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UNITED STATES OF AMERICA  
COMMISSION ON CIVIL RIGHTS

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Vermont Advisory Committee  
U.S. Commission on Civil Rights  
Room 413  
Waterman Building  
University of Vermont  
Burlington, Vermont 05405

Thursday, November 30, 1989

The Vermont Advisory Committee to the U. S.  
Commission on Civil Rights met, pursuant to notice, to hold a  
forum regarding Employment Discrimination on the Basis of Age,  
at 7:23 o'clock, p.m., ELOISE R. HEDBOR, CHAIRPERSON, VERMONT  
ADVISORY COMMITTEE, presiding.

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ANN RILEY & ASSOCIATES  
1612 K STREET, N.W. (202) 293-3950 WASHINGTON, D.C.

- 1           **PARTICIPANTS:**
- 2                   Mr. Appel
- 3                   Mr. Barbour
- 4                   Mr. Cheney
- 5                   Mr. Calabria
- 6                   Ms. Elmer
- 7                   Mr. Hand
- 8                   Mr. Holland
- 9                   Ms. Leitenberg
- 10                  Ms. Maloney
- 11                  Ms. Whittlesey
- 12                  Mr. Woolfson
- 13                  Ms. McIntosh
- 14                  Ms. Tuttle
- 15                  Ms. Waldrum
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## P R O C E E D I N G S

[7:23 p.m.]

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2  
3 MS. HEDBOR: Our last report, "Civil Rights  
4 Enforcement in Vermont," included a statement from the Vermont  
5 Attorney General's office that about 18 percent of the  
6 discrimination cases filed in 1986 were based on age  
7 discrimination complaints.

8 As shown on the Agenda, our guests are grouped into  
9 two panels. One panel includes individuals who are not  
10 directly involved in government or representing a Government  
11 agency and panel two includes those in government or in a  
12 quasi-governmental unit, delivering services with public funds.

13 Susan Sussman, who is the Executive Director of the  
14 Vermont Human Rights Commission, is not with us today. She  
15 originally agreed to appear but is submitting a brief statement  
16 through Mr. Robert Appel, who I think is here.

17 The Staff also contacted the Coalition of Vermont  
18 Elders but was unable to obtain representation from them or  
19 through their counsel. The press was also informed of the  
20 forum and members of the audience will have a reasonable  
21 opportunity to offer comments.

22 The proceedings are being transcribed and the  
23 transcript will be maintained in the offices of our Washington  
24 Staff in accordance with the Privacy Act.

25 You, our guest panelists, should know that for access

1 to information provided by you and stored in Washington, you  
2 may contact the Commission's solicitor at the address shown on  
3 the Agenda.

4 Federal law also requires that all persons refrain  
5 from degrading or defaming any individuals when providing  
6 information. That basically means you shouldn't say that Joe  
7 Schmo, you know, is an S.O.B. because he wouldn't hire you.  
8 Let's at least not use names because we can get sued, you can  
9 get sued -- I guess a lot of bad things can happen.

10 At the same time, all persons presenting information  
11 have the right not to be reported or photographed by the media.  
12 Should you wish to exercise that right, please let us know so  
13 your request can be accommodated.

14 The State Advisory Committee anticipates issuing a  
15 summary report of this forum. The report will be based on the  
16 transcript, supplementary interviews, and any other relevant  
17 information now in our Staff's file or obtained in the coming  
18 weeks.

19 Having stated these requirements, let me welcome our  
20 guests and audience and I'd like first the members of the non-  
21 Governmental panel to come forward and be seated here and that  
22 would be Shirley Waldrum, Anita Tuttle, Barbara McIntosh, and I  
23 guess Emile Lagrandeur is presenting for -- oh, Pat Elmer?

24 Pat Elmer got here -- congratulations for making it  
25 up from New York.

1 MS. ELMER: Thank you.

2 MS. HEDBOR: I guess you also have four older workers  
3 who are going to be represented.

4 MS. MCINTOSH: Yes.

5 MS. HEDBOR: Shirley, maybe since you are listed  
6 first here, why don't I have you start it off and address the  
7 whole issue of this discrimination against the elderly in  
8 employment, from your perspective.

9 Shirley, by the way, is with the American Association  
10 of Retired Persons.

11 MS. WALDRUM: Good evening.

12 I'm kind of caught off-guard. I am with the American  
13 Association of Retired Persons. I work with a section known as  
14 the Worker Equity Department, which is an initiative that was  
15 set up because we found that of the millions of members that  
16 AARP had, approximately one-third of them were working and --  
17 or wanted to be employed.

18 The initiative itself consists of three sections.  
19 One of them is the advocacy section, which addresses issues  
20 that people are concerned with in regard to the Age  
21 Discrimination in Employment Act specifically and pensions and  
22 benefits also has now come to the fore.

23 The Worker Equity Department believes and works  
24 toward older workers having the right to be hired, fired,  
25 trained just like everyone else in the workplace. We have

1 filed many Amicus briefs for some legislation that has been  
2 pending, and indeed have initiated some other legal suits for  
3 age discrimination.

4 We have made recommendations to EEO in order to see  
5 if some of the ageism complaints couldn't be not only  
6 facilitated better but included in terms of the statistics that  
7 they have on their forms when they file.

8 We get approximately 100 letters a day about  
9 terminations, mostly terminations and most of the people feel  
10 that it's because of age, so I mean that's just a background as  
11 to where we are.

12 We try to educate employers as well as employees as  
13 to their rights. We put out educational information and have  
14 instituted a volunteer corps to help train attorneys who  
15 usually do not deal with this particular Act. It's new. It's  
16 like the Title VII was some years back and there are some  
17 issues that the average attorney if they don't handle it, they  
18 might not know exactly the five points of ADEA, so that's just  
19 an educational thing and that's currently where we are.

20 MS. HEDBOR: Now, the people who write to you, the  
21 people who contact you, have they contacted anybody else? Have  
22 they sought remedies elsewhere?

23 MS. WALDRUM: One of the things that they have not --  
24 they don't know where to go. If they have contacted an  
25 attorney already, they will hear something that they don't

1 quite understand. They don't know what it means, so the first  
2 thing they are looking for is information. This is what is  
3 happening to me, should I be worried? This is what's happening  
4 to me, I feel like I am being discriminated against.

5 Usually it has been a lot to do with the downsizing  
6 that's been going on with organizations and now it's gotten to  
7 be where it is almost preventative. I have worked from two  
8 aspects, the national office where the advocacy section is, and  
9 now I'm in a field office in Boston until the end of the year  
10 and I am getting calls now because companies have been taken  
11 over, I am, you know, 52, I am 62; I have been offered a  
12 package; I don't want to retire -- what are my rights?

13 MS. HEDBOR: So in some cases we are talking here  
14 about these encouraging retirement packages --

15 MS. WALDRUM: Exactly.

16 MS. HEDBOR: -- and people don't want them but they  
17 feel as though --

18 MS. WALDRUM: A lot of people do not want them.

19 MS. HEDBOR: -- though they are under pressure to  
20 take them.

21 MS. WALDRUM: But they don't know what their rights  
22 are. They don't know if they don't take them, can they be let  
23 go and if they are, is there any way they might have as a  
24 recourse to get their job back? Is there anything they can do?

25 Now it is preventative. They panic early, and

1 rightfully so in some instances.

2 MS. HEDBOR: Especially in the Boston area.

3 MS. WALDRUM: Yes. I have seen that since I have  
4 been in the Boston area for the past month.

5 MS. HEDBOR: Any of my panelists have any questions  
6 now? We can go back and ask questions.

7 MR. HAND: I wonder whether in this informational  
8 stage whether there are any employers who seek information.

9 MS. WALDRUM: Fortunately, we have had some employers  
10 contact us, usually if they are doing something with their  
11 pensions, pension package, so it will not be discriminatory,  
12 and that's good.

13 We have not had as much contact voluntarily from  
14 employers but we do have volunteers who work with employers so  
15 we can say, well, we have, you know, some information that  
16 maybe your employees might want in terms of the Age  
17 Discrimination in Employment Act or their pension rights, that  
18 type of thing, so we work with about 200 volunteers who have  
19 access to employers.

20 MR. HOLLAND: Do you find that attorneys find it  
21 profitable to take these age discrimination cases?

22 MS. WALDRUM: No. It's not a profitable business  
23 right now. A lot of the cases we have filed Amicus briefs in,  
24 I mean they have been class action, more class action types.

25 For an attorney to take a case involving something



1 like age discrimination, if it doesn't have a lot of people to  
2 join in the suit or something like that, you find that there is  
3 probably not very much money so you have people who cannot find  
4 someone to listen to them and listen to their complaints  
5 because there is no money. They don't have the money in a lot  
6 of instances. It is very expensive to go to court.

7 MS. HEDBOR: Is there any luck winning these cases?

8 MS. WALDRUM: Well, I'm glad you asked that. Tell  
9 you what, I don't know -- I've got some statistics. The  
10 problem is getting the cases to court.

11 MS. HEDBOR: They're often settled?

12 MS. WALDRUM: Most of them are settled. Sixty  
13 percent of them are dismissed against the employees and they  
14 are usually dismissed by summary judgment but of that number  
15 that go to trial or before a jury, 60 percent of them are won  
16 in favor of the employee.

17 MS. HEDBOR: Are you familiar with any in Vermont?

18 MS. WALDRUM: No. I checked to see how much  
19 correspondence, if any, we have had from the state of Vermont  
20 and I was told none.

21 MS. WHITTLESEY: Could you help us understand how a  
22 Vermonter would know that this initiative exists?

23 MS. WALDRUM: We have a regional office but it is in  
24 Boston. We have volunteers in the state of Vermont.  
25 Unfortunately we don't -- we haven't had as much luck as we

1 would like in terms of volunteer numbers in the state of  
2 Vermont but we do try to get information through -- all they  
3 would have to do is write. We would send information to anyone  
4 and they can have it on hand, I mean just the library to even  
5 have information on hand so that they can have someplace to  
6 access this material.

7 MR. WOOLFSON: "Modern Maturity" has run a series of  
8 articles on this particular issue. Has that had much of an  
9 impact on people writing?

10 MS. WALDRUM: Oh, yes. As a matter of fact when the  
11 last article ran in "Modern Maturity" we were inundated with  
12 letters. I mean we were still -- it's very hard to answer  
13 them. We had to staff more and we recruited an additional I  
14 think 20 volunteers and we tried to put them in the areas where  
15 these letters were coming from. We have only one -- we have  
16 one attorney in the Boston area or the Regional Area I, which  
17 is what this is -- the New England States -- whose name is Lou  
18 Goldberg, who is willing to talk and answer with anyone and we  
19 are looking to recruit others, to train them so that people can  
20 have contact with them.

21 MR. CHENEY: Do the discrimination cases have any  
22 pattern? I mean is it people looking for work or is it mainly  
23 people who are getting laid off in company --

24 MS. WALDRUM: A lot of it is people who have been  
25 laid off and quite a bit of it has been through either not

1 understanding early retirement programs, downsizing, things  
2 like that.

3 We have had a number of people contact us and say  
4 things like I have applied for jobs but everyone either tells  
5 me I am either overqualified or something like that, which is  
6 really kind of a subtle form of, you know --

7 MR. CHENEY: Well, there was this article that was  
8 presented to us about --

9 MS. HEDBOR: Mr. Hill is here today, as a matter of  
10 fact.

11 MR. CHENEY: Well, is Mr. Hill --

12 MS. HEDBOR: I'm going to ask him to speak to us a  
13 little later.

14 MR. CHENEY: I don't know if you've seen the article  
15 but it makes a point of being discriminated against because you  
16 are overqualified.

17 MS. WALDRUM: Right.

18 MR. CHENEY: Do you have a number of those cases?

19 MS. WALDRUM: We have had a number of people contact  
20 us about that.

21 MS. HEDBOR: Is there anything you can do about that?

22 MS. WALDRUM: There's not a lot that we can do.

23 First of all, we're not staffed to do a lot of  
24 litigation. We don't have the staff.

25 Working with some of the programs that are available,

1       though, maybe through education we might be able to do  
2       something but in that area we have not been able to do really  
3       anything much.

