

STATE OF VERMONT

CIVIL RIGHTS LAWS AND)
METHODS OF ENFORCEMENT)
IN VERMONT)

VERMONT ADVISORY COMMITTEE
TO THE
U.S. COMMISSION ON CIVIL RIGHTS
FACTFINDING MEETING

As recorded on Saturday, September 6, 1986,
at 9:00 a.m., at the Pavilion Auditorium,
109 State Street, Montpelier, Vermont.

COMMITTEE MEMBERS:

Kenneth M. Holland - Cairman
Louis L. Brin
Kimberly B. Cheney
Jerry Diamond
Murray Dry
Samuel Hand
Samuel E. Johnson
Jacob Schlitt
A. Peter Woolfson

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Meet.
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COURT REPORTERS ASSOCIATES
74 BUELL STREET
BURLINGTON, VERMONT

1 SATURDAY, SEPTEMBER 6, 1986; 9:00 A.M.

2
3 MR. CHAIRMAN: Ladies and gentlemen,
4 this fact-finding meeting of the Vermont Advisory
5 Committee to the U.S. Commission on Civil Rights will
6 come to order. This is a rather large room, so for
7 those of you who are sitting in the back, if you would
8 like to come forward, you might be able to hear a
9 little bit better.

10 I am Kenneth Holland, Chairman of the Vermont
11 Advisory Committee. The members of the Advisory
12 Committee who will be participating in this meeting
13 today are, starting from my left and moving to my
14 right: Murray Dry, Peter Woolfson, Sam Johnson,
15 Jerry Diamond, Kim Cheney, and Sam Hand.

16 The Commission staff appearing with us today
17 are Louis Brin, to my right, and Jacob Schlitt, to my
18 far left, of the New England Regional Office of the
19 Commission.

20 Our purpose in holding this fact-finding meeting
21 is to hear the views of representatives of persons who
22 are often the victims of discrimination on the basis
23 of race, religion, sex, age, handicap, or national
24 origin; relevant government agencies; organized
25 labor; and the business community, about the adequacy

1 of the existing State civil rights laws and the means
2 by which they are enforced.

3 We hope that through this process we will
4 be able to assist the Commission, governmental
5 officials, and the public in evaluating the existing
6 laws and enforcement procedures, and determining
7 whether changes are necessary.

8 The Commission on Civil Rights is an
9 independent, bipartisan agency of the United
10 States government established by Congress in
11 1957 and authorized by the Civil Rights Acts of
12 1957, 1960, and 1964, to:

13 1.) Investigate complaints alleging that
14 citizens are being deprived of their right to
15 vote by reason of their race, color, religion,
16 national origin, sex, age, or handicap.

17 2.) Study and collect information concerning
18 legal developments which constitute discrimination or
19 a denial of equal protection of the laws under the
20 Constitution.

21 3.) Appraise Federal laws and policies with
22 respect to discrimination or denial of equal
23 protection of the laws.

24 4.) Serve as the national clearinghouse for
25 civil rights information.

1 5.) Investigate allegations of vote fraud.

2 I would like to emphasize at this time that this
3 is an informational, public fact-finding session, and
4 not an adversary type of proceeding. Individuals have
5 been invited to come and share information with the
6 Committee. Each person who will participate has
7 voluntarily agreed to meet with the Committee.

8 Every effort has been made to invite persons
9 who are knowledgeable about the issues to
10 be dealt with. In an effort to get a well-balanced
11 picture, we have invited professors, judges, state
12 officials, and business, labor, and community leaders.

13 Since this is a public meeting, members of the
14 electronic and print media, as well as individual
15 citizens are welcome. Any person discussing a matter
16 with the Committee, however, may specifically request
17 that he or she not be televised or photographed. In
18 this case, it will be necessary for me to comply with
19 these wishes.

20 We are very concerned that we obtain all the
21 information relating to the matter under inquiry.
22 We are, however, concerned that no individual or
23 group be the victim of slanderous statements.

24 I admonish each participant that because of
25 the nature of this meeting, no person making a

1 statement enjoys a privilege against civil liability
2 for any defamatory remarks.

3 Anyone who wishes to present information
4 on the subject of this meeting may submit a written
5 statement to the Committee. Such written statements
6 should be submitted to the Committee by September
7 22nd, 1986, and should be addressed to the Vermont
8 State Advisory Committee to the U.S. Commission on
9 Civil Rights, 55 Summer Street, Boston, Massachusetts,
10 02110.

11 At approximately five o'clock this afternoon,
12 members of the audience will be invited to make
13 statements to the Committee. Each participant has
14 been given a copy of the Privacy Act statement,
15 informing them of the Committee's statutory authority
16 to collect information.

17 I would like to introduce to you the Governor of
18 the State of Vermont, the Honorable Governor Madeline
19 Kunin.

20
21 THE GOVERNOR: Thank you very much.
22 Members of the Advisory Commission, let me just say at
23 the outset that as Governor of the State of Vermont, I
24 very much welcome your fact-finding mission here
25 today. I think it can only help to serve us in the

1 future and shed some light on the enforcement of our
2 civil rights laws here in the State of Vermont. So we
3 are pleased that you are paying us a visit and that
4 you are holding this day-long proceeding in order to
5 evaluate our statutes, and also the mechanisms by which
6 we enforce them, and to see how the State of Vermont's
7 laws compare with the those of similar states, and
8 whether or not we are in full compliance.

9 I would say at the outset that from my observations
10 I know of no latent areas where we are not enforcing
11 the laws. However, that does not mean that there is not
12 room for improvement; I think particularly in an area such
13 as civil rights, the subject of whether or not there is
14 discrimination for any of the groups mentioned on the
15 basis of race, religion, sex, age, handicap, that
16 subject is often a subtle one, and unless there is a
17 strong climate for coming forward, sometimes one does
18 not hear about the kinds of discrimination
19 experienced. So that I think it is important that we
20 constantly work to set a positive climate in that
21 regard, so that people who are the subjects of
22 discrimination have an opportunity and feel that they
23 are welcomed to come forward, and have an opportunity
24 to seek redress, if there is an occasion of
25 discrimination.

1 I might say that Vermonters, according to our
2 history and our Constitution, have a long tradition of
3 being very proud of our enforcement of civil rights.
4 Our Constitution was one of the first, if not the
5 first to prohibit slavery in its wording.

6 We passed a state equal --
7 well, let me rephrase that one. We passed the -- we
8 approved the Federal Equal Rights Amendment very
9 early, about six months right after the Congress
10 ratified the Equal Rights Amendment. Unfortunately,
11 at that point that did not come into the Federal
12 Constitution, but the State of Vermont was very
13 willing and very quick to be counted on the record in
14 terms of equal rights for women.

15 As you know, we are at this time considering a
16 referendum that will be voted upon in November on a
17 State Equal Rights Amendment. And I am very hopeful
18 that the state will be on record in that regard.

19 Even though we have very strong advocates for
20 equal rights, and we have a history in this
21 regard about which we can be very proud, I would not
22 for one moment make the assumption that we do not
23 suffer from some of the foibles and weaknesses of
24 other human beings when it comes to discrimination.

25 I think the real question for us is: How can we

1 we create a mechanism that is most effective.

2 As you undoubtedly know, we have a Human Rights
3 Commission on the statute books that was put into
4 law in 1967. It has not been active, however,
5 for about ten years. There have not been new
6 appointments made and it has not been funded.

7 In addition, its jurisdiction is very limited.
8 It is limited to public accommodation and real estate.

9 We also have, as you undoubtedly
10 know, an active Attorney General's office which is
11 enforcing civil rights laws in the areas of sex
12 discrimination, age discrimination, and other areas.

13 A real question is: Do we need a broader
14 umbrella; do we need a more comprehensive approach?
15 Do we need new laws on the books, and do we need
16 a new agency to administer those laws, ones
17 that may be larger than the branch of the
18 Attorney General's office which is now dealing with
19 this. I would welcome from you recommendations in
20 this regard.

21 If your conclusion at the end of the hearings
22 is that, yes, we do need more enforcements, I
23 would welcome your recommendations as to precisely
24 how to proceed.

25 I think we all recognize we want to do the

1 right thing, but there is now enough information
2 out there, from the experience of other states,
3 so that we want to know precisely how to do the
4 right thing.

5 Simply creating an administrative entity or simply
6 creating an appropriation does not necessarily result
7 in effective enforcement of civil rights laws. So we
8 want to be absolutely certain that when we create a
9 change, if that is agreed upon, that we do it in the
10 most effective way. And that is why I am delighted
11 that you are here.

12 I personally feel very strongly that we should
13 do whatever is possible to enforce civil rights laws.
14 If the laws are not adequate, then we should
15 strengthen them.

16 I believe every citizen of the State of Vermont
17 should be treated equally under all circumstances,
18 regardless of race, religion, sex, age, or physical
19 handicap. Thank you.

20 MR. CHAIRMAN: Thank you, Governor
21 Kunin. Now I would like to introduce the Honorable
22 Frederick Allen, Chief Justice of the Vermont Supreme
23 Court, who will provide an overview of state and
24 federal civil rights legislation.

25

1 CHIEF JUSTICE ALLEN: Thank you, Mr.
2 Chair; members of the Commission:

3 One of the great pleasures that comes with
4 sitting on the Bench in the State of Vermont
5 is the opportunity to view ourselves through the
6 prism of our own State Constitution. It is no
7 accident of history that the Declaration of Rights at
8 the beginning of our Constitution is not just a
9 preamble to that document, but it is actually part of
10 our Constitution, and it is a direct reflection on the
11 character and the will of the people who drafted that
12 Constitution that state jurisprudence has had a role
13 independent of federal law in charting the course of
14 human rights and individual liberties in Vermont.

15 Back in 1802, the Vermont Supreme Court rejected
16 a lawyer's argument in a case that the United States
17 Constitution required our courts to honor a bill of
18 sale for a slave. Then Chief Justice Jonathan
19 Robinson said, in that early opinion: "I should
20 always respect the Constitution and laws of the Union,
21 but when the question of slavery involves solely the
22 interests of the inhabitants of this state, I should
23 cheerfully carry into effect the enlightened
24 principles of our State Constitution." If the spirit
25 behind those words had been found in the Constitutions

1 and in the interpretation of the Constitutions in
2 other states, it is highly questionable whether the
3 Civil Rights Act of 1871 would be necessary.

4 That law now known to judges and lawyers
5 as Section 1983 was, in the words of the United States
6 Supreme Court, "...intended to interpose the Federal
7 courts between the states and the people as a guardian
8 of the people's rights."

9 But though the first Civil Rights Act has been
10 on the books for more than a century, throughout
11 most of that period it has been the state and not the
12 Federal courts that have been involved in those civil
13 rights cases. There have been both practical and
14 historical reasons for this. Civil rights issues have
15 always had a natural sense of urgency about them.

16 The state courts, which are no less bound to
17 uphold federally created rights than federal
18 courts, can often respond more quickly and flexibly
19 to the intricate issues which so often characterize
20 civil rights cases.

21 Until 1961 there were substantial historical and
22 jurisprudential barriers to using the 1871 Act as a
23 practical civil rights tool. Only victims of direct
24 governmental action were protected, and then the
25 actions of the offending state officials had to be

1 intentional and purposefully motivated.

2 Things changed in 1961 with the U.S. Supreme
3 Court decision in Monroe versus Pape, which
4 clarified the objectives of Section 1983, and
5 eliminated the specific intent requirement and
6 applied the act even where officials had acted
7 unlawfully. The number of federal filings following
8 Monroe versus Pape increased dramatically, from
9 something under 300 in 1961 to over 13,000 in 1979.
10 This did not include the prisoners suits which went
11 from just over 200 to just over 11,000 in that same
12 period.

13 But the rise of Section 1983 suits didn't happen
14 in a vacuum. Much was happening in Congress and in
15 the country that gave the impression that civil rights
16 were rights to be protected only in the Federal
17 courthouse.

18 The Civil Rights Act of 1964 and the subsequent
19 legislation recalibrated the national conscience, not
20 only on matters of racial discrimination, but on bias
21 based on sex, age and handicap status.

22 Passage of this monumental legislation was a
23 bell that sounded in Washington with strong echoes in
24 every federal courthouse in the land.

25 Almost simultaneously, the U.S. Supreme Court

1 in Matthew versus Ohio and in many following cases
2 began a reexploration of the rights of the accused;
3 and again, under the United States Constitution,
4 while the exclusionary protections were enforcement
5 both in federal and state courts, in the minds
6 of the public, this was a federal law evolution.

7 Somehow the state courts received neither
8 due attention or due credit as a primary line of
9 defense for most Americans whose civil rights and
10 liberties were threatened.

11 We live in different times today. There is a
12 notable sense of deference by the U.S. Supreme
13 Court to state court decisions, and a new sense
14 of discovery among state supreme courts, and a
15 renewed focus on state constitutions.

16 In the middle '70's, scholars and jurists were
17 talking of the new judicial federalism, and the impact
18 of the trend on Civil Rights will be felt well into
19 the future.

20 Again, the reason for the present trends are
21 both practical and jurisprudential. Perhaps
22 the practical restraints on continued nationalization
23 of civil liberties more important. One of the
24 big threats to the exercise of our individual
25 liberties in our country is not attributable to

1 any justice or any judge or any national administration
2 it is simply to litigation explosion.

3 The federal court dockets in the country have
4 grown dramatically and drastically. While the reasons
5 are complex, there is a perception that the shift of
6 the civil rights caseload from federal to state courts
7 has played a role in the case overload.

8 Since intent to harm is no longer a requirement
9 for a Section 1983 action, many simple torts committed
10 by government officials are not actionable in the
11 Federal courts.

12 Even a decade ago, the U.S. Supreme Court
13 noted that 1983 claims could become a font for tort
14 law and the numbers -- the increased numbers of cases in
15 the Federal courts have justified that concern.

16 Recently, the U.S. Supreme Court has announced
17 a case decision in Perreault versus Taylor which
18 may well accelerate the march of cases back to
19 the state courthouses. In that case, the U.S. Supreme
20 Court held that not every deprivation committed by a
21 state official might be remedied under Section 1983.
22 The court there held that if the state provided an
23 adequate post-deprivation remedy, due process is
24 satisfied and no Constitution deprivation exists.

25 It is careful to note that the court was not

1 simply deferring to state courts or establishing
2 new norms of primary jurisdiction. It determined
3 that the existence of state deprivation remedies
4 alters the character of the deprivation and
5 removes it from under the mantle of federal law.

6 While the parameters of Perreault have not
7 been fully determined, I think it is safe to say
8 that as a result of that case, and the cases which
9 it followed, there will be a return of civil rights
10 cases to the state courts.

11 As in the '60's, the trends today are reflected
12 today by more than just what the court does. There
13 seems to be a clear reluctance on the part of Congress
14 to create new civil rights responsibilities at the
15 Federal level.

16 The national Equal Rights Amendment
17 cannot look to early passage, but there is renewed
18 interest in Vermont and the ERA is closer to home,
19 with enforcement also closer to home. The Grova City
20 case which loosened the restrictions against federal
21 financial assistance in colleges that discriminate on
22 the basis of sex is barely two years old.

23 At the same time,
24 state and local awareness of discriminations, based on
25 sex, race, age, or handicap status has grown

1 vigorously.

2 I think what we conclude from the U.S. Supreme
3 Court decisions like Perreault versus Taylor, as
4 well as the trends in Congress in the nation today
5 seems clear.

6 The states will have the task of reconnecting
7 their sometimes frail ties to an earlier time when
8 protection of civil liberties meant a trip to the
9 county court and not to the Federal court.

10 We will have to restudy our Constitution,
11 re-examine the adequacy of our own laws. The
12 push to improve federal laws will surely go forward.
13 I don't think the importance of the strong federal
14 role in civil rights will permanently decline. But
15 the states are regaining a position of parity and
16 a reputation for renewed effectiveness. And whatever
17 happens at the Federal level in the next years, I
18 don't believe the states will ever again relinquish
19 their proper role.

20 Vermont stands in a good position to face the
21 challenge of greater civil rights responsibilities
22 in the years ahead. Last year the Vermont Supreme
23 Court urged the States' lawyers to pay more heed
24 to the Vermont Constitution. That message has
25 been heard. While that advice was given in a

1 criminal case, it is equally good advice for those of
2 you who are concerned with civil rights and individual
3 liberties.

4 I would also comment that by no means will
5 the coming changes in civil rights protections fall
6 solely on our courts. In a field where the outcome of
7 a case depends heavily on a fair review of complex
8 facts, justice would not be served if the sole reverse
9 of those cases were the courts.

10 Employers, landlords, municipal
11 governments, administrative agencies, labor unions,
12 among others, have a primary duty to listen to the
13 public they serve, to understand what the law
14 requires, and to try in the long Vermont tradition to
15 settle disputes short of litigation, if possible.

16 We have our own caseload problems in Vermont,
17 like every other state. And everyone will be
18 better served if the courts are reserved for
19 those truly unresolvable disputes or those
20 disputes where the law is unclear and needs
21 clarification.

22 Vermont enters this uncertain period in civil
23 rights enforcement with many natural assets. Nearly
24 200 years after the words were spoken by then-Chief
25 Justice Robinson, it is still correct to say that our

1 principles are enlighten.

2 Our communities are close-knit and
3 we care about one another. It is imperative that
4 developments in the field of civil rights be
5 constantly monitored to make certain that the
6 necessary laws and necessary educational programs and
7 the means of enforcement are in place to eliminate
8 discrimination in this state of every kind.

9 A people who care about fair housing, fair
10 employment, racial quality, equitable treatment of the
11 handicapped, the rights of senior citizens and
12 equality between the sexes deserves nothing less.

13 You are to be commended for the effort that
14 you have made and in the effort that you are making
15 today to perpetuate our enlightened principle.

16 I wish you every success for a productive
17 meeting. Thank you.

18 MR. CHAIRMAN: Thank you, Chief Justice
19 Allen.

20 Now I will ask Dr. William Bright and Judy
21 Stephany to come forward. Professor Bright teaches in
22 the College of Education at the University of Vermont,
23 and Ms. Stephany is sex equity consultant for the
24 State of Vermont, Department of Education. She has
25 served in the Vermont House of Representatives from

1 1977 to 1983. And we have asked Professor Bright and
2 Ms. Stephany to speak on the subject of education and
3 civil rights in the State of Vermont.

4 Dr. Bright, would you like to begin? You can
5 either speak from there or you can go up to the
6 lecturn, whichever you would be more comfortable
7 doing.

8 MR. BRIGHT: I would be more
9 comfortable sitting here, but I probably should go to
10 the front, because I will have the majority.

11 MR. CHAIRMAN: We will ask each of our
12 panelists, when they give their statement, to go to the
13 lecturn and then to return to the table for questions
14 from the Committee.

15 Also, I have the unpleasant duty of
16 pointing out that because of a very full agenda
17 today, I have to hold each of our speakers to five
18 minutes in most cases, ten minutes in other cases.
19 Each one of our speakers, however, has been asked to
20 present a written statement to the Committee, and also
21 we have asked each speaker to be available for
22 questions following the five minute presentation.
23 Professor Bright.

24 MR. BRIGHT: Good morning. I am glad
25 to have the chance to speak now, because as the day

1 rolls on, as the weeks have rolled on, the time has
2 gotten shorter and shorter. So by this afternoon, and
3 I am sorry for you folks, it is going to be quick.
4 So we will, I am sure, talk very fast.

5 Men and women of the Committee, I appreciate
6 the opportunity to appear before you this morning.
7 I also congratulate you in conducting these hearings,
8 as they serve many purposes, not the least being that
9 the public is being informed.

10 Education is important to all of us. Education
11 characterized as schooling is seen as the lifeline
12 by persons in those groups that have historically
13 endured discrimination in the achievement of
14 their life goals. They have adopted the American
15 ethic. These persons have set the acquisition of
16 certain levels of education as benchmarks. They
17 expect that the achievement of these benchmark goals
18 will allow them to overcome the force of the factors
19 that have been causes of this discrimination. They
20 are often disappointed. For so many of these persons,
21 the schools do not work as reflected by standard
22 measures.

23 The question is not, why don't our schools work
24 for these persons, but it should be, and is, really,
25 what can we do to make them work for these persons and

1 for all persons? For me, the answer is embedded in
2 the word "equity".

3 The dictionary refers to equity in terms of
4 fairness and impartiality. The dictionary also
5 refers to equity in terms of -- in educational
6 practice, equity has generally meant equal
7 opportunity and/or access. The education
8 establishment in Vermont has addressed this issue at
9 both the state and local levels. Have they addressed
10 it adequately? Not enough, say the disabled; not
11 enough, say the Abenakis; not enough, say blacks, and
12 so on.

13 I am certain that a systematic revision --
14 systematic review of the schools will surface access
15 difficulties for certain groups. There is certainly
16 anecdotal evidence that the difficulties exist.

17 Of comparable importance to the equal opportunity
18 and access dimensions of equity, there is a quality
19 dimension. I mean by this that the schooling
20 available has a dimension of appropriateness in
21 materials and delivery, and a dimension of expectation
22 of achievement. Is the child learning the material
23 they should be learning? Are the delivery or the
24 materials or the personnel appropriate? Is the child
25 expected to achieve? These are questions that should

1 be asked in dealing with these persons.

2 Numerous studies indicate that children of the
3 affected groups, particularly the protected minorities
4 and the disabled suffer appreciably in schools from
5 the inappropriateness of materials and delivery. They
6 also endure lower expectations of achievement than the
7 majority representation.

8 My experience in the schools throughout the
9 State of Vermont tells me that this is generally
10 the case, or certainly is often the case.

11 There is also an insensitivity that is
12 tolerated in certain schools, as the following
13 examples will show, just two: A black child is lying
14 on the ground in the playground, crying. A white
15 child is standing over him, yelling, "Nigger." The
16 teacher dismisses the episode as child's play. This
17 has been related to me, this particular example, in
18 very recent years.

19 I have a good friend, in fact, who is going
20 to speak later on, Larry McCrorey; Dr. McCrorey,
21 who often refers to this as an opportunity lost,
22 and that this is a teachable moment that has
23 been passed, been squandered.

24 Another example is just last year, was in
25 a high school, and a high school that was

1 using a broom closet adjacent to an office as a
2 detention area. I was taken aback when I was told
3 that, but I walked by the closet and there was a young
4 black man sitting in the closet. Needless to say, I
5 almost fell over; and asked the question: How many
6 black kids are there in the school? One.

7 The question is, what was the message, not only
8 to the white children in the school, to the staff, but
9 what was the message to that young man? A school
10 official described that as the only place that they
11 could use for in school detention. That is
12 unconscienable.

13 There is a field of research and a body
14 of literature that is emerging that can be and
15 should be very useful in terms of issues around
16 equity. It is the literature called school
17 improvement literature, or effective schools
18 research. As I say, it is emerging and a lot of good
19 information is coming out of that. And many school
20 persons in the elementary and secondary education are
21 beginning to look at that particular information, and
22 what that information has to say.

23 I think there are some things in that that
24 are very appropriate, and would not support
25 necessarily everything there. But a couple of

1 areas that it seems to me are important to look at.
2 One is the whole notion of school climate: What are
3 the conditions, what are the things that are necessary
4 to put together a school climate, one, not only to
5 improvement instruction, but a school climate that is
6 effective and proper for all young people to get to
7 grow and to get to develop with their own self-respect.

8 The school research talks about the
9 notion of school climate in making the school as a
10 place to work and a place where learning will take
11 place, involving the staff and the community together
12 as joint partners. It seems that these are particular
13 things that would help.

14 Around the notions of instruction that this
15 particular body of research is surfacing and coming to
16 bear in terms of looking at schools, is the notion of
17 instruction, what happens in terms of students being
18 better students, is that there is a whole notion of
19 expectations, that in these particular schools that
20 the expectations of everyone, staff, students, and
21 members of the community is that children can learn,
22 and in fact that children will learn, and much of the
23 information is showing that by the measures used, that
24 children do learn.

25 As I said before, many Vermont schools

1 are looking at this literature. I will acknowledge
2 that there are schools in Vermont, systems and
3 individual schools that are working very hard and are
4 making advances and are doing very well in terms of
5 working with children, of the representative groups.
6 And I do make that statement and make that
7 acknowledgement.

8 Back to equity and education in Vermont,
9 I do acknowledge that Vermont is different from other
10 states, underlining "different". By that I mean that
11 Vermont is dissimilar from other states on certain
12 points. I do not subscribe to the conclusion that
13 Vermont is unique, underlining "unique".

14 There are other states in this country that
15 have similar -- are similar to Vermont in substance
16 and in numbers of the underrepresented. Vermont can,
17 in this instance -- can and should not stand alone, and
18 does not stand alone in how it deals with the issues
19 of equity. It should learn and take advantage of the
20 experiences of other states and other institutions.

21 In terms of specific proposals, of legislation,
22 there is certainly a conflict of much of this
23 effective schools research, school improvement
24 research that where the real base of making the
25 difference in terms of education is not at the state

1 level, it is not at the system-wide level, but the
2 real improvement comes and real differences and
3 changes are made at the building level. That is where
4 real impact, real change occurs.

5 With that in mind, there is the possibility, of
6 course, that the civil rights , the Human Rights
7 Commission of our state, if it were broadened in
8 scope and it had a responsibility, in my mind, of
9 investigative power, investigative power and also some
10 type of authority that would allow mediation in crises
11 or situations that came up, that mediation would take
12 place.

13 My understanding of the laws and the statutes
14 and the authorities that are available now, that these
15 practices can take place, these things can occur. But
16 in their occurring and their being available, my
17 feeling is that they are somewhat submerged and they
18 do not have the highlighting effect where the people
19 who need to take advantage of these things, it is
20 visible for them to see.

21 I think there is a very big distinction in the
22 state among underrepresented people. I am black, one
23 of a number of a very few black people in this state.
24 But I am a visible black. I am at UVM. I am here.

25 But there are others in this state, as well as

1 other groups, who do not know what to do, how to make
2 that particular impact, where to make the inroad.
3 They don't know me, and it gets to the point with the
4 numbers that are here of many of the groups that we
5 are talking about, that if you don't know an
6 individual, redress does not happen.

7 So this is what, in terms of my recommendation
8 in terms of the immediate reactive and investigative
9 authority it would seem that would tend to ameliorate
10 these situations and conditions. Thank you very much.

11 MR. CHAIRMAN: Thank you, Professor
12 Bright, very much. Ms. Stephany.

13
14 MS. STEPHANY: Good morning, members
15 of the Committee and members of the audience. I would
16 have liked to have initially addressed you as ladies
17 and gentlemen, but not seeing any ladies on the panel,
18 that was a difficulty. There is one; thank goodness
19 you told me. Were you a school board or a group of
20 administrators in public schools of this state, I
21 would be able to offer to you technical assistance as
22 the sex equity consultant on ways in which to retain,
23 ways in which to recruit, and ways in which to look for
24 qualified women to serve in administrative positions
25 or on school boards.

1 As a sex equity consultant for the
2 Department of Education, my role is as a technical
3 assistant specialist, not as a regulatory person. The
4 Department of Education receives from the Federal
5 government a series of grants through Title 4, through
6 desegregation grants of Title 4, in several areas: in
7 the areas of sex, in the areas of national origin, in
8 the areas of bilingual education, in the areas of
9 migrant education. And these grants which are
10 administered by the State Department of Education are
11 specifically to provide technical assistance to school
12 personnel and to members of the community on ways in
13 which to work with those divergent populations and to
14 integrate those populations into the mainstream of
15 schooling within the State of Vermont. They are
16 specific targeted programs dealing with minority
17 populations and affected populations.

18 In addition to those grants from the
19 Federal government, the state also receives and
20 administers a broad variety of money for Special
21 Education students and children with special needs
22 through compensatory education programs and through
23 Special Education programs. All of these programs
24 that are administered by the department are
25 administered on a service-based model. We are not

1 regulatory in that sense.

2 Our regulatory aspect, however, does come into
3 play through the school approval standards.

4 The recently revised and redone standards by the
5 state Board of Education have moved from a quantity-based
6 evaluation system to a quality-based evaluation system;
7 and Professor Holland, I will leave for you and the
8 Committee, at the conclusion of my comments, the
9 latest draft of the proposed revisions of the school
10 approval standards.

11 And in the areas of equity in education,
12 the concept of school climate is the area where
13 we, as advocates for equity, whether it be
14 equity for those who are women as well as men, those
15 who come from a different ethnic background, have
16 involvement in the schools, student participation in
17 extracurricular activities, recognition of student and
18 faculty excellence, disciplinary actions, student
19 problems, students problems concerning substance
20 abuse, student detention. We proposed to add and the
21 presence of bias and stereotype on the basis of sex,
22 age, religion, national origin, or handicapping
23 conditions to key a school climate being open and free
24 of bias and free of discrimination to all persons.

25 The public school approval standards will

1 not solve all of the problems of dealing with equity
2 issues in the school; thus as Professor Bright had
3 mentioned previously, the new impetus on the part of
4 the public in promoting excellence in the schools is a
5 very positive approach to deal with the concept of
6 schooling. But one can argue, and I would argue very
7 strenuously that it is possible to have excellence
8 without having equity go hand in hand with that
9 excellence.

10 The department, through the school approval
11 standards, through its active solicitation
12 and its desire to have grants coming in from
13 the Federal government on a categorical basis, to
14 provide specific help to local school districts in
15 the area of sex stereotyping and the needs of the
16 handicapped, speaks to the need as well as it does on
17 the part of the State in general through the
18 legislature and the executive branches to provide
19 state aid to education in an equitable fashion.

20 We speak of the needs of equity in creating
21 that climate of equity, and if you look at the school
22 districts in that state, in addition to the very
23 quantifiable and very noticeable physical differences
24 among students, there remains a great divergence among
25 students with regard to the economic needs both of

1 their families and of the communities in which they
2 live.

3 So the issues of equity go beyond those which
4 we can look at and clearly quantify to that
5 economic equity issue with the State aid to
6 education formulas, whatever one we come up with on a
7 state level, seek to solve to even out the need for
8 families as individuals and communities as groups to
9 deal with that.

10 The vocational education programs that are
11 administered by the State of Vermont have a strong
12 component of equity of access for all students,
13 whether the students be young men or young women,
14 whether they have handicapping conditions, whatever
15 their national origin, and to provide for those
16 students appropriate vocational education for their
17 choice.

18 The state maintains a RAP catalog of
19 resource agents who go into the schools and work with
20 teachers and with administrators to provide programs.
21 Included in those RAP catalogs are groups specifically
22 dealing with the needs of other cultures, specifically
23 dealing with the needs of women's history, and
24 specifically dealing with programs that are presented
25 to show the persons of black Americans and to provide

1 experienced black history to our young people in these
2 schools.

3 . The Department of Education has within it an
4 internal group called the Equity Committee which
5 seeks to deal internally with issues of equity.
6 One of the things that we will be doing within
7 the next six months is putting together a
8 booklet of information to send out to every school
9 district in the State, along with a cover letter from
10 the Commissioner, advising them of the importance of
11 recognizing the recently enacted state holiday in
12 January to celebrate the contributions that Dr. Martin
13 Luther King has made to our American experiences.
14 And we will be providing information to school
15 districts and encouraging them to use that
16 information.

17 Finally, as the sex equity consultant, let me put
18 in a plug for the specific needs to create those areas
19 of excellence and those areas of equity
20 for young women: Providing technical assistance to
21 school districts, to students, to teachers, to school
22 administrators, to members of school boards, and to
23 members of the community.

24 The one thing that I began with and will
25 remind you as I leave you today is that as group,

1 young women are the only group of children who
2 enter school at a higher level of capability than
3 when they leave.

4 Young women are the only people
5 who go through twelve years and leave school at a
6 lower level than which they entered. For this reason
7 I would encourage you to not only look at the areas of
8 creating that climate of excellence, but once the
9 climate is created, to promote that excellence and to
10 encourage it.

11 Thank you.

12 MR. CHAIRMAN: Thank you, Ms. Stephany.
13 Kim Cheney, would you like to ask a question or two?

14 MR. CHENEY: I would like to make a
15 comment, as the Chief Justice leaves, that Chief Justice
16 Allen, I think what you are seeing in this make-up of this
17 Committee is exactly what you were talking about, that
18 this Committee reflects the national attitude towards
19 civil rights, and that there is no women or -- one black
20 and almost no other minorities, so I think your speech
21 is very timely. And I think it reflects very much the
22 need for the Vermont Constitution and this Commission
23 to do something.

24 I also enjoyed your remarks very much.

25 MR. ALLEN: Thank you.

1 MR. CHENEY: Judy, I think you did
2 appropriately take us to task for the make-up of this
3 Committee, and Professor Bright, I have long been
4 interested in the -- what I think is Vermont's neat
5 contribution, is the whole school climate thing and the
6 approval standards. I don't know any other state that
7 has such a really unique effort.

8 Is there something that the University of
9 Vermont could do to monitor this, to help --
10 my sense of it is, it is a brilliant idea, and
11 done with great sensitivity to the needs, but I also
12 have an idea there is a lot of resistance and a lot of
13 nurturing that is going to be needed to make that
14 work; we are looking for allies, I guess.

15 MR. BRIGHT: I as an individual am
16 looking for allies, and am not speaking as the
17 representative of the University today, of course, as
18 you understand. But as a faculty member in the
19 College of Education and Social Services, we have been
20 doing some work with a number of districts around the
21 whole notion of trying to identify ways of improving
22 the climate.

23 We have been -- some of our faculty in the
24 department that I am a part of have worked with
25 some people from Connecticut, they have developed an

1 improvement process which has a climate category in
2 that, work with districts.

3 We have had faculty that I am aware of that
4 have worked with the department, in terms of
5 the formulating of the standards. There is certainly
6 interest on the part of individual faculty, and I
7 think that will continue.