4               MR. CHENEY: One of the jobs of the Vermont Human  
5       Rights Commission is to ask questions of discrimination in the  
6       state. Probably nobody would know how to respond to them -- I  
7       mean it's a new agency, but would your volunteers do you think  
8       be able to channel complaints to the Human Rights Commission  
9       and do you have enough in Vermont?

10              MS. WALDRUM: Yes, they could. Yes, they could.

11              MR. CHENEY: Do you have an office in Vermont?

12              MS. WALDRUM: Yes, they could.

13              MR. CHENEY: Do you have any advertising media that  
14       you use in the state? I mean is there an AARP journal or  
15       something that goes out?

16              MS. WALDRUM: We have not yet. We do have an  
17       Information Update, a newsletter for the state of Vermont that  
18       is done out of the Boston office.

19              We can have something like that done, yes.

20              MR. CHENEY: For your membership --

21              MS. WALDRUM: For the membership, sure.

22              MR. CHENEY: Because that might help people know  
23       where to focus their complaints in Vermont as to send their  
24       cards and letters to the Human Rights Commission.

25              MS. WALDRUM: They have started a newsletter for the

1 volunteers in the state of Vermont to let them know what is  
2 going on in wherever, in the state itself, with the programs  
3 that people are responsible for.

4 MR. CHENEY: One of the things the Human Rights  
5 Commission would do, I guess, if it got a whole lot of  
6 complaints, it could either suggest legislation if things fell  
7 into a pattern. It could propose legislation to try to remedy  
8 that particular problem.

9 MS. WALDRUM: In other areas where you receive so  
10 much mail and you have a more, you know, a heavier  
11 concentration of the volunteers there -- I mean that is the  
12 area they have been working in.

13 We have just not had -- we have not had anything from  
14 the state of Vermont but should it come up it would be very  
15 good for our person to know.

16 MR. CHENEY: I suspect if your Vermont people knew  
17 that there was some forum in Vermont that they could complain  
18 to you would probably get some letters.

19 MS. HEDBOR: That's why we chose this subject.

20 MS. WALDRUM: We have a number of members in this  
21 area so maybe through an article even in "Modern Maturity."

22 MS. HEDBOR: Any other questions right now?

23 Anita Tuttle, will you give us some perspective?

24 I understand you are representing the Vermont Bar  
25 Association.

1           Does the Vermont bar take -- any of your members take  
2 these cases?

3           MS. TUTTLE: Well, I am an Associate with Downs,  
4 Rachlin & Martin and it's very interesting to listen to some of  
5 the comments because I know of two cases in Vermont that have  
6 been successful in age claims, one being in Federal court and I  
7 think there was also an action in state court as well, and that  
8 was a few years ago, where a person that was discharged on the  
9 basis of age actually won a lawsuit.

10           I am personally, along with Heather Briggs, who is a  
11 partner in the firm that I work with, representing right now a  
12 60-year-old man who we felt was discharged on the basis of age  
13 and also in retaliation for his complaints about the fact that  
14 he felt that he was being discriminated against on the basis of  
15 age.

16           Right now that case -- we tried the case to a jury  
17 and the jury found in our favor on the retaliation claim but  
18 not on the age claim and after the verdict, motions for a  
19 judgment notwithstanding the verdict were filed by both parties  
20 and we wanted to win on the ageism claim and the other side  
21 felt that they were wrong with respect to the retaliation  
22 claim, and the judge granted the defendant's motion for  
23 judgment notwithstanding the verdict, which meant that our  
24 verdict on retaliation was taken away from us.

25           We appealed to the Second Circuit and in July

1 received an opinion reversing the judge's decision on the JNOV  
2 which meant that we got a retaliation verdict back and we now  
3 are able to -- and also because the Second Circuit agreed with  
4 us in saying that the instructions that the judge gave were  
5 wrong on the age discrimination claim we are going to have  
6 another opportunity to try that age claim again, however it is  
7 just going to be for the willfulness part of that.

8 I don't know if you are aware but in the Age Act  
9 there is a provision for liquidated damages when the conduct of  
10 the employer is intentional and you can get double damages.

11 One of the interesting -- so we're going back. The  
12 instructions were incorrect. We are going back now to see  
13 whether or not we can get the plaintiff double his damages that  
14 he received in the first proceeding.

15 It's been a long process so far.

16 We're merely seeing that judges may not be that  
17 educated in this particular area, because there really aren't  
18 that many claims. And the earlier case that I mentioned, where  
19 a Plaintiff won an age claim, the district court relied heavily  
20 on those instructions that were given in that case to the jury  
21 which we felt were wrong. And so ultimately, we've proved  
22 successful so far, and it is very interesting to hear the  
23 comments about whether or not it is profitable to take these  
24 cases. And I think that under the Age Act, the prevailing  
25 party can apply for their attorney fees, to be paid by the

1 defendant. And that is also a somewhat lengthy process, too.  
2 We've been at it for two years, and what happened, and what we  
3 did was file for an interim award of fees, to keep the case  
4 going. We are looking at perhaps another two years of going  
5 through the second trial, front pay issues and then going back  
6 to the Second Circuit, maybe, depending on what happens in the  
7 next proceeding, and then maybe who knows whether it will  
8 ultimately end up at the U.S. Supreme Court.

9 But it has been a long battle. And I think when you  
10 are applying for attorney fees in these cases, there is a  
11 provision for enhancement. The problem with employment cases  
12 for attorneys is that the damages are generally much lower. It  
13 is not like your big personal injury case where somebody is  
14 going to be getting a million dollars and you are taking a  
15 portion of that. You are talking about back pay, which may not  
16 be that significant. Front pay may bring it up some more, but I  
17 think that is a big problem in these cases.

18 MS. WALDRUM: It's a problem in terms of the  
19 attorneys, too, who have not dealt with these types of cases.  
20 And once they are out of court, then the complainant has a  
21 problem. If we are lucky, then we can kind of educate them or  
22 let them know who, if there is a group that is doing something  
23 in an area in terms of attorneys. It's an education.

24 MS. TUTTLE: Well, just a fee application in itself  
25 is a whole 'nother ball of wax. You have to really support it



1 with a lot of documentation. And then there is the provision  
2 in the statutes for actually, you can ask for an enhancement.  
3 I've seen enhancements from .25 percent to 3.5 percent, times  
4 your lodestar, which is your basic rate that you take your  
5 hours and you multiply it by your rate.

6 So I think that we are going to probably be facing  
7 issues with respect to enhancement, trying to educate judges  
8 that if the judges don't start giving these sorts of  
9 enhancements, I think there are a lot of attorneys who will not  
10 take these cases.

11 MS. HEDBOR: Now, both of these cases you mentioned  
12 had to do with discharge.

13 MS. TUTTLE: Right.

14 MS. HEDBOR: Could you envision a case that you would  
15 feel comfortable taking where somebody simply hadn't been hired  
16 and claiming it was age discrimination? Or is that much harder  
17 to prove?

18 MS. TUTTLE: Well, I think that by far the claims  
19 that are being made are the ones, the layoffs, the discharges,  
20 and the hiring. I also represent employers, too. And I think  
21 I should tell that right upfront here. I advise employers, I  
22 mean from the very beginning, you know, how to avoid a lawsuit  
23 and what your applications should say, right from the very  
24 first time a potential applicant comes into your office and  
25 fills out an application. There are things that you can do to

1 avoid claims of age discrimination. You don't ask for people's  
2 age. Then right on through, through the hiring process.

3 But getting back to your question, I think that, I am  
4 representing one employer now in a charge that an applicant  
5 brought with the Vermont Attorney General, saying that she was  
6 not hired on the basis of her age. And I think that is a much  
7 harder thing to prove, unless you have someone actually saying  
8 something to you that would really provide some evidence that  
9 there was some real discrimination there.

10 There are so many ways that an employer can  
11 legitimize their action. To give you set a facts, I don't know  
12 if I could.

13 MS. HEDBOR: Any more questions?

14 MR. HAND: Downs Rachlin is probably the largest firm  
15 in the state. Is that a function of handling these cases, or  
16 do you know anything about the loads of other firms? Is this  
17 spread out or have you seemed to cornered the market?

18 MS. TUTTLE: Well, I think that when Heather Briggs  
19 came to the firm a couple of years ago, the firm had always  
20 been trying to develop a labor practice. And Dennis Wells, who  
21 is another partner in the firm, does a lot of work with public  
22 school boards and that sort of thing. And she came in and she  
23 started doing a lot of the private actions, and the business  
24 has really boomed. I think that we do a great portion of the  
25 work in this state -- I think that is probably accurate -- in

1 employment matters.

2 MS. HEDBOR: Any other questions?

3 MR. CHENEY: Do you have any sense of how pervasive  
4 age discrimination is? I don't know how you would have that  
5 sense. I don't know what sources of information you have in  
6 this state to try to get a handle on that.

7 MS. TUTTLE: Well, certainly the charges that are  
8 filed with the Vermont Attorney General and with the EEOC would  
9 be indicative of what is being brought initially. And I know  
10 that from my personal experience, the bulk of the cases we see  
11 are sexual discriminating, sexual harassment. But age claims  
12 are really starting to come in more frequently. I think it is  
13 just going to continue that way, especially as the population  
14 bubble, I think, as the work force gets older, and especially  
15 as the Baby Boom era goes along, I think that you are going to  
16 see a lot more of them

17 MR. CHENEY: A follow-up on Eloise's question, the  
18 hiring discriminating. I can see that is a real can of worms,  
19 because it is just so hard to prove why a person wasn't hired.

20 And yet you get the sense from a lot of people and  
21 from this article, and then you hear it all the time: I wasn't  
22 hired because I was quote "overqualified" or something.

23 Can you think of any legislation or any refinements  
24 in the law that would make that type of suit easier?

25 MS. TUTTLE: Well, it's interesting. I think that

1 there might be a real problem. Here in Vermont I know that the  
2 person that I represent in the past ten months has sent out 42  
3 applications, has only received three interviews, out of 42  
4 applications. And I'm not sure what --

5 MR. CHENEY: You mentioned some advice that you give  
6 to employers, like don't put age on the application or  
7 something like that.

8 MS. TUTTLE: Right.

9 MR. CHENEY: What about legislation that prohibits  
10 listing of age, sex or whatever?

11 MS. TUTTLE: You know, I think, certainly, I think  
12 that is something that could be considered. And it is so easy  
13 to do, to have your applications, don't ask for graduation  
14 dates, you know, don't ask for age. And then in the interview  
15 you have to train your interviewers what they are supposed to  
16 be asking and what they are not supposed to be asking.

17 A lot of times you have people who volunteer  
18 information. They may be sitting there in the interview, and  
19 even though the question may not be asked, they may volunteer  
20 their age.

21 MR. CHENEY: Taking that situation, --

22 MS. TUTTLE: You're going to know.

23 MR. CHENEY: -- you could make sort of a guess,  
24 anyhow.

25 MS. TUTTLE: Yes.

1 MR. CHENEY: You'd never know I was 70 to look at me,  
2 but you could make a guess probably.

3 But I wonder, not to take your business away from  
4 you, but if you were to develop rules or something under the  
5 Fair Employment Act that were much more specific.

6 I know when I pick it up, somebody comes in the  
7 office and says they are discriminated against, I say oh, yes?  
8 How can I tell? There is just no way to tell whether someone  
9 is discriminated against unless you know the whole universe  
10 that they are dealing in. And nobody, I certainly don't have  
11 investigatory resources to find out all the people who applied  
12 for this particular job and look at the job descriptions and  
13 all that sort of thing.

14 But I suppose if you had a system of rules or  
15 legislation that forced the employer in written job  
16 descriptions to list the qualifications for any job advertised  
17 in the newspaper or something, that you could smoke out a lot  
18 of this kind of subtle stuff.

19 You have more experience than I do. But I would  
20 certainly welcome any suggestions that you might make by way of  
21 a regulatory or legislative approach to kind of cleaning up  
22 this act so that people can at least get in the door and have a  
23 fair shot at it.

24 MS. TUTTLE: Well, it's something to think about.  
25 It's a very hard issue, I think, when you are speaking about

1 discrimination in hiring practices. I think it is, I would be  
2 happy to think about it and try to come up with some --

3 MS. HEDBOR: You can submit something to us in  
4 writing, whether it's just notes or whatever. But any ideas  
5 that might help eliminate it.

6 MR. CHENEY: We've not a legislative body. We're  
7 simply a factfinding body. If you were to submit a letter or  
8 something that says a regulatory approach that had these kinds  
9 of elements to it, and we wouldn't expect a whole statute or  
10 anything.

11 MS. TUTTLE: Good.

12 MR. CHENEY: But if you came up with a series of  
13 ideas, even if they ultimately were discarded, we would kind of  
14 pick them up and pass them on to the Human Rights Commission or  
15 whatever and just see if we could develop something on it.

16 MS. HEDBOR: Try to work out, we're really trying to  
17 feel our way and find out what solutions might be available.

18 MR. CHENEY: It seems to me the mere act of  
19 advertising a job in a newspaper, offhand I can't see any  
20 reason why legislatively you couldn't require somebody to say,  
21 have a written job description if you are going to advertise in  
22 the newspaper. And that would make an enormous difference, it  
23 seems to me that the employer would have to have some standard  
24 by which these qualifications should be measured against. And  
25 the applicant would at least be able to say hey, wait a minute,

1 I want to see your job description; I meet these requirements.  
2 Maybe you can monkey around with burden of proof issues, put  
3 the burden on the employer to demonstrate that there wasn't any  
4 discrimination if a certain number of people of a certain age  
5 are not hired when they meet prima facie requirements.

6 MS. TUTTLE: Of course that gets into burden  
7 shifting, and under the traditional standard the burden, you  
8 know once the plaintiff comes forward in a prima facie case,  
9 the burden will shift momentarily to the employer to come up  
10 with some sort of legitimate reason why the action was taken  
11 but then the burden shifts back to the, ultimately to the  
12 plaintiff, except in cases where you have what is called direct  
13 evidence.

14 And it's hard for me to tell you exactly what direct  
15 evidence is. But oftentimes it could be a memo, it could be a  
16 verbal statement.

17 MR. CHENEY: Most of those are judge-made rules,  
18 aren't they, these burden-shifting rules?

19 MS. TUTTLE: Yes.

20 MR. CHENEY: So if they don't work, you could change  
21 them by law. And it just seems to me that there must be an  
22 opportunity to move beyond what is. Just because it is doesn't  
23 mean it's right.

24 MS. TUTTLE: Well, of course, that's true. And I  
25 think that was part of our problem in our case.

1 MR. CHENEY: Yes.

2 MS. TUTTLE: Dealing with the issue of the burden of  
3 proof.

4 MR. CHENEY: At least in a state act you could  
5 mandate times, attorneys' fees or something. There's all kinds  
6 of things that we could do, instead of leaving it to the  
7 discretion of judges who may or may not be hostile or  
8 uninterested in the thing. It seems to me you've recited a  
9 whole lot of things we could just put in the law and tighten  
10 things up a lot instead of fussing with the Second Circuit and  
11 the Supreme Court and the whatchamacallit and the  
12 whitsiwatsies and so forth.

13 MS. TUTTLE: Well, of course, now that we go up and  
14 we go to the Second Circuit, and there have been cases on  
15 burden-shifting at the U.S. Supreme Court, that is the law, and  
16 that is how the judges should be instructing in these cases.

17 MR. CHENEY: I guess what I'm saying to you is, since  
18 you have all this experience, why don't we put it in a state  
19 act and be done with it, so we don't have to litigate it. And  
20 I'm sure you're right, that an attorney who it's discretionary  
21 with the judge about attorneys' fees and you have to have 50  
22 million pages of documentation, it just isn't worth it.

23 I suppose that a statute could clear a lot of that  
24 brushwork out.

25 MS. TUTTLE: Well, I'm not saying that I don't think



1 that you should have documentation for your fee request.

2 MR. CHENEY: Absolutely.

3 MS. TUTTLE: I think that you should.

4 MR. CHENEY: I do, too.

5 MS. TUTTLE: And I think that you should be able to  
6 support what you're asking for. One problem I see is, how are  
7 you going to define direct evidence? How are you going to  
8 define when the burden is going to be shifting? I think those  
9 are serious questions that have to be given serious thought  
10 before something is put in writing.

11 MS. HEDBOR: Do you have a question?

12 MR. HOLLAND: Just a comment that an obvious solution  
13 to the problem of discrimination in hiring is to extend the  
14 concept of affirmative action to age. And every employer would  
15 have a goal and have a timetable to meet where a certain  
16 percent of the workforce would have to consist of workers over  
17 the age of 55. And that is something that we can discuss as a  
18 committee later. But that is obviously a possible policy  
19 solution to this particular problem.

20 MS. HEDBOR: Any other questions?

21 [No response.]

22 MS. HEDBOR: Barbara McIntosh.

23 MS. McINTOSH: Good evening. I'm Barbara McIntosh  
24 with the University of Vermont.

25 I'm really not very happy that I'm here tonight. I

1 would rather live in a society where these kinds of meetings  
2 aren't necessary, and that obviously, people would be treated  
3 with dignity equally regardless of their beliefs, color,  
4 gender, or age.

5           Until that time, I think that these forums are  
6 obviously essential. Until that time, when we do have more  
7 equality in our society, these forums are certainly very  
8 necessary, and I thank you for the opportunity of speaking  
9 tonight.

10           As a Professor in the School of Business  
11 Administration, I have long held research interests in labor  
12 market behavior and certainly employer response to public  
13 policy, and what is going on in the Government in terms of  
14 programs.

15           Tonight I would like to talk about what is going on  
16 the Vermont labor force in particular and would like to  
17 contribute some insights that I have gotten from some research  
18 that I did in the Vermont labor market last Spring.

19           This survey was done throughout the state. We had  
20 216 employers with older workers, unsubsidized older workers, I  
21 really need to emphasize that, because there was another chunk  
22 to this study. And this represented about a 30 percent  
23 response rate. It does reflect the industry distribution  
24 throughout the state also. So it's not just the service  
25 industry or just farming, agriculture, et cetera.

1           In order to discuss this, I really would like to talk  
2 about three different aspects of behavior.

3           One is the employer's behavior in the labor market  
4 when it comes to hiring.

5           Number two is the employer's treatment of older  
6 workers currently employed. And let's make that aging workers  
7 currently in his or her workforce.

8           And then finally I would like to talk about  
9 organizational structures and how current policies, practices  
10 are really impacting the older worker.

11           If we start with the labor market, in this study we  
12 found that the employers we surveyed were hiring. There is  
13 more data in here, and I won't go into all that. You can look  
14 at that later. They were hiring.

15           In terms of total additions, now this isn't net.  
16 We're just talking about total additions. So it included  
17 replacements.

18           In 1977, the average was 12. The average in 1987 was  
19 nine. However, then we probed into okay, how many of these  
20 workers that you hired were over the age of 45? Only three,  
21 well, 2.7 out of the 12 in 1987 and only 1.3 out of the nine in  
22 1987. Again, these are the averages across the state.

23           When we asked the employers what factors influence  
24 whether or not you hire an older worker, 69 percent said there  
25 were no factors one way or another. However, 8 percent said

1 they never had any older workers come to apply for jobs.

2 When you look at their hiring practices, it becomes  
3 very evident what is going on. They reflect a national trend  
4 for employer's to go primarily to referrals and secondarily to  
5 walk-ins.

6 At the very bottom of the list are the private and  
7 public employment agencies. And what happens then is that we  
8 have a group, just as we had with minorities, that are not  
9 hooked into the network. If they don't have the contacts  
10 through the referrals our older population are generally not  
11 out beating down everyone's doors. They are sending out  
12 resumes, but not just walking into the places of employment.  
13 So we don't have those networks.

14 When asked specifically why older workers may not be  
15 suited for employment in their organization, 65 percent of the  
16 employers responded that there were no reasons at all. Twenty-  
17 three percent, which is a significant percentage, did indicate  
18 that they were concerned about the physical demands, heavy  
19 lifting, et cetera. Four percent were reacting indicating that  
20 there may be problems with stress. Only 1 percent, in fact it  
21 was less than 1 percent cited health benefits or attitude,  
22 adaptability, resistance to change, as reasons for not hiring.

23 Now, obviously we can say well, they don't want to  
24 report these things. They're not going to come right out front  
25 and say that. But this was a fairly detailed questionnaire and

1 we got at it from a variety of mechanisms, different questions  
2 that were asked different ways. So I think that they were  
3 being fairly honest. There isn't that overt discrimination.

4 And we also find that secondarily with how they  
5 treat, or how they feel about, and I really should say how they  
6 feel about their attitudes toward older workers that they have  
7 working for them. At the bottom of the questionnaire we would  
8 see written all the time, "they great, wish we had more."

9 General responses were, older workers perform better  
10 under pressure; older workers are more conscientious; job  
11 transfer not necessary; older workers are not more likely to be  
12 absent; there is not more dissension between younger workers,  
13 older workers.

14 In general, our employers in this state find that,  
15 and in this study, find that older workers are willing to take  
16 the jobs that are available, they are adaptable, and they do  
17 have the required skills.

18 Salary, benefits, training costs, are quote unquote  
19 "not the issue." But, the big issue for the employers is  
20 productivity.

21 Now, this all sounds terrific. Oh, we don't have any  
22 discrimination in the state. However, you have to come down to  
23 that next category and look at organization structure. And  
24 here is where I think it is very blatant.

25 Employers do not reflect the old-line stereotypes.

1 There is I think a degree of enlightenment, and/or they are  
2 just seeing how people are working in their workforce and yes,  
3 Joe can still do the job and it is great.

4 However, there is a startling lack of responsiveness  
5 to the increasing demand and need for flexibility in the  
6 workforce when it comes to older workers and aging workers.  
7 Everything is fine as long as the workers are going along and  
8 producing as they are supposed to. And what we find, though,  
9 is that this organizational inflexibility is really age  
10 discrimination.

11 Specially, when employers were asked what is the  
12 average age of your last promotion for an employee in the  
13 organization, the response was 42. In other words, if you're  
14 50, you can scratch off the promotion, in all likelihood. And  
15 this is certainly not a new trend. It's been around for quite  
16 a while.

17 They only have two, an average of two of their older  
18 workers, participated in training or retraining programs, in  
19 both 1987 and in 1988.

20 Now, in this society, with the technological change  
21 that we have going on, just the face validity of only having an  
22 average of two in training and retraining is blatant  
23 discrimination, because you know that the percentages are much  
24 higher for their younger workers.

25 Employers do not use job transfer, job redesign,

1 which are critical as we change in our careers. Everyone is  
2 going to grow, develop differently. And we don't have  
3 employers being responsive.

4           Nationally, we do have demonstration programs of  
5 alternative work schemes. Whether this is transfers, job  
6 sharing, longer vacations, flexible work hours, only 50 percent  
7 of Vermont employers are providing flexible work hours. Only  
8 61 are providing part-time employment. And yet the  
9 overwhelming majority of older workers in national surveys want  
10 part-time employment.

11           The statistics are on this sheet, and I do have other  
12 copies for the audience if they would like them.

13           Based on the evidence that came out in this study, I  
14 think it is very clear that employers are treating older  
15 workers in terms of business as usual, in this fashion. As  
16 long as they are productive, it's fine. But our older workers  
17 need more flexibility in the workplace.

18           With respect to specific recommendations, with  
19 respect to the external labor market, we need to provide more  
20 monies to organizations such as Vermont Associates for training  
21 and development which, by the way, helped and really  
22 cosponsored this employer study, and Pat Elmer, who is  
23 Executive Director, is going to be making the next presentation  
24 from the employees' point of view. But we need more monies  
25 going to these organizations that are specifically targeted

1 toward promoting older workers in the workplace. We need to  
2 have these organizations become part of this network, part of  
3 the referral system, very visible, within the state in  
4 particular.