8 I think the thing perhaps you are asking
9 is, can the University, does it, will it make a
10 commitment that is substantial, of people and
11 personnel and not just off the cuff? And I think that
12 it is groups like this or support from the State
13 asking that kind of question, and making that kind of
14 approach. I think it is appropriate, personally.

15 MR. CHENEY: One of the things that
16 strikes me is in Vermont at least there is no place
17 where anybody can go with a general concern about
18 civil rights. You can go to the A.G.'s office, but
19 that is basically an enforcement issue, and if there
20 is no specific case, then you can't do anything.

21 I wonder if the University, or working with
22 the Education Department, maybe a group such as
23 this that is a state group that just is a place
24 to collect information and to collect and
25 stimulate people's thinking on how to go about

1 improving the school climate, for example.

2 MS. STEPHANY: If I could interrupt for
3 one minute: There will be distributed, within the next
4 six months, from the department -- and you mentioned the
5 University, Dean Tescone will be involved in the
6 process, as well as several over experts in an
7 advisory to school districts undergoing public school
8 approval, and all school districts, for that matter --
9 on school climate and ways to measure school climate,
10 on ways to improve school climate.

11 MR. CHENEY: I don't want to monopolize
12 this, but I have one other question for you, because
13 the last time we met we had a discussion as to whether
14 you could give us some feedback on how the school
15 climate evaluation process was going, was there a
16 realistic impact on the schools, was there adequate
17 training for the visiting members, or was it something
18 that was pretty much pro forma?

19 MS. STEPHANY: Having gone through the
20 60 some-odd reports that have been submitted within
21 the last two years, one of the reasons I can say that
22 we are having the school climate advisory is because
23 there has been less of an understanding of the
24 importance of school climate and how to measure it and
25 how to look at it.

1 As an example, I was a facilitator
2 for the department for one of the schools, and one of
3 the comments made time and time again by several of
4 the members of the team that were visiting that school
5 was, how old the textbooks are and how outdated the
6 textbooks were and how outrageous that was.

7 And yet in the school climate section which
8 deals with the issues of stereotyping and bias, it
9 passed right over their heads.

10 And I raised the issue to them as I was
11 reading, and they said, do you think we should
12 put it in here; and I suggested if they felt that was
13 appropriate, that would be a good idea. They
14 ultimately did, but it was something that had to be
15 raised to them.

16 So in the interest of insuring that school
17 climate section, which as you point out, is
18 somewhat unique, is not just window dressing
19 but a very important part of the standards.

20 MR. CHENEY: But you see a need
21 to strengthen it with this Committee?

22 MS. STEPHANY: Certainly. That is why
23 the proposed revisions are in there. And there are
24 probably 7 or 8 specific proposal revisions to go to
25 the State Board which deal with the equity issues.

1 MR. CHENEY: Have you had any input
2 into that?

3 MR. BRIGHT: I know that there are
4 individual faculty members that have had input. She
5 mentioned Charlie Tescone, who is our former Dean,
6 just stepped down.

7 But what I wanted to mention is
8 that the New England Association, which is the -- not
9 exact title of this--but it is the accreditation board
10 of New England, where virtually all the schools in our
11 state school districts participate in that approval;
12 in their recent revision, which has been four or
13 five years ago, they have a school climate category in
14 there.

15 It is not monitored nearly as well as the
16 State is doing already, with their particular one.
17 So schools are being pushed in a couple of directions
18 to address that particular issue.

19 But again, it is a very nebulous, very vague,
20 and unless individual people push to get the kind
21 of comments that Judy indicated, should we do it?
22 Because they have not been encouraged to do it in the
23 past.

24 MR. CHAIRMAN: We have time for one
25 more question. Sam?

1 MR. JOHNSON: On this concept of
2 genuine opportunity to achieve, Professor Bright, you
3 mentioned that there was a question of inadequate
4 delivery and a question about the adequacy of the
5 materials. If the delivery is inadequate and the
6 materials are inadequate, will minority children
7 ever be given a genuine opportunity to achieve
8 in Vermont?

9 MR. BRIGHT: I would say no, not with
10 the inadequacies. There has to be an adequate --
11 there has to be adequacy in those areas.

12 MR. JOHNSON: Just a quick follow-up;
13 on the examples that you gave in the very beginning of
14 your presentation, isn't it fair to say that those are
15 blatant examples of nonenforcement of the existing
16 civil rights laws?

17 MR. BRIGHT: Yes.

18 MR. CHAIRMAN: Jerry Diamond would like
19 to take up our remaining one minute.

20 MR. DIAMOND: And the answer can be
21 submitted later; I have a make-up question on the
22 Equity Committee within the Department of Education.
23 I am just curious to know the make-up of that Committee
24 in terms of whether or not it really reflects the
25 sensitivity from protected minorities that might need

1 that expression within the department, or whether or
2 not it is essentially an entirely white Committee,
3 whether it is nine-tenths male or -- in terms of its
4 sensitivity. I just want to find out that
5 information; I have not been aware it exists?

6 MS. STEPHANY: The Equity Committee is
7 chaired by Marion Lucenti, who is the Director of the
8 Equity Project and reports directly to the
9 Commissioner. The line of reporting from the Equity
10 Committee is directly to the Commissioner of
11 education. It includes the Department Counsel, Chief
12 Counsel, who is a woman; I serve on it, and we have
13 representatives from each of the units within the
14 department.

15 We have somebody from the Compensatory
16 Education Unit, Special Education Unit, several
17 members from the Vocational Educational Unit, men and
18 women, and I would say it reflects a strong interest
19 of the department to provide service within the
20 department and to key issues within the department.

21 MR. CHAIRMAN: I think we have 30
22 seconds. Murray Dry?

23 MR. DRY: I want to ask Judy Stephany
24 if she would elaborate on the last point you made in
25 your statement.

1 It was shocking to me, but I didn't understand
2 it. You said that young women end up at a lower
3 level of capability than they finish school than
4 when they started. Could you explain exactly what
5 that means?

6 MS. STEPHANY: The research that has
7 been done by the educational researchers shows that
8 the capacity and the potential that young -- and the
9 capabilities that young women enter school with,
10 whether it be in kindergarten or first grade is
11 greater than when they leave in twelfth grade, that
12 their schooling has, rather than broadened their
13 horizons, limited their horizons and limited their
14 capabilities.

15 MR. DRY: Is that, for example, as
16 measured by a standard test, IQ test?

17 MS. STEPHANY: Yes. And I would be
18 glad to get you that information, if you like.

19 MR. CHAIRMAN: Thank you. Our next
20 panel deals with demographics in Vermont, and I would
21 like to ask Dr. Frederick Schmidt and Dr. David
22 Andrews to please come forward.

23 Dr. Schmidt is an Associate Professor of
24 Sociology and Director of the Center for Rural
25 Studies at the University of Vermont. Dr. Andrews is

1 a Professor of Anthropology at Middlebury College.
2 Dr. Schmidt, if you would like to take the lecturn.
3 And I have asked each of these participants to limit
4 their remarks to ten minutes.

5 DR. SCHMIDT: Thanks. I am really
6 pleased to be here.

7 David and I were struggling over how we were
8 going to use our half-hour; I think we both came
9 in assuming that we had 15 minutes, and rather
10 than wasting the time talking about time we do
11 or don't have, I hope that we will go through the
12 remarks as quickly as we can.

13 While we are beating up on the Committee,
14 let me point out one other thing that is of
15 concern to me, and I am part of the problem as
16 well, is the resources that are put behind these
17 kinds of hearings.

18 As an advocate and a researcher for rural
19 Vermont, I don't see any low income rural
20 Vermonters represented in any of the testimony given
21 today. And part of that is because the resources are
22 not available to get those kinds of people to these
23 kinds of hearings. And I would suggest that probably
24 all of us that are testifying are an unrepresentative
25 sample of the interests and needs and concerns around

1 the State. But again, I don't want to belabor that
2 point.

3 I think it would be useful in the future, when
4 we put hearings like this together, to figure out
5 strategies of getting people here whose voices are not
6 heard; get the resource to have them here.

7 I want to make my comments very much as an
8 advocate for having a civil rights commission in
9 the State. And I believe the letter I got asking
10 me to address that, as a witness, at the University,
11 was mentioned, I direct what is called the Center
12 for Rural Studies. And that is a kind of fee for
13 for service research outfit supported by the
14 University, but sustained by requests for
15 information. Because of the kinds of requests for
16 information we get come from all over the State, I
17 think the kinds of responses we get and the kind of
18 questions we get would be of interest to this
19 Commission.

20 About a third, going back over the last two
21 years of requests that we have had at The Center, come
22 in one way or another from interest groups that are
23 concerned about having some statistics to help them
24 make a case for their particular concern. That is of
25 interest; and what I am prepared and will submit as

1 testimony represents eight short papers in a data
2 brief series that we do in this state done mostly by
3 students, and essentially reflects the kinds of
4 concerns that we get. Let me give you an idea briefly
5 of what those are.

6 In the first place, a piece entitled, Women
7 in the Labor Force, which comes from a concern,
8 series of requests that we have had to provide
9 research on the role of women in the labor force,
10 changing roles of women in the labor force.

11 Secondly, and critically, and I hope to be
12 able to come back to that, is the definition
13 of "metropolitan". In Vermont, as you are all
14 aware, we are a rural state, by some definitions
15 the most rural. 66 percent of our population lives
16 in communities under 2,500.

17 Local governments, local activists,
18 people concerned about the future of the State
19 consistently find themselves prejudiced against
20 because they live in towns of under 2500.

21 An interesting cut on the rural/urban
22 split that we don't often notice and in fact
23 is partially responsible for why there is a
24 Center for Rural Studies at the University. The
25 metropolitan statistical data brief that we did points

1 out that 25 percent lives in the Burlington SMA, which
2 is the only recognized metropolitan area of the State.
3 Again, two-thirds of our population is rural.

4 Another request we have had recently deals with
5 profiles of aging in Vermont, and I know you
6 will hear more today about the aging composition
7 of our state; it is one of great concern. We are
8 slightly below national average in terms of our median
9 age; we are slightly above national average in the
10 proportion of people that we have over 55, 65, and 75,
11 and it is a growing cohort of the population.

12 Yet another area is simply to rank Vermont with
13 another states, how do we stand, and I will come
14 back to that.

15 A fifth area here, single parents data brief
16 that we put out entitled, "If You Are Living Alone,
17 You Are Not Alone"; one-person households.

18 Now, a rapidly increasing proportion of the
19 population, some 10 percent of our population
20 in 1980 increased at a rate of 75 percent during
21 the decade of the '70's. Why is that an issue
22 of concern? Simply because most of the public housing
23 programs have as part of their architectural designs
24 responses to the nuclear family needs and not to the
25 single family households or single heads of

1 households. Again, a concern. A quarter not often
2 heard from, single households.

3 A sixth area, the native American
4 experience in Vermont. There has been an ongoing
5 discussion in this state whether we legally have a
6 tribe in the State, I am sure all of you are
7 aware of that. Examination of statistics looking at
8 the native American population in the State suggests
9 some serious and ongoing inequities in the society.

10 Again, a repeat request for the role in the
11 increase of women in the labor force.

12 Finally, rural/urban distributions of
13 minority populations in this state and changes in
14 the minority populations in this state.

15 Let me, in the few seconds that I have
16 remaining, give you kind of an overview of one of
17 the ambivalances that I have in using too much
18 information. As ironic as it may seem, being in the
19 research outfit I am, of course, interested in
20 collecting numbers, massaging information.

21 On the one hand, my ambivalence comes from the
22 fact that sometimes numbers are often misused and all
23 too often policy is wagged by a single statistic.

24 For example, Vermont is 50th among the states in
25 terms of the number of blacks that live in this state.

1 Vermont is 50th in the United States in terms of the
2 number of American or native Americans that live in
3 the State. Vermont is 50th in the United States
4 states in terms of Asian peoples that live in this
5 state. If those statistics were used to make a case
6 against the development of a state-based commission on
7 civil liberties, I would argue strongly against using
8 those statistics.

9 The problems in the society, the issues of
10 equity in the society do not lie in the statistics
11 that count heads of minorities.

12 The problems in the society again, as I am
13 sure you will hear over and over again, lie in
14 the structure of the society itself, not in the
15 targeted numbers which are sometimes used to make a
16 case for the need for a Civil Rights Commission.

17 I would, however, then turn in my ambivalence
18 to use data to make a case.

19 One thing that is not realized or
20 not often put in the context of a civil liberties
21 discussion is this discussion of plurality. The rural
22 orientation of the State, the way the State is put
23 together in terms of its rural composition.

24 Very frequently, as I indicated before,
25 policy is conducted with an urban bias in the

1 society. Programs are concerned with delivery
2 mechanisms which are based on the influence from the
3 big cities.

4 There is no social service program in this
5 country that can serve rural peoples for the
6 same cost that it can serve urban peoples. It
7 is simply that friction of space that occurs or
8 emerges when populations are dispersed in space.

9 Rarely, if ever, is policy made, are programs
10 designed taking into account the rural location of a
11 population.

12 So I would suggest that a state as rural
13 as Vermont, when it considers civil liberties,
14 starts with a double jeopardy.

15 Any single subsection of the population does
16 have a rural component in this state. So when you
17 talk about the delivery of educational services, it is
18 easier to influence the curriculum of the metropolitan
19 centers in the State than it is to get out to the far
20 pockets to the Northeast Kingdom and the southeast,
21 warmer section of the State, and that is a problem that
22 confronts us as we address policy and equity in this
23 system.

24 I think I will leave it at that and hope
25 that I can use some of the numbers that I have brought

1 along to address some questions that the Commission
2 may have.

3 MR. CHAIRMAN: Thank you, Dr. Schmidt.
4 Dr. Andrews.

5 DR. ANDREWS: My name is David H.
6 Andrews, I am an anthropologist at Middlebury College,
7 an institution where I have taught for the past 18
8 years. Although my professional specialty is Latin
9 America, I also teach courses on American society and
10 culture and ethnic groups in the United States.

11 My comments today reflect the knowledge
12 that I have acquired in teaching these two courses,
13 although there are indications of my wider
14 cross-cultural experience. I have no in-depth
15 knowledge of the ethnic groups in Vermont and no more
16 than anybody else about other minority groups such as
17 the handicapped.

18 My task at this fact-finding hearing is to
19 bring some larger meaning to the statistics
20 presented, that is, how would I as an
21 anthropologist view these numbers and statistics.

22 I will go about this task by discussing Vermont
23 in a larger context, more specifically as part of one
24 of several cultural areas in the United States.

25 I will also briefly describe the larger

1 setting of minority groups in Vermont, and
2 this will be followed by an overview of what I
3 consider to be a very appropriate theoretical
4 framework for what I consider ethnic groups in
5 Vermont, and because of the recent admonition, this
6 will be briefer than I had anticipated.

7 Most of the behavior of people in the
8 United States can be accounted for by four factors:
9 The social clues background, their ethnicity, the
10 region of the country in which they grew up, and
11 whether they grew up in a rural or ethnic background.
12 Educational differences are created by the principle
13 of first effective settlement, that is, regional
14 differences have their origins in the culture of the
15 group that establishes the first effective settlement
16 in the area. And as Gaskill has pointed out, once
17 established, culture creates its own continuity.

18 The people who created the first
19 effective settlement in New England were primarily
20 English and Puritans. Many of them were also
21 farmers, and here in Vermont, for the farmers the
22 principles of life were sobriety, hard work, order,
23 self-reliance, and a restricted emotional tone; the
24 latter being the source of a great deal of humor,
25 obviously.

1 Although this may have been a fringe
2 area of New England, it was this way of life and
3 the values associated with that comprised the core
4 culture of the United States.

5 At later dates Vermont was also settled by
6 Scotch, Scotch/Irish, French, and later French
7 Canadians.

8 It is the Vermont farmer of British descent
9 and his genetic and cultural descendents in
10 the west that is seen as the exemplar of the
11 culture of the United States. These farmers
12 were predominantly protestant, is ruralism, that
13 is, the belief that the best life is found in a
14 rural, agrarian setting. People can be at their
15 best working on the family farm.

16 There is currently testimony to the strength and
17 longevity to the economic crises faced by the farmer
18 is not so much an economic problem as a sociocultural/
19 cultural problem.

20 People are lamenting the threat as a
21 way of life and that has traditionally been the
22 way of life at the core of American society and
23 culture.

24 And with this brief overview of the rural
25 setting and the settlement of Vermont, particularly

1 relevant to your concerns today, because it
2 probably accounts for the low number and
3 percentages of recent immigrant ethnic groups.

4 For the past 100 years or so the urban areas
5 of the United States have been the terminus of
6 immigrants' journeys, and since Vermont is the
7 most rural state in the United States, it has
8 received few immigrants.

9 The core culture referred to above has
10 implications for this perspective in our comments
11 today as well. The main implication is that the core
12 culture itself derived from England and the modified
13 colonial American experience became the model that all
14 other immigrant groups were expected to conform to.
15 This altitude is called Anglo conformity, and has been
16 the dominant ideology of ethnic group relations in
17 this country since colonial days, this as
18 distinguished from the melting pot, which is an
19 unhappy and inaccurate metaphor in cultural pluralism.

20 It seems to me, the very notion of civil
21 rights is itself derivative from the ideology
22 and thus another manifestation of continued dominance
23 of Anglo conformity; that is, if this country had been
24 saved by other ethnic groups, I wonder if we would
25 even have a notion of civil rights.

1 A convenient way to think about culture
2 is in terms of values, and we have in the sociological
3 and anthropological literature a rather long list of
4 the core culture, but I want to discuss two of
5 them: The values on achievement and success,
6 because these are two of the most important core
7 values of American society and culture.

8 Briefly, by these we mean that everyone should
9 strive to be a success in life, and being successful
10 is best measured by secular occupational achievement;
11 that is, by the job you hold.

12 Furthermore, we believe that one of the
13 best ways to get a good job is to get a good
14 education, and one of the best measures of a good job
15 is your income and what you do with that income.

16 Thus, one way to assess how one ethnic group
17 or any other minority group is faring is to gather
18 quantified data on education, income, and other areas,
19 and to present these in the form of averages.

20 May I remind you at this time that the use
21 of these criteria and this way of representing
22 these criteria is itself part of or derived from
23 the WASP core culture.

24 Now, there are several important assumptions
25 under these explicit statements, the most

1 important being that members of other ethnic groups
2 should want to conform to the standards of the core
3 culture; that is, that Anglo conformity should
4 prevail.

5 There is the further assumption that each
6 ethnic group or other minority group has within it
7 the same range of human potential, so that the levels
8 of achievement should be potentially the same; and
9 this is derived from our reinterprative value on
10 equality. Thus the rationale for gathering statistics
11 and comparing averages.

12 Given these assumptions, when one finds
13 that a particular group falls below the Anglo norm,
14 there is a conclusion that this disparity is the
15 result of systematic negative prejudice and negative
16 discrimination towards the other group in question.

17 Involved in this may be the conclusion that
18 some of the civil rights of the group in question
19 has been denied.

20 While this may be the case, it seems to me
21 that empirical research, and I emphasize this is
22 called for before such a conclusion can be reasonably
23 drawn, it is interesting to look at the explanations
24 for the disparity when the minority group's average is
25 above that of the core group.

1 One example of this is the level of academic
2 and occupational achievement of some Asian/American
3 ethnic groups. The usual explanation involves aspects
4 of the social organization and cultural values of
5 ethnic group in question.

6 Rather than say positive prejudice and
7 positive discrimination on the part of the core
8 group, I can't help but wonder if some of the
9 underachievement of some ethnic groups might not also
10 be attributed to aspects of their social organization
11 and cultural values. Let me hasten to add that this
12 should not be heard as blaming the victim.

13 There are circumstances where
14 under-registration for voting is not the result of
15 negative discrimination on the part of the dominant
16 core society, but rather of the values of the ethnic
17 group's culture. One's occupation can also be
18 affected, but it also may reflect preferences of
19 the ethnic group.

20 What I have tried to do in terms of the
21 time allotted is to suggest why there are so
22 few recent immigrants in Vermont; two, why we keep
23 statistics on minority groups; and three, why
24 they might be misread. All of this to the effect that
25 we should interpret the statistics with an open mind,

1 and in a systematic way, supplemented with field
2 research.

3 MR. CHAIRMAN: Thank you. Peter
4 Woolfson, do you have some questions?

5 MR. WOOLFSON: Yes; first one addressed
6 to Professor Schmidt.

7 In spite of the fact that the statistics
8 can be used negligently, can they perhaps be
9 used positively, because of course, with the
10 smaller numbers of people in the minority, there
11 is the lack of group support, group organization,
12 and the ability to speak out. Is in fact the
13 situation in Vermont putting minorities at a
14 greater risk in some way than in other states because
15 there is not the statistical numbers in that way,
16 then, the support groups that have been --

17 DR. SCHMIDT: There are at least three
18 questions, but let me take the first two. The first
19 one, dealing with the statistics: In the first place,
20 as David just mentioned, all too often in rural areas,
21 especially in dealing with minority statistics for
22 rural areas, the data is horrible. You get
23 essentially a head count, a total population that
24 comes out of a complete enumeration of the
25 population done every ten years, as you all know,

1 by the Bureau of Census.

2 Beyond that, being able to break it down
3 into a given community or town in Vermont, are
4 146 decision-making units. It is virtually
5 impossible because the critical mass is not there
6 in part to protect the confidentiality of the
7 respondent. There are solutions to that; they are
8 all usually expensive.

9 The solution in Vermont, for example, would be
10 to take the minority statistics, push them beyond the
11 total segregated for the State, aggregate the rural
12 data, contrast it with the urban data of the State,
13 then we would have a better fix on some of the
14 inequities that are created by the friction of space
15 that I mentioned.

16 Unfortunately, that is something that
17 the Congressional delegations have been working
18 on in a memorandum of understanding with the Census,
19 starting as early as '76, and we haven't had a lot of
20 success with that.

21 One success I would mention, in the
22 '80 Census for the first time in history
23 on the sample Census, they sampled 50 percent
24 of the families living in communities under a
25 thousand. That gave us potentially a better data

1 base. However, again, because of the problems of
2 targeting isolated minorities in communities, you
3 can't -- it is just not fair to present that data,
4 never mind the credibility.

5 What should have been done was, in
6 Washington where the tapes are kept, the rural
7 communities added together so you could take the 300
8 blacks, for example, that we estimate live in rural
9 Vermont, technically, and review some profile data,
10 thus measuring critically the impact of policy.

11 As Judy Stephany, Bill Bright mentioned, there
12 has been an effort in the State to address the
13 educational climate.

14 The reason David and I advocate better field
15 work, more use of statistics is for one reason not
16 simply an academic one, nor a concern with
17 Vermontania, but basically to measure the impact of
18 human design programs.

19 So I think I am answering the second part
20 of your question with my latter statement as
21 one of the reasons we use statistics, and demand,
22 if they be used, they be used with precision and
23 sensitivity is simply to measure the impact of
24 what we say we are going to do in the policy.

25 Did that get at it?

1 MR. WOOLFSON: Let me ask David a
2 question. In a sense, also, I applaud what you were
3 doing, because we goldfish don't see the water we swim
4 in. We are not aware of our own cultural biases and
5 limitations, and therefore we put the questions in a
6 way that make it impossible for us to really deal with
7 some of the issues of minorities.

8 The Secretary of Education, Mr. Bennett, in
9 his recent speech to the Press Club, wants to do
10 away with social science in the elementary school,
11 including anthropology and psychology and sociology,
12 to insist that our students be only firmly based in
13 American history, American geography and American
14 civics.

15 And I was wondering in terms of the concept
16 of school climate, from an anthropological
17 perspective, whether or not giving our children a
18 good cross-cultural understanding and concept will
19 work against the ability to have better understanding
20 of groups in the school?

21 DR. ANDREWS: I think the answer to
22 that question is very obvious: Yes, it will work
23 against that. I haven't read his recent statement,
24 but obviously it sounds like it is an example of Anglo
25 conformity, taken to the nth degree.

1 And after all, as far as I can tell from
2 recent court decisions, the ideology of cultural
3 pluralism is gaining prominence in this country. So
4 that would certainly go against that.

5 But at the same time, if we do not have
6 an unbiased understanding of people from other
7 cultures, and this would include then the
8 cultures from which various members of minority or
9 ethnic groups in this country come from, we are going
10 to cause them--and this is well-documented, as you
11 know, in the literature-- cause them a great deal of
12 unnecessary suffering and pain in the process of Anglo
13 conformity.

14 This is what was done in the early part of
15 this century and it was done in some cases rather
16 effectively, if you measure those people who are
17 successes.

18 But for every immigrant who made it, in
19 the Anglo sense, there were probably a 1,000
20 or 2,000 who didn't, and somehow those don't get
21 into the literature.

22 MR. CHENEY: Do you think this is the
23 result of influx of immigration into this country?
24 What is driving this kind of attitude?

25 DR. ANDREWS: What is this, now?

1 MR. CHENEY: The conformity to Angloism
2 and --

3 DR. ANDREWS: It has been and still is
4 the dominant ideology of inter-ethnic group relations
5 in this country. The other two, melting pot and
6 cultural pluralism, are less prominent.

7 I think if you look at the legislation
8 that was proposed and in some cases passed in the late
9 1800's, and particularly in the first two decades of
10 this century, it was a response to the tremendous
11 influx of immigrants, particularly from southeastern
12 Europe.

13 And my guess is that some of the response that
14 we are seeing today may be-- in Secretary Bennett's
15 comments and others as well is a response to what some
16 people see as the inundation or another flight of
17 different people coming into this country.

18 MR. CHAIRMAN: Dr. Andrews, would it be
19 a fair inference from your statement that you believe
20 that many of the -- the true explanation for lack of
21 achievement for many minorities probably has to do
22 more with their social organization and core values
23 than it has to do with discrimination by the majority
24 group, that in cases of when one is talking about
25 remedies for discrimination, that a better legal

1 approach would be to have each person who believes
2 that he is the victim of the individual discrimination
3 to come forward and file a suit asking for either
4 specific -- specific injunction from the court or
5 monetary damages, as opposed to group remedies, where
6 Affirmative Action programs, for example, would be
7 seen as a remedy?

8 DR. ANDREWS: I didn't know I said
9 anything of that sort; in the sense that I said that
10 in some cases, when you look at the statistics, it may
11 very well be that either the over or underachievement,
12 using the Anglo norms, is very often the result of
13 conscious, deliberate negative prejudice and
14 discrimination on the part of the core group. And
15 that is reprehensible and unacceptable, morally and
16 legally.

17 But I am saying that in some cases, field
18 work will discover and it has been discovered that
19 this under and overachievement is attributable more to
20 the cultural values of the ethnic group than to any
21 conscious, deliberate positive or negative
22 discrimination on the part of the ethnic group, the
23 core culture.

24 Now, the question comes up, to the
25 extent that you have something of that sort where a

1 group is kind of underachieving, and if it can be
2 established that it is due to social organization and
3 cultural values, then the question comes up, then you
4 have to implement Anglo conformity if you want them to
5 come up to those standards; otherwise, you have to
6 acknowledge the moral and legal legitimacy and
7 recognize that the Amish are never going to make great
8 soldiers.

9 Now, have I addressed your question?

10 MR. CHAIRMAN: My question was based
11 upon the view that if a certain kind of remedy such as
12 quotes is based upon the assumption that lack of
13 achievement must be due to discrimination on the part
14 of the majority ethnic group, then your statement
15 calls into question the arguments on behalf of that
16 kind of remedy?

17 DR. ANDREWS: I think my statements do
18 have an implication for it. What may be --
19 individuals can find themselves torn, if they do not
20 conform to the ethnic group standards of which they
21 are a member, and if those standards are not those
22 of the Anglos, then sanctions are applied to them.

23 And what may be good for the group may not be
24 good for the individual.

25 And we have a number of cases, I again

1 refer to the Amish, but others where people are
2 shunned because they don't go by Amish norms. The
3 question is, are the Amish violating the civil rights
4 of that individual? And this is a legal question; I
5 am in no position to give any legal advice.

6 I can simply point out that here again,
7 you have these two ideologies that come into conflict.

8 This ethnic group, we say by our standards
9 has the right to maintain its norm, social
10 organizations, values. To the extent that they
11 can do that effectively, that may prevent some of the
12 individuals in the group from achieving what we call
13 the Anglo norms.

14 MR. JOHNSON: I am fascinated by this
15 concept of Anglo norm. That norm, does this it apply
16 specifically to the individual or to the group -- a
17 given minority group, is the pressure placed by that
18 norm heavier on the group than on the individual or is
19 it equally applied?

20 DR. ANDREWS: It would depend on a
21 number of circumstances; the circumstances under
22 which that group is living. But for heaven's sakes, if
23 you look at many of the texts that people are talking
24 about, and where you are trying to get across a
25 message in a text in a grade school that all people

1 are Americans and should be treated equally,
2 independent of their religion, national origin, or
3 color, you will discover that in some cases that goes
4 against some of the norms of some ethnic groups. And
5 what you are doing is imposing Anglo conformity on
6 them.

7 MR. JOHNSON: But in terms of -- I
8 guess I asked a question only to address indirectly
9 the remedy. Because if the norm is applied and if we
10 take the norm as a given as being applied to the group
11 as a whole, without segregating out individuals, then
12 perhaps it is appropriate to provide remedies for the
13 group, since it is the group that is required to adhere
14 to the norm. If it is only applied to individuals,
15 then it may be more appropriate to provide remedies
16 solely for the individual.

17 So I was trying to distinguish between the
18 applicability of norm to an individual or to the
19 group?

20 DR. ANDREWS: If you deal with the
21 individual, he or she may be very under representative
22 of the particular group, and if we are dealing with
23 statistics, we are usually dealing with statistics of
24 groups. Therefore, that would be the appropriate
25 unit.

1 MR. JOHNSON: Would it be fair to say
2 then that remedies -- since we are dealing with groups,
3 then remedies may be appropriate in terms of group
4 impact?

5 DR. ANDREWS: Yes. That would be my
6 response, yes.

7 MR. CHAIRMAN: Thank you very much. At
8 this point we will take a five minute break, and then
9 we will turn for a panel on protected minorities.

10 (A recess was taken.)

11 MR. CHAIRMAN: Ms. Doane is a
12 Vietnamese emigre and a member of the City of
13 Burlington School Board. Dr. McCrorey is Dean of the
14 School of Allied Health Sciences at the University of
15 Vermont.

16 Again, I have asked each participant
17 to limit remarks to five minutes.

18 Ms. Doane, would you take the lecturn, please?

19
20 MS. DOAN: Good morning. I am glad we
21 have a little break; trying to sit to listen for
22 awhile, after awhile you have forgotten what you have
23 heard.

24 Listening to all the speakers before me this
25 morning, I can't help but wondering, we all

1 represent the same message over and over again,
2 and I wondered, are we doing it for the sake of
3 hearing ourselves talk or in order to make a
4 statement?

5 I get to the point I don't come here with
6 with a prepared statement any more, it is
7 ingrained in my bones what I want to say.

8 I had to make a speech this morning on
9 education employment, law enforcement. We are
10 talking about the minority, we talk about
11 school climate in the school, the present
12 acceptance; what do you mean by acceptance?
13 Are you accepting a minority in your school, say,
14 okay, here, we accept you, and end it there?

15 Employment, we are accepting into employment;
16 folks, you are here, we give you minimum job, we give
17 you an opportunity to start, and this is where it is
18 going to end, or are you going to offer them an
19 opportunity to go on?

20 Proper school approval standard. Unless you
21 are a minority yourself, you go to one of
22 these schools to assess the school, you are not
23 looking for those things.

24 I work a school approval standard member.

25 I went up to St. Albans to assess one of the

1 schools, and one of the child's in the classroom
2 would look at me, and finally come up and said,
3 do you speak English? I said, yes, I do. He
4 said, do you speak English? Yes, I do. All of the
5 sudden, it dawned on him I did speak English to him.

6 We have to educate our children right from
7 the time they are young. It is saddened me to
8 hear Secretary Bennett make those kinds of
9 statements, we only learn English, we only learn
10 American history; it is not so in our country. We
11 learn our own history and culture and our own language,
12 but they are required by law to learn another language
13 and another country history, to broaden our interests,
14 to broaden the child; might realize that there are
15 other people in the world besides himself. Learn
16 another language so they can learn to deal with other
17 people besides the people who speak their own
18 language.

19 So the civil rights law are discriminated,
20 should start at the elementary level.

21 I listened to someone make a comment this
22 morning, a black child laying on the playground
23 crying and a white child looking over, call him
24 nigger, teacher doing nothing about that. How sad it
25 is. How sad it is. We teach our children to be--

1 that black child to have the same as the black child
2 or Asian child.

3 My children are Amerasian children; if
4 you ask them who they are, they will tell you,
5 English, Asian, Vietnamese and American. We taught
6 our children to be proud of it, to include all the
7 groups in it. Not to set out a American culture; we
8 are here, we accepted it. But give us a chance for
9 our own culture and background to develop.

10 This morning I get back to, why do we
11 need the Civil Rights Commission in the State
12 of Vermont? And someone mentioned, you take the
13 number of minorities and the handicapped, it is a very
14 small fraction of the population. I see the role of
15 the Commission of Civil Rights not to protect the
16 minority only or the handicapped or the aged, but to
17 educate the community, the people in the community,
18 the housing people, employment agency, the education
19 department.

20 What are their responsibilities towards
21 the minority? Someone said, if you take them
22 out of the culture and put them forward and
23 had them do all the things that American people
24 do, that will get set up from the group; it is
25 not so. I have done that. I have break away from

1 that circle to go forward to be part American because
2 the only way I can help my own people, the minority.

3 It is very difficult for someone to come up
4 and make a complaint say, I have been discriminated
5 against me. They can't even spell the word, how can
6 they make the complaint to a board like this?
7 Someone, how are they going to come and make a
8 statement? Where do they go?

9 We have no office in the State of Vermont
10 that the minority can feel comfortable and go and talk
11 to them and to see whether or not their civil right
12 have been violated or are they discriminated against.
13 We have none of that.

14 It is the Commissioner's job, supervisor's
15 job to make the public aware and make the minority
16 aware, we are here make yourselves available to
17 them so they can talk to you. That is the role
18 I see as the Civil Rights Commissioner should
19 be doing.

20 Law enforcement in the State of Vermont.
21 I chuckle when we provide all the criminals
22 and public defender to defend the criminal.
23 Yet we have a minority go into the courtroom who
24 speaks another language, we do not have an interpreter
25 for him.

1 I find myself going to the courtroom several
2 times as a volunteer to interpret. Unless I do
3 that, these people have no other way of understanding
4 what the charge is against him. I don't call that
5 a fair trial at all.

6 The discrimination can be so subtle. It is
7 not something that you can stand up and make way
8 about, or the news will come and cover. It is so
9 subtle. Especially in the State of Vermont, so the
10 population is so little that the individual get by --
11 get discriminated against, but it just kind of slides
12 by. I am one of the very, very few who would get up
13 and make an attempt to talk or speak to any panel, any
14 civil rights, to those.

15 But even with all the discrimination in the
16 schools, even with all of the not-right materials and
17 the teaching and the way of talking to the children, it
18 is interesting to know that the Asian children scored
19 the highest in the United States for the test and the
20 higher education concern. Just think what they can do
21 for American country on the whole, if we give them a
22 helping hand?

23 I measured the Asian success by the
24 number of families that I get out of the Welfare
25 system and get them to pay tax, get them to get a

1 higher education. That is the way I measure success;
2 and live with American families and community.

3 I think my time is up.

4 MR. CHAIRMAN: Thank you. Dr. McCrorey?

5
6 DR. MCCROREY: Members of the
7 Advisory Committee and guests: First of all,
8 thank you very much for giving me an opportunity
9 to talk this morning, albeit a very short time
10 frame.

11 It is extremely difficult to know whether
12 civil rights laws and their enforcement fairly,
13 efficiently and fully help to fulfill the inalienable
14 rights of Vermont so-called protected minorities. I
15 suspect they do not, but that is a judgment based on
16 my knowledge of the country as a whole with its
17 societal racism and on anecdotal evidence here in
18 Vermont.

19 There are two problems, or two facts, rather
20 which make the desired analysis very difficult, if
21 not impossible. One is demographics, and you have
22 already heard the numbers and the admonitions by
23 those people.

24 In Vermont, blacks are in fact a rare and
25 endangered species. There is no black community

1 to speak of, and there is a very small data base.
2 Thus, the numbers are so small that figures like
3 unemployment rates are hard to come by, and they have
4 lessened validity.

5 Secondly, a distorted population.

6 Due to sociological factors, Vermont has attracted a
7 disproportionate number of professionals, creating an
8 atypical economic picture, a picture very different
9 from the rest of America; thus, there is likely to be
10 higher median income, lower hospitalization rates and
11 so forth within the black community. Taken together,
12 these factors dictate to the usual array of problems
13 found in urban America are minimal here. It does not
14 mean that there isn't unemployment, for example.

15 It just isn't of the magnitude that is seen
16 elsewhere. In fact, the picture may be skewed in
17 the other direction, at least percentage-wise.

18 One unfortunate outcome of this situation,
19 and Fred Schmidt referred to this, is that
20 Vermont assumes that there is no problem here.
21 This is a most unfortunate circumstance, for it
22 undergirds those who would argue that a state Human
23 Rights Commission, for example, is unnecessary.

24 I suppose in the marketplace of economic minds
25 there is not likely to be in the near future the

1 kind of numbers that justify such activities in
2 other localities.

3 But my thesis will be in the interests of justice
4 that there is a pressing need for such an entity,
5 especially in light of the Federal negativity.

6 The aforementioned picture of Vermont, that
7 is, a lack of documented number of cases should
8 not be taken to mean that blatant, microcosmic
9 examples of discrimination do not exist. There is,
10 for example, an absence of black representatives
11 in public appointments. There is a blatant
12 absence of teacher administrators. One still
13 has to tune into Plattsburgh to see local color on
14 television. So such examples do exist.

15 But in the absence of substantial data,
16 one is driven to lean on anecdotal evidence, and
17 such evidence, albeit insufficient, nevertheless
18 assesses bounds. Such evidence would indicate that
19 the problems of being black in Vermont are less in the
20 area of civil rights legal violations and more in the
21 individual, personal attitudinal domaine.

22 Thus, a black child alone in his or
23 her grade school class is caused to suffer the
24 customary epitaph without administrative
25 intercession. Thus, the black Cuban girl is sprayed

1 with Lysol by the other children, again, with
2 horrendously inadequate protection by the
3 administration. Thus, a black professor's daughter is
4 turned away at the employment desk of a downtown
5 Burlington department store, while all the white
6 applicants are received, and some of them, her good
7 friends. Thus, a black sheriff in plainclothes is
8 escorting a white prisoner to another Vermont city is
9 mistaken for the criminal by the local authorities.
10 Thus, a black minister in Irasburg has his house shot
11 into and the shooter is fined a few dollars, but the
12 minister is arrested for adultery, a national scandal
13 for those of you who remember. Thus, cake walk, that
14 deplorable, derogatory racist activity long ago
15 banned by the University keeps popping up again in
16 other Vermont communities and is a constant threat
17 to be reopened by local Burlington merchants. Thus,
18 a medical school receiving enormous federal monies is
19 allowed to go unchallenged in being one of only four
20 black schools in the country having no minority
21 students, and graduating only two blacks in the past
22 twenty some years. Anecdotal? Unfortunately, yes.
23 But symptomatic of a social malady, a society
24 psychopathology, if you will.

25 These examples are not in the realm

1 of unemployment statistics or of inadequate hospital
2 care, but they are nonetheless the things on which
3 social justice hinges. And if justice is a
4 sought-after goal, then we need to pay attention to
5 these kinds of problems.

6 Dan McGuire, in his book, A New American
7 Justice, states that there are two things that every
8 individual needs for what he calls survival/thrival:
9 respect and hope.

10 Respect implies recognition that one is a
11 person, the full prerequisite of humanity. The
12 opposite of respect is insult. It says that one's
13 full value is not there.

14 Hope is the prospect of going someplace,
15 the belief that life has meaning, and there is
16 a prospect of getting something out of it.

17 The challenge of social justice is to make sure
18 that, A, no life is radically insulted, and B, no life
19 loses all hope. The kind of events and episodes,
20 especially those of the children that I alluded to
21 above run a great risk of stripping black children of
22 respect, and to do so is to rape them. It is the
23 ultimate murder.

24 The point of it for this discussion is
25 that there really is no place to turn when these

1 incidents occur; and others have alluded to
2 this. There are few sympathetic ears; there is no
3 agency with eyes, ears, and mind that have been
4 sensitized to the problems and willing and eager to
5 help unravel and solve them. And appallingly, there
6 is no leadership.

7 No thrust, either stick or
8 carrot variety, to bring about change, to ask the hard
9 questions.

10 Blacks and other minorities need
11 that kind of help here, perhaps more than in other
12 places where the sheer numbers offer some form of
13 protection.

14 Black people in Vermont are alarmingly
15 naked and vulnerable. And I should remind you that
16 half of the people I am referring to are women.

17 Thank you very much.

18 MR. CHAIRMAN: Thank you. Sam Hand, do
19 you have any questions for our panelists?

20 MR. HAND: Sure. Really, I am
21 addressing them to both our panelists. Both panelists
22 have made it clear that they think discrimination does
23 exist in Vermont, serious discrimination, and there is
24 really no strong climate to come forward and perhaps
25 no place to come forward to, to lodge these

1 complaints. I wondered if they would be willing to
2 comment on, really, two interrelated points, or two
3 related points: one, how could we facilitate a
4 willingness to make complaints or an ability to make
5 complaints on the part of the aggrieved minorities;
6 and the other point of this is, if there was some sort
7 of place where you could go, that place where you
8 could go would have to be different from what we have
9 now; what would you anticipate?

10 MS. DOANE: For the aging community,
11 for them to come in front a panel like this to make a
12 complaint, there is no way they would do it; it is
13 just too frightening to do so. They have to go to
14 someone within their own group. In the past they come
15 to me for that, that is why I say somebody has to step
16 out of that circumstance to become a leader, in order
17 to help your own people.

18 My strong suggestion to the Committee will be,
19 in order to help a minority group, you have to be
20 considered a minority, to be part of you, to be
21 your eyes and ears, to listen to the problem that
22 occurs within the community, and being able to draw
23 attention. It is easier sometimes to talk to a single
24 person, and it would be my strong recommendation to
25 you.

1 MR. MCCROREY: I would merely echo
2 those sentiments. I think there are two things
3 needed: One, there has to be a mechanism, whatever
4 that is, whether it is a Committee, a person or whatever;
5 and secondly, there has to be a sensitivity, and that
6 is what I think Phi is referring to.

7 In the Lysol incident, for example, that parent
8 had no place to turn. What happens is that these
9 parents come to who they think might be able
10 to help them, I, perhaps, or Bill Bright, or
11 whoever happens to be around, that they perceive, at
12 least, has some kind of authority or power or
13 connection with the power structure.

14 We went to the school board, we went to the -- to
15 Montpelier, to the Education office in Montpelier, we
16 went all over the place, trying to rectify that
17 situation. It wasn't the Lysol spraying, of course,
18 it was the administration's total inability to deal
19 with the situation by saying, we don't know what to
20 do. So we were trying to rectify that.

21 I think there has to be a mechanism. I think
22 there has to be a place with sensitivity for people
23 who can relate these things.

24 MR. CHAIRMAN: Kim Cheney has a
25 question.

1 MR. CHENEY: My own view is that I
2 really don't favor a Human Rights Commission because I
3 think it would over-lawyerize the whole civil rights
4 movement and would require the whole legal mechanism.
5 I tend to favor a recreation of a civil rights
6 commission on the Federal model, that would not
7 necessarily have any enforcement mechanism, but would
8 be hopefully staffed or have people that you refer to,
9 Phi, that you could come to; and that we could have
10 meetings like this around the State as often as
11 necessary, kind of be the conscience of Vermont on
12 Civil Rights issues. Could you react to that
13 distinction?

14 MR. MCCROREY: I guess my own feeling
15 is that without enforcements, nothing works. I mean,
16 it is nice to have an ombudsman, it is nice to have
17 somebody who says, let's get the two parties together
18 and talk, but we are talking about blatant racism. We
19 are talking about things that will destroy a person.

20 It is not, somebody stole my bicycle, can
21 I get it back? It is, what I do I do for my
22 child who is every day insulted by being called
23 nigger? What does that do to his personality?

24 I am talking about life and death, I am not
25 talking about equity in the sense of, did I get

1 enough money for a bicycle.

2 So I think without an enforcement power,
3 things won't change.

4 MR. CHENEY: Would you prosecute the
5 teacher or whoever said that?

6 MR. MCCROREY: Maybe so. Maybe that
7 is what we ought to do. Maybe that teacher is not
8 qualified to teach any more.

9 MR. CHENEY: I guess I would certainly
10 agree with that. But as a Human Rights Commission,
11 would they be empowered to prosecute or remove that
12 individual from their employment?

13 MR. MCCROREY: I don't know. But I
14 think there should be a mechanism for looking at cases
15 like that. And if that teacher is in fact inadequate
16 for the job, yes, there ought to be some mechanism for
17 removing that teacher. That teacher is committing
18 murder. You have to understand that. I know I sound
19 like I am overstating the case.

20 You can destroy a child of five or six
21 years old; that is continued blatant racism, you
22 can destroy that child. And when we parents
23 look at our kids and seeing them being destroyed,
24 yes, the power is not great enough.

25 MR. DIAMOND: I just wanted to try to

1 distinguish if there is a distinction between what
2 both you, Larry, and you, Phi, see as this role;
3 because I think in your statement to us, Phi, you
4 indicated that there ought to be a place that people
5 who do not know whether their rights have been
6 violated can come and ask and to find out whether
7 what has occurred to them in fact has had -- has caused
8 a violation of rights, whether there are remedies and
9 how to pursue those remedies; I see that as one thing.

10 Larry, I see what you are saying is different
11 from that. It may involve that, but it involves
12 something much broader; it goes to the issue of,
13 in fact if legal rights have not been violated
14 but damage is still being done, are there
15 remedies to be pursued.

16 MR. MCCROREY: You are absolutely
17 correct. I am talking about both of those entities
18 and I think Kim Cheney sort of pushed me into the
19 other element.

20 But, yes, I am talking about both of
21 those. I think both are necessary.

22 MS. DOANE: There is the need for the
23 Human Rights Commission. If, say, the law will not --
24 give you a right to prosecute anybody who hurts the
25 child, let's say that is the worst scenario, what can

1 you do?

2 You can give out a message to the school
3 system, to the education department, that you
4 will not tolerate those kind of behavior to a
5 minority. Your job is to educate a teacher how to
6 treat a minority. How to accept him. I guess my
7 point is, you cannot talk enough to these people to
8 explain it to them.

9 I feel it is my position, my job -- I am
10 in a minority group -- is to educate the people who do
11 not know you. I am different, yes, but we are a lot
12 on a lot of common ground. And I feel very strongly
13 it is your job not to just sit here and listen to
14 complaints but to make statement; to go out there, to
15 talk to the school department, to the teachers, that
16 we as the human rights commissioners do not accept or
17 tolerate those kind of behaviors.

18 And make those statements as clear as you
19 can to the adult population and to the children,
20 because children will copy the adults.

21 MR. CHAIRMAN: Thank you, Ms. Doane and
22 Mr. McCrorey.

23 Our next panel deals with the elderly
24 and disabled in Vermont, and our two panelists
25 are Faire Edwards and Stewart Meacham. Ms. Edwards

1 is a member of the Central Vermont Regional Planning
2 Commission --

3 MS. EDWARDS: Not now. I was.

4 MR. CHAIRMAN: Was a member; and is a
5 lobbyist and publicist for the Vermont State Council
6 of Senior Citizens. Mr. Meacham, who is blind,
7 and active in organizations and issues involving
8 handicapped persons, is a former director of the
9 Client Assistance Project of the State of Vermont
10 Vocational Rehabilitation Division.

11 Ms. Edwards, if you would like to take the
12 lecturn, please.

13 MS. EDWARDS: Thank you, middle-aged
14 gentleman.

15 I think if Phil Hoff were here, he would take
16 the curse away, but just barely. As far as I am
17 concerned, you are all young things.

18 I represent, of course, the largest
19 minority in the State, and the minority that is about
20 to grow like crazy. It is a minority that everybody
21 joins, unless the Lord has definitely different plans
22 for you, so just prepare to empathize.

23 Do you realize how much this group is going
24 to grow? The group has been growing rapidly.

25 From quite a long time back, probably

1 Larry McCrorey would know more about some of
2 the reasons than I do, but improved medical
3 technology, beginning with Louis Pasteur and working
4 on through a lot of other people, has created a great
5 change, and that is why we are all alive now; we did
6 not expect to be.

7 Because the maternal death rate, for example,
8 started dropping in 1930, and it dropped from
9 nearly 700,000 live births in 1930 to 17 in 1970.

10 Then the Pap smear came along, and that saved a great
11 many women from death by malignancies of the
12 reproductive system, to the point where -- I have some
13 copies of a little pyramid chart that I will give you
14 or you can have copied off. It comes right out of a
15 State Department of Health book.

16 What has happened is that this pyramid is about
17 to look more like a Christmas tree or something of the
18 sort, because the base of the pyramid has been eaten
19 out with the end of the post-World War II baby boom.
20 Because that extended from about 19 -- the beginning
21 of 1945 through the end of 1964. That particular
22 group equals one-third of the population nationally.

23 And it begins to retire in 2010, which will be 23
24 years from next New Year's Day, and will continue to
25 retire, one whole third of the population, not the

1 work force, the population, until 2030. And who is
2 going to do the work of the country while this group
3 retires? Are they going to want to retire as early as
4 they should have in the past?

5 Because this is the first group, the first
6 generation that has grown up with antibiotics
7 available from the time they were babies. And
8 it is going to make a great deal of difference in
9 residual things that you have left over from previous
10 illnesses.

11 I for one am on a ridiculous low-sodium
12 diet because I was indiscreet enough to have
13 a scarlet fever 30 years before we had sulpha,
14 and believe me, that was an error. Anyway,
15 that is what is happening.

16 You will note, as I said before, the women
17 are now surviving to become old so that you
18 have a dual population; most of the men are
19 married and living with spouse and most of the women
20 are single, two-thirds of them living alone. In 2000
21 we are going to have, I believe 18,000 and a half
22 widows over 75 in the State of Vermont.

23 The Agency of Human Services is
24 talking about community care for a lot of the people
25 who really need what might be termed one form or

1 another of residential care. The difficulty is that
2 community care has traditionally been the wife. She
3 took care of him, and then there was nobody to could
4 take care of her because her daughter or her
5 daughter-in-law could not drop out of the work force
6 to take care of her for fear the daughter or
7 daughter-in-law would then be unable to get back in
8 the work force, and if her marriage ended, she would
9 starve to death until she was eligible for Social
10 Security. Now, these are just parts of the thing.

11 Also, you talk about discrimination against
12 the disabled. I would like to point out that in
13 a state where nearly half the elderly have arthritis,
14 you have a built-in guaranty of disability.

15 You have ageism, which can be pretty
16 vicious, because they tend to think of us as valueless.
17 Then you have sexism, and everybody knows that an old
18 lady's main function is to pet her cat; you know that,
19 don't you? But bear in mind that there are a lot of
20 people who think it.

21 Then you have discrimination against the
22 disabled, and in many households, you have at
23 least one member who is functionally not very
24 literate. 60 years ago it wasn't easy to get to
25 school, or to get to high school, particularly. There

1 weren't the buses and things. And this is reflected
2 in the educational level of the elders.

3 The Office on Aging does not even have
4 departmental status. We tried to get it when
5 Governor Snelling was determined to take the director
6 of the office out of the classified system and make it
7 appointive. We thought that we were getting the worst
8 of two worlds, and we should have some compensation
9 for it, but we did not get it.

10 There is just naturally a tendency to skip the
11 advocacy role that was assigned under the Older
12 Americans Act to the state units on aging. It depends
13 on a lot of things whether the Office on Aging can
14 actually speak out as much as it should. We always
15 assume it can, but remember, it has to go through the
16 Agency of Human Services and then through
17 administration, and we do have the Coalition of
18 Vermont Elders, which acts as an advocacy group on
19 legislation.

20 But there is a great deal of discrimination,
21 and I can tell you, as an older woman I have
22 found discrimination, including at the hands of some
23 members of the medical profession, who don't always
24 get as progressive as they might be as fast as they
25 might. So that they are dealing with a totally new

1 situation; nobody knows how to cope with this thing.
2 We are probably going to have to address how to have
3 more people past 65 without retiring.

4 I would venture to bet that there are
5 going to be a whole lot of little legal odds and ends
6 that will need cleaning up over a period of time, you
7 know, like ten years or something, because the
8 question just of health insurance of people old enough
9 to have Medicare but still being employed, at least
10 part-time, could be horrendous by the time everybody
11 starts picking nits on the thing. So that one has
12 to be addressed. We need to have the general public
13 address it; we certainly need to have the part of
14 government that will have to answer to this addressing
15 it more clearly.

16 Now I will say it for the Agency of Human
17 Services, the Office on Aging is just rounding up
18 the data coming out of a survey which I believe
19 will be very helpful. But it is only going to
20 tell you, unless Fred Schmidt changes that, which he
21 may, from the directions which I believe the Office on
22 Aging gave him, it may not look to the future.

23 As I understood it, the order was just to look
24 to the present; but hopefully it will look to
25 the future, too, which would be helpful.

1 But again, we are venturing into new territory.
2 It is your lives, not mine, that are going to be
3 in difficulty, and it needs to be addressed with
4 long-term planning of a sort that businesses and
5 particularly large corporations do, but government
6 is not inclined to do it. And I think this is what
7 can happen.

8 Now, I can give you individual instances of
9 discrimination. They are not as dramatic for the
10 most part as the ones that Larry spoke of, but
11 they exist, and they can be very damaging to
12 individuals.

13 MR. CHAIRMAN: Thank you, Ms. Edwards.
14 We have to move on to our next panelist.

15 MS. EDWARDS: That is all right. I
16 grabbed all I could get.

17 MR. CHAIRMAN: The next speaker is
18 Stewart Meacham.

19
20 MR. MEACHAM: I appreciate this
21 opportunity to speak to the group here. My concerns
22 are basically concerns having to do with disabled
23 people. I wish that I had Dr. McCrorey's eloquence to
24 present the case for disabled people, which certainly
25 supports the notion that there should be some type of

1 Civil Rights Commission in the State of Vermont. But
2 you will just have to do the best you can with my poor
3 eloquence.

4 There are 66,000 disabled people in the
5 State of Vermont. And the thing about disability
6 is that there are no groups which do not have
7 representatives of disabled people. Now, there is
8 a certain amount of work that is done for disabled
9 folks. I say for disabled folks advisedly. Don't
10 misunderstood; paternalism in the disability area
11 is gratefully received.

12 We don't have enough to be all that choosy
13 about what we get from the public sector, or the
14 private sector, for that matter. It is -- one
15 of the reasons why disabled people are not -- you
16 are going to be surprised that to find that there are
17 66,000 disabled people in the State -- is because
18 much of the disabled community is scattered around
19 the State of Vermont and behind closed doors.

20 I have been using a little piece of rhetoric,
21 I suppose you would call it, to describe this
22 phenomenon. There is a disabled ghetto in the
23 State of Vermont. It is not a ghetto so nicely
24 defined as the Jewish ghetto of Europe or the black
25 ghettos of the United States, but nonetheless, it is

1 a ghetto. It is a ghetto of poverty.

2 I was really pleased, listening earlier
3 to the gentleman who was reporting on some of
4 the social aspects of discrimination, because this
5 ghetto is like the Gulag, it is an archipelago. And
6 the archipelago generally runs to the place of
7 residence of the lowest income people in the State of
8 Vermont. It runs to places that you might easily
9 recognize; certainly some of the places are low income
10 housing for elders, but much of it is in trailer
11 parks.

12 Almost nothing is truly known about trailer
13 parks in the State of Vermont. As far as I know,
14 even the number of trailers has not been counted
15 since the last Census.

16 Many of the trailer parks have really
17 deplorable conditions, so far as water, so far as
18 sewage, problems of this type. They have some of the
19 same characteristics as a big city apartment building
20 in that -- except that they are laid on the side.
21 Instead of an elevator, you have to have a car to
22 drive to your house; the roads are frequently not
23 paved.

24 There is -- some years ago there was
25 some regulatory legislation put in, but

1 everyone in that trailer park at that time was
2 grandfathered. So what has happened is over the last
3 10 or 12 years, these trailer parks have expanded
4 tremendously, but most of them were trailer parks that
5 were existing prior to 1972.

6 I don't know how many people here have
7 tried to live on approximately \$390 a month. It
8 is particularly difficult if you also are disabled and
9 are in need of medication, are in need of adaptive
10 equipment. If you are in need of adaptive equipment,
11 you should be prepared to wait three and a half years
12 for the process from State purchasing back to
13 Vocational Rehabilitation for your wheelchair.

14 I mean, we are not even talking here about
15 money come up with by the State of Vermont, we are
16 talking about federal dollars that the State spends,
17 and you have that kind of disgraceful circumstance, in
18 terms of people being served. You have just
19 unbelievable problems in employment; mind-boggling
20 problems in employment.

21 It is not the Employment Security's fault
22 that a lot of people are not employed, but what
23 you should know is that the sheltered workshops
24 which at one time employed at least a few people
25 and gave them something of an experience to

1 relate to beyond their disability, have now been
2 closed down.

3 We are -- disabled people, whether they
4 are elderly, whether they are children,
5 searching for an adequate educational and cultural
6 experience in the schools, or whether they are
7 middle-aged people like myself, who are still
8 perfectly capable of engaging in certain kinds of
9 work, it is -- you are going to live with that
10 problem. So that is really about what I have to say
11 at this time.

12 We need -- I believe I would support Dr. McCrorey's
13 observation that we need a Commission with teeth.
14 There must be some sort of minimal inconvenience to
15 discriminators. This is, after all, a state of half a
16 million people.

17 The decision, the great decision on the
18 question of civil rights for minorities was established
19 in 1954. The court requested that the states proceed
20 with all deliberate speed. This is not a situation in
21 which there is any likely person to prosecute the violator.

22 I am not suggesting that everybody who commits
23 a piece of stupidity is a conscious discriminator.
24 Most people who break the speeding law are not
25 conscious speeders. You know, that is not the point.

1 The point is, is that if you are able --
2 on a minor offense like speeding, if you are able
3 to charge the State police to go running around
4 catching speeders, my God, folks, don't you think that
5 the cost in human terms is worth a Commission which
6 has no enforcement officials, the people have to bring
7 the damned violation to your attention; it is
8 outrageous; that is really all I have to say.

9 MR. CHAIRMAN: Peter Woolfson, do you
10 have a question for our panelists.

11 MR. WOOLFSON: Yes. First for Faire.
12 To your knowledge, you are kind of a special person
13 yourself. Because you are an advocate, you are
14 very much out there in the public eye in Vermont;
15 nothing happens without your being a part of it,
16 when it comes to an elderly issue. But are
17 the elderly as a whole, in your understanding,
18 adequately taking advantage of the avenues that are
19 available to them for redressing the kinds of
20 discrimination? There are lots of things, like the
21 Office on Aging, and there is lots of legislation and
22 so on. But when it comes down to really doing it, are
23 the elderly taking advantage of those opportunities?

24 MS. EDWARDS: We are the most
25 individually diverse age cohort in the entire

1 population, because we have had longer to get that
2 way. However, there is a lot of small stuff that you
3 almost let go by, simply because there is no point
4 in it.

5 Now, for example, I was up at the hospital
6 having a cataract surgery. I had a big battle
7 with PSRO as to whether or not I was entitled
8 to have it; and finally Dr. Golodetz helped
9 cut that Gordian knot, and then I had the surgery.
10 And since I am one-eyed, this is a much more critical
11 situation; when the dressings were taken off, I knew
12 that the light could bother me, so that I knew I had
13 won that one.

14 But I had the impression with no focus that I was
15 in a gigantic vat of merangue, uncooked. It was just
16 a vague formlessness.

17 First the nurse in charge of training
18 a bunch of would-be aides came up and rather
19 disapprovingly cut open my egg and cut it up for me
20 and so on. I got the feeling that she thought I ought
21 to have been able to do it myself, and I didn't
22 explain to her that American Optical's prosthesis did
23 not go that far.

24 But then a little girl came up, a would-be
25 aide, handed me a bunch of papers, and she said,

1 now, this one tells you how to put drops in your
2 eye. I doubt if she was ever corrected.

3 You have that kind; again, it is the
4 insensitivity, and sometimes it is much more
5 vicious than that.

6 For example, the refusal from PSRO to allow
7 Medicare to cover the surgery was done on a
8 form, I think they got it from New Hampshire, that
9 tried to cover everything in one form. It told you
10 absolutely nothing, in an illegible and
11 incomprehensible manner. I had a daughter who was a
12 government lawyer, who was at my house that weekend,
13 she couldn't understand it. And how do you expect
14 people who probably had to-- at least some people who
15 would have had to leave in the grades in order to help
16 out at home, years ago, to understand this kind of
17 treatment?

18 MR. CHAIRMAN: Thank you. In order to
19 stay on schedule, we will have to move on to the next
20 panel; thank you very much, Mr. Meacham and Ms. Edwards.

21 Would our panelists on sex discrimination please
22 come forward.

23 Lynn Heglund is Executive Director of the Vermont
24 Governor's Commission on the Status of Women. Cheryl Rivers
25 is Executive Director of the Low Income Advocacy Council.

1 Gretchen Bailey is in the City Attorney's office in
2 Burlington; and Heather Wishik is an attorney in
3 private practice and an adjunct professor of law at
4 the Vermont Law School. Ms. Heglund, would you please
5 take the lecturn first.

6 MS. HEGLUND: Thank you for the
7 opportunity to come and speak to you today.

8 I came before you about a year ago, maybe a
9 year and a half ago on the same subject, raising
10 the issue, and think -- which was perhaps the first time
11 that this issue came up for you for discussion; and I
12 appreciate the fact that you have put together this
13 panel and worked very hard to try and assemble these
14 people to present their opinions to you.

15 The Governor's Commission on Women
16 is perhaps the only constituency here that is lucky
17 enough to have its own advocacy group which exists
18 within state government. As such, we are able to
19 assemble more documentation for this kind of issue
20 than many of the other representatives are able to do.

21 I would call to your attention that
22 in the absence of such an organized, paid advocacy
23 group, there is no capacity to accessible data.

24 In addition, without the raising of the
25 issue and the offering of the opportunity to talk to a

1 group or to bring the information forward, you have a
2 commensurate lack of requests or complaints.

3 Likewise, as soon as you say to someone publicly, and
4 do a public relations campaign on the fact that
5 they have a right, you will discover hundreds of
6 complaints. And this is in fact what happens.

7 Whenever there is press on child support enforcement,
8 or the lack thereof, we have, the following week, fifty
9 calls. And likewise, you are not going to discover the
10 numbers to justify this case until you develop the
11 Commission, which is going to be able to be the voice and
12 the source of the information. So I would suggest to you
13 it is erroneous to go about it in that fashion.

14 I will proceed with my remarks. Our Commission
15 has been responsible for assessing legal, economic,
16 social, and political status of women since 1964.

17 In the last decade the best changes that
18 have been made for women have been made in the
19 creation of jurisdiction for Vermont Fair
20 Employment Practices law to be enforced in the
21 Attorney General's office, and recently to pass a
22 landlord/tenant law with the housing discrimination
23 clause. However, there are numbers of various areas
24 where discrimination tends to be a problem for women,
25 and those areas are in this order where there is no

1 legal remedy available, such as with the problems with
2 insurance discrimination, where there is a legal right
3 to be free of discrimination, but in practice, the
4 right is difficult or impossible to exercise due to
5 the cost for a low income person to exercise a private
6 cause action in court; and that is that is the case
7 with the housing discrimination law.

8 And thirdly, where there is an inaccessibility,
9 a lack of enforcement, power, or unwillingness to
10 enforce the law by the agency where the grievance is
11 supposed to be addressed. For instance, the existing
12 Human Rights Commission on the books, which is supposed
13 to be enforcing a housing or public accommodations
14 statute, which -- there is a right under law, but
15 there is no remedy, in fact.

16 Or for instance, the U.S. Office of Education
17 which is supposed to monitor the compliance of
18 the State of Vermont with Title 9 laws.

19 In effect, policies made by the government
20 about funding for the enforcement arm of that
21 agency make it impossible to actually assess
22 whether there is compliance.

23 And in addition, the State Board of
24 Education, while I agree that their standards
25 for qualities in the schools and school approval

1 standards are a great leap forward, there is, likewise,
2 no bottom line. There is nobody to say, this is the
3 place where right ends and wrong begins, and this is
4 the penalty for committing that wrong.

5 And because of that absence of the bottom line,
6 not that that bottom line has to be a legal remedy,
7 you do not have the reality of freedom from
8 discrimination in this state.

9 And the fifth area is where public awareness
10 is low, of discrimination. Therefore, rights
11 are not exercised by potential grievants. I
12 would emphasize this is the case for the majority
13 of minorities that are represented here, that
14 the absence of the awareness and the absence of a
15 vocal public spokesperson to make the remedies known
16 if they were available, means that there are no people
17 who are going to come forward and bring you statistics
18 that you need.

19 So briefly, the areas that women still suffer form
20 of discrimination are in the areas of employment
21 discrimination. Since 58 percent of Vermont women
22 work in the paid labor force, which is a 25 percent
23 increase since 1960, and 71 percent of all mothers with
24 children work, children under the age of 18, there is
25 a great importance in making sure that the enforcement

1 of employment discrimination laws are powerful and of
2 high public profile. And I would suggest to you that
3 within the restraints of the budget of the Attorney
4 General's office and the limitations of time and
5 access that they have to do public relations, they
6 have done as good a job as possible.

7 However, I think that an effort must be
8 made if discrimination is to be eliminated in
9 this very critical area for women, since it is
10 the most crucial issue for women, which is the
11 feminization of poverty; that in the absence of a high
12 profile agency who is seen publicly, who is identified
13 publicly as a source or place to go, that you do not
14 have a real remedy.

15 You have enforcement in certain limited
16 situations where litigation is appropriate, but there
17 may, as Kim Cheney pointed out, be lots of other
18 situations where litigation may not be the way to go;
19 but that there has to be a bottom line beneath a
20 mediation or fact-finding process. There has to be
21 someone there to say, the law says you can't do this.

22 The second area is housing discrimination; I am
23 going to leave that to some of our other
24 speakers who were more active in the passage of
25 the Vermont Fair Employment Practices law. But the

1 Commission position on that was to advocate for an
2 enforcement arm which did not require a private cause
3 of action. We did that because we knew that the
4 primary persons who were suffering from housing
5 discrimination, according to subjective testimony and
6 data that we had collected from complaints over a 10
7 year period, says that the people who suffer are low
8 income people who are not going to be able to go to an
9 attorney and bring a case in court, who must have a
10 place that they can call with an 800 number, and a
11 person who can answer the question, is what was done
12 to me the right thing or the wrong thing, and then
13 proceed about pursuing a remedy.

14 Discrimination in education, I believe,
15 is still a very important issue. And as I said,
16 despite the school approval standards, there is no
17 guaranty that an equitable climate exists in our
18 schools. The State Board of Education does have some
19 regulatory authority, but as I said, the Federal
20 government does not have a bottom line, either.