5 With respect to changing behaviors within the  
6 organization, I think there is a role for the Title VIIs, for  
7 going back and trying to be regulatory with respect to  
8 employers. But I am not sure it isn't more effective to try  
9 and offer the carrot rather than the stick, also. And I think  
10 that the extent to which we can take the retraining monies, and  
11 there are retraining monies available, and we have had them  
12 under JTPA, the Job Training Partnership Act, as you know, they  
13 are the 3 percent monies. We need far more, given the  
14 demographics of this aging population, we need far more of our  
15 retraining monies specifically targeted to the aging workforce,  
16 and make that a major thrust. We also need tax incentives for  
17 organizations to employ people beyond the age of 62 or 65.

18 Right now, all the economic structure is arguing, get  
19 them out the door, get rid of them. We're going to be having  
20 labor shortages in the next ten years, and it is a crime what  
21 our legislation is now doing in terms of fostering  
22 discrimination in employment. We really need to work on doing  
23 away with the earnings cap in Social Security, certainly not  
24 have penalties for older people to continue working. Private  
25 pensions are another key, that the employer has a program



1 offered by a private insurance organization and if that  
2 employee starts taking that pension, he cannot go back, or she  
3 cannot go back to work, or they lose their pension. If the  
4 employer starts offering part-time opportunities, the employee  
5 can be sacrificing the size of his pension in the future,  
6 because it affects his average earnings.

7 So there are some really serious issues that I think  
8 can be addressed legislatively in terms of pensions, in terms  
9 of Social Security structure, et cetera. And from the  
10 employer's perspective, I would recommend that let's build some  
11 incentives there so that the employer does start recognizing  
12 the need to retain older workers.

13 MS. HEDBOR: You mentioned that the demographics are  
14 changing so we're going to need the older workers.

15 MS. McINTOSH: Oh, yes.

16 MS. HEDBOR: Can you tell me now what the  
17 demographics are for say, how many Vermonters are over 55, and  
18 still want to be working, and how many of them are working? Do  
19 you have any kind of statistics like that?

20 MS. McINTOSH: Yes. Do I have them with me? Pat,  
21 you may even have them with you. Are you going to talk about  
22 them?

23 MS. ELMER: Yes, I am.

24 MS. HEDBOR: Okay.

25 MS. McINTOSH: It seems to me it depends on what age

1 category, but it ranges from 13 percent down to about 3 percent  
2 when you are talking about the older --

3 MS. HEDBOR: Do you see from your survey of  
4 employers, and I realize this is a summary, do you see that in  
5 a lot of cases they are simply not aware that things they are  
6 doing are discriminatory? Are we looking at part, part of the  
7 solution being educating the employer and also educating the  
8 older worker to hey, walk through the door, maybe ask your kid  
9 or your neighbor's kid where they are working? You know,  
10 things like this as to how you get a job. And also employers,  
11 to be aware.

12 MS. McINTOSH: Certainly, when we are talking about  
13 that first area, talking about that market, I think there you  
14 are much more likely to have those stereotypes working. It's  
15 much harder to identify why was someone turned down, just as  
16 women, just as blacks, Hispanics are turned down at the door,  
17 exactly the same reasons.

18 Yes, certainly, I think we need to have the education  
19 going on because there certainly still is discrimination going  
20 on in a variety of ways. And it's going on --

21 MS. HEDBOR: People may not be sensitive to it. I  
22 mean, we are sensitive to race, religion, gender, this kind of  
23 thing. But a lot of people may not be sensitive to age  
24 discrimination.

25 MR. CHENEY: Could you explain this flexibility

1 business, what you mean specifically? Because that seems to be  
2 a need for people with children who need flexible hours. And I  
3 would think perhaps the older people might need less flexible  
4 hours.

5 MS. McINTOSH: Okay. When we're talking, well, AARP  
6 had commissioned Louis Harris to do a major, a nationwide  
7 study, thousands and thousands. And it was found that retirees  
8 in fact would like to work. And 80 percent wanted to work, but  
9 they wanted to work part-time. We've got a tremendous resource  
10 out here that we are not using, that we are discriminating  
11 against, because the employer is going along in that straight,  
12 40-hour work week.

13 And if you have part-time work or flexitime, job-  
14 sharing, and you're right. It isn't just a benefit for older  
15 workers. Paternity leave, maternity leave, it would help  
16 everyone in the workforce.

17 MR. CHENEY: I guess I'm asking, the person who 45 or  
18 older, looking for work, and we shifted to 50 years old or  
19 something, but I wouldn't think that that population would need  
20 job flexibility particularly. These are people who probably  
21 don't have dependents, that could work a 40-hour week.

22 MS. McINTOSH: Okay. Really, we're talking about two  
23 different populations. Because well over half the people  
24 retire before age 62. But longevity is such, and what we are  
25 projecting in terms of the advances in drugs and such, that

1 those people who are -- how to say this -- by the year 2000 we  
2 are going to be living probably into our 90s. I mean,  
3 longevity is increasing just exponentially right now. And  
4 that's a midline projection.

5 So for people to be retiring at 62, when I'm talking  
6 about flexibility, it's for this re-entry of older people into  
7 the workforce.

8 Obviously, when we're talking about someone who is 45  
9 to 50, we're still talking about someone who is in the prime of  
10 their life. And no, flexibility is not as much of an issue  
11 then. They want, and/or need, economically, 40 hours of work.  
12 So we've got different segments of age here that we really need  
13 to be talking about and addressing in terms of employment.

14 MR. WOOLFSON: Barbara, in terms of jobs opening up  
15 in the sense of where the crunch is coming is in the service  
16 industry. And where you see the jobs now, are when you go down  
17 Shelburne Road and you see hiring so on, it is McDonald's, and  
18 those kinds of jobs are the ones where the crunch is, where  
19 there are not enough teenagers. It's not necessarily the kind  
20 of jobs that the people 55 and over necessarily want. So how  
21 do we deal with that particular kind of issue?

22 MS. McINTOSH: I don't know if I'm getting -- Pat,  
23 feel free to chime in here.

24 When McDonald's first started coming out with their  
25 ads, you know, with Grandpa clicking his heels, his buddies are

1 going off fishing but he's going to work, I got real angry.  
2 Because I thought, this is exploitation. You know, I don't  
3 want you exploiting the older worker.

4           However, I've talked to a lot of people who feel that  
5 no, they really want to be able to go in, you know, they don't  
6 want to have to take any briefcase home at night, and they'll  
7 get their \$6.00 an hour, you know, they work four hours a  
8 couple times a week, and they're satisfied with that.

9           At this point in time, those are the kinds of job  
10 opportunities that have opened. However, there are a lot of  
11 other demand occupations, particularly in the health care  
12 field, particularly with relationship to computers, and  
13 technology relating to that, where we need to do retraining, et  
14 cetera, but would be very well suited for somebody sitting,  
15 entering data, programming, a number of other things that can  
16 and/or should be done on a short-term basis.

17           Long-term care. We really need people going into  
18 these industries.

19           At any rate, what I wanted to say was that I think  
20 with training and with this sensitivity, the education you are  
21 talking about, that many more of these kinds of jobs can and/or  
22 should be opened. But part of it comes back to that employer  
23 to think in terms of redesigning jobs, to think about hey, can  
24 this job be split in two, can we have job sharing here, can I  
25 make this two part-time jobs, so that I could bring in people

1 who want to work part time, and I don't have to be out there  
2 searching all over this labor market for this white male who is  
3 no longer going to exist by the year 2000. I mean, 85 percent  
4 of the new entrants into the labor force are going to be  
5 minorities and women and immigrants. We are not going to have  
6 a white-male-dominated labor force anymore.

7 MS. HEDBOR: Some employers had better take notice.

8 MS. McINTOSH: That's right. Anyway, we have to  
9 start looking. We've got this wonderful pool, this wonderful,  
10 talented resource of older workers that employers are not  
11 tapping into.

12 MS. HEDBOR: Any other questions?

13 [No response.]

14 MS. HEDBOR: Pat, I think it's your turn.

15 MS. ELMER: Is there anyone here tonight from the  
16 Vermont Human Rights Council?

17 MS. HEDBOR: No. Unfortunately not. Susan Sussman  
18 was supposed to come and then she wasn't able to make it and so  
19 I am very sorry that they won't be here. She is going to  
20 submit a written report and I will make sure she gets a report  
21 of our proceedings here because obviously for Vermont that is  
22 one of the places we really need to educate them, because, you  
23 know, they have been looking at a lot of other issues but I  
24 don't think they have looked at ageism much at all.

25 MS. ELMER: I prepared comments because I felt so

1 much needed to be said that if I did it off the top of my head  
2 I might leave out some important facts, but an advantage for  
3 you is that because they are written, feel free to interrupt.

4 I would like to start by introducing our panel:  
5 Emile Lagrandeur, Bill Kelly, Phyllis Atwood, Fern Leduc.

6 We would like to start by commending the Advisory  
7 Committee for convening this meeting to examine the changing  
8 nature of the workplace and the civil rights issues related to  
9 older workers' participation.

10 We are pleased to be able to share our experience and  
11 observations with you.

12 Vermont Associates for Training and Development is a  
13 private, nonprofit corporation.

14 Did you want to pass out those folders? They have  
15 some information, general information, in it about us. I have  
16 the feeling that -- have any of you ever heard of Vermont  
17 Associates?

18 I really cut down the portion of my program to tell  
19 you about who we are because the issues are so important.  
20 There is background there.

21 Basically we design and operate employment and  
22 training programs exclusively for the mature and older worker.  
23 We provide a statewide network of local training centers,  
24 eleven throughout the state.

25 In addition to our work here in Vermont, we have also

1       been recognized as a national resource for program development,  
2       training, research and technical assistance in the field of  
3       employment for the mature worker. We have provided services  
4       for organizations such as the U.S. Department of Labor, the  
5       Coalition of Northeast Governors, the New Jersey Department for  
6       the Aging, the National Council on the Aging, et cetera.

7               I have developed tonight's program as a primer. What  
8       I would like to look at is three basic areas.

9               First, we will try to develop a profile for the 55  
10       plus worker in Vermont. Then we will look at issues -- for  
11       example, why are older people working? Why are older  
12       Vermonters working?

13              Then we'll focus on outcomes. How many of these  
14       people are getting jobs and what types of jobs are they  
15       getting?

16              Third, we'll talk briefly about some of the problems  
17       we see and then we'll hear from our panel. They are the  
18       experts in the field.

19              All right. How many want to be working? To  
20       establish the scope of older worker employment in Vermont, I  
21       need to ask you to visualize as you look at any one of us  
22       sitting here 8,466 Vermonters with employment and training  
23       needs -- in other words, collectively we represent over 42,000  
24       workers 55 plus in the state of Vermont.

25              That is roughly 20 percent of Vermont's population is



1 55 plus, whereas they represent 14 percent of the labor force.

2 Compared with other states, that is quite high.

3 What do we do? What does Vermont Associates do? We  
4 can cover a lot of territory by summarizing our services into a  
5 few critical categories. We train people in job skills and in  
6 the basics. We develop and subsidize on the job training in  
7 both the public and private sectors. We also enroll people in  
8 training at courses at the vocational centers, community  
9 college, adult basic ed. We provide peer support and  
10 vocational counselling. We offer a work search seminar program  
11 to teach people how to look for jobs, how to fill out the  
12 applications so they don't get screened out.

13 We also offer a program called our Success System,  
14 which is a specialized assessment we have developed for older  
15 people to help them to come to some decisions about what they  
16 want to be doing at this very special time in their life.

17 Now what is the profile of the 55 plus worker in  
18 Vermont? Our data includes statistics on the people who enroll  
19 in our various programs and that is about 500 a year.

20 As you might imagine, each program serves a different  
21 segment of the population. For example, the people in our work  
22 search seminar, they have marketable skills. They have recent  
23 work experience and references and they are actively looking  
24 for jobs, whereas those in our on-the-job training programs,  
25 they are involved in longer term training to develop the skills

1 and acquire job references.

2 Thus, when we combine the demographic features of the  
3 people in all these programs we come up with a very interesting  
4 cross-section of Vermont workers.

5 To look first at the female - male distinction. We  
6 see about -- about a third of the people we see are men, two-  
7 thirds are women. That is consistent with national statistics  
8 for employment and training for the older people. We have seen  
9 that that trend's remained constant.