21 And I also want to bring to your attention
22 in this area that in a 1985 survey done by
23 the Project on Equal Education Rights in
24 Washington, they assessed a number of areas of
25 critical importance to women, and the one which is

1 always the red herring is athletics. We do very well
2 in athletics. We are ranked fifth in the nation in
3 participation in sports, and second in the number of
4 women coaches, so that is not an issue, we will get
5 rid of that one, football teams and contact sports.
6 And we don't have to have that discussion.

7 We do very well in the number of women in
8 secondary and elementary school principalships and
9 superintendencies, but very poorly in the number of
10 computer-using teachers at all levels. What that
11 means for children in our schools, and especially
12 girls, who may or may not more likely have access to
13 technological education or vocational education, it
14 means that those -- that our children are poorly
15 prepared for the kinds of employment opportunities
16 that are likely to become more and more available as
17 the years pass.

18 We are ranked at the elementary and
19 junior high school levels, 49th and 50th at the
20 number of computer programming teachers; this is
21 a poor area.

22 Lastly, we are ranked 41st in the nation
23 with regard to female participation in
24 non-traditional vocational education. Only 8.4
25 percent of Vermont girls take advantage of the

1 non-traditional vocational opportunities, and for women
2 who still do not understand, or young girls who are still
3 not made aware in the educational system that they are
4 doomed to poverty by making traditional choices about
5 careers and home values, they do not -- they are not
6 taking advantage of certain opportunities that are
7 available to them. And part of the reason for that is
8 attitudinal issues within vocational schools and
9 traditional schools about what girls should be and
10 should not be doing.

11 I think it is very important, that given
12 the statistics, that we are not doing well in
13 certain areas. Some areas we may very well be,
14 that we should attend to that area. And that the
15 discussion should focus around some kind of need for
16 state Title 9 or some kind of mechanism to measure
17 what is an equitable situation in the Department of
18 Education and in the state of our schools.

19 MR. CHAIRMAN: Thank you, Ms. Heglund.
20 We will have to move on to our next speaker, Cheryl.

21
22 MS. RIVERS: Good morning. First I
23 would like to correct my title. My title is
24 legislative advocate, which I think gives you a better
25 idea of what I do with the Vermont Low Income Advocacy

1 Council. I would like to first explain to you what it
2 is, and then give you my perspective as an advocate
3 that has worked with low income people for the last
4 eleven years.

5 Vermont Low Income Advocacy Council is
6 a grassroots organization made up of low income
7 Vermonters that are elected from the various
8 geographic areas in the State. And it is a totally
9 unfunded organization, and exists outside the
10 realms of either the State or the Federal government,
11 at this point.

12 It came out of the old War On Poverty, and
13 originally did get some encouragement from the Federal
14 funding that came with that. But that has long since
15 gone.

16 As I would go around the country
17 to different meetings I would find that we are one of
18 the only active low income organizations left that
19 actually has an advocate that takes positions during
20 the course of the year, and also in the Vermont
21 legislature and in working with the Congressional
22 delegation.

23 The funding for my salary is entirely
24 private. It comes primarily from church
25 organizations, and is somewhat erratic. But so far we

1 have kept going.

2 During the last session of the legislature,
3 I was fortunate to be able to work with the --
4 primarily with the House Judiciary Committee, Chairman
5 Betty Nuovo, who will be speaking with you later on
6 this afternoon, I understand, on a comprehensive
7 landlord/tenant bill.

8 For several sessions of the legislature
9 the Advocacy Council had endorsed what was
10 known as the Fair Housing Bill which was a
11 comprehensive bill that would have allowed the State
12 to become eligible for some federal funding to provide
13 for a staff person in the Attorney General's office to
14 enforce housing discrimination, to make it illegal to
15 discriminate on the basis of handicap or on the basis
16 that you have minor children or are a recipient of
17 public assistance. Unfortunately, one of the things
18 that happened during the course of the debate was that
19 the bill got very long. It got so long that
20 legislators began to be concerned that the people on
21 the floor weren't going to understand it.

22 So one of the things that went out of the bill
23 was the language that would have allowed the State to
24 become eligible for federal funding to enforce the
25 discrimination provision. So all that remains in the

1 bill that was passed is a right of private action.

2 And I have been watching the newspapers
3 because I was hoping when we worked on this bill that
4 at least one thing that would go would be those awful
5 ads. I don't know if you have ever seen them, but they
6 say, no children and no pets. And what happens is
7 that women, single parent people that are looking for
8 apartments have a very difficult time finding them.

9 In Vermont we have a very, very tight
10 housing market. In fact, it has reached crisis
11 proportions, and we are in hopes that the State will
12 act to do something about it this coming year; that the
13 Governor may identify it as a priority, whoever that
14 may be. But in the meantime, the competition for
15 existing rental units is fierce, and when a large
16 segment of rental units get excluded from
17 consideration from you if you happen to have children,
18 minor children, it becomes a difficult situation. And
19 the newspaper ads indeed are not gone. They are still
20 there.

21 I was going to bring my local newspaper with, me
22 and I went down through the rental units; and one of
23 the things that was written in was, if an apartment
24 was too small, then you didn't have to take children.

25 In this week's paper were several apartments

1 listed that said, no children and no pets,
2 two-bedroom apartments. It was a little difficult to
3 understand how to make use of a two-bedroom apartment
4 for most people without having children, but that is
5 what happens.

6 So these people are still not able to
7 bear the benefits of the law which we passed.
8 The Attorney General's office, I know from experience,
9 is very busy. They have a lot of things that
10 they work on, and they have been unable to enforce
11 this new law without some extra staff. So from
12 our point of view we would like to see something
13 happen that would allow -- this is just one example
14 of the type of pretty insidious discrimination that
15 takes place against women and against low income people
16 that we would like to see approved in the future. I
17 would like to agree with what Lynn Heglund said.

18 One of the things that happens when we try and
19 work on legislation in Vermont is that there are
20 no statistics available to document a problem, no
21 reliable or recent statistics available.

22 The session before last, we worked on a
23 minimum wage bill, which was extremely controversial.
24 But in working on that bill I did some research
25 on the wage levels in the State, and had to

1 rely primarily on data from the 1980 Census, which was
2 somewhat outdated. But I was shocked at the very
3 clear-cut case that exists in Vermont for the
4 discrepancies in wage levels.

5 Most of the people that work at minimum wage
6 in the State of Vermont are women. An overwhelming
7 number of the people that work at minimum wage in the
8 State of Vermont are women, and I also looked at some
9 statistics that showed that there are numbers of
10 people that work below the minimum wage, and that there
11 are -- a lot number of people that work below the minimum
12 wage are women. But the statistics are not complete
13 and not up-to-date.

14 One of the things that we are encouraging
15 the State to do with the new federal wage recording
16 system is to accumulate reliable statistics on who
17 pays what to who in the State of Vermont. How many
18 minimum wage jobs are there, really, and who is in
19 those minimum wage jobs?

20 And the employer community is labeling
21 it as the last nail in the coffin of the
22 business community, and opposing a form that
23 the Department of Employment Security is putting out,
24 asking them to report that, along with other wage and
25 record data. We are very much in hopes that something

1 like a Civil Rights Commission could help to
2 accumulate the kind of statistics that give us a true
3 picture of really what is happening.

4 The last area is public -- our people taking
5 advantage of the areas that are available to them.
6 And I would say for the most part there is a great
7 fear among low income people and among women about
8 retaliation.

9 Under the Welfare system, people have
10 certain rights, but most of the time they don't
11 exercise them. They don't exercise them because,
12 number one, they don't know them; and number
13 two, they are afraid of retaliation.

14 And I think the creation of a Civil Rights
15 Commission and some publicity to go with it could go a
16 long way towards giving people the court and jury to
17 get involved with the process, and to question things
18 that currently they may not even know they can
19 question.

20 Thank you.

21 MR. CHAIRMAN: Thank you, Ms. Rivers,
22 very much. Ms. Bailey.

23
24 MS. BAILEY: Our panel is on sex
25 discrimination, and we are talking about an

1 unprotected majority in this situation, but I don't
2 think that people should think that we don't have
3 common interests, because the discrimination that women
4 suffer in these areas is very, very similar to what we
5 have heard from the other people today. In fact, it
6 is almost synonymous when you are talking about low
7 income people in Vermont that you are talking about
8 women for sure, and certainly in the other areas as
9 well.

10 I was asked to talk about two specific instances
11 in which the City of Burlington has passed ordinances
12 to try to deal with two of the problems that have been
13 mentioned here.

14 I am proud of the role that the City of Burlington
15 has had in these areas. We have had the chance to
16 do this because we have a progressive administration
17 in that city and because the background of the
18 staff people in that city, a lot of them is
19 similar to my own, which is as an advocate for low
20 income people and for women. I think that is why we
21 have been able to do it. And because the interest in
22 the community has been high.

23 The housing discrimination which I will
24 speak about and the women in construction trades
25 ordinance which I will also speak about brought out

1 more people and more testimony in the city than any
2 other things that have been mentioned in the city in
3 the last three years, except possibly a major
4 development on the waterfront.

5 People have talked about the problem in
6 housing discrimination. It is no different in
7 Burlington. Actually, Burlington has a little more of
8 the urban flavor problem. 59 percent of the housing
9 units are rental units and 65 percent of the people
10 are tenants. There is a very tight market, with a one
11 percent -- in the low income people there is one-tenth
12 of one percent vacancy rate, so the problem is
13 overwhelming; and of course, that makes the problems
14 of discrimination worse.

15 It also comes out of the view of society
16 that housing is a commodity to be traded on the open
17 market instead of shelter for people, that it
18 is basic need. So given that situation, the city
19 administration raised and the city council passed
20 unanimously an anti-discrimination Fair Housing law in
21 1984, and that was before there was any state
22 legislation in this regard in these particular areas.
23 The law we passed was to supplement an existing
24 1960's law which mentioned race, creed and national
25 origin. Our new law is preventing discrimination

1 based on the source of income, the fact of minor
2 children, sex, age, handicap and sexual preference.
3 Those were the categories that came to the forefront
4 in the testimony of the city council that needed
5 protection.

6 Most of these, in fact, especially a source
7 of income, minor children, dealt mostly with
8 women. One result has been a minor result, but
9 it makes a difference, as Cheryl pointed out,
10 is the ads that she mentioned are virtually gone
11 in Burlington.

12 The whole thing of public education and
13 advocacies and public knowledge has been -- there
14 is a difference because of the law. I think the
15 most important thing that is different in Burlington
16 that I hope we will be able to do something about in
17 the State law is in fact we can enforce the law. It
18 is a criminal penalty in Burlington, just like another
19 city ordinance, enforced by the City Attorney's
20 office.

21 We need, as everyone needs, more resources. Our
22 experience in this particular area is that we need
23 particularly more investigative resources, more
24 public education, we need testers. So we are in the
25 process of seeking federal funding to help us enforce

1 that ordinance. And in fact, we are going to modify
2 our own ordinance in order to be able to obtain that.

3 But that is what we have learned, is that
4 public education and outreach have helped.

5 Most of our cases have been cases of
6 discrimination based on source of income. They
7 don't want Welfare people, that is the bottom line.

8 The second most important area is discrimination
9 against minor children. The second ordinance that we
10 have passed that I want to speak about is directed in
11 a different way, and it is an Affirmative Action
12 ordinance. It is a hiring goal in the construction
13 trades for women.

14 It was brought forward again because the situation
15 was such that 97 percent of the industry in Vermont,
16 construction industry, was male. 59 percent of
17 Burlington households in poverty are headed by women,
18 and the income of the women heads of household were 55
19 percent of the city's median income. At the same
20 time, the timeliness was important because there was
21 in Burlington a construction boom, and the Committee
22 on Economics of the Burlington Women's Council decided,
23 this is a good place to target, a good place to start.
24 And it is -- really the only thing we argue that
25 this ordinance is, is a very small start in dealing

1 with the problem. But it requires a hiring goal of 10
2 percent of women in each trade, and it excludes
3 clerical workers and people who hold the stop sign at
4 the construction site.

5 So we are talking about real jobs, and
6 we are talking about them for one person. A society's
7 measure of success, as various people have said, is
8 money. These women have to have money to support
9 their families.

10 The entering jobs in these fields is 7.00 to
11 7.50 an hour, that is what they need in Vermont
12 to get off Welfare, that is why we have targeted
13 this area.

14 We have had so far very good public education,
15 very good response, total voluntary compliance
16 up to this point, in fact; we went for a small
17 goal so that we would be able to do that. We
18 hope to build it.

19 One of our models was Seattle. They started
20 with 12 percent, they have gone to 15 percent, and
21 now 17 percent women in their work force. This is all
22 construction contracts involving public funds for
23 projects over \$50,000.

24 It is very important, again, that we have
25 enforcement of this. It is enforced by the Community

1 and Economic Development Office; prebid plans are
2 enforced, monthly reporting of the women on the job
3 sites is enforced, and there are penalties that the
4 City Attorney's office is able to enforce.

5 So people have a place to go and they have
6 someone that can enforce the law. And obviously
7 we need as many resources as possible; we will
8 be asking for more resources as these laws continue
9 to exist, because the workload has seriously increased.

10 And the complaints in the housing area have
11 increased to our office, and the applicants for
12 the women in trades jobs. 75 women in Burlington now
13 are on the list of people to be referred in these
14 situations.

15 One of the electrical unions this year opened its
16 apprenticeship program for a week, and they have been
17 used to getting one or two women applying; this year
18 they had 19 women applying for those jobs. So just
19 the public education is important.

20 But I can't emphasize how much it is important
21 to have enforcement and also advocacies; it has
22 to be professional advocacies for this. And to
23 show you just how far we still need to go in this kind
24 of area, two of the women who came in for the training
25 program that we have just started to go along with

1 this ordinance are involved in custody disputes in the
2 courts of Vermont. One of them was advised by her
3 attorney to get out of the construction business
4 because it was not a good job for a woman and it was
5 going to hurt her in her custody case. And another
6 woman who had lost a custody battle on the same issue.

7 So it is just not a problem of advocacies and
8 enforcement; it is a problem of attitudes from the
9 courts as well.

10 So people have to make money, and then they can
11 not be discriminated against in other areas because
12 they choose to do work that will pay them a living
13 wage for themselves and their children.

14 MR. CHAIRMAN: Thank you. Ms. Wishik.

15
16 MS. WISHIK: I have been asked to
17 discuss with you today some of the economic
18 consequences of sex discrimination in Vermont as a
19 part of describing the civil rights problems faced by
20 Vermonters, problems about which you are considering
21 various strategies for solution.

22 Sex segregation of employment is a national
23 problem which Vermont has not escaped. Women are
24 segregated in some of the lowest paying job categories
25 in the market. This results in an earnings gap

1 between women and men.

2 Vermont women are 82 percent of our clerical
3 workers, 66 percent of all service workers,
4 85 percent of the apparel manufacturing workers,
5 and 84 percent of health service work earnings;
6 they are only 8 percent of craft workers and only
7 26 percent of the managers and administrators in
8 this state.

9 Reduced income from limited employment
10 opportunities costs Vermont women in the form
11 of low salaries, but also costs the State in
12 the form of Welfare costs and the negative
13 consequences to women and children of poverty.

14 Between 1970 and 1980, Vermont experienced
15 an almost 70 percent increase in the number of
16 poor families headed by women. 40 percent of
17 such families in Vermont are poor. Only 8 percent
18 of the families headed by men in Vermont are poor.

19 Pay equity is being implemented by the State
20 of Vermont for state workers, but the women of Vermont
21 in the private sector still face a serious wage gap.
22 They also face a benefits gap.

23 Many women are in jobs without fringe benefits,
24 and few jobs provide any employees with child care, a
25 need most women in the labor force have.

1 Wage and benefit gaps and outright hiring
2 discrimination are only the most obvious types
3 of sex discrimination that may occur in employment.

4 More subtle but still costly is discrimination
5 in working conditions and in retention and promotion.

6 In the leadership study conducted by the
7 Governor's Commission on the Status of Women, the
8 Commission demonstrated, for instance, that in the ten
9 years between 1973 and 1983, the percent of women full
10 professors in Vermont institutions of higher education
11 had only risen 3 percent, and the overall percentage of
12 women employed as faculty in Vermont is lower than the
13 national average.

14 In addition to actual losses of employment
15 due to lack of retention or promotion, there are
16 economic consequences when women work in working
17 conditions that are differential by gender.

18 Sexual harassment on the job and status as
19 a woman in a setting which women have rarely
20 or never before been employed caused losses in
21 worker productivity an additional stresses that
22 lead to health problems and health care costs.

23 Sex segregation of jobs won't change
24 without educational counseling to expand the role
25 choices young women and men in Vermont feel free to

1 make.

2 They found that Vermont education and training
3 programs, despite efforts to the contrary, still to a
4 large degree reinforced traditional role choices for
5 students.

6 Of the more than 44,000 young
7 girls in Vermont public schools today, 90 percent will
8 be in the labor force for 34 to 41 years in their
9 lives. Sex equity in education, early education about
10 the need for vocational skills, and good vocational
11 programs that prepare women for jobs that will prepare
12 them to be the primary breadwinner for their
13 families are essential if Vermont is to stop the
14 problem.

15 Sexual discrimination also occurs in Vermont
16 in the context of divorce. Women in Vermont are not
17 yet receiving fair and equitable divisions, nor are
18 they receiving fair support. New legislation just
19 passed this session will cause child support awards to
20 rise, but often Vermont judges are still failing to
21 award the women any interest in the husband's pension,
22 and are inclined to award them no more than 50 percent
23 of the value of the house, even when the men are
24 leaving the marriage with much greater earning
25 capacity.

1 And in my Economics of Divorce on the Family
2 article recently published in the ABA law journal said
3 that Vermont women received spousal support half as
4 often as women in the rest of the country.

5 I also found that after Vermont divorce,
6 Vermont men experience a substantial rise in the
7 standard of living, but Vermont women experienced a
8 drop.

9 In reference to employment, housing
10 discrimination, discrimination in commercial
11 credit for Vermont women with federal jobs,
12 federal credit laws do not extend to the credit
13 context.

14 In a rural state where many low income rural
15 women may earn more as entrepreneurs than in those
16 other jobs, a lack of business loans without
17 co-signers often limits their capacities to limit
18 business ventures. There is also discrimination in
19 insurance and pensions that Vermont women face, but
20 you have heard about that from other speakers.

21 As the Governor's Commission on the Status of
22 Women found in its report, The Economics of
23 Child Care, the economics of Vermont women are
24 also the problems of Vermont children. One of
25 two Vermont children under the age of 6 lives in a

1 household where the mother is in the labor force.
2 Two out of three children aged 6 to 18 live in such
3 households, and between 1970 and 1980 , the number of
4 single parent households in Vermont doubled.

5 In addition, the labor force participation
6 of single parents in Vermont approaches 80 percent.
7 This means that if Vermont women are suffering
8 economically due to the types of discrimination I have
9 discussed above, their children are also suffering.
10 The child care report found that Vermont offers
11 woefully inadequate slots for child care,
12 approximately one-quarter the number needed, and that
13 available places are beyond the economic needs of most
14 of Vermont families. Vermont children are thus not
15 receiving the care they require while their parents work.

16 I hope this brief survey of the types of
17 conventions of sex discrimination being faced by
18 Vermonters is of use to you.

19 I am also submitting to you each of the
20 Vermont Commission on Women's publications for
21 your use.

22 Finally, about ten days ago, I received
23 a letter which rescinded the invitation to talk
24 about law and equal opportunity, and which gave the
25 reason for canceling my talk, quote, "...a shared

1 perception that your radical feminism might render
2 scholarly detachment sufficiently difficult as to
3 elicit distracting and inappropriate responses from
4 members of the audience." I have here a letter which
5 I am hand delivering to you today which I would like
6 to read into the record of today's proceedings about
7 sex discrimination.

8 "Dear Vermont Advisory Committee Members:

9 I am writing to you in response to your decision of
10 August 18 to cancel my engagement to speak with you
11 this morning about "Law and Equal Opportunity." I
12 begin this with a story which seems relevant to this
13 situation.

14 "While I was still an infant, my father was
15 blacklisted by the government of the United States
16 during the period known as 'the McCarthy era.'
17 As a result, he lost his governmental security
18 clearance, and his employment options were limited.
19 During the next decade the Federal government
20 repeatedly asked my father, due his professional
21 expertise, to serve as a government consultant. He
22 acceded to those requests and provided service despite
23 the fact that the government could not pay him for his
24 time or expenses because he was still on the
25 blacklist. In the early 1960's, when a federal agency

1 asked him to assist with the design of a major new
2 federal program, my father regretfully declined
3 because he could not afford without compensation the
4 large time commitment and travel expenses involved.
5 The government at that point removed his name from the
6 blacklist and restored his security clearance.

7 Joseph McCarthy's legacy is not easily
8 erased. In 1977, when I was an applicant for federal
9 employment that required a full field investigation,
10 the investigation turned up my father's prior
11 blacklist status. They then initiated a new probe
12 into his activities. They went to his doorman at his
13 apartment building, and to the building manager, and
14 queried them about his social life, the hours he kept,
15 the regularity of his payment of rent, and other
16 matters. During the almost 30 years that my father
17 was periodically the object of governmental
18 blacklisting and harassment, he was never provided
19 with a statement of the charges against him, the
20 identity of his accusers, or an opportunity to answer
21 and defend himself.

22 "Benjamin Franklin once said, quote, 'They
23 that can give up essential liberty to obtain a little
24 temporary safety deserves neither liberty nor safety.'
25 Democracy and the liberties associated with it are

1 fragile and require, as has often been said, eternal
2 vigilance. Government actions that bring down upon
3 individuals negative consequences for their public
4 speech or for their participation in the political
5 process have a chilling effect upon the freedom to
6 speak and participate. And democracy does not
7 function unless people feel free to participate in it.

8 "On August 18 you met and apparently
9 decided that I was not sufficiently competent as an
10 attorney and scholar to deliver to you today a talk
11 about the relationship between federal and state civil
12 rights protections. You then directed your staff to
13 rescind my invitation to give the morning speech
14 entitled, 'Law and Equal Opportunity.' As far as I
15 know, you made these decisions without reviewing my
16 resume, which includes experience as a law school
17 faculty member, including the teaching of
18 constitutional law, or my scholarly writings. You did
19 not consult with me about your concerns before taking
20 action.

21 "I am not personally or professionally
22 acquainted with the majority of you. I do not know
23 what forms the basis for your concerns, judgments, and
24 decisions, other than what was said in the attached
25 letter your staff mailed to me to communicate your

1 decision. That letter suggests that you formed a
2 judgment about my political views, concluded that such
3 political views render me incapable of sufficient
4 'scholarly detachment,' and therefore decided I was I
5 was an inappropriate speaker. You have accused,
6 judged, and sentenced me without interacting with me
7 at all. Such actions by a governmental or
8 pseudo-governmental entity may appropriately be
9 described as McCarthy tactics.

10 "While I know very little about the basis
11 for your actions as a Committee, I know very
12 much about the impact upon people's lives when the
13 government acts in this manner. People lose jobs,
14 friends, homes and families. Good people become
15 afraid of associating with a person about whom the
16 government has made such vague and accusatory
17 judgements. Personal and professional isolation may
18 result. And good people become afraid to participate in
19 public and political processes, lest they, too, be
20 branded too 'radical'.

21 "While I personally will not be silenced by your
22 actions, and I am, in my employment, surrounded by
23 supportive colleagues, I am concerned about the impact
24 or your actions upon the people of Vermont. You are
25 here today to explore whether there are mechanisms for

1 responding to Vermonters' civil rights concerns. The
2 establishment of a Human Rights Commission or any other
3 remedial process will not alone give individual
4 Vermonters the courage to stand up and make claims
5 when they feel their rights have been violated.
6 People who do make claims must be treated with
7 respect, and when these claims have merit, they must
8 be provided with relief. If public assertions of
9 concern about discrimination and civil rights bring
10 down upon people's heads negative governmental
11 responses, claims will not be brought. There was a
12 time when, if a black person spoke publicly in favor
13 of civil rights for all races, or made a claim of
14 personal discrimination, that person was considered
15 'uppity'. I fear that the message carried to
16 Vermonters, by your actions regarding me is that women
17 who speak publicly about women's rights are not worthy
18 of professional respect, are 'uppity', are too
19 'radical'. I think you owe the people of Vermont an
20 apology.

21 MR. CHAIRMAN: I am authorized on
22 behalf of the Committee to explain the situation that
23 Ms. Wishik refers to, and what I would like to do now
24 is read a letter that I drafted last night after our
25 Committee's meeting.

1 "Dear Ms. Wishik: It has come to the
2 attention of the Vermont Advisory Committee to
3 the U.S. Commission on Civil Rights that Louis L.
4 Brin, a civil rights analyst on the staff of the
5 Commission's New England Regional Office wrote you
6 a letter dated August 21, 1986, alleging reasons for
7 the Committee's decision to rescind Mr. Brin's
8 invitation to you to present the keynote address at
9 the Committee's September 6 fact-finding meeting. On
10 behalf of the Committee, I wish to point out that Mr.
11 Brin had no authority to write such a letter, that it
12 does not reflect the views of the Committee, and it is
13 not an accurate reflection of the Committee's
14 decisions taken at its August 18 meeting.

15 'The decision to rescind the invitation
16 was not based on your views, views which we
17 believe deserve fullest possible hearing.
18 Moreover, the Committee in no way questioned your
19 integrity as a scholar.

20 Mr. Brin was not authorized to invite you, and
21 the Committee concluded upon learning of the
22 invitation that you could best contribute to our
23 fact-finding meeting as a participant in the panel
24 on sex discrimination.

25 The Committee is grateful for your willingness

1 to participate in our September 6 meeting and
2 eagerly awaits what we know will be a valuable
3 statement", as it indeed proved to be.

4 That is the statement that I was authorized
5 to make on behalf of the Committee.

6 Sam Johnson, do you have any questions?

7 MR. JOHNSON: Just a few, given the
8 fact that a considerable amount of time has lapsed, it
9 is almost noontime.

10 Gretchen, I am glad you raised the question
11 that -- or broached a subject that women are
12 indeed in the majority, and in my travels around the
13 country, and having met with various groups and
14 discussing some issues, since we are here to examine
15 the types of legislation or enforcement mechanisms
16 that are in Vermont of those things that may be put
17 into place, several issues come to mind, one of
18 which is the fact that there has been a Governor's
19 Commission on the Status of Women since 1964, and I am
20 not sure whether it exists in Vermont, but it does
21 exist in other parts of the country, and that is
22 whether or not in Vermont there is any conflict
23 between the position and advocacies of women and other
24 protected minorities, or whether there is a perception
25 of conflict in Vermont? That is my first question to

1 the panel.

2 MS. BAILEY: I don't think there is.
3 It is unfair -- people always talk about women as one
4 of the minorities. I think it is actually wrong to
5 focus on the word "minority". I think it is much more
6 important to focus on the kinds of discrimination that
7 happen to people, happen to people for various
8 reasons; part of it -- in women it is clearly because of
9 their gender, and in a lot of people, black women who
10 have a double whammy, and other people have more
11 things on their list. I think it is important not to
12 lose what we are really talking about.

13 And I just-- it is just that women
14 are considered, I think, quote, "minority" because
15 they have very little power and they think they must
16 be a minority because we give them so little power.

17 MR. JOHNSON: In Vermont, will there be
18 any diminution of ability to protect other segments of
19 the protected minority group with the establishment of
20 a Commission without them having equal status of some
21 governmental entity or board to lobby for and gather
22 information on their behalf?

23 MS. HEGLUND: I am trying to understand
24 the question. Is it more, does the women's Commission
25 feel they would lose if there was a civil rights

1 commission advocating more strongly for other
2 minorities who are not necessarily women?

3 MR. JOHNSON: No; whether or not other
4 minorities in a protected class will lose, if in fact
5 they aren't elevated to a funding and status as the
6 Governor's Commission on the Status of Women.

7 MS. HEGLUND: I think they already are
8 losing. Because in the absence of an organized voice
9 and access route for redress that is highly visible
10 and easily accessible, you don't have the capacity to
11 solve the problems, either through a non-litigative or
12 litigative route; you don't have it. You don't have
13 the capacity to develop information, to build a case,
14 to understand the problem or to seek solutions.

15 MR. JOHNSON: So would it be your
16 recommendation that something similar to that, to the
17 Governor's Commission on the Status of Women also be
18 implemented for other members of minorities in a
19 protected class so as to stop slippage?

20 MS. HEGLUND: I think if you also ask
21 the question, does there need to be enforcement of
22 existing statutory rights or nonexistent rights that
23 are not now being enforced.

24 I think just establishing the
25 Commission without an enforcement power is sufficient

1 for certain kinds of purposes, public awareness being
2 one. But essentially, if you want to stop the problem
3 at its source, you have to have the ability to say,
4 no, this is wrong, and this is the line past which
5 thou shalt not step. And that is only done if you
6 have the capacity to enforce.

7 I don't think it has to be necessarily
8 the most stringent form of litigation model of
9 Commission. But I also think that the absence of
10 that enforcement is a weakness.

11 MR. CHAIRMAN: Thanks to our panelists,
12 Sam; we will have to stop here. The meeting is in
13 recess until 1:30.

14 MR. CHENEY: Before the meeting
15 recesses, I want to make a statement on the record.

16 I was not at the August 18 meeting; I think the
17 Brin letter is most unfortunate. I think you
18 personally deserve an apology from this Commission.
19 And I, for one, applaud the statement you made, and I
20 subscribe to it.

21 MS. WISHIK: Thank you.

22

23 (12:20 p.m., a luncheon recess was taken.

24 1:30 p.m., hearing resumes.)

25

1 MR. CHAIRMAN: This is a panel on
2 combatting discrimination in employment, and we have
3 with us today Steven Gardner, from the IBM
4 Corporation; Mr. Gardner is Personnel Manager of IBM
5 Corporation in Essex Junction. William Keough; Mr.
6 Keough is Executive Vice-President of the Associated
7 General Contractors, in Montpelier. Christopher
8 Barbieri; Mr. Barbieri is Executive Vice-President of
9 the Vermont Chamber of Commerce in Montpelier.
10 Timothy Hayward, Mr. Hayward is Executive
11 Vice-President of the Vermont Bankers Association in
12 Montpelier. Thomas Belville; Mr. Belville is COPE
13 Director of the Vermont State Labor Council, AFL-CIO,
14 in Montpelier. J. Scott Cameron; Mr. Cameron is
15 Commissioner of Personnel for the State of Vermont.
16 Joan Fobbs; Ms. Fobbs is Human Resource Development
17 Assistant at the University of Vermont. Thomas
18 Whitney; Mr. Whitney is Executive Director of the
19 Vermont State Employees Association, in Montpelier.

20 This is by far the largest panel, and again,
21 I ask each panelist to limit his or her remarks
22 to five minutes, and then we will have a question and
23 answer period after each person has spoken. Mr.
24 Gardner, would you like to take the lecturn, please.

25 MR. GARDNER: Thank you. My brief

1 comments are drawn obviously from my experience at IBM
2 in Vermont, and to some degree are supported by what
3 we heard earlier today, and to another extent differ
4 from some of the things we have heard.

5 I must make it very clear, however,
6 that I am really going to address myself to the
7 private sector employment environment, and not to
8 some of the other broader issues that were so ably
9 discussed and described earlier this morning.

10 Vermont is a small state, and I mean that
11 in the most positive sense, and to that extent, state
12 officials, the leaders of all of the segments of our
13 community and the various sectors of the community are
14 relatively accessible to one another and the
15 citizenry, and communication, from what I can see,
16 appear to be healthy among those leaders.

17 The various protections of the State and the
18 other public agencies as they relate to fair
19 employment protection also appears to be
20 available and responsive to the needs of Vermonters.
21 With that backdrop, let me speak specifically about
22 our experience with the Civil Rights Division of the
23 Vermont Attorney General's office.

24 That experience, of course, is limited to
25 activities at our Essex Junction facility, which

1 is a manufacturing and development facility of
2 about 8,000 people.

3 By this committee's own description, Vermont
4 Fair Employment Practices Act and the protections
5 against employment discrimination is comprehensive and
6 essentially identical to that in many other states.
7 The Civil Rights Division here in Vermont has
8 developed procedures and practices to receive
9 complaints, to investigate them, and conciliate those
10 complaints; and we have found those practices to be
11 thorough, responsive, and as best we could determine,
12 equitable. That is not to say that we always agree
13 with the conclusions of that division, but find them
14 to be, as I say, responsive and equitable.

15 The procedures are flexible, which is one
16 of the advantages of the, quote, "smallness" of
17 this state. And flexibility is a positive thing
18 because it does allow the needs and circumstances
19 of individuals and of individual cases to be
20 addressed, and decisions and actions are well-founded
21 on legal principles. That is one of the key
22 advantages that we see of having the cases handled
23 and reviewed from the Attorney General's office.

24 The emphasis on facilitation is, of course,
25 a very positive focus, and the bottom line,

1 from our experience I believe the process in the
2 employment arena is working well.

3 The other facets of equal opportunity in
4 employment deserve a couple of minutes of
5 discussion beyond the receiving of complaints,
6 the investigation of complaints, the determination
7 of either discrimination or the absence of
8 discrimination and the reconciliation of those, and
9 that is the discussion of public awareness and of
10 outreach programs.

11 From my perspective, state and municipal agencies
12 must take the lead in creating and maintaining
13 an awareness for fair employment practices and
14 employment opportunities. While the State must
15 take the lead in that, there must be a good measure of
16 support from industry, from education, from trade
17 associations, throughout the State.

18 In this particular state there has been
19 some level of activity, particularly out of Steve
20 Kagan's office, the Education Commissioner. And that
21 organization has sponsored in the past a couple of
22 programs on Women in Science and Women in Industry
23 which have been very positive. But there is no
24 question that more could be expected, particularly as
25 it relates to protections and rights and information

1 awareness to the citizens of the State.

2 Outreach programs, on the other hand, to attract
3 women and minorities, for example, to non-traditional
4 careers are the clear responsibility of industry,
5 but not without some support from the education
6 community.

7 Again, IBM, for example, has been very active
8 in this area. We have dealt very specifically in
9 efforts to work with native populations, both for
10 community leaders as well as through the education
11 institutions such as Missiquoi Valley Union High
12 School, where there is not a large population, but as
13 this state goes, a relatively large concentration of
14 native Americans. Also with Clarkson and Technician
15 College in Canton, New York; a large hiring is in the
16 areas of programmers and technicians, and those are two
17 educational institution which have a fair amount of
18 inroads in the native American population, as well as,
19 obviously, technical curriculum that we are looking
20 for, as well as a fair amount of work on our part with
21 a number of agencies for attracting disabled and
22 making accommodations for disabled applicants.

23 What is clear to me is the need
24 for greater focus. Efforts are very effective in this
25 state in some areas and they are inadequate in others,

1 and we heard some of that this morning. The private
2 sector can clearly do more within its own ranks to
3 more effectively coordinate Affirmative Action
4 activities and outreach programs. Likewise, each of
5 the State agencies could do more to coordinate their
6 activities.

7 There are activities that come out of
8 the Education Department, the Attorney General's
9 office, the Human Services Department, and perhaps
10 those agencies might be able to achieve more and more
11 effectively deal with the very broadest description of
12 discrimination and equal opportunity if their
13 activities had a greater focus to them.

14 While my experience in the employment area
15 does not necessarily lead to the conclusion that a
16 single agency is the answer, it is agreed that the
17 State and this Commission is to satisfied with the
18 results and with the activities that we have seen to
19 date. That may be the one remedy remaining.

20 MR. CHAIRMAN: Thank you. Mr. Keough?

21 MR. KEOUGH: Thank you. I represent
22 the Associated General Contractors of Vermont, which
23 is a construction trade association of general
24 contractors, subcontractors, and suppliers who do
25 construction work here in the State.

1 With regard to minority persons working
2 in our industry: We certainly don't have those
3 numbers of people that could be available to our
4 industry mostly because of a seasonality of the
5 industry. Minority persons find much more stable
6 employment with the other aspects, other industries,
7 rather than the eight or nine months in the
8 construction industry whereby they suffer lay-offs,
9 as do most people here in Vermont.

10 With regard to the employment of women,
11 we have made great strides over the past five years.
12 I am sure all of you who have been going along the
13 roads of Vermont during the week, you will see many
14 more women today than you have ever seen. We find
15 that women who begin their work in the area of being
16 flaggers, that is a good introductory aspect into
17 construction because at that time they know what it
18 means to get up before dawn and on the job site at
19 dawn, so that they are working many hours a day and
20 they know what it is like to work on a construction
21 job. We find that that is, as I said, a good
22 introduction to the industry, and then they go on to
23 become laborers or truck drivers or equipment
24 operators with that kind of background.

25 One of the greatest things we find is

1 the need -- rather, is for education and training
2 of the people. We find if they have skills to
3 be carpenters or equipment operators, they are much
4 more readily assimilated into the industry and they do
5 an outstanding job, and while some people don't agree
6 with the strides that have been made in our industry,
7 we think we have done extremely well. Our supervisory
8 people on the job site need some more training and
9 more persuasion with respect to broadening their
10 outlook in this area, and that is coming, slow but
11 sure. But that is -- we are making progress in that
12 area.

13 Looking over our shoulder with regard to
14 compliance programs is the Agency of
15 Transportation, the office of federal contract
16 compliance programs, as well as the City of
17 Burlington has its own 10 percent requirement for
18 women in the construction trades. Thank you very
19 much.

20 MR. CHAIRMAN: Thank you. Mr.
21 Barbieri.

22 MR. BARBIERI: Some little notes up
23 here for us. The Vermont State Chamber of Commerce is
24 a broad-based business organization that represents
25 about 1300 employers in the State of Vermont. And by

1 broad-based I mean that we cover the entire spectrum
2 of employers, all types, whether it be manufacturing
3 or recreation, construction, retail, and so forth.

4 And what I would like to do is paint for you
5 a verbal picture of the Vermont economic community
6 before I offer any editorial comment.

7 Vermont is one of the most concentrated
8 small business states. In fact, by most definitions
9 we are very small business state. For example, 80
10 percent of Vermont businesses employ nine or less
11 employees, and 91 percent employ less than 20. The
12 small business person is often the manager, with
13 many operational responsibilities such as sales,
14 purchasing, marketing, personnel matters and so on.

15 The Vermont employer often shares a close
16 working and sometimes social relationship with
17 his or her employees. Vermont workplace
18 environment is often less impersonal than in many
19 other parts of this country. It is also my feeling
20 that all Vermont employers, both large and small, have
21 demonstrated a high level of concern and respect for
22 the employee problems that might potentially result
23 from discrimination. I might add that Vermont
24 employers, though very small by national standards,
25 have been asked to make special efforts to hire the

1 handicapped, veterans, senior citizens, teenagers,
2 and so forth.

3 Vermont has a national reputation for
4 high productivity. It is my experience that Vermont
5 employers will hire the best person for the job,
6 regardless of race, age, disability, or any other
7 considerations.

8 Employers as well as employees are potential
9 victims of discrimination on the basis of race,
10 religion, handicap, or national origin.

11 In many years working with the Vermont
12 business community, we have received very few
13 employment discrimination complaints against member
14 businesses. Do they exist? Of course they do,
15 and I am sure that there are individuals in Vermont
16 that have experienced employment discrimination, but
17 the extent to which it occurs, in my opinion, is
18 relatively small.

19 The question you have asked us to
20 address today is the adequacy of Vermont civil
21 rights laws, and are they being enforced. My
22 observation that is we do not have a serious problem
23 in this regard in Vermont, that the existing laws and
24 enforcement are both adequate and satisfactory.

25 There is currently a popular saying, of

1 unknown origin, "If it ain't broke, don't fix it."
2 That is my current assessment of the situation in
3 Vermont. Thank you.

4 MR. CHAIRMAN: Mr. Hayward.

5 MR. HAYWARD: I am Tim Hayward; I am
6 the Vice-President of the Vermont Bankers Association.
7 We are a trade association, and we represent 33 of the
8 35 banks in the State of Vermont. Together these
9 banks represent about 4,000 employees, many of
10 them are women.

11 As an association and how we operate as
12 an association is to assure that our members are
13 kept apprised of what is happening both on the State
14 and the Federal level, as far as changes in the law,
15 as well as providing other services to them.

16 One of the areas of concern to our association
17 is in the whole human resources personnel area, and as
18 such, we have a Personnel Committee. One of the
19 duties of this Committee, which it has continually
20 looked at, is in the whole area of employment rights
21 and equal rights. This Committee, approximately two
22 years ago, have spent a fair amount of time on the
23 Affirmative Action, equal rights; sponsored a forum to
24 assure that our members were in fact up-to-date as to
25 the requirements of it; that they had helped in

1 developing Affirmative Action plans, and generally
2 increasing the awareness to the situation and to
3 possible employment discrimination.

4 Our association also has a way of demonstrating
5 its tenor to the members and has adopted a policy
6 statement to its by-laws, which I can read, if
7 I could; this is in the by-laws of the association.

8 "The Vermont Bankers Association supports the
9 principle of equal opportunity for all without regard
10 to race, color, religion, sex, national origin, age,
11 handicapped or veteran status. We will actively
12 support member banks as they take Affirmative Action
13 in establishment of a safe, supportive, and equitable
14 environment in which every customer and employee can
15 assure equal opportunity to share and participate in
16 all relevant aspects of the bank." So there really is
17 a concern amongst the trade association and the
18 members of the association to assure that equal
19 employment opportunities are not just a phrase, but in
20 fact is a reality.

21 As I mentioned in the outset, women represent
22 the majority of employees of banks; I think we
23 all know that. Over time, we have seen, in the
24 last few years, particularly, where women are now
25 getting up into the middle and upper management of

1 banks. This is happening more and more. This is
2 happening for two reasons: one is because it is the
3 right thing to do, and assure that there is equity in
4 our practices. And the other is, frankly, that the
5 financial services industry is becoming much more
6 competitive; deregulation, competition from other
7 financial institutions. And frankly, banks cannot
8 afford to do anything other than to evaluate employee
9 based upon their capacity to produce, and to be a
10 contributor to the bank. So discrimination of any
11 sort would make absolutely no sense.

12 Banks don't look at the employee as to their
13 color, their race, their religion. It is, can
14 they be a contributing member of a team?

15 One other comment I would like to make at this time,
16 I think it is really a common theme which has come
17 through here is the need for education, whether it is
18 in vocational education, or not. And it really is a
19 concern, particularly in the banking field, as
20 employment is becoming more competitive, and also the
21 technology in many cases is becoming more complex,
22 that all people who desire to become employed in the
23 financial services area as well as in the construction
24 area or otherwise, that they in fact have equal
25 opportunity to participate in the training form,

1 whether it is vocational education or more traditional
2 education.

3 There is a real need to assure that the work
4 force, male and female, are preparing for the
5 jobs they will find when they graduate. Thank you.

6 MR. CHAIRMAN: Thank you. Mr.
7 Belville.

8 MR. BELVILLE: My name is Tom Belville;
9 I am COPE Director for the Vermont State Labor
10 Council, an organization that represents approximately
11 20,000 AFL-CIO union members around the state.

12 In the eleven years that I have been
13 working for the council we have been involved
14 peripherally at least in several discrimination
15 incidents. I remember one dealing with racial
16 discrimination, one dealing with a handicapped worker,
17 and two cases dealing with age discrimination. There
18 have been at least four cases dealing with sex
19 discrimination. Of these eight cases, one is pending,
20 six were settled to the satisfaction of those
21 involved, and one, a sex discrimination case, went
22 nowhere. In addition, our Montpelier office receives
23 on the average of one call a day from workers who feel
24 they have been unfairly treated by their employers.

25 In my own estimation, I would say about

1 one-third of these cases seems to stem from
2 some form of discrimination, usually on the basis of
3 sex or age. I should point out that these people call
4 our office not because they are union members, but
5 because we are listed in the Yellow Pages.

6 It is the policy of our office not to give
7 these callers advice, but refer them to the
8 proper state or federal agency. We do not ask them
9 their name or the names of their employers. We do
10 tell them if they are not satisfied with the response,
11 to get--to call back; very few ever do.

12 It is my belief or perhaps my fear that a
13 large number of discrimination cases are never
14 identified as such, never reported. I feel that the
15 Vermont laws governing these issues are adequate, and
16 that the enforcement is quite good.

17 Where our state seems to fall short of the
18 mark is in the area of education or publicizing
19 the existence of the laws, rules, or regulations.
20 I believe that many Vermont workers are discriminated
21 against without ever realizing it, or if they do
22 realize they have received unfair treatment, they do
23 not realize there may be a remedy for their situation.

24 Thank you.

25 MR. CHAIRMAN: Mr. Cameron.

1 MR. CAMERON: I would like to thank you
2 for inviting me here today. I am the Commissioner of
3 Personnel for State of Vermont government.

4 State government employs over
5 six thousand employees in the classified or civil
6 service merit system, and several thousand others in
7 either the executive branches or judicial or
8 legislative branches of government. I am going to
9 primarily talk about the merit system, which is
10 something that we administer.

11 We are responsible for recruitment,
12 selection, classification of employees, for
13 negotiation of collective bargaining agreements
14 which provide for employee rights and employer
15 rights, and define processes by which grievances are
16 addressed. And I have been in this job now about 18
17 months, and prior to that I had been an attorney for
18 state government, usually representing management in
19 labor cases. And I think that on the one issue of
20 adequacy for us to investigate complaints, whether it
21 be civil rights complaints or contractual violations,
22 I think that the public employee of the State probably
23 has an advantage over employees in other private or
24 even municipal systems.

25 We have -- first of all, not only are

1 we subject to almost all of the Federal and state
2 employment fair employment practice laws, but the
3 original basis for the civil service is the merit
4 system which arguably can provide even greater
5 protections to an employee, since the basis is that
6 people will be hired, selected, promoted based on
7 merit based factors, rather than to say what things
8 you should not do in terms of race or something else;
9 it basically, the way I see it, reaches all methods of
10 invidious classification. And therefore, if you are
11 not making a decision based on merit, you are probably
12 violating that law, to some degree. And so that is
13 where we start.

14 Through collective bargaining, we have
15 non-discrimination clauses in the contract
16 which not only obligate the employer to take
17 Affirmative Action and end discriminatory practices,
18 but which -- the Union takes an active role and active
19 responsibility in trying to eliminate these practices.
20 Those practices can be addressed in many ways;
21 sometimes by directly going up the chain of
22 supervisory command, things can be resolved.
23 Sometimes claims go to the Union, the Union will speak
24 to us. We can mediate things, bring about
25 resolutions. Sometimes there are other alternative

1 actions.

2 A grievance can be brought to the Labor
3 Relations Board, based on violation of a contract
4 which could be the clause against non-discrimination
5 and nonharassment. It could be based on
6 discriminatory application of a rule or regulation.
7 So there is a means of redress.

8 And like every other employer, they may
9 simultaneously take the complaint to the Attorney
10 General's office, and ultimately that could result
11 in a right to pursue a complaint to federal court.

12 Interestingly enough, I had lunch with
13 Tom Whitney, the Executive Director of the Union which
14 represents state employees, and one thing that came up
15 was that we could end up, in the Labor Board, not only
16 being sued, I guess is the word to use, by a victim of
17 discrimination, but we could also end up there based
18 on a disciplinary action that we had taken against the
19 perpetrator as that perpetrator seeks to define what
20 his or her rights are, after being disciplined.

21 And I would say that employers generally --
22 and the State is no exception -- sometimes feel very
23 burdened by the demands of trying to confront
24 discrimination; it is difficult for us. In fact,
25 sometimes one of the most discouraging things in my

1 job is when I look at the resources that we are always
2 putting into defending various actions when those
3 scarce resources could have been put into something more
4 productive in the first place. But that is a fact of
5 life. People do need a place where they can bring
6 their grievances. I am glad to say that I think state
7 employees have those places.

8 I am less familiar with the rights of the private
9 sector, although I think in the employment area there
10 may well be adequate protections. I am more concerned
11 with other areas of housing and education, and I
12 don't feel personally that the same kind of avenues
13 that have been provided for people who have been
14 discriminated against or feel they have been
15 discriminated against in employment are available to
16 these other situations. And I do think that this
17 Commission should study that area and see what changes
18 in the laws are necessary.

19 I think that basically whether or not
20 employers, especially large employers, public
21 employers like the State of Vermont are willing or not
22 willing to try to combat discrimination at least
23 equally depends on leadership; not just what the laws
24 say, but what leadership is. And I think under
25 Madeline Kunin, I do detect the kind of leadership

1 that says we want to go out, we want to find where our
2 weaknesses are and we want to address those
3 weaknesses. And I think that we have seen that in a
4 succession of Vermont elected leaders, at various
5 levels.

6 We have in our state culture at this point
7 in time the environment to combat discrimination, but
8 we do have serious problems. With our work force,
9 which is very diverse -- everyone tends to think of the
10 State as being a monolithic entity -- but it is a very
11 diverse work force with very different missions.
12 Probably today the biggest problem that we have is in
13 that changing work environment. And typically, the
14 most typical situation is where historically we have
15 had an all-male environment, in Corrections, in law
16 enforcement generally, in some of the blue collar
17 occupations.

18 And as women are making inroads, that one of
19 the biggest problem areas for us is the degree
20 of resentment and bias that exists among the
21 historical work force towards the newcomers.
22 And dealing with those problems has presented
23 us with some real difficulties. But it is
24 something that we are struggling to get ahold of.

25 More resources need to be put into

1 training, there needs to be more education. And I
2 think again, the attitude is there, the willingness to
3 change, to improve things is there. And I would -- one
4 other thing I would urge the Committee to think about:
5 employers often become very defensive when they get
6 talking about civil rights issues, when they talk about
7 what they are doing, not doing, because the bottom
8 line is, as much as you do, you are going to fall
9 short, based on somebody's expectation of you.

10 And as new laws are considered, I would say to
11 you to try to think of ways in which the laws could
12 create the kind of climate where employers could be seen
13 as part of the solution rather than part of the problem,
14 and brought in so that they would be cooperative and not
15 always feel that they were being put on the spot.

16 I am the Commissioner of Personnel, and I
17 am a lawyer, and that may tell you something
18 about, why did they put a lawyer in charge of the
19 Department of Personnel? I think that says something
20 about the climate that we live in today. And perhaps
21 when the day comes that they don't feel they need a
22 lawyer to run the Department of Personnel, that will
23 say something about the climate then.

24 Thank you very much.

25 MR. CHAIRMAN: Thank you.

1 MEMBER OF THE AUDIENCE: Could I ask a
2 question?

3 MR. CHAIRMAN: No. Each person will
4 make a statement, members of the Committee will ask
5 questions, then at the end of the day, members of the
6 audience can make statements. But members of the
7 audience may not ask questions of the participants.
8 Ms. Fobbs.

9 MS. FOBBS: I am representing the
10 Office of Human Resources Development for the
11 University of Vermont, and not the total University,
12 and I want to clarify that, because my experience
13 there has been one year. So what I would like to do
14 is tell you what I have learned and what I have come
15 to find out, or give you some brief generalities about
16 the way that the Office of Human Resources Development
17 functions, in order to try to combat discrimination.

18 The process in that office is that the paper
19 flow follows from the Personnel Office through the
20 Vice-President's Office and through our office. Our
21 office is the final sign-off on paperwork regarding
22 hiring, faculty and staff hiring.

23 The University of Vermont has a faculty
24 and staff of about 3,000 employees there. That
25 paperwork, as it reaches our office needs to be

1 approved, needs to be checked and verified, whether
2 there are minorities in the pool and whether there are
3 minorities or women that were interviewed and
4 identified for appointment. And this is where we come
5 in, to try to identify whether Affirmative Action
6 plans have taken place, and whether discrimination is
7 occurring, whether equal employment opportunities are
8 being made available.

9 A number of problems occurred, and as
10 Scott has mentioned, when you approach employers
11 or employees or departments or Chairs or searches of
12 Chairs, Chair searches, and supervisors that are in
13 the hiring process, and ask questions in regard to the
14 minorities that are in the pool, there is a bit of
15 defensiveness. There is no easy, soft, positive way to
16 approach that. You can be as pleasant as possible,
17 but somehow or another, the threat is still there.

18 The problem occurs when minorities appear in the
19 pool, there is this feeling of perhaps they need --
20 they are obligated to identify and interview, but
21 then even if they interview, the interview may be
22 a courtesy just because the minorities appear in
23 the pool. The drop-off point is when it is time
24 to make that final appointment and that minority
25 is left out, at that point. Now, where does

1 that minority go or that woman go when that occurs?
2 And that is the problem. That is one of the problems.

3 Our office will hear that complaint, but where
4 they go beyond the University to get respect for their
5 concerns, and there are identifiable minorities that
6 are qualified in the State of Vermont to fill a number
7 of positions. But the University, as all universities,
8 have the privilege to determine who they think is the
9 most qualified, and the position is offered at that
10 point.

11 We have -- this year we are planning to
12 matriculate approximately 75 minority students as
13 freshmen. Among that are 17 black students, and the
14 others, the largest percentage are Asian students.
15 What kind of role model or image is being set for
16 those students is also a question when there are not
17 faculty that might offer that privilege for them or
18 serve as a role model.

19 The minorities that are recruited are generally
20 the cream of the crop. The University of Vermont
21 is enjoying a very good reputation nationally, and
22 ranking very, very high. So every effort is made
23 to identify the top 10 percent students, the top 10
24 percent faculty, the top 10 percent staff. We recruit
25 nationally, and our office works very closely with

1 Chairs of searches to help them to identify very
2 creative ways of finding scholars in the academic
3 areas, and encouraging them to move to Vermont, to the
4 University. It is a very scholarly environment. It
5 offers a great opportunity for a number of people, and
6 it offers us a chance to provide that diverse
7 multi-cultural influence not only for the faculty, but
8 also for the staff and for the students.

9 We now have 28 minorities out of that 3000
10 employees. And that is a trickle effect over a period
11 of years. The first minority faculty and highest
12 ranking one now was hired in 1962, and so over the
13 years a few have come and gone, but the numbers have
14 not increased. The most that has been hired in any
15 one year has been four or five.

16 Another thing that our office hears are complaints
17 about sexual harassment. Those complaints are brought to
18 bear and given the highest respect of confidentiality,
19 and beyond our office, they are referred for a grievance
20 process, if they so choose.

21 There is also a grievance process for students
22 to go through, and the sexual harassment policies
23 are circulated very widely.

24 Our office has increased its efforts to educate
25 or provide training throughout the campus on issues

1 related to to Affirmative Action, Equal Employment
2 Opportunity, sexual harassment, discrimination. We
3 are now circulating a newsletter which goes to all
4 employees throughout the campus. Our first issue came
5 out in August, the next will come out in October. We
6 have welcomed and continue to welcome scholarly
7 articles, information about any programs or any issues
8 related to the office's concerns, that this information
9 could be disseminated through the newsletter. We have
10 requested information from the Regional Office, from
11 the State government offices, information on various
12 topics that we feel might help eradicate or educate
13 people involved with working with discrimination
14 issues. Most of these efforts have been very
15 well-received. But then there is still the problem
16 when it comes to the final hiring. And that problem
17 is the problem that has not been fully addressed.

18 On the staff side of things, there is
19 a local community of minorities who have felt that
20 they have been closed out of the UVM system and don't
21 know where they can go to have their problems
22 addressed. The students have not expressed as much of
23 a problem, but the biggest problem seems to be right
24 now with the staff, and with the qualified staff
25 being eliminated from opportunities at the University

1 of Vermont.

2 In the Office of Human Resources Development,
3 the effort is made and linked closely with central
4 administration, and not considered so much a
5 personnel function so that it has a -- gains and gets
6 a higher respect with equal employment opportunities
7 considered in a much more positive and favorable
8 manner. But even that is not enough when it comes to
9 working directly with the people in the hiring
10 process.

11 So I think that there needs to be a mechanism by
12 which people can carry their complaints, concerns,
13 or at least have advocacies for their concerns,
14 beyond the University system. In the area of
15 handicapped employment, I think great inroads
16 have taken place there in that respect, but there is
17 still -- occasionally complaints come to our office
18 that more needs to be done.

19 In regard to women's issues, women do not
20 comprise a minority population at the University,
21 but there are problems that are brought to bear
22 by the women, in terms of pay equity, and in
23 terms of line of promotional opportunities, and also,
24 in terms of benefits. For instance, in the area of
25 research, we have a large percentage of women working

1 in those areas of research. This is not a problem
2 that is unique, and a number of the things that I
3 mention are not simply unique to the University of
4 Vermont. It may be typical of University and college
5 systems, period. So I don't want you to think that it
6 is a problem that is only a University of Vermont
7 problem. But that area of research and women getting
8 appointments in the area of research is a problem that
9 is brought to our attention by the AAUP, as well. And
10 that this is one area in which we need to take a
11 closer look at because it is an area that eliminates a
12 number of people from tenure track positions and also
13 for additional benefits.

14 The bottom line, I think, is that there
15 is an effort being made out of the Office of Human
16 Resources Development, and right now that effort is
17 mostly focused on training and education,
18 disseminating as much information as possible,
19 working very favorably and positively with search
20 committees at the beginning of their search.

21 We feel that by doing that we eliminate some
22 of the discrimination, problems and concerns, but
23 changing attitude and behavior takes time. Those
24 who are receptive and are creating opportunities
25 for looking for and identifying minorities is an

1 increasing number, and that to me is favorable.

2 MR. CHAIRMAN: Thank you. Mr. Whitney.

3

4 MR. WHITNEY: I will speak in a very
5 slow rate. I would like to start my remarks by a
6 common Vermont phrase we all hear that was used by
7 another speaker that I thought of last night, so I
8 don't mean to say that I sat at the table and heard
9 this and started over, because I really think the
10 material that I reviewed as to the purpose of this
11 inquiry, what we are actually looking for or asking
12 has something to do with that old Vermont phrase that
13 can be humorous, and it can be very sad, that phrase
14 being, "If it ain't broke, don't fix it." Well, the
15 problem that we are looking at, how do we know it is
16 broke if we have done nothing in the interim to see
17 how it works?

18 If we haven't established a recording system,
19 a method to see where there are problems, where it can
20 be improved, we have really failed in our effort; so
21 we passed a law, and almost like that other Vermont
22 phrase, on benign neglect we have passed a law,
23 allowed it to sit there, but really haven't addressed
24 the groups of people that the law was intended to
25 help.

1 I think it is very interesting,
2 when we hear the demographics of Vermont, that there
3 are a thousand blacks, 66,000 handicapped who are also
4 in a ghetto because we never see them, then we take
5 the one group, women. That is half or better of our
6 population. And like in any democratic society, they
7 with the large population base have moved forward
8 beyond what the civil rights law was intended to do.
9 They have set up -- and I think a lot of credit goes to
10 the women's Commission for articulating what women's
11 rights are and letting them step forward and enforce
12 those rights.

13 To that degree I think the present enforcement
14 in the Attorney General's office works, and works
15 fairly well, and I say that from the Union
16 perspective. I am not so sure the rights of the aged,
17 my definition, are adequately enforced.

18 I am not so sure I know anything about
19 those other areas, because I haven't seen any
20 statistics that would be helpful in formulating that
21 kind of opinion. But I think there is one problem in
22 representing state employees; there are some six
23 thousand classified employees in the system, and I
24 think that makes Vermont, as a state, the third largest
25 employer in the State of Vermont.

1 Unlike the private sector, unlike municipal
2 governments, that can go to the Attorney General's
3 office and have a hearing, have an investigation,
4 and certainly this is not intended to cast any
5 negative view on the people that work in that
6 system. But as to those people and that office, that
7 is an objective hearing.

8 When we deal with it in representing state
9 employees, what we are basically dealing with is an
10 Assistant Attorney General taking the position of an
11 individual and usually another Assistant Attorney
12 General taking the position of the department.

13 Whether or not there is conflict there, someone else
14 can take a look at. But certainly there is an
15 appearance of conflict when that type of system
16 exists.

17 I think it is very important that we
18 establish -- and since my experience comes from a
19 labor setting in the Labor Board, I don't particularly
20 care who sits on the Labor Board, I just want
21 reasonable people sitting on there. And the system
22 with legislative review that gives us that kind of
23 Labor Board gives us a feeling that we get a fair
24 hearing. We don't always win, but that doesn't
25 mean we didn't have a fair hearing.

1 I think the same thing when we are talking
2 about minority groups. They, too, need a feeling
3 of confidence when they go to a board, when they
4 state their case, there is no question that they
5 got a fair hearing. They may not like the result,
6 but they got a fair hearing.

7 I think what we have to do, and a positive
8 thing in establishing a separate and independent
9 Human Rights Commission, we also need that
10 Commission not only to enforce the law, and to
11 back up strongly one of the prior speakers, there must
12 be enforcement, but like a labor representative, I hope
13 I never have to use the grievance procedure in the
14 contract. But that grievance procedure and the fact
15 that it exists, that enforcement of the civil rights
16 laws brings the parties to sit down and find some
17 compromise to that change of society.

18 Civil rights and these ideas -- it is not
19 an issue of black, white, and gray. We are changing
20 the way people were brought up and the way they think,
21 and they need compromise. But an office has to
22 enforce the law, it has to have that power. But I
23 think even as important, it has to have some sort of
24 money, always money, to set up a mechanism to
25 publicize the law, to get people know what their

1 rights are and to answer questions that people might
2 have, that they can freely express their points of
3 view.

4 MR. CHAIRMAN: Thank you, Mr. Whitney.
5 In order to assist our stenographer, I will ask
6 each of the participants, before you answer a question,
7 to identify yourself for the record. Sam Johnson, do
8 you have some questions?

9 MR. JOHNSON: Yes. Just briefly, before
10 I ask the questions, I made some notes and I want
11 to give you some observations. It looks as if overall
12 the question dealing with what type of mechanism
13 should be implemented for enforcement, if in fact one
14 is needed; and the breakdown of these participants,
15 the Chamber seems to say that you don't need anything.
16 Labor seems to take the position that you don't need
17 another mechanism, it is fine as it is. The state
18 employees, the State of Vermont takes the position
19 that you don't need anything else.

20 I am unsure about the position of IBM and the General
21 Contractors Association; and I lump UVM and the bankers
22 and VSEA in the same group. UVM needs to know where to go,
23 the bankers want some education, and the VSEA wants a fair
24 hearing. With that as a backdrop, the questions that
25 I have of you, since it is a diverse group of

1 employers, is: How can you legitimately answer the
2 question about discrimination in Vermont without
3 telling us on the record, what is your experience
4 with discrimination? Will you know it when you
5 see it?

6 MR. GARDNER: Can I -- Steve Gardner,
7 from IBM. Two things; one I obviously didn't
8 communicate very well.

9 Our experience with the Attorney General's
10 office in employment discrimination cases has led me
11 to conclude what it works well. We don't have a
12 problem. It enforces well. It receives, hears,
13 coaches, advocates, investigates, et cetera, well.
14 And I want to make that very clear.

15 MR. JOHNSON: So IBM is in the column
16 that, if it ain't broke, don't fix it.

17 MR. GARDNER: Yes; and I am glad I
18 didn't say it first, because I came close to using
19 that very term. But, yes, in an organization of 8,000
20 employees, we have had situations of discrimination;
21 of course we have. Some of it is stupidity, some of
22 it may even be blatant discrimination on the part of
23 an individual. We have an internal mechanism that
24 allows us to address those; sometimes employees don't
25 use the internal mechanism, sometimes they are not

1 satisfied with the results. And they go to external
2 mechanisms.

3 So we have had a fair amount of experience.
4 So my comments, I think, are based on experience.

5 MR. WHITNEY: I would like to comment
6 or clarify. While I did end my presentation with the
7 idea of a fair hearing, I was trying to convey the
8 message that I think that the problem that we are
9 trying to resolve or address is somewhere between
10 establishing and enacting a law and enforcement of the
11 law, and that is where I think the weakness has
12 occurred.

13 That we don't really know what, for example, the
14 State of Vermont and maybe the State Employees
15 Association should participate in the blame, but what
16 has the State of Vermont done specifically on
17 Affirmative Action program? That is one issue. But
18 until we know what those facts are or what is out
19 there, by simply putting an enforcement mechanism
20 in the Attorney General's office is not going to get
21 us any of this information.

22 Just publicizing the results of that office of
23 what they did, and I wasn't trying to get into another
24 use of word, but in the definition of beauty. The
25 definition of discrimination. What is it? What does

1 it really mean? It means many things to many people,
2 but what does it mean in the law? I don't think
3 people will ever know that until we start publishing
4 the results of these inquiries that maybe compromise
5 settlements, but people can begin to see where it is
6 right and where it is wrong.

7 MR. JOHNSON: The other follow-up
8 question that I had, and I will turn it over to someone
9 else after this one, was that I guess the University of
10 Vermont -- I don't have my list; John, you made the
11 statement that minorities create a threat to
12 employers, in your speech. I would like to get
13 everyone's reaction as to, why do minorities create a
14 threat, and what can be done to alleviate that
15 threatening posture.

16 MR. CAMERON: I guess I am trying to
17 speak from my experience as an attorney who has
18 assisted managers and supervisors. Part of it stems
19 from a fear that many people have about doing
20 something that is going to put them on the wrong side
21 of the law or the wrong side of society's values. And
22 when they approach a hiring decision or promotion
23 decision or discipline decision, because of their
24 ignorance, their fear of the law, their inability,
25 maybe their lack of interpersonal communications,

1 there often is a fear expressed when there is a member
2 of a protected class involved in a decision. Will
3 they say the right word, will they make a mistake,
4 will they get themselves in some kind of trouble. So
5 I have had that expressed to me many times by people
6 as they approach these decisions. And it is something
7 that only a lot of training, and maybe more than that,
8 education, is going to help. So that -- I think that
9 that is part of it, as I interpret Joan's comment.

10 MR. CHAIRMAN: Sam Hand has a question.

11 MR. HAND: I guess this would be to
12 Tom Whitney and Scott Cameron. I don't know
13 whether it was broken or not, but there seems to be
14 now a new comparable worth element in the VSEA state
15 employee program. Is this simply ratifying what
16 exists or is this a significant --

17 MR. CAMERON: I will start off, and then
18 let Tom follow up with that. Scott Cameron again.
19 The State of Vermont has a statute which requires all
20 jobs in the classified system to be evaluated using a
21 point factor method and then assigned a pay scale
22 based on that evaluation. Assuming that the method,
23 the point factor method, can be freed of all biases,
24 which is a supposition people may or may not accept,
25 you would then be able to have all jobs assigned a pay

1 scale based on the relative worth of the jobs. And
2 that has been a law in the State of Vermont for over
3 20 years, long before comparable worth theories
4 emerged in the case law of this nation.

5 One of the problems was that in 20 years, we
6 hadn't reviewed our system to see if that internal
7 equity was still present from the system we
8 installed 20 years ago. As a result of collective
9 bargaining, where the VSEA had -- probably three
10 years ago expressed a strong desire to review
11 the internal equity, a classification study was
12 funded. All jobs were examined, and they -- it has
13 just been completed now -- have been assigned internal
14 comparable ranking.

15 And during this last negotiations which
16 Tom and I both participated in, we also negotiated
17 a new pay system which would compliment the
18 revisions in the classification system and would
19 address some of the pay inequity problems that
20 had crept in over that twenty year period by
21 basically putting more money at the lower end of each
22 pay scale this time around than at the top end and
23 trying to bring the bottom up.