10 Again, feel free to ask questions, okay?

11 Regarding education, a third have less than high  
12 school, a third have high school or the equivalent and about a  
13 third have more than high school.

14 When we look at the age profile, two very distinct  
15 sub-populations emerge. You have already hit at that.

16 We call the first group the "young old," those 55 to  
17 62 and the second group, the "senior" group, those 63 plus.

18 It is clear why we have to divide into those two  
19 categories because their needs, their eligibility for Medicare,  
20 for pensions, social security, they tend to change. Hold this  
21 thought about these two groups. We are going to be referring to  
22 it again a little bit later.

23 In terms of age, a third of the people are from the  
24 older group; two-thirds that we serve are from the younger  
25 group.

1           Now labor force status: The majority of the people  
2 that we work with, a full 75 percent, have been unemployed 15  
3 weeks or longer or they were not previously in the labor force.  
4 Many of the people are in fact discouraged workers and by  
5 definition a discouraged worker is someone who indicates that  
6 they are not looking for work because they don't expect a  
7 continued job search to be successful.

8           Okay, what happens then when somebody is unemployed  
9 more than 15 weeks? Surely lots in terms of self-esteem and  
10 income, but technical when a person exhausts unemployment  
11 insurance benefits, he or she isn't even counted as unemployed  
12 any longer. Many older people fall through the cracks for this  
13 reason.

14           Additionally, the unemployment rates and the figures  
15 for length of unemployment understate the problems of older  
16 workers.

17           Let's take a minute then and look at why are older  
18 people working?

19           This is where it's important to remember those two  
20 distinct age cohorts, because the answers to questions such as  
21 why do older people work, what types of jobs are they looking  
22 for, how important are fringe benefits, what is an acceptable  
23 pay rate, they are often totally opposite depending on which  
24 age group we are talking about.

25           What does it mean? It means that it is a very

1 diverse group and we have to be very cautious about creating  
2 stereotypes, that the man in the McDonald's ad is not the  
3 typical older worker. Certainly many older people share those  
4 interests, those same needs but many don't.

5 In just the past six years we have served more than  
6 2500 older Vermonters. From this we have learned that a  
7 person's reasons for working are as diverse as are their  
8 personalities and lifestyles.

9 For example, many older people prefer part-time  
10 positions with less pressure and responsibility as Barbara  
11 mentioned, while many others want just the opposite, full-time  
12 mainstream pressure cooker positions, high pay and promotional  
13 opportunities. Thus, to avoid oversimplistic generalizations  
14 we can say that the reasons that older people work are to  
15 fulfill a range of needs. For example, immediate income and  
16 financial security, for self-respect, to be with people for a  
17 sense of belonging, for status and to be involved in doing  
18 something that's meaningful -- that's a pretty classic Maslow  
19 hierarchy.

20 Now what's our experience with employers? How are  
21 our efforts received? How receptive are employers to older  
22 workers?

23 Well, there is a lot of anecdotal information we can  
24 give you, but let's save that until later when we are talking  
25 informally and answering questions. For now we'll focus on

1 some statistics I think you would be interested in.

2 For example, how many of the people we have been  
3 talking about actually get jobs? Well, to answer this we have  
4 to look at the programs separately. The public sector programs  
5 are for those who don't have marketable skills. The national  
6 goal is for 20 percent positive placement rate. That means  
7 that they will get jobs as a result of the training. Our  
8 average is about 30 percent and the national average is 24  
9 percent. Of these people, about 40 percent get their jobs in  
10 the public and nonprofit sectors and 60 percent are hired in  
11 the private sector. The average pay rate for these positions  
12 is \$5.43.

13 Now in the private sector programs the statistics are  
14 different because the intent of the program is different. They  
15 are shorter. They are for those who have basic job skills,  
16 though many need to update or upgrade their skills and almost  
17 all need assistance with the job search.

18 There is no national positive placement goal for  
19 these programs. The national averages range from 35 percent to  
20 100 percent. Our average is about 67 percent.

21 The national statistics on pay rate is in the range  
22 of \$3.65 to \$5.68. The average nationally is \$4.55. Our  
23 average pay rate from those programs is \$6.64.

24 There is an important footnote we need to add here,  
25 however, and that is when we look at the wage figures more

1 closely we see that the majority of people get positions in the  
2 \$5 an hour range. A few people get jobs at \$10, \$15, \$18 an  
3 hour. Obviously it has an effect of raising the average to a,  
4 quote, "respectable" level but it is obscuring a trend which  
5 may indicate potential civil rights abuses.

6 What types of positions do people get?

7 Again we need to caution ourselves about  
8 oversimplifying because the range of positions is as diverse as  
9 the people themselves. Some of the positions, however, include  
10 office manager, well driller, machine maintenance, data  
11 processing, meat cutter, bricklayer, nurse, nurse aide,  
12 clerical, sales, woodworker, teacher, teacher aide, engineer,  
13 cost accountant and everything in between.

14 Now given these characteristics of the 55 plus  
15 worker, what are the problems we see? Where are the  
16 inequities?

17 Well, the primary question is does age discrimination  
18 exist in Vermont? It's a tough question because it is so  
19 difficult to prove.

20 From our vantage point it is a very real problem.

21 Because it is such an elusive issue, perhaps a more  
22 meaningful or precise question would be to focus on what types  
23 of discrimination exist and what forms does it take? At each  
24 step in the employment process we see different types of  
25 attitudes and behaviors.

1           For example, some people feel they have been screened  
2 out at the initial application stage. Though they have the  
3 required qualifications, their applications for job after job  
4 go unacknowledged, never once being called in for an interview.

5           Is it because of dates given on the application or is  
6 it because the resume had too much work history? How does one  
7 go about substantiating such a complaint so that the Attorney  
8 General's office could even consider pursuing it?

9           Others make it to the interview only to see the  
10 interviewer's eyes glaze over at the sight of a mature person.  
11 We're working with one very skilled woman right now who as a  
12 result of her experience is contemplating coloring her elegant  
13 snow-white hair. Her skills, dress and demeanor -- they are up  
14 to date yet she hasn't been successful in getting beyond first  
15 base. Are there really employers in the state who base a  
16 decision of whether to hire on a person's hair? It's  
17 irrational. Little wonder why the woman is reluctant to  
18 discuss her problem with any of the authorities.

19           A man had a similar experience in that he applied for  
20 a position and was abruptly told the position was filled, so he  
21 decided to have his son apply. Not only did the employer  
22 accept the application from the son, but an interview was set  
23 up. Now this case is unusual because he was able to come up  
24 with some type of proof, however he decided he needed a job  
25 right away and it was taking all of his effort because of the

1 other ageist issues just to pursue his own job search, so he  
2 wasn't interested in filing a complaint. His reasoning? He  
3 said why bother, it's a waste of time and energy -- there's  
4 such a backlog they'll never get to my case and besides I  
5 wouldn't work for that type of company anyway. Such a loss! A  
6 real Vermonter, however, very proud and independent and we need  
7 to recognize that. It's typical of the people we see.

8 Still other older people are flatly dismissed as  
9 overqualified. In these instances the employer relies on the  
10 one word excuse "overqualified" and fails to provide the  
11 applicant with any legitimate basis.

12 Others face discrimination practices in layoff and  
13 termination and in selection for promotion, work assignment,  
14 training and retraining.

15 Another trend that has recently become as real in  
16 Vermont as in other parts of the country is downsizing. This  
17 often goes hand-in-hand with the early retirement incentives,  
18 the buy-offs, the so-called "golden handshake."

19 Our staff seemed to have a way of calling a spade a  
20 spade. They came up with a new name for the golden handshake.  
21 Many of them from personal experience insist that is it more  
22 appropriately called the "golden boot."

23 In summary, I would like to make just one  
24 recommendation. We need to have you maintain your focus and  
25 pursue this issue. Please don't let it drop.



1           Ageism manifests itself in too many ways. Strategies  
2 have got to be developed to address each of the barriers that  
3 we have discussed.

4           Now the panel -- we have selected our panel from out  
5 of the thousands of older workers who contribute valuable,  
6 necessary talents in the workplace. Again, to underscore the  
7 diversity of our workforce, our panelists are each from  
8 different career orientations and they are working to fulfill  
9 different needs. Though their stories are different, there's  
10 common threads woven through them.

11           Let's start with Phyllis Atwood from Burlington.

12           MS. ATWOOD: My name is Phyllis Atwood. For the past  
13 35 months I have been employed in my second career as an  
14 Administrative Assistant in one of the five Vermont regional  
15 weatherization program offices. Prior to that for a period of  
16 35 years I was employed as a dietician and a member of the  
17 American Dietetic Association. In addition to a Bachelor of  
18 Science degree in Food Nutrition from the University of Vermont  
19 I completed a one year Dietetic Internship in a Boston  
20 hospital. I earned a Master of Public Health degree from  
21 Tulane University and I have also met the requirements of  
22 Dietetic Registration of obtaining 75 educational credits per  
23 five year period since 1969.

24           I have worked in a number of professional capacities  
25 in California, Massachusetts, Louisiana, Connecticut, New York

1 state and now Vermont.

2 In 1975 I returned to the Northeast to accept a  
3 management position at a local hospital. During that time I  
4 headed the clinical area of the Dietary Department and my staff  
5 increased from 5 to 20 employees. I developed the first  
6 written clinical policies, revised menus to meet the needs of  
7 five therapeutic dietary modifications and implemented a new  
8 organizational structure.

9 However in 1981 I made a decision that was to have a  
10 devastating effect on my career. I requested to step down from  
11 the management position to take a staff clinical dietician's  
12 slot. My motivation was to spend more time and direct patient  
13 care, a facet of my profession that I had missed over the past  
14 six years. This did not fill the managerial philosophy and it  
15 was sort of interpreted, well, either I should take another  
16 management position but certainly it must be a lack of  
17 competence to step down like that.

18 For five years, until April of '86, I tried to prove  
19 myself but was rewarded with the lowest status assignments.  
20 Remaining on staff proved to be the road to phase-out. A  
21 complete break with the organization because a necessity to my  
22 personal well-being.

23 There I was at the age of 57 without the benefit of  
24 glowing references to represent the last 10 years of my  
25 professional work. It took three months before I could garner

1 enough self-esteem to look for work. I did attempt to find a  
2 few dietetic jobs in Burlington with no success. Finally I  
3 registered with two employment agencies and substituted in a  
4 special education program in the Burlington high school. These  
5 jobs provided some sense of accomplishment and needed income  
6 but I was floundering and certainly lacking a sense of purpose.

7           During my daily review of the classified section of  
8 the "Free Press," I saw an ad from Vermont Associates seeking  
9 persons 55 and older to look into employment opportunities and  
10 training. Previously I had been pretty oblivious to age. The  
11 truth, however, was that I did qualify to take advantage of the  
12 program and more certainly I had nothing to lose.

13           I called for an appointment and that was one of my  
14 better decisions. At their office I was treated with  
15 hospitality and dignity. I was encouraged to attend a job-  
16 seeking skills workshop to be held in the next few weeks.  
17 There I was at last with a feeling of belonging.

18           The workshop was held for a group of people with a  
19 similar need, not only to work but to feel a sense of purpose.  
20 Job-seeking was treated by the leader with realism,  
21 intelligence and humor. Attendees participated by looking at  
22 their life experiences as well as job skills. We practiced  
23 being interviewed and were graduated with ten beautifully  
24 typed, individualized resumes ready to go.

25           I was sorry to see the workshop end because I enjoyed

1 the camaraderie and support. However I did have now renewed  
2 hope and direction.

3 After the workshop our group met weekly with a  
4 counselor to discuss our job-seeking experiences and to obtain  
5 new ideas. I had to take time out for surgery but the door to  
6 support was kept open to me.

7 In January of '87 I received a call from the job  
8 counselor recommending that I contact the Director of a local  
9 weatherization program at Champlain Valley Office of Economic  
10 Opportunity. I interviewed, trying to use some of my workshop-  
11 acquired skills for a job as an Administrative Assistant, and  
12 was hired that same day at half of the salary I had earned as  
13 an RD.

14 I still grieve for my loss of a profession and  
15 maintain my dietetics registration. However, my new career is  
16 rewarding and satisfying. I began by working 24 hours a week  
17 and have gradually been given increased hours.

18 I started to work full-time in March of 1988.

19 In contrast to my previous experience, I have a  
20 supervisor who constantly provides positive feedback. There  
21 are just three of us in the weatherization office and work  
22 activities are dealt with directly and personally. I consider  
23 myself a most fortunate person. I now belong to CB OEO and  
24 Community Action, a group of people who demonstrate their  
25 caring to persons in the community who need help.

1           Mid-life and late career change can be imposed by  
2 personal and institutional cases. The peer support and job-  
3 seeking skills I obtained were invaluable to me. I would hope  
4 that others could remain aware of these services and be offered  
5 a chance to be reborn.

6           MS. ELMER: Thank you. Emile.

7           MR. LAGRANDEUR: I thank you for the opportunity to  
8 share with you the experiences that I have had. My name is  
9 Emile Lagrandeur. By profession, chosen profession, I am an  
10 educator and have taught for 20 years in a classroom,  
11 administered Federal programs, did educational administration,  
12 and a year and a half ago, two years the position that I had  
13 was terminated and I found myself unemployed.

14           It happened to be that it was at the beginning of the  
15 school year, so that the positions in education are rather  
16 scarce to apply for at that particular time of the year.  
17 However, I wasn't really daunted at that point. I felt that I  
18 had all sorts of qualifications. I had a bachelor's degree. I  
19 had years of experience. I had 60 graduate hours or credits  
20 beyond the bachelor's degree. I was bilingual, bicultural. I  
21 figured that finding employment should be relatively easy. The  
22 skills that I had learned in education obviously were  
23 transferable to private industry as well.

24           I was in for a rather sad awakening. From November  
25 of '87 until March of '89 I remained unemployed. I sent out

1 numerous resumes. I organized a mailing campaign, had my  
2 resumes -- developed my resumes, had cover letters and the most  
3 frequent response I got to the resumes I sent out was that I  
4 was overqualified for the position. A few of them said that I  
5 was not qualified for the position and in some instances I  
6 received no replies and when I followed up with a phone call  
7 they could not find my application, they could not find my  
8 resume. When I suggested that I would send them another copy I  
9 was informed that the closing date for the position had been  
10 already reached and therefore it would not be advantageous for  
11 me to do so.

12 In general, I feel that most of the experiences that  
13 I have had are really based in some form on age discrimination,  
14 but again, how do you prove it? How do you take the fact that  
15 the individual company, for example, says to you that you are  
16 "overqualified" and how do you take that and go to an attorney  
17 and say, hey, look, you know I am as capable as anybody else to  
18 do that position, and yet it just doesn't go. There's no proof  
19 beyond the point of your word against the employer's word for  
20 the most part.

21 In the period of time that I mentioned from November  
22 '87 to March of '89 I was fortunate in receiving four  
23 interviews, and I probably may have sent out 50, 60 or so  
24 applications or even more.

25 In some of the follow-up investigations that I was

1 able to do I discovered in most instances that the job had been  
2 filled by a considerably younger person and in many cases from  
3 out of state, which brings in something else, and I found this  
4 to be true basically not only in private industry but also in  
5 state and local government agencies, and so I think we  
6 sometimes have to keep in mind that even our own state  
7 government may not be as open to age as they want us to  
8 believe.

9 After 15 months of being thoroughly disillusioned and  
10 discouraged and having experienced several major health  
11 problems, I ended up sending out one more application, one more  
12 resume, more mechanically and considerably with less enthusiasm  
13 and this one I did receive a rather positive response to, and  
14 that was the one that I sent to Vermont Associates.

15 I was interviewed I believe on two occasions, if I am  
16 not mistaken -- couldn't convince Pat the first time around --

17 [Laughter.]

18 MR. LAGRANDEUR: -- and was hired and have been  
19 working with Vermont Associates since March of 1989.

20 That pretty well covers it.

21 MS. ELMER: Fern?

22 MS. LEDUC: My name is Fern Leduc and I was employed  
23 for 14 years as a billing clerk in a local pharmacy and then my  
24 position was phased out when they became computerized.

25 The pharmacist automatically keys in the billing as

1 he fills the prescription so that left me to either go back to  
2 clerking or look for something else.

3 Then I was hired in a sports distribution company as  
4 a receptionist and there I learned new skills, namely the  
5 switchboard operation, the telex and word processing and I was  
6 employed four years for this organization.

7 In my current position at Vermont Associates I am in  
8 charge of payroll for approximately 200 employees. My employer  
9 has provided training in data processing and I am responsible  
10 for computerized office operations and my story proves that an  
11 older person who is interested can learn new skills and  
12 continue to be productive in the work place.

13 I expect to continue working as long as I am able --  
14 I hope for a long time.

15 My recommendation is that lifelong skills training  
16 should be available to senior citizens as well as to the  
17 younger population, in the classroom as well as on the job.

18 MS. ELMER: Thank you.

19 Bill?

20 MR. KELLY: I want to thank you for letting me have  
21 this opportunity to speak in front of you. My name is William  
22 Kelly and I am talking about a subject that I very dear to my  
23 heart -- me --

24 [Laughter.]

25 MR. KELLY: -- and Pat told me, since she knew I was



1 going to be talking about myself, is to keep it down within two  
2 or three minutes.

3 My name is William Kelly. I am a widower, a resident  
4 of Vermont, college graduate and age 60 years old -- or young I  
5 should say, presently employed in a managerial position in a  
6 private organization with 11 offices in the state.

7 I supervise five of those offices located in the  
8 southern portion of the state. Needless to say, that's a great  
9 organization, Vermont Associates for Training and Development.

10 Previously I taught and coached in the public schools  
11 in grades 3 through 12 in Massachusetts and New Jersey. I  
12 became interested and eventually was employed by the Young  
13 Men's Christian Association of the United States. I stayed  
14 with this very worthwhile and dedication for 26 years, serving  
15 in Connecticut, New York, and Massachusetts. While employed I  
16 held many positions from Physical Education Director to Chief  
17 Executive Officer.

18 In these capacities I developed and I learned  
19 numerous skills such as program development, short and long  
20 range, for all ages and sexes; public relations, written and  
21 verbal; short and long-range building and property management  
22 and development; dealing and developing and working with  
23 committees, boards of directors, political and community  
24 leaders; personnel policy and supervision; organizing and  
25 managing operation budgets; and fundraising and many more.

1 I am not telling you this just to blow my horn but to  
2 let you know there are many of us out there with additional and  
3 greater skills which if we were seeked-out and cultivated could  
4 be a tremendous force and a help to our nation's employment and  
5 needs in future.

6 After 26 years with the YMCA I developed an itch in  
7 seeking new fields of employment. They call it "burn-out."  
8 However, I felt because of no family responsibilities and the  
9 skills that I had learned and developed over the years I would  
10 be the answer to any future employer that was fortunate enough  
11 to hire my services, so I moved to Vermont for a mid-career  
12 change. I certainly was in for a great surprise.

13 I quickly found out I wasn't such a hot item and  
14 considered old at then-56. I think this is what a lot of us  
15 have been talking about tonight is these things that we can't  
16 really prove. I became very intimidated by younger personnel  
17 managers. I was required to take employment tests such as  
18 letter-writing, spelling, mathematics, et cetera, fill out  
19 applications which easily pinpointed my age.

20 Very rapidly I became bitter, ashamed of my age, lost  
21 my self-respect, developed doubts of my ability and finally  
22 because I was intimidated in many sly ways that it would be  
23 very difficult for me to learn new concepts of business  
24 procedures. In other words, you can't teach an old dog new  
25 tricks.

1           With my savings fast depleting I was at the point of  
2 taking anything, but thank God I hung in there and was employed  
3 by my present employer.

4           In this new association I feel that I have brought  
5 some of my past skills to my employer, and yes, believe it or  
6 not, I have been able to learn new ones.

7           I am fortunate that when I do decide to retire I have  
8 an excellent and a secure financial plan waiting, but like many  
9 others of my peers I will probably return in some capacity to  
10 the employment field. You know, just how much golf can you  
11 play or travel? Any person needs to keep their mind and body  
12 active.

13           With all things financially on the rise, we can all  
14 use more income. We want to be needed, not patronized, be  
15 challenged and learn new skills.

16           So just to end, we might slow down a little in our  
17 step, our eyesight might go, our hearing might weaken but our  
18 minds are still very active and if it could be tapped, all  
19 these years of experience, and still be trained in learning new  
20 ventures, what a wonderful source we'd have for this nation in  
21 hiring older workers.

22           One of the things I would like to say in closing, and  
23 it has been brought out by this gentleman up here, that maybe  
24 we ought to take a look at applications. Why don't you let  
25 some older workers design an application and send it in to you.

1 I think this would help you a great deal.

2 Thank you again for your time.

3 MS. HEDBOR: Do any of my panel members here have  
4 questions?

5 MR. CHENEY: Do you charge a fee for your services?

6 MS. ELMER: No. It's all Federal and state funding.  
7 The Federal funding is called the Senior Community Service  
8 Employment Program and the state funding is from the Department  
9 of Employment and Training. It's the Job Training Partnership  
10 Act.

11 MS. HEDBOR: If we don't have any questions here, I  
12 would like to ask Mr. Hill to come up and speak to us, and,  
13 Louie, would you be willing to tell us a little bit about your  
14 experiences, which I just happen to know of personally?

15 These are two other people who have been involved and  
16 working. I really appreciate all of you sharing your  
17 experiences with us.

18 Willie, if you could come up front here -- I think a  
19 number of people were struck by the op-ed piece you wrote in  
20 the press, and it seemed to strike a responent chord.

21 MR. HILL: I've actually had seven phone calls in  
22 about 2 days from people who said that it's right on the money,  
23 which surprised me.

24 Just to put it formally in the record, I brought a  
25 copy of it. I don't want to read this. I'd rather give you

1 some of my reflections.

2 MS. HEDBOR: I just wanted to ask you one thing: Any  
3 of those phone calls offering jobs?

4 MR. HILL: One of them was; in fact, the first one, 9  
5 o'clock that morning, and it was offering me a job doing  
6 something like financial services. I made an appointment and I  
7 went there, and he didn't show up today, but I know nothing  
8 about financial services, and I think it's sitting on the phone  
9 trying to convince other people to let you use their money for  
10 something, which I said right in article that I have no desire  
11 to do something like that. So, it's strange. There's strange  
12 people out there.

13 As you get older, you become aware of more obstacles  
14 to doing things, and one of them is my name. I always use my  
15 middle initial, because there are other Fred Hills around here.  
16 Lately, I have started to use my full name, Frederick, because  
17 there is another Fred Hill. He has been around here quite a  
18 while here, and we keep getting confused, but I made an  
19 appointment with someone, and when I went in, he had had a run-  
20 in with this other Fred Hill this summer and he thought I was  
21 him and didn't want to talk to me, and I had to argue him out  
22 of it. So, I am using "Frederick" a lot now. You become aware  
23 of more things you have to be careful of here.

24 This article that I wrote was really motivated by two  
25 other letters that I read in the paper. One of them was from a

1 veteran, who complained about the same thing, of being  
2 overqualified, and the other was from a bigot down around  
3 Bristol somewhere -- there seems to be a nest of them around  
4 Bristol, and I'm sure they're all fine people if you knew them,  
5 but I don't know them, and I think they're bigots -- who said  
6 that the solution to homelessness is to go out and get a job --  
7 read the classifieds and get a job, and that got my back up,  
8 and that's why I wrote the letter, because it just isn't that  
9 simple.

10 My reflections on this whole process are, first of  
11 all, that most of these employers do seem to be people of good  
12 will.

13 Eloise, you asked do the employers seem to be  
14 deliberately discriminating or not? I don't think they are. I  
15 think they just aren't aware of it and have even thought it,  
16 but moreover, I was once someone who was in a hiring position,  
17 and I was working for an ad agency in Boston, and we were  
18 hiring someone to replace me as a photographer, and so, I think  
19 that what went on there is probably fairly typical.

20 We had about 30 applications, which now it doesn't  
21 seem like many, but then it struck them as a flood. They were  
22 in a panic. How do you deal with all of these applications?  
23 Weed them out somehow.