24 Tom, do you want to take that any further?

25 MR. WHITNEY: From a comparable worth

1 pay equity, one can get into a long dissertation of
2 what those words mean and what got us to that point in
3 time.

4 Three years ago we sat down and began to
5 negotiate. We heard problems not only from
6 women but people in hospital jobs that these jobs
7 were not recognized by society as having any content
8 or value. We addressed it by doing a complete
9 classification study, an updating of a twenty
10 year system, and to compound the problem, in a
11 distribution of dollars, Vermont for twelve years had
12 a hiring rate and maximum rate.

13 In between that rate there was no way
14 of moving except possibly by promotion. In fact,
15 we did a study two years ago, one of the easiest
16 ways to get to the maximum was demotions because you
17 didn't lose any pay in scale. But the system that we
18 set up, while it does address a vast majority of
19 women, it addresses them primarily because in the past
20 12 years, single parents new into the work force,
21 these people all hovered around that minimum line,
22 they may have had one promotion, but that was only 8
23 percent above the line.

24 So this system hopefully, if reviewed
25 five or six years from now, there will be sort of a

1 balancing and a much fairer distribution of the
2 dollars in the whole system.

3 MR. CHAIRMAN: We have time for one
4 more question. Kim Cheney.

5 MR. CHENEY: Mr. Gardner and Ms.
6 Fobbs, Scott Cameron spoke of the internal energies
7 that are taken up investigating discrimination issues
8 in employment, and I have some experience with that
9 on the Labor Board. If the State were to impose or
10 set up an enforcement hearing mechanism for external
11 complaints, how do you think that would impact the way
12 you go about your business? Would it have some impact
13 on your internal processes or can you --

14 MR. GARDNER: There already is a
15 mechanism not unlike that; the Attorney General's
16 office conducts an investigation. They help the
17 complainant fill out a complaint and properly word it.
18 They come down -- they send us a copy of it. They ask
19 us to do a certain amount of investigation. They then
20 come down and interview all of the people that have
21 been involved in that particular situation, employees,
22 managers, whatever, and then reach some conclusion.
23 So there already is a process like that.

24 Also, IBM has had an internal grievance
25 channel for years, long before Equal Opportunity

1 Commission. Very frequently complainants have
2 already gone through the IBM internal process.
3 So it is duplicative, but it is not additive.

4 MR. CHENEY: The internal process, do
5 you wind up with a record and transcript of interviews
6 and testimony?

7 MR. GARDNER: Sure.

8 MR. CHENEY: Like in the public
9 sector, there is a record.

10 MR. GARDNER: There is a record. It is
11 a confidential record. It is subpoenaable. I don't
12 know whether it ends up in EEOC's office or not. I
13 know it does end up in other actions, it can be
14 subpoenaed.

15 I don't know whether the Attorney General's
16 office looks at that or not.

17 MR. CHENEY: So you see any more
18 enforcements as redundant?

19 MR. GARDNER: Yes, I do. One, it
20 wouldn't be an additional burden, but I think it would
21 be.

22 MR. CHENEY: But you indicated a need
23 for some more external oversight.

24 MS. FOBBS: I feel that that may
25 further support some decisions that need to be made by

1 an office such as that, Office of Human Resources
2 Development. That is one channel by which problems,
3 complaints, can be carried. Another is through our
4 employee assistance counselor. Another is through a
5 counselor within the personnel system. Another is
6 through the Senate for Faculty concerns. Then there
7 is a Staff Council for Students; there is a Student
8 Council for student concerns. So it could be
9 channeled through any one of those.

10 And maybe the nature of universities is such
11 that there are all of these little routes and
12 maybe not a clearly defined route to channel
13 major problems.

14 And this is where I see maybe the Attorney
15 General's office, or certainly a Commission
16 would provide that back-up whenever one of
17 those channels did not reach the satisfaction of the
18 person bringing to bear the complaint.

19 MR. CHENEY: It might legitimize some
20 decisions you are already making?

21 MS. FOBBS: Exactly.

22 MR. CHAIRMAN: Thank you very much to
23 our panelists.

24 Our next panel deals with the Vermont experience
25 in civil rights enforcement. I will ask our panelists

1 to please come forward.

2 Our panelists on this panel are Margaret Lucenti;
3 Ms. Lucenti is Chair of the State of Vermont Human Rights
4 Commission, and as you have heard, there is debate about
5 whether it exists or not. Denise Johnson; Ms. Johnson is
6 an Assistant State Attorney General and Chief of the
7 Protection Division, subsection Civil Rights.
8 Finally, Scott Skinner; Mr. Skinner is Executive
9 Director of the Vermont Civil Liberties Union in
10 Montpelier. Ms. Lucenti?

11 MS. LUCENTI: Thank you very much to
12 the Commission for inviting me to come here today. I
13 wish you had done this ten years ago when I was
14 appointed, because at the time I thought that we
15 needed a Commission to cover all discrimination in the
16 State. And I fought hard to do it, but it just didn't
17 work out.

18 What I have seen with the Human Rights Commission,
19 as it is called in Vermont, which is a housing
20 mandate, it is race, color, creed, national origin;
21 that is it. I have had to work with this for the last
22 ten years. The Governor said this morning it hasn't
23 been active, the Commission, for ten years. Well, it
24 wasn't active before my time, either; simply because
25 of the expression, if it isn't broken, don't fix it; it

1 wasn't there to begin with. I mean, the problem has
2 always been that there has been no enforcement. And
3 that the Commission itself, five people, were given
4 the duty of going out and facilitating any
5 discriminating housing claims.

6 I have had in the last ten years, I would
7 say -- well, I have had phone calls; after I talk
8 to people, they actually were not covered by our
9 mandate and I had to say to them, we do not cover it
10 in the State of Vermont. You will have to go to the
11 Federal government with it, because the Federal
12 government does cover it.

13 What we have heard here this morning is that
14 the Federal government is cutting back; they have
15 such a backlog that they can't handle it, and I
16 don't think that people in the State of Vermont
17 want to be in that predicament. I think people
18 here want to have that coverage. They do not
19 want to be discriminated against.

20 And we also have people from out of state,
21 and I have run into cases where -- a banker, I
22 had one case last year of a banker from New York who
23 put a deposit on a condominium down in Londonderry.
24 This condominium cost \$150,000. He went up to the
25 condo to get the condo and he was told that the owner

1 had also taken a deposit on this particular
2 condominium, along with the realtor. So I got in my
3 car, drove to Londonderry, went to see the realtor,
4 went to see the black man that had been felt he was
5 discriminated against, and looked at the checks,
6 looked at the dates on the checks, went as far as I
7 could go with an investigation. I am not actually an
8 investigator, but I did the best I could with it,
9 which I have had to do in the last ten years. And
10 what I found was that it was true, the owner had sold
11 it to someone previous or at least the date -- the check
12 was dated that way. What we did was the realtor felt
13 so bad about it that we found him another condominium
14 that he was even happier with than the one he had put
15 the deposit on, so we conciliated that particular case
16 that way.

17 I have had other cases where we do not cover
18 age, we do not cover sex, and we do not cover
19 source of income or handicapped. And all of these
20 things have come up with me.

21 I have had a man call me on the age situation.
22 He wanted to buy a condo on the Stowe, and the brochure
23 said no one over 65. This man was 72. So I got in my
24 car and went up to Stowe and talked to the manager up
25 there, and he said, well, we put that on the brochure

1 because it is really set up for people under 65. And
2 he went over -- the stairs are steep, and it would be
3 difficult for someone older. But I sold to a woman 80
4 years old, sold her two of the condos last week. So I
5 went and talked to the man, and he was happy with the
6 situation, and he did get his condo.

7 So it is really difficult for me to stand
8 here and feel like I am doing the job, because
9 I don't feel like it is being done. And the
10 reason I feel that way is that I don't think my
11 kitchen should be the place that people call if they
12 are discriminated against. And as my husband said
13 last night, I would hate to be the person, because you
14 are never in the kitchen. It is very difficult.

15 So when I call the other members of the
16 Commission, they all say, oh, my term has expired;
17 my term expired in the '70's, I am not a member
18 of that Commission. And I say, yes, you are,
19 because I called the Governor's office and they
20 said you are a member until somebody else is
21 appointed.

22 And I have called consecutively every two
23 years to the Governor's office and said, are you going
24 to reappointment me; am I still the chair of this
25 Commission? And they say, yes, you are, until you are

1 replaced. So there I am.

2 Now, you know, I could resign. But I feel
3 at least while I am there I am doing what I can.
4 And I do feel the State should have someplace
5 for people to go.

6 Now, in the '70's I managed to get a CETA
7 employee, and we did get some educational material
8 out. We tried to increase the mandate to have sex
9 included, handicapped included, source of income
10 included. There was some work done on it. But then
11 at the same time, we had the Governor's Commission
12 on the Status of Women very concerned about employment.
13 There was money available, there were attorneys in
14 the Attorney General's office, and I did not fault
15 them to go against the idea of a Commission at the time,
16 and say, I would like to see it; they were saying,
17 let's let it be done in the Attorney General's office.

18 The state, the legislature will not appropriate
19 the money to set up another agency. My feeling
20 at the time was that the State -- and I agree with Mr.
21 Whitney, when he says the State is one of the largest
22 employers that we have.

23 And I do personally see some conflict
24 when a person in state government feels they are
25 discriminated against, goes to the Attorney General's

1 office who represents the State, is the attorney for
2 the State, and this person is going in, feeling they
3 are discriminated against. And I went over to Maine
4 purposely for that reason, to see how it is done in
5 Maine. And they have a Commission over there; a very
6 active Commission. And they are doing a very good
7 job. New Hampshire also has one. New Hampshire keeps
8 everything sort of under cover. Maine is very out
9 with things, you know what is going on.

10 So I went over and I spent a day over there with
11 them, and what I saw there, I would love to see in the
12 State of Vermont. Now, I know it is going to be a
13 money problem, there always is a money problem. And
14 to get the legislature to appropriate that money,
15 probably, you know, will be very difficult.

16 I noticed this morning that Ms. Rivers said
17 that there was a bill, and I have worked in the
18 legislature so I have been following the housing
19 mandate bills that have been coming in over there,
20 hopefully thinking they will do something so that our
21 Human Rights Commission that is so ineffective will be
22 got rid of, and that we will have a good Commission to
23 do something. I followed the bill and I understood
24 there was \$17,000 from the Federal government
25 available for an investigator or whatever. When

1 that \$17,000 disappeared, the bill disappeared.
2 So it is a matter of money, I really believe that
3 is the case. And it is also a matter of having
4 good investigators, and watching what goes on;
5 and I agree with Kim Cheney when he says we need
6 education. Of course we need education, that is a
7 priority, as far as I am concerned. But it is also a
8 priority to have the legislation and to enforce the
9 legislation and to have advocates of that legislation
10 in the State. I think it is very important that we
11 have that, too.

12 I have picked the newspaper up and seen,
13 apartment for rent, no Welfare family need apply. I
14 went down to the Times-Argus and I said, how come, why
15 do you run ads like this? They said, we didn't
16 realize it; we are sorry, it will never happen again.
17 You know, it just happened out in the circulating
18 department.

19 You have to put -- the discrimination
20 is subtle, it is innocent in many ways, I am finding
21 that out when I answer a call, that people really
22 don't realize. A lot of people will say, I think I
23 should have a choice. And if it is a black or a white
24 and I want a white, I think I should have that choice.

25 And I say to them, no, you have to be color-blind

1 in this situation. And it is very difficult to have
2 people feel that way.

3 MR. CHAIRMAN: Thank you Ms. Lucenti.
4 Ms. Johnson.

5 MS. JOHNSON: I would like to introduce
6 Susan Sussman, who is also an Assistant Attorney
7 General, and she is here in place of Mr. Amestoy, who
8 had another commitment. And the way we have put
9 together our presentation, if the Committee has no
10 objection, I would let Susan go first?

11 MR. CHAIRMAN: Would you state your
12 name again for the stenographer.

13 MS. SUSSMAN: I am Susan Sussman, and
14 I am an Assistant Attorney General with the Public
15 Protection Division. Thank you for letting me speak.
16 We figured since Mr. Amestoy had been voided, we could
17 take two shots here to give you some information about
18 how our office operates.

19 I am going to speak on how we process
20 complaints and the number of complaints we have had
21 over the past number of years, and Denise Johnson will
22 address the law in Vermont today and where possibly --
23 where it exists and where it doesn't exist in the area
24 of civil rights. Though some people on this
25 Commission certainly know exactly what our office

1 does, I would like to start from the beginning on
2 this.

3 What we do in the Public Protection
4 Division is enforce the State Fair Employment
5 Practices Act. In addition to that, we also
6 investigate complaints for the EEOC, for the Federal
7 EEOC, as their state agency.

8 The work done in our office is done
9 by two investigators and one attorney; actually, 50
10 percent of two attorneys. And all cases are
11 investigated that are called into the office. We take
12 cases over the telephone or in person. We handle
13 about 500 calls a year.

14 Of those 500, a smaller number turn into
15 formal charges where the investigator and the
16 attorneys believe that a prima facie case of
17 discrimination has been stated by the charging party.
18 Every charge that is taken by our office is
19 investigated to completion. What happens after the
20 charge is taken, as Mr. Gardner from IBM, from the
21 previous panel has already laid out, the investigation
22 is done, state-wide, including requiring a lot of
23 state-wide travel.

24 These -- after investigation -- at all times
25 during investigation there is an opportunity for

1 conciliation, and many cases are settled during that
2 process. If a case cannot be settled, our office will
3 issue a letter of determination. That letter of
4 determination will either find cause to believe that
5 discrimination has occurred or no cause. At that time,
6 if there is no cause, there is then an appeal right is
7 given to the individual. If cause is found,
8 litigation -- a lawsuit can be initiated at that time,
9 either by our office or through a private attorney on
10 behalf of the individual. And it is up to the
11 individual, in conjunction with our office, as to how
12 that happens, whether it is with a private attorney or
13 not.

14 I would say over the past two years more
15 cases than before have come to our office with the
16 assistance of a private attorney. So there is a
17 private attorney involved on behalf of the individual
18 from the beginning.

19 In 1986, to date, we have received
20 110 formal charges, that is charges that have been
21 filled out and returned to our office and filed with
22 the EEOC and with our office. Just since April there
23 are an additional 50 charges that are still
24 outstanding. That means charges that have been filled
25 out by our office, sent to the individual, but not been

1 returned.

2 Our estimate is that we will have approximately
3 165 cases this year. This is up significantly over
4 previous years. In 1985 we had 131 charges filed
5 with our office.

6 I would like to give you a little breakdown
7 of the kind of cases that we have to date in 1986 by
8 percentage. Five percent of the charges are race
9 discrimination, 54 percent are sex discrimination, 5
10 percent retaliation for filing a charge, 18 percent
11 are age discrimination. We have had no religion
12 charges this year. One percent have been national
13 origin, and 18 percent have been handicapped and age.

14 Other functions of our office, with our limited
15 resources and time, considering the fact that
16 we have part-time of the two attorneys and only
17 two investigators whose time is taken up investigating
18 these charges, we also make ourselves available for
19 public speaking, workshops throughout the State on
20 different areas of employment discrimination law.

21 We have worked on pamphlets both with the
22 Governor's Commission on the Status of Women as
23 well as on our own. And for example, when the Fair
24 Housing component of the landlord/tenant law was
25 passed this year, even though we have no enforcement

1 authority at all for that, since there is only a
2 private right of action under the law passed this
3 year, we did send out a letter to all media,
4 explaining the law and what we believed they should be
5 guided by in accepting ads, as Ms. Lucenti spoke to.
6 Thank you.

7 MR. CHAIRMAN: Thank you. Ms. Johnson.

8 MS. JOHNSON: I am Denise Johnson, and I
9 am the Chief of the Public Protection Division of the
10 Attorney General's office. The Public Protection
11 Division has within it the Civil Rights Division.

12 What I would like to talk about are some of the
13 gaps that I see in the current law, and also to
14 make some comments on the feasibility of having
15 a Human Rights Commission in Vermont or in changing
16 the enforcement structure.

17 First with respect to Vermont law, let me make a
18 couple of general observations about how enforcement
19 has changed over the six years that I have been
20 in the office. As Susan pointed out, the
21 Attorney General is authorized to enforce the act.
22 A few years ago when we had some aged and
23 handicapped amendments to the law which were effective
24 in 1981, a private right of action was also added.
25 And that has resulted, I think, in part in a lot more

1 interest on the private part of the private bar. And
2 we have tried to develop, since I have been in the
3 Attorney General's office, that interest, and to refer
4 cases for litigation and to do CLE conferences and so
5 on for the private bar. As a result of that, as Susan
6 said, there are a lot more cases coming into our
7 office beginning with a private lawyer.

8 There are a couple of other changes in the
9 law that have brought that about, too, and that
10 is that there is a -- I would say a lesser
11 emphasis now in the law on Fair Employment Practices
12 Acts and Title 7, because they have much more limited
13 remedies than a litigant could get under tort laws or
14 other kinds of legal remedies. For instance, Fair
15 Employment Practices Acts are traditionally limited to
16 equitable relief or back pay, that sort of thing,
17 whereas now there are tort causes of action developing
18 for sexual harassment, for wrongful discharge, and for
19 other -- there is a whole body of employment torts
20 that are developing. This means that there are a lot
21 more damages out there, and when a case comes into our
22 office that has this potential, our advice now to the
23 charging party is that they should seriously consider
24 using a private attorney, since the State is limited
25 to enforcing the Fair Employment Practices Act.

1 So we have gotten some help in enforcing the law
2 from the private bar.

3 With respect to the gaps in Vermont law
4 that I see right now, I think the Fair Employment
5 Practices Act is in fairly good shape. I would really
6 like to see a clearer statement in that law that
7 discrimination on account of pregnancy is in fact a
8 part of our law. We contend that it is, and we process
9 charges on that basis, but that is one amendment I
10 would like to see in the act.

11 Some other glaring gaps, as we have
12 already heard , the housing law that is passed only
13 has a private right of action, and the damages under
14 that act are not going to be significant, even though
15 there are attorneys fees to make, other than pro
16 bono cases by private attorneys. So there needs to be
17 another enforcement mechanism for the housing law.

18 We also need legislation in the area
19 of state Title 9, that is, equal opportunity for boys
20 and girls in schools, educational benefits. Our
21 public accommodations law, as Margaret Lucenti pointed
22 out, is very thin. It does not cover sex, it does not
23 cover age. Again, we need a better enforcement
24 mechanism for that.

25 Now, with respect to enforcement mechanisms:

1 I think that we have done a good job in the
2 Attorney General's office in using the authority
3 that we have to enforce the Fair Employment
4 Practices Act. But that is the only authority
5 that we have had. I think that -- and it has
6 not cost much for the State of Vermont to carry
7 out that program. And as Margaret pointed out, the
8 key issue for the legislature if they are going to be
9 considering a Human Rights Commission is, what will
10 this cost.

11 And if I could make a recommendation with respect
12 to what the legislative priorities ought to be, that
13 the legislative priorities should be filling the
14 other gaps in the laws that I have mentioned before
15 going to the legislature with a request for an
16 umbrella agency. Because right now, I think if you go
17 to the legislature with a request for an umbrella
18 agency, the legislature is going to see it as just way
19 too much money to support something that is already
20 working.

21 It is true, and I agree with everything
22 that has been said about there needs to be more public
23 education, there needs to be more public awareness,
24 and that is the kind of awareness that a Commission
25 can bring.

1 One of the things that might be considered
2 as an interim measure before the civil rights
3 jurisdiction is broadened or given to a Human Rights
4 Commission is to set up some mechanism or to get some
5 funding to do that kind of public education, to take
6 care of that. And that could be separate from the
7 enforcement proceedings. I am just suggesting that as
8 a possible thing to consider.

9 I think once you start to consider a
10 Human Rights Commission, you have got to find
11 a way to convince the legislature that civil
12 rights is such a priority in Vermont that it
13 needs a lot more money, or we are going to have a
14 situation that Mrs. Lucenti has had with a Human
15 Rights Commission that hasn't been funded. Because
16 I think one thing that could happen is if the
17 enforcement mechanism is changed without enough
18 dollars to do it, then you are going to have a worse
19 enforcement situation, and you have a good one working
20 now, at least with respect to employment.

21 There is one other point I would like to make
22 about state cases, cases that we have against the
23 State of Vermont. No issue has bothered attorneys
24 general that I have worked for, and the people in my
25 office, more than the conflict situation we have with

1 having charges against state agencies. And I want to
2 say here and now that everybody recognizes that it is
3 a conflict. However, I would say it is an apparent
4 conflict and not a real conflict.

5 I have fought hard with every Attorney General
6 I have worked with to keep those investigations
7 in our office, and that is because if we send
8 them over to EEOC, they are going to languish
9 there forever, and the State employees are not
10 going to get a remedy. And Mr. Whitney could talk
11 to the people we have helped who are union members.
12 We cooperate with the Union. We have had a number of
13 cases against state agencies that have settled
14 satisfactorily to the parties, and I think we have
15 done a good job there. I am not saying there is not a
16 conflict. But we are doing the best we can, with the
17 situation.

18 Some of the other situations that could
19 be handled I think are to have assigned counsel,
20 because I think you will never get any attorney
21 general to say, I can't represent the State agency. I
22 mean, the Attorney General has a dual charge there,
23 and it is difficult for the Attorney General to make
24 that choice. So there should be a side counsel on one
25 side or the other. Again, that is money, that is

1 going to the legislature and asking for money to
2 resolve that. In lieu of that, I think that we are
3 doing the best job we can on the conflict cases.

4 MR. CHAIRMAN: Thank you, Ms. Johnson.
5 Mr. Skinner?

6 MR. SKINNER: Good afternoon. I am
7 Scott Skinner, Executive Director of the American
8 Civil Liberties Union of Vermont. If anybody wants to
9 sort of nod off while I talk, the summary would be --
10 okay.

11 The summary would be that the system isn't
12 broken, or broke, I guess is the way the cliché goes,
13 but can be improved. I would like to talk primarily
14 about employment discrimination, because that is the
15 area that in which the law is the most fully developed
16 and the system is in place. But there are certainly
17 other problems that might concern this Commission,
18 Advisory Commission, and people generally. For
19 instance, in the area of handicapped access, where
20 enforcement is with the Department of Labor and
21 Industry, not with the Attorney General, there is
22 emerging evidence of almost a nonexistence of
23 enforcement, which is very troubling to me, and we at
24 the ACLU are receiving complaints about that problem,
25 and hope to work on that problem; it is a fairly

1 serious problem that I am not going to address here,
2 but it is certainly a problem.

3 Let me start by very briefly giving four
4 assumptions that I am making about this problem
5 in terms of employment discrimination, then I
6 will talk about them. And let me say at the outset,
7 too, that to the extent that I have been talking about
8 things that the Attorney General's office might do, I
9 see them more as generic problems with the existing
10 system, and in no way a reflection on the individuals
11 working in the department, about whom I have some kind
12 words to say further down.

13 First of all, one assumption that I have
14 is there is more discrimination than is officially
15 percolating to the top.

16 Second of all, there is a lack of visibility
17 about -- as to where to turn, by people who have
18 been discriminated against.

19 Thirdly, that the threat of suit is a
20 deterrent to discriminatory practices.

21 Fourth, that an effort is needed to improve
22 the laws; as Denise just mentioned, and as other
23 speakers have mentioned, there are definitely gaps.

24 The first thing I said was that there
25 is more discrimination out there than we are

1 hearing about. Now, discrimination, reports of
2 discrimination can pop up in a number of ways: They
3 can come by people going to their private attorney who,
4 as often is the case, then sends them -- in the case of
5 a -- let's say a sex discrimination and employment
6 case, sends them to the attorney general to go through
7 that process before -- which may result in the
8 discrimination complaint being successfully resolved,
9 or it may eventually come back to the attorney to
10 litigate the case, or the A.G. may litigate it,
11 whatever may be the case. It may come through
12 organizations such as the ACLU, which acts more or less
13 as a private attorney in those cases, referring them
14 over to the Attorney General's office; or the case,
15 complaint may come directly to the Attorney General.

16 You have had some statistics given to you, those
17 statistics may include private lawyers and the
18 ACLU, since we routinely get about 20 to 30 employment
19 discrimination cases a year which we send to people
20 basically a form letter explaining to them why under
21 the law they should go through the Attorney General's
22 office. I think that part of this is based on
23 things I hear and part of it is just a guess. I think
24 that is relatively few cases. Now, at the same time, I
25 don't want to suggest that what we are seeing is only

1 the tip of some enormous iceberg; I don't think that
2 is the case, either.

3 Obviously Vermont is not New York State
4 in terms of the volume and extent of discriminatory
5 practices. And my reliable evidence on this is
6 pretty much limited to remarks of people in
7 social services agencies, particularly in the more
8 remote parts of the State, which usually mean, like,
9 Bennington, who have said that there people often
10 don't seem to have any idea on where to turn or even
11 that there is help to them. I think the closer you
12 get to Montpelier, the less that is a problem.

13 So I guess it is primarily a feeling I have
14 that a lot of cases don't surface, either because
15 people aren't aware that they have a remedy, or
16 if they are vaguely aware they have a remedy, they are
17 not really sure as to where to go. That ties into the
18 issue of visibility.

19 Personally I think the -- here again, it is
20 no reflection on the people in the Attorney
21 General's office, who spend a lot of extra time
22 speaking and going out. But I think there is an
23 institutionalized lack of visibility, which is one
24 factor in whether there should be a Human Rights
25 Commission fully funded and active with the broad

1 mandate, and that is that the civil rights function
2 in the Attorney General's office lacks visibility.
3 You can almost argue that the visibility has decreased
4 since the Civil Rights Division essentially was
5 swallowed up into Public Protection. So there is less
6 official visibility there.

7 Obviously you have something called
8 the Human Rights Commission, that is automatic
9 visibility every time it gets into the paper. Public
10 Protection is obviously a more amorphous phrase. So I
11 think there is a certain amount of institutional lack
12 of visibility there.

13 Visibility serves several functions: one,
14 it informs -- helps to inform the public as to their
15 rights, and it also lets people know where to go to
16 seek redress.

17 As for litigation, here again, this is an
18 area where it would be very difficult to do any kind
19 of detailed study. My own sense is that in all areas,
20 Attorney Generals have a tremendous positive role to
21 play by litigating, because, one, that sends a message
22 that these issues are extremely serious, and has a
23 deterrent effect on discriminatory practices or bad
24 consumer practices, or any other area where people may
25 be tempted to violate the law. If you are pretty sure

1 that there is a good chance of some legal action
2 against you, you are going to think twice about it.

3 Evidently, if there is a sense that nothing will
4 happen, you know, some percentage of the business community
5 or any community is going to say, well, maybe, we will
6 go ahead and do something we shouldn't. So I think
7 litigation serves a purpose well beyond -- far more
8 important than just the individual case. I think it
9 sends an educational message to the public that is
10 important.

11 The ACLU has on the average had about
12 three cases a year on our docket of employment
13 discrimination, and we are a tiny organization
14 relying almost entirely on volunteer attorneys to
15 bring cases. My sense is that although the Attorney
16 General's office is stretched very thin in a number of
17 areas, that more cases could be brought, and that that
18 would have a positive effect that I am talking about.

19 Lastly, I said there was a need to improve
20 the laws as others have mentioned. Here again,
21 you are considering the Human Rights Commission;
22 presumably one function of such a Commission
23 would be to focus public attention on these gaps
24 and to provide an organizational impetus towards
25 improvements. Now, the Attorney General's office

1 could do this as well. In fact, the Attorney General
2 has -- the office has become increasingly visible in the
3 legislature, but almost entirely on criminal issues.
4 In other words, there is a lot of finetuning and even
5 fundamental change going on in Vermont criminal law in
6 which the Attorney General, current Attorney General
7 has stepped forward and really served in the
8 leadership role trying to do that. Well, of course
9 that same attention could be focused on Civil Rights
10 laws as well. And perhaps this is a criticism of all
11 of us who care about these rights, is that perhaps we
12 should be putting pressure on the Attorney General, who
13 is a visible and articulate spokesman on these issues,
14 to put more emphasis on Civil Rights laws as opposed
15 to criminal laws. Because in part the Attorney General
16 is reacting to very great pressure from the law
17 enforcement community, to get changes in the laws
18 they care the most about.

19 Perhaps it is incumbent upon us as advocates
20 of rights to say, go after the Attorney General and
21 get him to take a little time out of that criminal
22 lobbying to fill in some of our gaps. So I think it
23 is something that if that is not happening now,
24 perhaps we are all a little bit to blame for not
25 pushing a little harder on that.

1 MR. CHAIRMAN: Thank you, Mr. Skinner.
2 We just have a few minutes for questions.

3 MR. SKINNER: Can I add one thing,
4 because I promised I would in the introductory remark,
5 about the Attorney General's office. The way the
6 operation is working now, when I said it isn't broken,
7 I meant that. I think the people in it, the office,
8 are very committed to enforcement of those laws, and
9 they are certainly extremely competent. The
10 investigations which we have often relied on in some
11 of our lawsuits have been truly excellent. And I
12 think by and large, from what I have been able to read
13 about the Human Rights Commissions in some states, our
14 present system of employment discrimination is working
15 better than the Human Rights Commissions in most
16 states.

17 MR. CHAIRMAN: Thank you. Jerry Diamond,
18 do you have some questions?

19 MR. DIAMOND: I have a couple. I just
20 want, to, one, kind of on filling in the gap, the other
21 is an enforcement mechanism. When the legislation was
22 pending in the legislature on the landlord/tenant bill,
23 and the one that created a private right of action,
24 there was, for that time, for the short time at least
25 the possibility that the Attorney General's office

1 would be given enforcement powers. What was the
2 role of the Attorney General's office during that
3 legislative debate? Did it actively advocate the
4 enforcement powers being left in the bill and being
5 left with the Attorney General for a public right of
6 action, as opposed to a private right of action?

7 MS. SUSSMAN: I was involved in helping
8 to draft some of that legislation, personally, with the
9 Fair Housing Coalition, and I testified before the
10 House Committee on the bill, and explained how
11 enforcement would work through the Attorney General's
12 office. So the office did in fact testify. But the
13 Attorney General did not take an advocacy position on
14 it.

15 MR. DIAMOND: With regard to the State
16 of Vermont, and I am looking at the contractual
17 provisions, the State of Vermont requires in all of
18 its contracts adherence to a non-discrimination policy
19 in the State of Vermont. Is there an enforcement
20 mechanism of any kind that deals with that as a
21 follow-up mechanism?

22 MS. JOHNSON: You mean like a
23 monitoring function? No, there isn't, not that I know
24 of. What the Attorney General does, and all the
25 assistant attorneys general do it, is they have to

1 review all the contracts that come through for state
2 contractors, and we make sure that that provision is
3 in there. But we are not funded to go out and to do
4 spot checking of that provision. It might come back
5 to us through the regular enforcement procedure from
6 somebody filing a charge, but there is not now any
7 mechanism for monitoring those.

8 MR. DIAMOND: Has it ever been
9 contemplated to use the investigators assigned to
10 Public Protection Division for a random--

11 MS. JOHNSON: The investigators who are
12 assigned to Public Protection right now are really
13 working hard. We are overworked right now, and with
14 what we expect to be 165 charges on this calendar
15 year, we have to get our EEOC contracts met or the
16 salaries aren't going to be paid.

17 MR. CHENEY: Could you function if you
18 were cut loose from the A.G.'s office, set up as
19 an independent agency, as a board that would maybe do
20 to educational function and you would go do the
21 investigation?

22 MS. JOHNSON: With a lot more money.

23 MR. CHENEY: You get a lot of staff
24 support?

25 MS. JOHNSON: We get a lot of staff

1 support from the A.G.'s office. The only thing that
2 the legislature commits to civil rights is about
3 \$21,000.

4 MR. CHENEY: Are you state funded,
5 mostly?

6 MS. JOHNSON: No. The rest of the
7 money comes from our federal contracts with EEOC. And
8 the rest of what it takes -- and those two figures pay
9 for two investigators and part of a secretary and
10 their expenses, and that is it.

11 And all of the overhead, our computer
12 system, everything else, paper, telephones, et cetera,
13 is out of the Attorney General's office.

14 MR. CHENEY: What is the total budget?

15 MS. JOHNSON: For those two things
16 separately, around \$60,000.

17 MR. CHENEY: If you were an independent
18 agency --

19 MS. JOHNSON: We would have to pay the
20 60,000, we would have the 60,000, plus we would have
21 all the overhead. Plus you would have to have
22 somebody who --

23 MR. CHENEY: That doesn't include you
24 and Susan's salary?

25 MS. JOHNSON: No.

1 MR. CHENEY: How much does the whole
2 thing cost?

3 MS. JOHNSON: I can't give you a figure
4 on that. You would have to set up a very different
5 limit. You would have to have an Executive Director,
6 and whether or not you would have to have a lawyer
7 there and how that would work would depend on how the
8 enforcement mechanism was set up.

9 MR. CHENEY: In the A.G.'s office the
10 amount of money committed to it is in the magnitude of
11 a hundred thousand, maybe?

12 MS. JOHNSON: Yes.

13 MR. CHAIRMAN: Thank you very much.

14 MR. DRY: I have two questions, one on
15 the gaps and one on the visibility; and I guess the
16 first is for both Susan Sussman and Denise Johnson, and
17 the second might be for both of you and Scott Skinner.
18 As a follow-up to what you said, Susan, I am wondering
19 if you propose that the gaps be filled before separate
20 money be committed to a Human Rights Commission, is the
21 Attorney General's office on record, as apparently it
22 wasn't when you testified, you stayed neutral in favor
23 of having that law changed, the housing, the
24 landlord/tenant law, so that there would be a public
25 right of action as well as a private right of action.

1 MS. SUSSMAN: Would that --

2 MR. DRY: Are you on record in support
3 of the changing of the landlord/tenant law to give
4 you, the Attorney General's office, a crack at this?
5 You said that was one of the gaps, and then you said
6 when you testified you didn't take a position?

7 MS. JOHNSON: The Attorney General
8 didn't take a position, that's correct. We personally
9 are very committed to that.

10 MR. DRY: That will teach him not
11 to come to these hearings. Now, as far as that
12 handicap act, Scott Skinner surprised me by mentioning
13 that, because I got the naive impression that all
14 this of was within the Attorney General's office or
15 your division of Public Protection. That would seem
16 to be another loophole, and I am wondering if there
17 are any others. That is a law that is not handled
18 within your division?

19 MS. JOHNSON: But I think Mr. Johnson
20 can speak to that.

21 MR. JOHNSON: I handle that. It
22 is in the Civil Division.

23 MR. DRY: The last question, to both of
24 you and Scott Skinner, has to do with the visibility
25 issue. Is it perhaps true that the best case for a

1 Human Rights Commission is that in some way it might
2 provide greater visibility than if there were no
3 Commission? And if that is so, do you see any
4 possible drawback or attention short of asking for
5 money that -- let's put our -- granting I can't
6 remember priorities, is there the possibility of a kind
7 of institutional attention that could be
8 counter-productive in your opinion?

9 MS. JOHNSON: What do you mean by
10 institutional?

11 MR. DRY: Who is going to have the
12 action, your division or the Human Rights Commission?
13 The case seems to be made that reinstating the Human
14 Rights Commission, there was Scott Skinner's point, I
15 think others have made it, would help people know there
16 is somebody out here, they might not know what the
17 Public Protection Division is all about?

18 MS. JOHNSON: I disagree that people
19 don't know who we are and where we are, and I disagree
20 with Scott on that point. I agree with everybody who
21 has said, yes, if you have a Human Rights Commission,
22 you are profiling civil rights in a big way, and that
23 can only be good.

24 I don't personally have a problem with the
25 Human Rights Commission as long as it has an

1 effective enforcement mechanism. I think there
2 is no model on the table here that we are addressing
3 today. As Scott pointed out, there are some models in
4 other states that are terrible.

5 Right now we have a good enforcement mechanism
6 working, and for me to support a Human Rights
7 Commission, I would have to see it was going to
8 be a good model and well-funded. Because you cannot
9 separate good funding from effective enforcement.

10 MR. SKINNER: One thing obviously is, if
11 you have a Human Rights Commission, it has a symbolic
12 effect. In a way, the fact that Ms. Lucenti mentioned
13 about having a Human Rights Commission with one dollar
14 as its budget is a negative symbol. The more publicity
15 it gets, the more negative it becomes; it is an
16 embarrassment; either we should have it or we shouldn't.
17 So there is a value there.

18 At the same time, just creating one for the
19 sake of having one doesn't work, too, we want to make
20 sure that we don't end up with a situation that makes
21 it harder to enforce civil rights laws.

22 My idea of the role of the Attorney General and
23 the interrelationship between the Commission would be
24 to -- first of all, we are never going to have one
25 unless the Attorney General becomes the lead advocate

1 for having one.

2 Second of all, what I would see the Attorney
3 General retaining all the enforcement powers of a
4 Human Rights Commission. They would more or less be
5 the investigatory unit, the public education unit, but
6 all litigation to be referred to the attorney general,
7 or in the case of state employees, to a private
8 assigned counsel.

9 Just one note to -- what Mr. Johnson said
10 about the handicapped law that he mentioned;
11 there again, the enforcement is ultimately in the
12 Attorney General's office, because they are the people
13 that go to court to enforce the law. The statute in
14 question talks about enforcement powers being at the
15 Labor and Industry Department. It means primarily
16 that they are supposed to process -- make sure people
17 are complying with the law. If they send a case over
18 for litigation the Attorney General, presumably the
19 Attorney General does it. The problem in that case
20 lies not with the Attorney General's office, but what
21 they are getting.

22 MR. CHAIRMAN: Jerry Diamond has a
23 comment before we take our break.

24 MR. DIAMOND: I want to offer a comment
25 for you and Susan to take back. You have been

1 here long enough and heard enough people throughout
2 the day talk about the visibility function and the
3 education function as just being critical. I can't
4 help but really think that one of the comments that
5 Scott made concerning the amorphous nature of what a
6 Public Protection Division is as opposed to a Civil
7 Rights Division, that if nothing else could be done
8 immediately, I have the sense that if your work were
9 able to be done under a Civil Rights Division, as
10 opposed to a Public Protection Division, both from an
11 education and visibility standpoint, that it would give
12 a lot more visibility to what you do, and might serve
13 that function a lot easier. I just tend to agree with
14 him. I know it is an administrative choice.

15 MS. JOHNSON: All I can say is, when
16 people call they ask for the Civil Rights Division.
17 It is known as the Civil Rights Division. We may have
18 changed the name, but to the public we are the Civil
19 Rights Division.

20 MR. SKINNER: That shows the power of
21 the name; five years after it is demised, people are
22 still calling and asking for it.

23 MR. CHAIRMAN: Thank you. We will now
24 take a ten minute break.

25 (A recess was taken.)

1 MR. CHAIRMAN: Mr. Green and Mr.
2 Rodreguiz please come forward.

3 This panel deals with the experience
4 of other states in the area of civil rights
5 enforcement, and our two panelists are Arthur Green
6 and Alex Rodriguez. Mr. Green is Executive Director
7 of the Connecticut Commission on Human Rights and
8 Opportunities, and Mr. Rodriguez is Chairman of the
9 Massachusetts Commission Against Discrimination.

10 Mr. Green, would you like to take our lecturn.

11 MR. GREEN: Thank you, Mr. Chairman,
12 members of the Committee.

13 You have invited me today to address the
14 province and the area of local, state Human
15 Rights commissions, in general, and in specific,
16 the experience of the Connecticut Commission on Human
17 Rights and Opportunities.

18 I hope my comments offer some contribution to
19 your deliberation. I have been with you all
20 day, and have had an opportunity to experience
21 your session. I must say I think you have quite
22 a task before you, as an Advisory Committee to
23 the U.S. Civil Rights Commission, in your task of
24 making recommendations perhaps to the State of Vermont
25 with respect to whether or not there ought to be a

1 more comprehensive mechanism to address the problems
2 of equal rights protection as opposed to the present
3 mechanism. So that is how I formulated the task in my
4 mind for you, that seems to be the charge that you
5 have laid out for yourself.

6 Let me start by first indicating to you for
7 background purposes and historical perspective, if
8 you will, because I believe indeed history is terribly
9 important as we consider such a topic, whether we
10 consider the issues themselves or a remedy for those
11 issues. The Connecticut State Commission on Human
12 Rights and Opportunities was formed in 1943. The
13 Connecticut legislature at that time named an agency
14 or created an agency of government to administer an
15 act entitled, The Interracial Commission. In 1957,
16 the Connecticut General Assembly changed the name of
17 that agency to the Civil Rights Commission. In 1967,
18 the Commission suggested our name be changed to the
19 Commission on Human Rights and Opportunities. I
20 submit to you that those are not mere words.

21 We see in the name change a philosophical
22 and moral as well as legal commitment to the subject
23 matter. In other words, those name changes represent
24 a change in focus, change of perspective, change in
25 identity or identification of the nature of the

1 problem; the nature of the problem changed.

2 In the early '40's and beyond that period of
3 time, we in America are concentrating on the
4 issue of black/white relations, and we saw in
5 the early formative years of commissions such
6 as ours in the 1940's the concentration being
7 merely painting jobs at entry levels for black
8 Americans.

9 In the mid-1940's, 1950, we came of age
10 a bit with respect to law. We began to
11 understand that if indeed you were to change the
12 climate and provide for equal opportunity, you needed
13 really strong protection, you needed sanctions, you
14 needed a mechanism whereby a person could come forward
15 and initiate a complaint, and there be someone or an
16 agency of government to receive and process that
17 complaint and provide remedy and sanction against any
18 violations.

19 It is important to understand from a theoretical
20 point of view that a law against discrimination
21 without appropriate sanctions and remedies built into
22 it is rather meaningless.

23 It is perhaps a cruel joke to play on the
24 American public to suggest that you can merely
25 pass a law as a matter of public policy and

1 not provide for any sanction; nothing could really
2 happen. So indeed the Connecticut experience was that
3 to call ourselves an Interracial Commission, meaning
4 that we were concerned about race relation between
5 blacks and whites and nothing more than that; that is,
6 through some educational process, we hoped, we prayed,
7 we cajoled each other that we would change our
8 attitudes, we would somehow stop disliking each other
9 because of race; just didn't work, and it has never
10 worked. In my view, ladies and gentlemen, it will not
11 work without some appropriate law enforcement
12 mechanism.

13 But in the 1960's, America began to see that
14 the laws against discrimination or the
15 anti-discrimination laws that are on the books in some
16 450 state and local governments in this country, and
17 the number today is over 500 state and local
18 commissions exist in this country, not including the
19 Federal enforcement effort.

20 It was our experience in the mid-'60's that we
21 needed to do something more than enforce the law, that
22 is, prevent discrimination, which you need to
23 understand is a neutral process; to prevent
24 discrimination or to be against it is neutral. It
25 does not advance at all the cause of equal opportunity

1 or justice, to be neutral. So to receive a complaint,
2 to process it, to effectively obtain relief for the
3 victim does not advance at all the cause of equal
4 opportunity. It merely advances the right of that
5 person. It achieves some benefit for that individual.

6 But the fabric of America, the climate and the
7 environment in which we are talking about is
8 not altered by the successful processing of thousands
9 of complaints against discrimination; a very
10 important concept in our field. We in Connecticut
11 felt we needed to do something more. We changed our
12 name in '67 to the present nomenclature, a Human
13 Rights Commission, meaning something to us broader than
14 merely the law, but rather, by the mere fact that we
15 are all members of one massive family, we are entitled
16 to certain basic rights. And those rights ought to be
17 advocated, and that is the notion of human rights and
18 opportunities to us, that we are in business today, we
19 feel, to advance the basic rights of people, basic
20 rights, whether they be in the statute or not. And to
21 promote opportunities, i.e., Affirmative Action,
22 because we don't believe, and today I witnessed most of
23 the country does not believe, whether it fully
24 appreciates it or not, we do not believe that you can
25 advance equal opportunity without the accompanying

1 notion of Affirmative Action. The two do not exist
2 independently of each other.

3 So the Connecticut Commission's experience,
4 as you can see, is a very long one; proud, I am not so
5 sure sometimes, because we -- not unlike every other
6 jurisdiction in the country, we have our problems, a
7 massive caseload. Our budget of 3.5 million dollars,
8 a staff of 117 people, four regional offices, laws
9 that cover virtually every kind of moral, ethical sin
10 you could think of, except a few; we find ourselves
11 experiencing large numbers of tasks and assignments.

12 We have the power to initiate as well as
13 receive. We can hold hearings, we can issue orders,
14 we can subpoena records, we can compel witnesses, we
15 can do all the things, really, that most courts can
16 do. Yet that is not enough, because as you witnessed
17 today and heard, there is the component part to every
18 agency like ours, and that is providing proper
19 information about what we are doing and who we are.

20 You heard the word today, frequently,
21 education. I am always troubled by that term because
22 I never know what the speaker means when he or she
23 says we need to educate people. Who are we talking
24 about, the victim or the culprit? So often I have the
25 feeling you are talking about educating the victim,

1 and I think the victim needs some kind of education
2 more in the form of equal opportunity education, but
3 the people that discriminate, landlords, labor unions,
4 realtors, contractor associations, personnel people,
5 they need education about the nature of difference,
6 because we are indeed educating legions of young
7 Americans daily in our public and private school
8 systems with no knowledge of racial, ethnic
9 nationality and religious difference. So the
10 education I will advocate for you is that the school
11 systems of our country need to educate as part of the
12 curriculum about racial religious difference.

13 We need to learn to appreciate difference.
14 That is the kind of education that we normally
15 don't deal with successfully. The Connecticut
16 Commission's experience, though, has to be
17 reviewed in the context of a larger picture, which I
18 now want to turn to, and that is the relationship
19 between state, local, provincial human rights agencies
20 and the Federal government.

21 You have, I think, had a word game somewhat
22 today, with whether there be a Commission or
23 whether the Vermont Attorney General's office
24 is adequate. To me, what I have heard is the
25 word game because whether you use the term Commission

1 or Attorney General or Commissioner or Chair, I mean,
2 that may not really matter. Because what ultimately
3 matters is the structure that the organization
4 develops to carry out its public policy, the laws
5 themselves; that is to say, whether those laws have
6 adequate remedy attached to them when there are
7 violations found, and of course, most importantly, an
8 appropriate budget.

9 I agree with Denise, you cannot separate
10 the two. You cannot have a viable governmental
11 entity, call it whatever you wish, without appropriate
12 dollars. And can the State of Vermont or State of
13 Massachusetts or Nebraska afford not to fund human
14 rights entities to protect the rights of our citizens?

15 The country today has about 150 agencies, state,
16 local and provincial, belonging to a professional
17 organization called the International Association
18 of Official Human Rights Agencies. We are a
19 professional organization. Among that 150 agencies,
20 about 110 of us receive deferral charges or complaints
21 deferred to us from EEOC, the United States Equal
22 Employment Opportunities Commission. Another 113 of
23 those commissions receive complaints from housing,
24 U.S. Department of Housing and Urban Development.
25 That is to say, many of the State and local

1 commissions in this country receive charges or are the
2 recipient of charges from either HUD or EEOC, and
3 those are contractual relationships.

4 But those contractual relationships are based
5 upon the determination that the State and local
6 commissions are capable or equivalent or competent
7 or staffed, have equal laws to afford the
8 charging party at the local level the same kind of
9 protection that they would receive at the Federal
10 level. Over half of the Federal workload, EEOC, HUD,
11 is carried out by local, state commissions, and done so
12 rather successfully, whether those mechanisms be in
13 the form of an Assistant Attorney General, a
14 Commission like Connecticut, a Chair, like the
15 Massachusetts model. In other words, my friends,
16 there are a number of examples of governmental
17 entities that carry out the laws in our country
18 against discrimination. And I want you to really
19 consider that it may not be too important what you
20 call it.

21 In Massachusetts, you will hear later, they
22 have three full-time commissioners, one acting
23 as Chair. They get some compensation.

24 In Connecticut, there are nine commissioners,
25 they get no compensation. They have an Executive

1 Director. The State of New Jersey, you have another
2 model like Vermont, Assistant Attorney General
3 carrying out the law. Arizona, Phoenix, a similar
4 model. Throughout the country you have a variation on
5 the theme of how these laws are administered. But
6 what is important in common and critical to all of
7 them, that they are adequately funded.

8 But behind the notion of adequate funding
9 is the kind of support we receive from our Connecticut
10 legislature, from the general public, because it is very
11 interesting to see the nature of our critics today.
12 Our critics, and interesting or not, the respondents
13 and the complainants -- by the way, there are some of
14 those, but they come from our so-called friends, our
15 so-called progressive liberal colleagues that look at
16 what we do and say we are not doing it right or doing
17 enough. Those are the people we would look to, to
18 support our efforts, to argue for our the budget
19 increases, to argue for the kinds of staff
20 classifications we need to do the job.

21 So part of your task ought to be more
22 than consideration of a mechanism, but are you
23 prepared to support the kind of funding to create a
24 more comprehensive agency or entity in Vermont? I say
25 comprehensive meaning that the models in the country

1 like Connecticut, for example, where all the
2 functions, all the laws against discrimination,
3 whether it be in the private or public sector, whether
4 it be laws protecting against lending institution
5 discrimination by state agencies, all of those laws
6 are embodied in one agency. All the public
7 information, public information operates in one
8 agency.

9 In the area of Affirmative Action the
10 Connecticut Commission is the only state in the
11 nation with a law requiring the State government
12 itself to have an Affirmative Action plan. That is
13 rather interesting, because normally the courts have
14 said that Affirmative Action shall issue as a remedy,
15 as relief to a violation of law.

16 The Connecticut legislature
17 felt several years ago that the Connecticut state
18 agencies, the executive branch of government, by
19 virtue of their mere existence, ought to be
20 affirmative in their employment hiring promotion
21 activities, whether there was a violation or not. So
22 there is a law on the books in Connecticut as a matter
23 of public policy that requires each of us to be
24 affirmative. Not in response to a complaint--

25 MR. CHAIRMAN: I am sorry, Mr. Green;

1 thank you very much for your comments. We are short of
2 time this afternoon.

3 MR. GREEN: I will take any questions
4 later.

5 MR. CHAIRMAN: Sure, please do. Mr.
6 Rodriguez.

7 MR. RODRIGUEZ: My name is Alex
8 Rodriguez. I am the full-time Chairman of the
9 Massachusetts Commission Against Discrimination in
10 Boston, and as Art Green has told you, our agency is
11 designed in such a way that we have three full-time
12 commissioners, compensated by the Commonwealth of
13 Massachusetts, and a staff of some 83 individuals, full
14 and part-time, with a state budget not as generous as
15 the State of Connecticut, which has fewer citizens,
16 but approximately three million dollars to carry out
17 the awesome task of trying to combine Affirmative
18 Action concepts within the Commonwealth.

19 Let me back up one second and say I am not
20 unfamiliar with Vermont. I am very familiar
21 with this state. I went to school down the
22 road at Goddard College, and I have probably spent
23 about six weeks a year in this state, spending good
24 tourist money. I do know -- I cut my political teeth
25 working for Phillip Hoff and getting him elected as

1 the first democratic Governor after a hundred years
2 here. Stu Meacham testified this afternoon, I believe
3 I saw him; we went to school together. Bernie
4 Sanders, down at Burlington, went to the same high
5 school I did in New York; there is a lot of ties. And
6 it goes a long way back; I have been familiar with
7 Vermont since I have come here in 1959 and to come to
8 school, and I do read Vermont papers and I know what
9 goes on in the State. But I still feel a little
10 clumsy about coming to someone else's house and trying
11 to tell them how to arrange it.

12 It reminds me of the story of the three Nobel
13 laureates who are sitting at Harvard on a warm summer
14 day, and the door was thrown open, and some bombed
15 derelict came by. And he was hearing them speak, and
16 he somehow managed to get to the front row. And he
17 said, I don't know what you are talking about, just
18 tell me what 2 and 2 is. And he asked this
19 mathematician, and he said, well, 2 and 2 is 4, except
20 if it is a negative and positive 2, and it is 0. He
21 said, you see, you don't know what 2 and 2 is. Then
22 asked the statistician, who was a Nobel prize winner,
23 the same question. And he said, well, just like my
24 colleague, 2 and 2 is 4. But if you want, you can use
25 a permutation, and it gets complicated. You have to

1 tell me what you mean. And again, he ostracized the
2 statistician. Then he went to a lawyer, who was also a
3 Nobel prize winner, and we have a lot of them in
4 Boston, you know, in the Cambridge area, and the lawyer
5 was not going to be embarrassed. So he pulled the bum
6 aside and he said, hey, what do you want it to be?
7 And basically, I think that is what you have to figure
8 out is, what do you want it to be? I mean, what do
9 you want the nature of human rights enforcement to be
10 in Vermont?

11 I am sitting watching you, you have been here
12 all afternoon, I know some of you by reputation,
13 and there is no question that you are good
14 people who have nothing but the well-being of the
15 citizens in this state in mind. And yet, by some
16 evolution, I read the name of the list on this
17 Committee and I see only -- I think two women; they
18 are not here.

19 I look at who else is on the group. I am
20 sure Vermont has 50 percent women, at least, and
21 one would assume that this group should be
22 50 percent. There are things within our social
23 system that always allow the structure of or system to
24 end up way this group looks, that is the way this
25 country is, and we will have to go back hundreds of

1 years to go through that history and talk about the
2 millions and millions of dollars that were given away
3 in property to white males to put it the way it is
4 today. And anti-discrimination laws is just trying
5 to undo that in a very civil way. We remember
6 very clearly our apartheid struggle that we cannot
7 see any more in South Africa, because they won't let
8 us get it on TV. But we know it is going on; we
9 remember that. We can never forget the oppression of
10 women in this country because it goes on today.

11 As we bump from the elderly, who are now
12 doing fairly well in the economics of the United
13 States, and open the doors for minorities, et cetera,
14 you always have women to beat on and we still do.
15 So now women and children have become the catch-all
16 for the worst within the society.

17 We are beginning to open the doors for the
18 handicapped, we are discussing gay people's rights
19 in Massachusetts, et cetera.

20 The common denominator of all of these
21 issues is so simple, and we know what it is, and the
22 prophet Dr. Martin Luther King, Junior, told us: It is
23 that awesome task of taking the responsibility of
24 dealing with each and every person around the issue of
25 the content of their character and nothing else. We

1 somehow can't do that.

2 Now, the issue really becomes, how important
3 is it to this state to do it? The economy of
4 the State seems fairly well, going along pretty
5 good, the northeast region is not suffering
6 that much. What is broke, you might say? What is
7 broke? Let's leave it alone. Leave it where it is.

8 I get somewhat uncomfortable, hearing questions
9 to the A.G. staff about, why doesn't the A.G. take
10 an aggressive role here? If you gave me something
11 and I had it, why should I take an aggressive
12 role to get rid of it? And in a state where
13 people run for political office for two years, I
14 would take the chance to say, I don't want civil
15 rights in my office? So the opposition would would
16 say, I don't want civil rights? Come on. It just
17 seems to me that either a groundswell begins that
18 says, this is important enough and it either starts
19 here -- because I have sat in the comparable seats in
20 Massachusetts, and Jake and I have worked together, I
21 have been on the Advisory Committee in Massachusetts
22 for many years -- either it starts here and it is
23 important enough here or it starts out here in the
24 audience and it is important enough there, as
25 difficult as it is to do activism in Vermont; and I

1 know, I had a house up in Barton, Vermont for twelve
2 years and spent a lot of summers there, I know how
3 hard it is to get people around except almost anything
4 except the Bread and Puppet Theater, and the August
5 fair, people come out for that. But if it is
6 important enough, do it seriously.

7 You hit on something very important, and it is
8 the most important thing in civil rights. It is
9 not a one-to-one case. When I hear the staffing
10 that exists, and the Attorney General's office, and
11 they are doing 120 cases and going for 175, you guys
12 are lucky. That is -- both Art and I will agree that is
13 a good rate of case handling in one particular year.
14 You get nothing else.

15 If you expect to get anything else,
16 the funds are not there for anything else. Let me
17 give you some sense of what the other things we do.
18 We do 2500 cases a year. We have the whole
19 jurisdiction that you can imagine except the
20 protection of sexual orientation, anti-discrimination
21 law in unemployment. We have handicapped, we have age,
22 race, natural origin. We have housing and we have
23 single head of households and females and children and
24 anything you can imagine, we have. Credit, public
25 accommodations.

1 We do something else that is a very unique
2 in Massachusetts, we also enforce how public
3 officials handle their duties under the Constitution.
4 By that I mean we oversee each city and town in
5 Massachusetts to make sure that they affirmatively
6 and aggressively move forward and make their
7 towns and their jobs and their contracts available
8 for anybody, irregardless of the -isms, and
9 the protective classes. That makes a difference.

10 We have been doing that under executive
11 order, not under law, as Connecticut, since
12 1974. We have been keeping records since 1979. We
13 can document a hundred million dollars a year worth of
14 salaries and contracts that go to people of color
15 today in Massachusetts through cities and town
16 budgets that were not going to the same people before
17 1979. So social policy change in this manner really
18 can be effective and really can make a difference.
19 You run a great risk when you do it.

20 If you separate out your human rights agency
21 and you have someone like me running it, then
22 everybody better watch out, and that is the Attorney
23 General, the Governor, et cetera, and Jake can tell
24 you this. Our agency doesn't recognize any employer
25 as being different from any other employer, and if I

1 have to sue my own Governor, I will. And that in the
2 wrong hands can cause a hell of a lot of problems.
3 And that has to be considered.

4 Likewise, you have talked about some of the
5 limitations of an Attorney General who has
6 to sort of feel like he is on both sides within the
7 same office. That is clumsy, too. But the models
8 work in other places that, as Art has said, if the
9 first ingredient is there, the will. The will.

10 How important is it that every single head
11 of household that is going to be predominantly
12 woman with children in this state have safe,
13 sanitary, adequate housing, in accordance to
14 their ability to pay? You have to ask that question.
15 You know it is not going on now, you know they are
16 getting rejected, because it is happening everywhere.

17 How important is it that the society
18 be barrier-free? You know you really can't afford to
19 do that. Do you really want to have a court tell you
20 you have to do it? Because if you wanted to do it, you
21 would be barrier-free today. So how important are these
22 things, is really the question that you have to
23 ponder. Not how you do it, not where you place it,
24 how willing are we to change the discussion from that
25 which is comfortable to that which aggravates.

1 How willing are we to walk through the urban
2 areas of Vermont, Burlington, Bennington, et cetera,
3 and confront some of the problems that no one
4 seems to be confronting. How willing are we to
5 walk through the rural areas of Vermont and do
6 the same thing? That is the question that you have
7 to ask.

8 Because if you do get serious about civil
9 rights, an amazing thing happens, a thing
10 called equity. You change the difference. The
11 pyramid's top gets cut off a little and it changes its
12 form. And more people share in the bounty that we
13 know exists.

14 The reality of life and the reality of American
15 history tells me as I tell my children that that is
16 not what America was designed to do. So how willing
17 are we to be basically anti-American?

18 Thank you.

19 MR. CHAIRMAN: Thank you, Mr.
20 Rodriguez. Murray Dry, you have some questions.

21 MR. DRY: I guess I have two related
22 questions to ask each of you. The first -- I infer
23 from what you have said that in each of your states
24 your organization has a near-monopoly of jurisdiction
25 over this subject, and I guess I would just like to

1 hear a little bit about how full it is, what the
2 relationship is between your organization and the
3 Attorney General's office and Connecticut and
4 Massachusetts; it may well be that our situation is
5 different in that respect, in that we do have to pay
6 some further attention to coordination. And the second,
7 and maybe it isn't all that connected, I am interested
8 in knowing something about the stages or process of
9 the complaint filing, the response, just how that
10 works. I will leave it at that.

11 MR. RODRIGUEZ: B is going to be the
12 same, so he can do B. While we might have a described
13 monopoly, I don't think it is quite a monopoly. We
14 probably have 90 percent of it in Massachusetts; 10
15 percent is scattered with either city and towns that
16 have human rights or fair housing commissions, and the
17 A.G.'s office in Massachusetts does have a Civil
18 Rights Division. We do work closely with them. Then
19 there are another thing called the district attorneys
20 office, and there is some belief that district
21 attorneys should just bother about criminal law; I
22 don't believe that, and the district attorneys in
23 Massachusetts and how they are relating to us now
24 and the work we are doing together will show that they
25 don't believe it, either.

1 One of the things that all of us know in
2 this business is that we are the stepchild of
3 our legislators; people don't like civil rights
4 agencies because they sue the people that fund
5 them. You see? And folks don't like people -- it is
6 the old, biting the hand that feeds you.

7 No one likes the civil rights agency because the
8 people who generate the business ultimately are
9 employers, they have staff, their staff might sue. We
10 try to tell people that is the price of doing
11 business.

12 I get sued by my staff if I don't promote A and I
13 promote B, and you either believe that you have done
14 something in a nondiscriminatory way or you haven't.
15 And I give myself the same advice I give other people,
16 you review every case individually.

17 But we don't have the responsibility alone
18 because basically in a pluralistic society, we
19 all have the responsibility. We have to look
20 out for each other. We can't stand by while
21 somebody else's rights are being taken away, because
22 it is not us.

23 When you are a governmental official, I believe
24 that we all swear to the same Constitutional oath and
25 we have the same responsibility. If you are, then

1 more certainly a law enforcer around this civil law as
2 the Attorney General is and district attorneys are,
3 then I believe that you have to work closely with
4 them.

5 We do not enforce the criminal civil
6 rights law in Massachusetts, the A.G.'s office
7 does. But whenever that law needs enforcements
8 because some new arriving Asian who has suffered
9 through a horrible life because of what American money
10 did thousands of miles away in Vietnam and Cambodia,
11 et cetera, is now arriving on our shore and gets
12 killed or beaten to death in a fight, or the house gets
13 burned, sure, that is a criminal offense; the A.G.'s
14 office has to go in. I have a responsibility because
15 it tells me, quickly, something is wrong here.

16 If people can't live civilly next to each
17 other, and the only variable that I can figure
18 that is causing them to have any trouble is the color
19 of their skin, their ethnic background, I have some
20 business in this town, I have to get in there. That
21 has caused us to work with district attorneys'
22 offices.

23 We are holding workshops in three counties,
24 we have three very generous district attorneys
25 in the south of Massachusetts, who set a

1 fantastic example as to how a district attorney's
2 office can be involved.

3 We are doing it now in Middlesex County.
4 We are going to do it in Essex County, where we truly
5 need it. And we are going to do it throughout the
6 whole Commonwealth. So in a long-winded way, I am
7 saying it is everybody's job. You do have to
8 coordinate.

9 There shouldn't be any jealousy and turf wars;
10 there is always a role for the Attorney General's
11 office, no matter where you put the human or civil
12 rights agencies. And you also have to work with town
13 officials, especially when you have this very
14 independent notion of town government that we have in
15 New England where, we want the big boys in the State
16 House to leave us alone.

17 You really then have to say to the town
18 fathers and mothers, then you have to watch this
19 business, too, because you are close to it.
20 You have to make sure that everybody can wheel into
21 your grocery shores or get up those steps.

22 You have to make sure that everybody in the
23 town is housed adequately and they are not losing
24 housing because of their sex, because they have
25 children, because of their race. You have a

1 responsibility here, and we legally require that, we
2 require Affirmative Action programs from cities and
3 towns.

4 We have almost every city and town on
5 board now except for two in Massachusetts; in fact
6 have plans, have programs, work diligently at it, we
7 monitor them. We monitor contract compliance in
8 Massachusetts. We monitor the whole process of
9 development in the Commonwealth, to make sure it is
10 fairly distributed. And the result of it is we are
11 the only state in the United States of America that --
12 other than Hawaii -- that can show that minorities are
13 not twice as unemployed as white people are.

14 It is the first time in American history that
15 ever happened. It happened in Massachusetts
16 two years ago because the goods are being
17 distributed equitably. That causes a lot of
18 problems with people, people don't want to see that
19 happen. You know, there are traditions in
20 Massachusetts about who should be a fireman and who
21 should be a policeman and who should get a town job,
22 and that Affirmative Action program has been in place
23 for hundreds of years, and what we are trying to do is
24 change the Affirmative Action program, you see. And
25 the question is, are you ready to do that?

1 MR. GREEN: We in 1967 moved to
2 initiate legislation to separate our law enforcement,
3 or legal representation, rather, from the Attorney
4 General's office to ourselves. We moved to establish
5 our own lawyer; the Attorney General's office in
6 Connecticut up until '66, roughly, represented the
7 civil rights or Human Rights Commission. We saw a
8 terrible conflict because we had the power to bring the
9 actions against and receive complaints against state
10 agencies. The Attorney General must represent all
11 state agencies. It was clear to me he couldn't.

12 So we said to the legislature and the
13 Governor, we ought to have a separation; we ought to
14 be empowered to hire our own counsel. Today we have a
15 legal office of eight or nine attorneys, who
16 represents the Commission and all of the complaints,
17 it handles against state agencies. And we handle
18 complaints that the A.G. would otherwise handle, too,
19 by agreement. I guess we believe strongly that we
20 need to be independent. Do we have a monopoly? No.
21 Close to it, because of law, but I agree with Alex,
22 that it is everybody's business now. That is more a
23 philosophical statement. But as a legal matter there
24 has to be one entity of government that I believe that
25 has this responsibility.

1 MR. CHAIRMAN: Thank you, panelists. We
2 are running about twenty minutes behind schedule, so
3 we are going to have to move on to the next panel.
4 Our last panel deals with the legislative prospects
5 here in the State of Vermont, and at this time I would
6 like Peter Welch, William Hunter, and Betty Nuovo to
7 come forward.

8 Senator Welch is Senate President Pro Temp -- not
9 here. Mr. Hunter is a member of the Senate Judiciary
10 Committee. Representative Nuovo is Chair of the House
11 Judicial Committee, and House Rules Committee.

12 Mr. Hunter, if you would like to take the
13 lecturn first.

14 MR. HUNTER: I do want to convey Peter
15 Welch's regrets that he is not here. It is poetic
16 justice that he is attending a funeral of the late
17 Senator Margaret Hammond, who I think to many of us is
18 best know as the person who led the fight in the
19 legislature to allow pregnant females and married
20 women to continue in high school, when she was in the
21 Senate in the late '60's and early '70's. And she
22 died last week, and Peter and I were deciding who
23 would come here and who would go there, and he is at
24 her funeral and I am here.

25 I am delighted to be with you. Let me talk a

1 little bit about the topic that I have been
2 asked to address, which is legislative prospects;
3 and I think at the beginning what I would say
4 is that in Vermont right now legislative prospects
5 for effective Affirmative Action in the area of human
6 rights are very good. We are unlike many other parts
7 of the country, enjoying a spirit in politics in the
8 State now which is very progressive and very concerned
9 about individual rights and freedoms.

10 I want to point to a few of the accomplishments
11 of the last legislative session as part of that
12 context. I am sure that Representative Nuovo,
13 who had a very important role to play in the
14 passage of our landlord/tenant law, which
15 fortunately makes out-of-date some of the materials
16 that I received before this meeting, because it deals
17 with discrimination against certain groups in housing
18 who previously were not protected in any way, I am
19 sure she will talk some about that. But I just
20 mentioned that the last session of the legislature
21 again voted overwhelmingly in favor of a state
22 amendment Equal Rights Amendment to the State
23 Constitution, expressed its opinion on apartheid in
24 South Africa. The Governor has initiated by
25 executive order an access to state building where

1 public meetings are going to take place.