24 So, my boss and I got together and weeded them out.  
25 We weeded out the sloppy applications, the illiterate letters,

1 the kids who obviously didn't have the experience to do a job  
2 like that, and finally, a very informal process. I'd say I  
3 don't like this one, and she'd say okay, throw it out, and  
4 there were two or three or four who just someone stood out as  
5 good prospects, and some of those overlapped with what she  
6 thought were good prospects, and so, those were the ones who  
7 got called in.

8           It's a very informal process. It's a fairly  
9 efficient way of handling all of the applications, no thought  
10 given to whether it's fair to the applicants. It's an  
11 efficient way of running your business. You don't want to call  
12 all of those people in and interview them for an hour or two.

13           So, that's probably what goes on in most of these  
14 places. Someone low-level -- not the big boss, maybe even  
15 secretaries, I don't know -- sort of weed through them and pick  
16 out the -- you know, call the ones that are more likely, and  
17 probably, I am culled out by a lot of secretaries who really  
18 have no final say in the matter. That's how I feel, anyway.

19           If there were a more methodical way of culling the  
20 applications, one that is deliberately more fair to people  
21 rather than only efficient for the employer's own business,  
22 that would be good, and I think the employers would go along  
23 with it. I think they just know that the climate of things is  
24 not to do this yet, but it can be if the consciousness is  
25 raised.

1           By the way, I'm not really in favor of legislation.  
2           I think there's too much of it, and I think that social change  
3           is too much done here by forcing laws on people until they  
4           finally change and then finally begin thinking in the right  
5           terms. I would rather, if possible, just raise everybody's  
6           consciousness and rely on their good will, and I think -- well,  
7           it can probably be done. I'm not positive of that, but I think  
8           it could be.

9           MS. HEDBOR: Louis, your experience as far as --

10          MR. KRIEG: Well, I think it's a social change that  
11          evolves over time.

12          Forty years ago, the man with 30 years experience was  
13          highly respected in the world, and that experience was valued.  
14          We went through the baby boom and the destruction of values, in  
15          general.

16          This country has gone through a situation where we no  
17          longer can produce quality, if anybody wanted to. I don't  
18          think we're capable of it, in most cases, anymore, and now, as  
19          the baby boom generation gets older, in another 10 or 15 years,  
20          they'll all be in 50s and up, and I think you'll see the swing  
21          back the other way again, that it's going to be the young  
22          people that are going to find it difficult, because they're in  
23          the minority again. We happen to be in the minority right now.

24          I find that if I go in to apply for a job, the first  
25          thing I run into is usually a female personnel manager in her



1 mid-20s that goes by a textbook that says that my tie is  
2 supposed to be so wide and my lapels are supposed to be so wide  
3 on my suit and my hair is supposed to be in a certain style.  
4 If I get past her -- she has absolutely no knowledge, anything,  
5 of my technical qualifications on the job, because if I start  
6 anything about technical things and my qualifications, she  
7 immediately changes the subject.

8 Now, I may sound chauvinistic, but this is my  
9 experience. The majority of the personnel managers that I run  
10 into are females in their mid-20s -- mid- to late-20s, maybe.

11 If I get past her, I come into an engineering or  
12 drafting supervisor, usually in their lower-30s. He looks at  
13 my resume, and says this guy was doing what I'm supposed to be  
14 doing now before I was a twinkle in my dad's eye. He's going  
15 to pick up any mistake I make and possibly take my job. I  
16 don't want him.

17 So, he says -- well, he says, you're way over-  
18 qualified. We're only paying \$6.50 an hour, and you're worth  
19 \$16 or \$18 dollars an hour. I says yes, but I'm willing to  
20 work for \$6 an hour. Why don't you take advantage of my  
21 experience for that? Well, but you're so over-qualified for  
22 the job. You'd leave in 6 months if somebody offered you \$20  
23 an hour. I said wouldn't you leave in 6 months if somebody  
24 offered you twice your pay? I said what's going to happen if  
25 you hire somebody that's 22 years old for \$6.50 an hour, and 6

1 months later, somebody offers him \$10 an hour? He's going to  
2 leave.

3 There's no security for employers or employees in the  
4 market today. None whatsoever. You can be CEO of a company  
5 and somebody buys out that company, and you're out of a job the  
6 next day, or you can be digging ditches for \$4.50 an hour and  
7 the company goes bankrupt, and you're out of a job the next  
8 day.

9 There is no security from one end of the market to  
10 the other today, but for this country to lose the value of the  
11 training and skills that people have acquired -- I have been in  
12 my profession for 40 years. It's got to be of value to  
13 somebody. Unfortunately, I can't afford the fare back to  
14 Japan. If I got to Japan again, I could probably find a job.  
15 They appreciate skills and experience there, but I don't know  
16 that there is a solution to the problem that's immediate.

17 You can pass all the laws you want. There's  
18 loopholes in them. There's all kinds of laws now against  
19 discrimination. I believe there are laws against age  
20 discrimination, for that matter, and as I we said here tonight,  
21 how do you prove it?

22 I went through a period of time where I sent out,  
23 let's say, 100 resumes. Maybe in 10 percent of those I did not  
24 have contacts. I've lived in this area for 30 years. I know  
25 most of the businesses that can use my skills, except for a few

1 of the new ones that have moved in recently.

2 With the exception of maybe 10 percent of those  
3 companies, I knew somebody in the company that, after I didn't  
4 get the job, I could contact them and say who got the job? In  
5 no case did anyone within -- over half my age get the job.

6 Now, it can't be a coincidence. I worked in job-  
7 shopping, where I worked on a contract basis, where I'm hired  
8 from a resume but paid by a middle-man. The person that I am  
9 doing the work for pays the middle-man; the middle-man pays me.  
10 So, they're actually paying 40-some percent more than what I am  
11 getting to that middle-man.

12 While there were jobs available in that field in this  
13 area -- in my field in this area -- I could get those jobs,  
14 quickly. I'd be snapped up very quickly, but unfortunately,  
15 computers have put me out of business in my field. There are  
16 very few companies in this area that are not doing drafting by  
17 computer. Again, no respect for quality anymore. I think of  
18 all the times I got my butt chewed for sloppy drawings, and you  
19 see what some of these plotters turn out today, I shudder at  
20 them.

21 Another thing that's happening today -- and some of  
22 the major companies in this area, and I can verify this if I  
23 can get some people to be willing to come forward and write  
24 things down and commit their names -- companies hire young  
25 people, 2 years tech school -- Vermont Tech or equivalent --

1 that know how to run a computer. They've got 2 years of  
2 knowledge of running a computer, and maybe they had 2 years of  
3 drafting in high school. They hire them because they can run  
4 the computer. They will not hire me to teach me to run the  
5 computer.

6 Now, they get in, and they've got a drafting room  
7 full of 22-year-olds, with some drafting experience and  
8 computer experience, who spend all day redesigning the wheel,  
9 because they have no design experience. They design equipment  
10 that, if it can be built, which, in many cases, it can't,  
11 cannot function the way it was supposed to function.

12 Major companies in this area are suffering from that  
13 problem, but they still will not hire me and give me a 2-week  
14 course or 3-week course to run that computer.

15 MS. HEDBOR: So, in a lot of cases, we're looking at  
16 retraining -- a very minor amount of retraining.

17 MR. KRIEG: That isn't just the answer, either,  
18 because I took a course that cost Vermont Training Partnership  
19 Act \$525 at Champlain College. It was a complete waste of  
20 time. Nobody knows that, except those of us that took the  
21 course, but we put it on the resume that I took a course in  
22 computer drafting. I took a course through Essex Junction  
23 Trade School, learning computer drafting, which, again, was  
24 useless, but nobody knows that.

25 MS. HEDBOR: Why were these courses useless?

1           MR. KRIEG: Because the technology changes so fast  
2 that it was obsolete before we finished.

3           MS. HEDBOR: In other words, you actually have to be  
4 on the job using the equipment daily.

5           MR. KRIEG: Exactly. There are so many different  
6 hardwares and so many different softwares in the field that,  
7 when you see an ad in the paper, "Wanted: CAD Draftsman",  
8 which is computer-aided drafting draftsman, this is like the  
9 United Nations putting an ad in "Wanted: Translator".

10          MS. HEDBOR: Okay.

11          MR. KRIEG: From what to what? It's meaningless.  
12 You've got to know what the software is; you've got to know  
13 what the hardware is.

14          MS. HEDBOR: Would tax incentives to employers to  
15 hire older people and provide retraining help?

16          MR. KRIEG: It's a possibility. I don't know.  
17 Vermont Associates, at least, 5 or 6 years ago, when I went  
18 through their program, to no avail, unfortunately, offers to  
19 pay half your salary for 6 months or so to on-the-job training  
20 and such, and it didn't seem to have any effect, although they  
21 weren't looking in my field for jobs for me.

22                 It's a possibility. It's worth looking into.  
23 Inquire of the employers and see if they're interested, but I  
24 don't see it.

25          MS. HEDBOR: Yes.

1 MS. ELMER: You know, something else that it just  
2 feels would help -- I think most older people think that  
3 there's simply no place to go and no one is going to listen and  
4 there's not going to be action taken. They need a job. They  
5 need the income. They don't want to waste all of their  
6 energies into something that's going to come to no avail.

7 When you call the Attorney General's office, there is  
8 a part-time person there 2 days a week. It's just not  
9 sufficient. You know, if we could get through this Committee,  
10 through the Vermont Human Rights Committee, to have somebody to  
11 continue to look at age discrimination for a bit.

12 We find that when people come into our workshops,  
13 they need to ventilate. You know, they need to get out a lot  
14 of this stuff, and then they could go on and be successful in  
15 their job search, and if they could just leave that baggage  
16 with somebody who will, obviously, try to pursue it and, as I  
17 heard earlier, look at making changes in the laws. We just  
18 need somebody out there who is going to be our partner.

19 We're doing older-worker employment and training.  
20 The Department of Employment and Training is very supportive of  
21 older people. We're working more with the Department of  
22 Vocational Education, to have them redesign programs for older  
23 people. There's a lot of wonderful things happening.

24 MS. HEDBOR: Okay. Well, I think we better move on  
25 and get the next panel up here, but I really appreciate

1 everybody's comments, and anyone who wants to submit written  
2 comments -- and they don't have to be formal, just in any form  
3 that seems appropriate to you -- please do so, ideas that come  
4 up later, anything.

5 Should we take a little break before we have the  
6 other panel, or are we running too late?

7 MR. CHENEY: We're 45 minutes late already.

8 MS. HEDBOR: Okay. The second panel is a government  
9 and quasi-government panel, and we have Phillipa Maloney,  
10 Barbara Leitenberg, Robert Appel -- Susan Sussman did not make  
11 it -- and Job Barbour.

12 Phillipa, why don't you start? You're with the  
13 Vermont Department of Employment and Training.

14 MS. MALONEY: That is correct.

15 I want to thank you for being able to be here tonight  
16 and participate in this. I feel as though I am the one coming  
17 along with the money pot.

18 We, fortunately, are the ones that do receive the  
19 JTPA monies for the State of Vermont, and this year, under the  
20 Title 2(a) monies, 3 percent of that is designated to help  
21 older workers, which meant that we were able to fund Vermont  
22 Associates for approximately -- let me think here -- it's  
23 \$133,737 plus some carryover -- about \$150,000 we were able to  
24 give to that particular program.

25 Rather than recreate the wheel, we have found it much

1 more advantageous to have an association like the Vermont  
2 Associates do the kind of employment and training that is  
3 appropriate for older workers.

4 I work very closely with the Human Rights Commission.  
5 I get a lot of calls from people who feel they have been  
6 discriminated against in one form or another; not many calls  
7 because of age discrimination. I'm not sure exactly why.

8 I think part of that is the fact that the State of  
9 Vermont is so small that a lot of the people feel if I cause a  
10 problem, it precludes my employment somewhere else. I think  
11 you all have run into that if you've tried to work here in the  
12 State of Vermont.