2 A couple of other things that came to mind:

3 We initiated a reporting law for abuse of the
4 elderly and disabled in the last session of the
5 legislature, and last year, until the opposition from
6 the Attorney General's office became too strong to go
7 any further, we were well on our way to enacting a
8 mini-Section 1983 statute to provide a private right
9 of action on the part of people whose state
10 constitutional rights have been violated, whether by
11 public or private entities. It was reported favorably
12 by the Senate Judiciary Committee; but after
13 opposition from the Attorney General's office, who, in
14 fairness, I think were concerned about the potential
15 financial liability that the State might be facing,
16 the bill was put off and will be introduced again next
17 year. I hope we will get further then.

18 That opposition, though, which I think
19 is a little bit similar to the conflict which
20 both prior speakers spoke of as occurring within
21 the Attorney General's office is something which I
22 would like to address, because as we look ahead to
23 ways in which Vermont might become more aggressive in
24 its human rights enforcements.

25 I know a lot of people today have said

1 in Vermont, we are lucky it is not broke,
2 so don't fix it; I know that Vermont is a
3 superior place to live over both Connecticut and
4 Massachusetts; however, I don't think that we are that
5 much better off, that the one dollar a year that is
6 appropriated to our Human Rights Commission shows that
7 we have one-three-millionth of the problem that they
8 have in Massachusetts or Connecticut.

9 We don't fund human rights enforcement in
10 Vermont. We don't have an independent
11 Commission enforcing it. The people in the Attorney
12 General's office who work on sex discrimination and
13 other age discrimination and other forms of
14 discrimination complaints do a terrific job, and I
15 think that we all recognize that. But we kid
16 ourselves if we think that they are staffed adequately
17 to address the problems which exist.

18 There are an awful lot of people in the State
19 of Vermont who feel that their Human Rights
20 are being violated all the time, and they don't have
21 anyplace to turn. Some of them may still call what
22 they think is the Civil Rights Division. Scott Skinner,
23 I think, was right to point to the importance of that
24 name in people's minds. But I think it would be good
25 to have an independent entity outside of the Attorney

1 General's office which would be charged with the
2 enforcement of Human Rights laws and the protection of
3 Human Rights, and address issues of other places where
4 legislation is needed. Because we are faced with some
5 rather disturbing trends that are going on outside.

6 First of all, obviously, is the continued
7 retreat on the part of the Federal government
8 in areas having to do with enforcement of
9 human rights, whether it is Supreme Court decisions
10 which say that sex discrimination statutes don't mean
11 what everybody always thought they meant, or budget
12 changes in various federal agencies. One thing after
13 another from this administration has led to the
14 conclusion that Human Rights -- you can't look to
15 Washington for the kind of aggressive protection of
16 human rights that you used to be able to. That places
17 a large burden on the State of Vermont, a burden which
18 wasn't there six years ago, and it is one that we need
19 to recognize.

20 At the same time that the Federal government,
21 in its directional, is cutting back, other
22 institutions which previously could be counted on for
23 some sort of human rights enforcement are also being
24 weakened. Legal Aid as an entity of protection of
25 Human Rights has been starved in funding. The State

1 of Vermont in the last two years has done something to
2 bolster the funding for Legal Aid, but the Federal
3 support continues to be weak, and Legal Aid is in a lot
4 of financial difficulties.

5 Unions, which traditionally would be good --
6 I am sure that you have talked about and think
7 about the problems that unions sometimes have
8 created in the area of human rights; but
9 certainly for an awful lot of workers, their first
10 line of defense against violations of their human
11 rights was their union. The percentage of union
12 workers in Vermont, as the rest of the country,
13 continues to decline, and the frontal assault on the
14 labor movement which has been initiated in the last
15 few years by the private sector with the active
16 collusion of the Federal government continues to make
17 unions a weaker institution on which one can rely for
18 aggressive human rights protection.

19 Now, I want to speak just briefly about
20 one other reason that I think it is important that our
21 first line of human rights protection be outside of
22 the Attorney General's office. That is that an awful
23 lot of people in Vermont, and I am sure other states
24 who feel that their rights have been violated, feel
25 they have been violated by state government. And I am

1 not proud of that, being a person who is a member of
2 state government, but that is a sad but true fact.

3 The State of Vermont is probably the largest
4 employer in the State, and to the extent that Human
5 Rights protections involve going after employers,
6 there is an obvious conflict of interest when the
7 state's lawyer is the person charged with the human
8 rights enforcement. In addition, I think it is fair
9 to say that the one example that probably the rest of
10 the country knows best about of a flagrant civil
11 rights violation was the Island Pond raid designed
12 by the State and the Attorney General's office, a
13 little more than two years ago. So there needs to be
14 both the perception and reality of an independent
15 enforcement agency, and that really needs to go on
16 outside.

17 And again, I want to stress that the efforts
18 that are being made now in civil rights enforcement by
19 people in the A.G.'s office are commendable, but I
20 don't think that they are enough.

21 I will stop now and hope that we can continue
22 the dialogue after Representative Nuovo has spoken.
23 But I would end by saying as far as the legislature
24 is concerned, the attitude is very, very open
25 to the idea of taking more aggressive steps towards

1 the protection of human rights, and I would like
2 to be part of that process.

3 MR. CHAIRMAN: Representative Nuovo.

4

5 MS. NUOVO: I have been very impressed
6 today in listening to everybody speak on all the
7 various aspects of the civil rights issue and how they
8 affect Vermonters in the everyday life.

9 It also makes me very sad to hear the many
10 instances where discrimination is happening, and
11 what happens to people who are discriminated
12 against, and the affect that has on that person,
13 but also on society and the community.

14 Take the little boy who was crying in
15 the schoolyard? How does that affect his life,
16 the people he associates with, and his interaction
17 with the community, not only at age 16, not only
18 now, but at age 16, 18, and 30? Discrimination
19 in all areas hurts people and hurts society.

20 If people can't address the wrongs against
21 them, it harms them and the society. For example,
22 I was shocked today to hear a man say, women
23 should start the work as flaggers in the construction,
24 to train them to get up early in the morning. And as
25 another put it, if it ain't broke, don't fix it. It

1 is this kind of mindset that hurts women in the
2 employment community.

3 This lack of job opportunity then not only
4 hurts the women, but hurts the children involved,
5 and the children's attitude towards life. This
6 in turn hurts society, and as a matter of fact,
7 hurts business.

8 Women who do not have money can't buy
9 business goods. When children are not allowed to
10 have roofs over their head because of housing
11 discrimination, when the hearing impaired can't have
12 interpreters for courts or meetings, when the
13 handicapped can't work, it is a blight on society.

14 The legislature has begun to address
15 some of these issues and will continue to address
16 these issues. We need to look at more of the issues
17 that are brought before us, and write legislation
18 addressing the problems.

19 The Judiciary Committee has worked very
20 hard on them. We did pass a bill for interpreters
21 not only for handicapped, for people with
22 foreign background, and we passed a bill to end
23 discrimination in housing. We even passed a bill
24 allowing statues. It is a beginning.

25 The legislative process is to hold hearings

1 not only with experts and people knowledgeable
2 in their field, but also to hear from the public,
3 and hearings are just held so the public can
4 come and speak to the legislature.

5 I had hoped that today there would be some time
6 for the public to come, but unfortunately that
7 did not happen. If I had -- I feel sad that this
8 Commission will be ending; perhaps instead of looking
9 backwards it will only cause people to move ahead, to
10 look for other avenues where we can continue to do the
11 work that you have begun and to see exactly what is
12 happening in our state. This procedure should not --
13 today, should not be the end of things, but a
14 beginning.

15 The Commission should write up its report
16 and work for implementation of a recommendation. The
17 legislature then can help by passing the legislation
18 that helps eliminate this discrimination. And your
19 job will be to do so.

20 This is a slow process and not all issues
21 are going to be solved in one session of the
22 legislature. But we will work -- in time we can
23 all work towards an end of discrimination.

24 MR. CHAIRMAN: Thank you. Murray Dry,
25 you have some of questions for our panelists?

1 MR. DRY: Earlier in the day we heard
2 testimony concerning education and its effect on -- or
3 the lack of opportunities for protected minorities and
4 women. And at that time I wondered, to what extent a
5 general funding problem or lack of adequate funding
6 for education in the State might be connected to
7 special problems that protected minorities face; and
8 more recently now, we have heard something about the
9 landlord/tenant bill, and not having the public
10 right of action, and we have been discussing the
11 relationship between the Human Rights Commission and
12 the Attorney General's office.

13 With that by way of preamble, I would like
14 to ask each of you lawmakers how you assess
15 the prospects for raising sufficient government
16 funds to address education, to -- and to either
17 fund a Human Rights Commission in a way that will
18 make it effective or beef up the Civil Rights Division
19 of -- what is it called -- the Division of Public
20 Protection, so that they have more of an opportunity.
21 And in that connection, I think that William Hunter,
22 you already have gone on record in favoring the Human
23 Rights Commission, I wonder whether Betty Nuovo thinks
24 that that would be preferable to beefing up the Civil
25 Rights Division of the Attorney General's office. In

1 other words -- sorry for the complication, I am just
2 trying to think through what issues I have identified
3 here.

4 I would like you to respond to my suggestion
5 that one of the common problems is just lack of
6 sufficient funds, and that seems to me to point to a
7 larger problem of tax equity and how we raise enough
8 taxes in this state.

9 Then the second is, where would you place
10 the priority? Would it be towards getting \$50,000 or
11 more for a Human Rights Commission, or would it be
12 towards beefing up the Attorney General's staff or the
13 Civil Rights Commission staff?

14 MS. NUOVO: Wow. I don't know where to
15 start. I had not really given it an awful lot of
16 thought, to the Human Rights Commission as opposed to
17 the Attorney General's office prior to coming here
18 today. I just hadn't given that any thought. I have
19 heard a lot about both it being good for the Human
20 Rights Commission and it also being appropriate for
21 the Attorney General. I would like to reserve comment
22 on that, since I hadn't had a chance to give much
23 thought on that.

24 On funds to education, I think most of the funds
25 to education are just given to the schools and

1 they do it in the manner and use it in the manner in
2 which they wish. There is some procedures where we
3 hand to it Special Education, to Voc.-Ed., or we hand
4 it -- that the State board requires that the local school
5 districts to have certain courses.

6 I certainly would like to see education
7 going in such a way that it helped the handicapped
8 and minorities, and to keep women and to help
9 women -- have more ideas for what they are going
10 to in the future. I do think that in some cases, and
11 we heard testimony today that children come in with a
12 higher testing than they go out with; that bothers me
13 a great deal. I don't know what is causing that, but
14 I am not on the Education Committee, although I have
15 had a lot of education in the past, having graduated
16 from college with a BS in education. But I would like
17 to get into that, I would like to see, why is this
18 happening? And it shouldn't happen.

19 On the landlord/tenant bill, we did
20 pass not only the housing discrimination
21 which everybody has mentioned, but we also passed
22 condominium law, because a lot of the condominium laws,
23 in 30 days, they sell the house, the rental housing, a
24 new buyer buys it, and in 30 days everybody is out.
25 You are talking 120 people on the market within 30

1 days; it is not possible. So we put in some things
2 there to protect the elderly, the handicapped, and the
3 poor people, so that they had more time. So in a way,
4 that is protecting people in discrimination.

5 We also put in the landlord/tenant bill, the
6 rights of the landlord and tenant and the landlord has
7 the health issues and so forth in order to protect the
8 tenants so that they wouldn't have to live with
9 leaking roofs and toilets that flushed all over the
10 floor and that sort of thing. I guess that is all I
11 have to say.

12 MR. HUNTER: I would begin by saying
13 if there were a member of the Education Committee
14 here, I doubt they would be able to tell you why some
15 people end up with lower scores after they have been
16 in for awhile than they had when they started. But
17 let me address in sequence some of the things that
18 Murray, you raised.

19 Number one, I think that what is behind
20 part of your question is a suggestion that the
21 most serious form of discrimination in Vermont,
22 the most serious form of discrimination anywhere is
23 the discrimination against poor people. And it
24 isn't -- the Constitution isn't interpreted in a way that
25 poverty is a suspect classification; yet in all sorts

1 of instances, I think it is the discrimination in
2 every single walk of life against people just because
3 they can't afford the ticket to a good apartment or a
4 good education, or whatever it may be, which is the
5 route of enormous problems now and will be the route
6 of greater problems in the future.

7 And I am not sure to what extent a
8 Human Rights Commission or aggressive enforcement of
9 civil rights legislation can do something about the
10 awful income disparity which exists here and every
11 place else, but I think that you are right to point to
12 that, because it does underlie a lot of the other
13 problems that we may be talking about.

14 To the extent that poverty is continued because
15 single women are discriminated against and are
16 paid less than male counterparts, efforts to bring in
17 sex equity can do something to wipe out economic
18 inequity as well. But I think there still is an enormous
19 problem in a state where there are a lot of people
20 people, like Vermont, which isn't going to go away.

21 And we can say it will be illegal for a
22 landlord to refuse to rent to a single mother
23 with three children on the basis that she is
24 a single mother with three children. But if
25 the rent is \$450 a month and the State gives

1 that person \$600 a month total in Welfare benefits,
2 there is no way that being told that she has an equal
3 right as anybody else is going to do her any good;
4 like the Anatole France quote about the law of making
5 it equally illegal for rich and poor to beg for bread
6 and sleep under bridges.

7 As far as educational funding goes, I don't want
8 to be a nihilist, but if we hitch our wagon
9 to solving the problems of educational funding
10 in Vermont, we can just postpone any action for
11 another 15 years, and at that time postpone it for
12 another 15, because that problem will be with us
13 forever. And many better minds than any of ours have
14 practically driven themselves crazy by trying to
15 figure out a solution to that problem.

16 And I would reiterate what I said before, that I
17 think it is very important that the human rights
18 activity be conducted or that the general human
19 rights watchdog be an independent entity. And
20 let me subdivide that in two ways: One, I think it
21 ought to be a state presence outside of the Attorney
22 General's office, for the reasons I have mentioned
23 before.

24 Two, I think it ought to be a decentralized effort
25 in the form of private rights of action with payments

1 of attorneys fees.

2 And you mentioned something about Special
3 Education; I think in the reenactment of the Special
4 Education legislation that is coming through Congress
5 right now, there is a provision for payment of
6 attorneys fees to parents who are successful
7 in litigating against local school districts
8 when their children's educational needs aren't
9 being appropriately met. That kind of effort
10 in a world where an awful lot of people can't afford
11 lawyers is a very important one, and it is an
12 important decentralized method of human rights
13 enforcement.

14 MR. CHAIRMAN: We have time for a
15 couple more questions, first by Jerry Diamond, and Sam
16 Johnson.

17 MR. DIAMOND: For advice from the House
18 and the Senate, we have heard from a number of people
19 today that in a sense what our -- one of the
20 problems we have in dealing in Vermont was the lack of
21 empirical data; that it is going to be very, very
22 difficult to get around the legislative Catch-22, and
23 that is, how do you go to the legislature and say, we
24 would like an umbrella agency to accomplish a number
25 of functions, and yet be able to respond to the follow-up

1 question from the legislature, how do you know you
2 need it, because where are the statistics that show we
3 have a problem?

4 We can't come up with those statistics, and
5 yet most people will tell you once you create the
6 agency and you start on its tasks, you are going to
7 find the statistics, that they are in fact there. How
8 do we deal with that?

9 MR. HUNTER: If I were looking for
10 advice on that, you are the first person that I would go
11 to, since you were more persuasive than any person I
12 have ever known, justifying new programs when you were
13 Attorney General.

14 Seriously, I wouldn't get too hung up about
15 coming up with statistics. I think there is
16 a perception that people have that in many ways --
17 well, let me give you the easiest. I think the
18 easiest way you do is by saying, look at
19 what is happening to the Federal government.
20 They are pulling back. We have to step in.
21 Forget about statistics, just sell it on that
22 basis first.

23 MS. NUOVO: I also agree that sometimes
24 the bills are passed just because there is a need out
25 there, and it doesn't matter whether it is one need or

1 ten needs or a thousand needs. If there is a need, it
2 will get passed. And we have passed bills for that.

3 MR. JOHNSON: I was real interested in
4 your statement about in response to Murray's question
5 about poor people and their plight. A suggestion and
6 possibly a question as well: third largest employer
7 in the State of Vermont is the State, we have heard
8 that today. And if you were to possibly review all of
9 the monies spent by the State of Vermont and
10 governments and cities and towns in the State, you
11 would probably have the largest distributor of dollars
12 is government in the State of Vermont.

13 And Massachusetts made an interesting
14 observation; that when they went in and enforced
15 upon the government itself, which in view of the
16 Federal model is often the least likely person to
17 want to comply with any rules, the obligation that it
18 must affirmatively redistribute the wealth or the
19 money that it is going to spend in the marketplace,
20 target more of that money to be spent in Vermont,
21 include poor people, women, heads of households,
22 single heads of households into those categories, and
23 strictly enforce that, then I think you may answer the
24 question of, where does the ticket come from, the
25 question of economic clout in the marketplace, and

1 this constant circular notion of poverty and an
2 inability to break out.

3 And a last observation is that you can pass
4 all of the civil rights laws that you want. You can
5 expend as much money as you so desire for enforcement.
6 But until poor people, minorities, or those in all
7 protected classes and women feel like they can equally
8 participate in the economic system, it is not
9 worthwhile, because you will never secure their rights,
10 and their rights will be secured by their place by
11 society.

12 MR. CHENEY: Betty and Will, I don't
13 see how you can set this agency up for anything under
14 \$200,000. If you spun off the A.G.'s office and got
15 those grants and put them over there -- just a minimal
16 effort, I know how hard it was it was to get 10,000
17 to work on divorce reform. I am very skeptical that
18 that legislature will do anything that costs money.
19 It may pass a lot of laws that sound good. But I
20 don't see \$200,000 coming, do you?

21 MR. HUNTER: You don't know until you
22 try. I think if there is a decision that that is the
23 route we ought to take, then a lot of people can give
24 a lot of thought to how you best sell it. And that
25 was Jerry's question. And you can begin, I think, by

1 using the example of the Federal retrenchment and
2 saying, this is something we have always counted
3 on. And it is like the foundation of your house,
4 you don't notice it, it has always been there.

5 MR. CHENEY: I understand the need.
6 I am just asking for your assessment of the climate up
7 there for that kind of money.

8 MS. NUOVO: I think part of it depends
9 on who is elected. I have been up there three terms
10 now, and different legislators are more keen on one
11 area of an issue than another area. And so maybe this
12 year, maybe some other year they might be more
13 interested in a Human Rights Commission and funding it
14 than they are at the present time. Of course, we will
15 have a new legislature in January, so I can't speak for
16 the new legislature.

17 MR. HUNTER: I don't mean to say that I
18 think it would be easy. But I was first elected 12
19 years ago and I think that the attitude and
20 progressive climate in the legislature right now is
21 way ahead of where it was then, even though in the rest
22 of the country it has gone in the other direction.

23 MR. CHAIRMAN: Thanks to our panelists.
24 Now I would like to call upon the Honorable Frank
25 Mahady to give our closing summary and analysis.

1 Judge Mahady, do you need five minutes?

2 JUDGE MAHADY: I am ready to go.

3 MR. CHAIRMAN: Mr. Mahady is a district
4 judge and former visiting professor of Constitutional
5 Law at Middlebury College. He has been asked to
6 observe the fact-finding meeting, and at the conclusion,
7 summarize the information presented and provide us
8 with an analysis as to whether the existing laws and
9 enforcements systems are adequate.

10 When Judge Mahady concludes, individual members
11 of this Committee will have an opportunity to
12 question him. Judge Mahady.

13 JUDGE MAHADY: Thank you. That is
14 quite a charge, and I viewed it as somewhat amorphous,
15 frankly. I would like to say at the beginning that I
16 don't pretend to presume to have the expertise in this
17 area to be particularly analytical. I propose to be
18 thematic in terms of what I heard here today.

19 Looking at the assignment, I was reminded of a
20 conversation I had not too long ago with our
21 administrative judge, and he commented to me --
22 apparently drawing on some trendy new piece of
23 information that he had learned at some judges' school
24 someplace, he told me that I was a red personality.
25 And I looked at him blankly and said, well, I always

1 thought of myself as turquoise, if anything, but what
2 the hell do you mean? And he says, you are a red
3 personality, and red personalities aren't interested
4 in administration, not interested in detail. All you
5 care about is the big picture. And I think probably
6 Judge Martin was perhaps relying on trendy information
7 from some judges' seminar that had an element of truth
8 in what he was saying. And those of you who know me
9 probably recognize that. So I propose to be
10 thematic in terms of what I heard here today, and to
11 try and place it a little bit in the context of some
12 Vermont history, both recent and not so recent.

13 And with regard to that history, with regard
14 to at least two incidents, I can speak like Aneas, for
15 I was a part, referring to Irasburg and Island Pond.

16 A theme I think I heard, an overriding theme
17 that I think I heard today really has two prongs
18 to it. One is that Vermont is a special place,
19 and it is a special place in which we can take
20 justifiably and healthy pride. In taking
21 that pride, however, I also hear that we have to guard
22 against that dangerous false pride for which the
23 Greeks have a word that doesn't translate well into
24 English, so we use their word, the danger of "hubris".
25 In our history, both recent and not so recent,

1 Vermonters have much to be proud of in the area of
2 civil rights and concerns for human dignity.

3 I would submit that our history, both recent and
4 remote, however, produces some warnings.

5 I think we take pride, and we heard it
6 today, in the Vermont Constitution, alluded to by
7 Chief Justice Allen this morning, and as he pointed
8 out, by Justice Robinson in 1802. Our
9 Constitution, which was adopted in 1777, long before
10 the Federal Constitution, even longer before the
11 anti-federalists won the fight for a Bill of Rights
12 to be appended to that Constitution.

13 And in our Constitution the provisions
14 which the Chief Justice alluded to this
15 morning was Article 1 of Chapter 1 of the Vermont
16 Constitution. The very, very first thing it says.
17 And it says, "All men are born equally free and
18 independent."

19 Just a few words later, our Constitution
20 goes on to say, "Therefore, no person born
21 in this country or brought overseas ought to be
22 holden by law to serve any person as a servant, slave,
23 or apprentice." I submit that was a leadership role in
24 1777, for those of us who consider ourselves
25 Vermonters.

1 In 1777, before the Federal Constitution,
2 before the Federal Bill of Rights, before the
3 Emancipation Proclamation Vermont, at the very moment
4 of its birth, as its very first act, it abolished slavery
5 but went even further in adopting its Declaration of
6 Rights as an integral part of our Constitution, made a
7 fundamental and enduring commitment, unmatched to
8 civil rights and human dignity.

9 Subsequently, Vermont historically put
10 its money and its blood where its constitutional mouth
11 was. Vermont played a significant role and provided
12 many of the leaders of the Abolitionist movement prior
13 to the Civil War. We are proud that Vermont
14 volunteered and lost more men in the Civil War than
15 any other state in the Union.

16 We take pride in General Mead's famous
17 command at the Battle of Gettysburg, "Put
18 the Vermonters out front." We are proud of
19 men like Alexander Dwight, a graduate of
20 Middlebury College, who was elected to the legislature
21 from a town in our Northeast Kingdom of Vermont, the
22 first black man ever elected to any legislature
23 anywhere in the United States of America long before
24 the Civil War. Yet in our recent memory, in our
25 recent history we have Irasburg, to which Dr. McCrorey

1 referred this morning. Irasburg, where a black
2 minister had the temerity to move with his family from
3 California to a small, remote town in our Northeast
4 Kingdom. One sultry, hot summer night in the late
5 1960's, a car made two passes at Reverend Johnson's
6 house, and in both passes, fired gunshot blasts into
7 his lit, occupied living room.

8 Worse than the incident itself, an incident
9 of racial hatred and violence, was the fact
10 that high ranking members of the Vermont law
11 enforcement community moved heaven and earth to cover
12 up the fact that the principal night rider was the son
13 of one of the area's most prominent businessmen.

14 Racial hatred and violence, we have and
15 have had in Vermont. We in Vermont are proud of
16 the fact that we elected the first woman Lieutenant
17 Governor of the nation, Consuelo Northrop Bailey.

18 We in Vermont are proud that we have a
19 Governor who is a woman, who is a Jew, and
20 who came oversea to us. Yet in my very own
21 branch of government, the judiciary, only two women,
22 both very recently appointed, serve along with the
23 rest of us males as judges in the entire state.

24 While what Judge Levitt and Judge Fisher lack
25 in numbers, they certainly make up in quality, the

1 fact of the matter is, and a sad fact it is, that our
2 periodic and regular judges meetings still pretty much
3 resemble Rotary Club luncheons.

4 I can't pass picking up on what my neighbor
5 from Middlebury, Betty Nuovo, did as well. I am
6 currently assigned to the district court in
7 Burlington. I work on a daily basis with Judge
8 Levitt, and I have seen absolutely no evidence
9 whatsoever that she required training to get up and
10 get to the courthouse on time.

11 We are proud as Vermonters and justifiably so,
12 that the turning point of McCarthyism was
13 marked by the courageous stand of a crusty
14 Senator from Vermont, the late Ralph E. Flanders.
15 Yet while we are proud of that civil liberties
16 history, just two short summers ago, we had an
17 Island Pond, where armed police officers using Bills
18 of Attainder, and with military precision, raided one of
19 our communities, and not entirely unlike the soldiers
20 of Herod, snatched the children of a small but very
21 defined group of people whose religion is perceived to
22 be different.

23 We are justifiably proud in Vermont of
24 our ethnic minorities, from the Francophones of
25 Franklin County to the Lithuanians of Springfield.

1 And yet we ignore here in Vermont, until we are hit
2 right smack in the face by it from the national
3 media, that we have here in Vermont, not only in
4 Greensboro, deeds to real estate which contain such
5 restrictive covenants as not selling or renting to
6 members of the Hebrew race. Well, such a clause is
7 obviously, as a technical matter, not enforceable in
8 our courts of justice.

9 The fact of such restrictive covenants
10 make a moral statement that is, to use Justice
11 Renquist's understatement, obnoxious.

12 In Vermont, we pride ourselves that we truly care
13 about people and our fellow citizens. Yet there are
14 many, and I see them almost daily in my criminal court,
15 especially in Burlington, where they simply flat do
16 not belong, there are many who are mentally ill and
17 homeless. Mentally ill people who in the winter seek
18 shelter from the frigid winds off Lake Champlain as
19 best they can in the alleys and the byways of Church
20 Street.

21 In Vermont, we truly care about people
22 and we pride ourselves on that fact. Yet in my home
23 court, which is the court in Middlebury, we don't show
24 that concern and that caring. It is a beautiful old
25 courthouse, many of you are familiar with it, lovely

1 Queen Anne facade. That is a building whose business
2 it is and the symbol for which it is of justice,
3 equality, and fairness. Yet for my home court in
4 Middlebury, a person who is handicapped has about as
5 much chance to enter that courthouse as does the
6 camel to pass through the eye of a needle.

7 Despite the fact that our Constitution
8 demands that the courts of justice shall be
9 available to all without exception, speedily
10 and without delay, this gentleman could not
11 get into my courtroom in Middlebury (indicating).

12 We put the jury in our court in Middlebury --
13 I think we try to make them feel like Anne
14 Frank. We literally put them in the attic. It
15 is not an absolute prerequisite to being a juror in
16 Addison County to be a mountain goat, but it helps. A
17 flight of stairs to that jury room is about like that
18 (indicating). And in my experience, many of the
19 elderly in Addison County have been precluded from
20 serving as jurors.

21 Thematically, I think we have heard about
22 all of those things here today, and I think we
23 hear reflected, in the comments of the various people,
24 our justifiable pride in our civil rights history and
25 our concerns for human dignity. But I also hear an

1 undercurrent among the people here today of a fear of
2 hubris, of false and dangerous pride.

3 I would submit what I was hearing
4 was the people who submitted, it ain't necessarily
5 broke, were addressing a very narrow area of a
6 multi-faceted problem which isn't just a problem for
7 people downcountry in Connecticut and Massachusetts.
8 It is a multi-faceted problem for those of us here in
9 Vermont.

10 The fact of the matter is that this
11 Committee, which I greatly respect, and nearly a
12 majority of it are old and close friends -- Murray, Sam,
13 Jerry, Kim -- this Committee is virtually invisible.

14 I am an avid newspaper reader. I religiously
15 read most state-wide papers every morning. I get very
16 testy if I miss Dibs Parsons in the evening, and I am
17 hardly aware of a civil rights presence in the State
18 of Vermont.

19 And I would submit to you that those who are
20 discriminated against and who suffer discrimination
21 have less opportunity to be informed.

22 The Attorney General's office does a fine
23 job, from all I know, of the relatively small
24 part of the problem assigned to them. But that office
25 is overworked, understaffed, underfunded, with many,

1 many important fish to fry. And it does, as has
2 been acknowledged, have an inherent appearance of
3 conflict in many important cases. As a result there
4 is a void; that is what I hear here today, a void.
5 And I have not the expertise nor the experience to
6 presume to suggest how that void should be met.

7 But I will say, in Vermont,
8 so long as we can and did have an Irasburg, our
9 tradition demands that we do better insofar as we can
10 and did have an Island Pond, our tradition demands
11 that we do better.

12 Insofar as we witness discrimination in
13 employment based upon sex, our tradition demands that
14 we do better. Insofar as we have significant numbers
15 of the mentally ill who are homeless and living on the
16 streets of Burlington, our tradition demands that we
17 do better. Insofar as the handicapped are denied
18 access to our very courts of justice, quite literally,
19 our tradition demands that we do better. Insofar as
20 those who suffer discrimination must learn of their
21 remedies themselves, must enforce them themselves, and
22 must do so on their own nickel, our tradition demands
23 that we do better. Our tradition demands that we not
24 leave these important concerns and important matters
25 to happenstance and to a jury-rigged system, which is

1 what we now have. Our history and tradition demands
2 that Vermont exercised moral leadership in this area,
3 and not trust such important concerns to the varying
4 vicissitudes of the ever-changing winds of federal
5 politics. In short, our tradition and our history
6 demands that we follow the command of General
7 Mead, at Gettysburg, it is time to put the
8 Vermonters out front.

9 Thank you for having me here; it has been an
10 educational day.

11 MR. CHAIRMAN: Thank you. At this time
12 I would like to ask if there is anyone in the audience
13 who has not had an opportunity to speak who would like
14 to make a statement to the Committee? If so, please
15 come forward.

16 MR. JONES: I think I can speak here,
17 because I don't have a whole lot to say. I just would --
18 I guess I would like to say --

19 MR. CHAIRMAN: Could you give us your
20 name.

21 MR. JONES: Chris Jones; I live in
22 Waterbury Center. I would like to say, I work at the
23 Vermont Center for Independent Living, and obviously,
24 I am in touch with a lot of folks with disabilities.
25 One of the things that I guess that I discovered this

1 year was that because of an instance where a disabled
2 individual was told that he could not stay at a motel
3 because he had a disability, I thought it was,
4 obviously, take them to court, no problem. Found out,
5 he is going to lose that case. And the Vermont public
6 accommodations law, disability is not in there. And I
7 guess it surprised me a great deal to find out that a
8 person like me that can go out and be able-bodied,
9 have an automobile accident, wake up and end up having
10 less civil rights than I had the day before, I think --
11 in some instances, I think that is a crime.

12 And the disabled people in the State of Vermont,
13 there will be a law, they will be pushing
14 through a public accommodations law; it is going to be
15 a piecemeal attack to civil rights, unfortunately.
16 But that is probably about the only way it can happen
17 right now. The other thing that people want to see
18 is an office on disability affairs, and the main thing
19 they want that office to do is deal with civil rights
20 of people with disabilities. I don't think that -- to
21 me, I guess I agree. But then when you start thinking
22 that, does every minority have to have their own
23 office? That is what it is coming to; it is going to
24 cost the State of Vermont more money to have
25 additional offices.

1 But we don't have a whole lot of Mrs. Lucenti's
2 that are going to drive around the State of Vermont,
3 with one dollar funding, to take care of civil rights.

4 MR. CHAIRMAN: Thank you very much. Is
5 there anybody else in the audience who would like to
6 make a statement to the Committee at this time? If
7 not, I would like to make a closing statement.

8 Today the Vermont Advisory Committee to the U.S.
9 Commission on Civil Rights has been conducting a
10 fact-finding meeting on Civil Rights laws and methods
11 of enforcement in Vermont. Based on information
12 obtained here and by staff and Committee interviews,
13 the Vermont Advisory Committee hopes to submit its
14 findings and a transcript of this meeting to the
15 United States Commission on Civil Rights.

16 The Committee is deeply grateful to
17 all of those whose cooperation made this fact-finding
18 meeting possible. Your thoughtful comments have been
19 informative and stimulating. If there is anyone in
20 the audience who would like to offer further
21 information for consideration by the Committee, please
22 submit your statement in writing to the Vermont
23 Advisory Committee to the U.S. Commission on Civil
24 Rights, 55 Summer Street, Boston, Massachusetts,
25 02110, by September 22nd, 1986.

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Thank you for being with us; this meeting
is adjourned.

(5:15 p.m., hearing adjourned.)

C E R T I F I C A T E

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I, CHRISTINA L. BOERNER, Notary Public and Court Reporter, hereby certify that the foregoing pages, numbered 3 through 270, inclusive, are a true and accurate transcription of my stenographic notes of the hearing held on the 6th day of September, at 9:00 a.m., before the Vermont Advisory Committee on Civil Rights, at the Pavilion Building, Montpelier, Vermont.

Christina L. Boerner

CHRISTINA L. BOERNER