13 I'm a native Vermonter. I know a lot of the people.  
14 I know whose cousin is related to whom and who works in here,  
15 and oh, yes, that is my uncle's cousin's cousin, who came  
16 around, yes, and that's a lot of the way that people get jobs.  
17 It's because they happen to know, and they get referred in that  
18 manner.

19 I think one of the things we really need to look  
20 towards, since we can't legislative morality, is asking that  
21 private industry buy into and become responsible for a portion  
22 of -- a monied portion of the retraining -- that is, if it's  
23 necessary for older workers. If private industry makes that  
24 commitment, it's a personal commitment, and they're going to  
25 try and get their money's worth, and I think that's one of the



1 things we need to really explore with them and get them to see  
2 the advantages in hiring that older worker.

3 Too many times, what they look at is the fact -- oh,  
4 you've worked 22 years for one place. They're too narrow in  
5 focus. What they don't take into consideration is the fact  
6 that that individual not only has grown with that particular  
7 company but they've grown in their community, through volunteer  
8 work and other things that they've done. They have a great  
9 deal to add and to contribute to any organization that they  
10 join.

11 They talk about the fact that older workers, quite  
12 often, are very opinionated and prejudiced. Being an older  
13 worker myself, I have to say that those that I deal with that  
14 are the most opinionated are the younger ones, because they  
15 immediately look at an individual and say, oh, well, they're  
16 going to feel as though they know more than I do, and they're  
17 not going to have the tolerance, and it usually works the other  
18 way around, because that older person has lived a little bit.  
19 They have a little more tolerance and understanding, especially  
20 the understanding that is needed to get along with the rest of  
21 their coworkers.

22 The Human Rights Commission has been very helpful in  
23 dealing with state agencies if anyone feels that they have been  
24 discriminated against because of an age issue. That is one of  
25 the things that we have found that they do focus in on.

1           The Attorney General's office I refer to quite  
2 frequently. In turn, I find they refer to me, as does labor  
3 and industry and the Governor's hotline.

4           One of the biggest things that we find as a drawback  
5 is definitely the Social Security cap, insurances, and  
6 pensions. So many older workers find that they are precluded  
7 from being hired because of an existing insurance or pension  
8 plan that precludes them from being considered.

9           The Social Security cap means that they must work  
10 within specific guidelines. When they've earned a certain  
11 amount of money, the employer has to be cautious not to have  
12 them work over that. They can't go beyond that.

13           We deal with flex-time for younger people, job-  
14 sharing, and for some reason, that is not being accepted for  
15 the older worker. I don't know why. I don't have the answers.

16           One of the things I do and that the Department does -  
17 - we do go into the various organizations that request and give  
18 training on job applications, what should and should not be on  
19 there. We specifically address any discriminatory aspect of a  
20 job application that would fall under anything that is  
21 established under the Federal EEOC guidelines, which deals with  
22 age, as well as race, handicap, etc.

23           We have business organizations that meet on a  
24 regional basis that are advisory groups for the Department of  
25 Employment and Training, and they are very conscious of the

1 fact that they need to be very sensitive to a great many of the  
2 areas that can be called discriminatory, and that is one of the  
3 issues that we try and deal with.

4 We also are funding part of the Adult Education  
5 Program. We have the VCOT program, which is established  
6 through the Department of Personnel for people that have become  
7 unemployed and are disadvantaged, and so, they are given a  
8 specific training program to get them trained for clerical  
9 work, for instance, computerization, data work, things along  
10 this line.

11 I don't have an answer. I don't think anybody does  
12 at this particular point, but I could understand and relate to  
13 everything that has been said here this evening, because it  
14 isn't a conscious thing, I do not believe, on the part of most  
15 of the people and the employers in the State of Vermont.  
16 Unfortunately, it's there, but by the year 2000, they're going  
17 to find they have got to make those changes or they are not  
18 going to have a workforce.

19 MS. HEDBOR: If we could just get them to change a  
20 little faster.

21 Anybody have any questions?

22 MR. CHENEY: Do you have any specific programs for  
23 older workers?

24 MS. MALONEY: We have the Adult Education, the VCOT  
25 program. We have, in our own offices, programs where we have

1 people for resumes, going through interviews, etc., all of  
2 these things that support, actually, anything that is done by  
3 Vermont Associates, but it really is more advantageous for us  
4 to have our monies go where it's concentrated specifically  
5 towards that particular group.

6 Vermont Associates works with both private and  
7 public. Office on Aging works primarily, or had, in the past,  
8 more with the public agencies, and therefore, we have worked  
9 with them to some extent, but not as extensively.

10 MS. HEDBOR: Barbara?

11 MS. LEITENBERG: I've just been changing my  
12 presentation as I sit here.

13 It notes on the piece of paper that I'm the Assistant  
14 Director of the Vermont Office on Aging. The Vermont Office on  
15 Aging no longer exists. It is now a part of a new State  
16 department, a much bigger one, called the Vermont Department of  
17 Rehabilitation and Aging, where services for elderly people  
18 have been put together with services for disabled people and  
19 other services that affect elderly people, in the interest of  
20 better coordination, and so, I am now in the Department that  
21 includes the Division of Vocational Rehabilitation, where  
22 there's lots of money put into programs to help disabled people  
23 get jobs with special training and all sorts of special  
24 supports.

25 What I thought I was going to say here -- I'll do

1 some of that -- is to just give you some information on  
2 description of the characteristics of elderly people in this  
3 State, how many there are, what we have some information about,  
4 attitudes towards work, and their general finances, but before  
5 I do that, as I was sitting here listening to the testimony, it  
6 occurred to me that I'm an employer.

7 I worked for the old Office on Aging for 10 years,  
8 and I have hired many of those people, and so, I started to  
9 think, you know, what did I do? I just never really thought  
10 about that, and it turns out that I've hired or was very  
11 instrumental in the hiring of 8 of the current 20 people, and  
12 you know, I know how old they are.

13 I hired -- this how the mix turned out over the years  
14 -- 32 years old, 35, 48, 68, 37, 35, 43, and the last person  
15 that I arranged the hiring for was business manager job.  
16 That's a top-level position in the Department of Rehabilitation  
17 and Aging, and we interviewed -- I think it was about 15 people  
18 -- in-State employees, several from out of State, several older  
19 people with 20 and 30 years of experience in financial  
20 management, and what happened -- you know, this is not a simple  
21 issue of evil employers discriminating against unsuspecting  
22 older people. There's too many things going on here.

23 What interested me, now that I think about it, about  
24 that last hiring, the business manager, there were all these  
25 people with these marvelous work records. You know, I would

1 loved somebody like that. Not one of them made the effort to  
2 find out about what the job really was. Each one of them came  
3 in with all of their stories about their 20 years, and I need  
4 somebody who could hit the deck running. You know, we're  
5 terribly understaffed, and I need somebody to be able to come  
6 in there and take charge of a staff and get the budget written  
7 and do all these very complicated fiscal kinds of things.

8 Nobody took the time -- very easy -- to find out what  
9 the nature of the job was. All they would have had to do was  
10 ask anybody -- me or anybody from the State Government. Nobody  
11 had ideas about my particular job. I can't use somebody like  
12 that.

13 I need somebody who is interested in the job I am  
14 offering, not only in explaining what they have done for all of  
15 those years, and so, we wound up hiring somebody who is 35, who  
16 did that, who knew, who made it his business to find out what  
17 the nature of the job was and to show that he could come in  
18 there, plus he was very well-experienced, also, but he didn't  
19 have 20 years. He had about 5 or so, but he did homework, and  
20 as an employer, I find that very significant.

21 I was making averages here. In the Office on Aging,  
22 part of the Department, where there are about 20 people, the  
23 average age is 46. There's nobody under 35 or so.

24 We don't receive in our office any complaints, in the  
25 10 years I have been there. It could very well be that we're

1 too far away from working directly with older people. You  
2 know, we're administrators and give out the money to people  
3 like John in the area agencies on aging, which have more direct  
4 contact with older people themselves, but in all of those  
5 years, we don't get stories about discrimination, and probably  
6 for all the reasons that you've heard. It's a complicated  
7 issue. For all sorts of reasons, people cannot prove it, do  
8 not want to bring it up. It gets very complicated.

9 I'd like to go into, for a couple of minutes -- and  
10 the material that I have brought you -- I think it has value in  
11 this issue, some documentation.

12 Everybody knows that the population of America is  
13 graying. That's a cliché by now. Vermont isn't immune from  
14 that. The number of older Vermonters is increasing any kind of  
15 way you count it. The number of Vermonters age 60 and older  
16 has increased, for instance, from 55,000 in 1950 to almost  
17 85,000 in 1985, an increase of 55 percent in 35 years, and  
18 that's the same sort of thing that's happening all over the  
19 country.

20 Not only are the specific numbers going up, the  
21 proportion of older Vermonters in relation to the rest of the  
22 population is increasing. That's also a national phenomenon.  
23 In 1950, for example, 10.5 percent of Vermonters were age 65  
24 and older. By 1980, that figure had risen to 11.4 percent. By  
25 the year 2000, estimates are that people over 65 will

1 constitute 12.3 percent of Vermont's population. By the year  
2 2040, it will be about 21 percent. This is a very quickly  
3 burgeoning phenomenon.

4 Another piece of the growing numbers is that the  
5 fastest-growing group within this aging group are the people  
6 85-plus. Those are where the numbers are really exploding.  
7 You might have notice, just recently -- I saw it in the Free  
8 Press -- their very current population estimates, which are  
9 saying that we know that the numbers of people 85-plus are the  
10 fastest-growing population group in the country, but the latest  
11 figures are that it's growing even faster than we thought, and  
12 from what I have here, by the year 2000, it is estimated that  
13 of people over 60, 38 percent of them will be 85 years old and  
14 older.

15 So, the times are changing. The workforce will be  
16 forced to change, whether employers like it or not. They're  
17 going to be hiring older people, because there's not going to  
18 be young ones around. So, it's going to change.

19 Another thing I'd like to emphasize that in all of  
20 these categories, women vastly outnumber men. When we talk  
21 about older people, we're really talking about women, and so,  
22 you know, the sex discrimination gets totally mixed in here  
23 when you talk about discrimination in terms of aging.

24 Another point I'd like to bring up, besides the one  
25 about the growth, is finances. There has been lots of public



1 talk in the popular media about the affluence of elderly  
2 people, and our data shows that older Vermonters are not, as a  
3 group, living in luxury at all.

4 The average monthly income for somebody 60-plus in  
5 Vermont is about \$1,100, and that doesn't sound terribly much,  
6 but it doesn't sound too bad, either, until you look further.  
7 This figure is for households. When you talk about single  
8 people, the figure is much lower. Of people without spouses --  
9 about 26,000 people -- one-half of them have annual incomes of  
10 \$7,000 or less. You're getting down there.

11 I bring up the financial figures to indicate that  
12 people really do need jobs or some kind of extra income in some  
13 kind of way. They're not living on very much money.

14 Another statistic that I always like to remember,  
15 again relates to the plight of older women. In Vermont, 30  
16 percent of the women who are 75 years old or older have incomes  
17 below the poverty line. That's a huge figure.

18 I have some information here about attitudes towards  
19 work, and where I got this from is from a survey that the  
20 Office on Aging put together 2 years ago. I can leave it with  
21 you, if you'd like. It has all of this finance information and  
22 the demographic -- the population curves, as well as -- it's  
23 not very full. It wasn't done as a survey particularly about  
24 employment, but there is some kind of stuff that's of interest.

25 For instance, a question was asked, are you employed

1 now? Are you not employed? Would you like employment but you  
2 are not employed now?

3 According this survey, 7.5 percent of people 60 years  
4 old and older in Vermont said that they are not employed but  
5 would like employment -- 7.5 percent. That translates into  
6 some 6,000 people.

7 Those figures were broken down in different ways.  
8 For instance, of people 60 to 64 years old, the younger group,  
9 13.6 were not employed, said they would like jobs. As you get  
10 older, that number get smaller, obviously. In the 65 to 75 age  
11 range, it was 7.1 percent who said that they would like jobs  
12 and don't currently have them. Seventy-five-plus, it was down  
13 to 2.9 percent.

14 When you analyze those figures according to income,  
15 you get -- I don't know how obvious it is, but for instance,  
16 for people who have an income of up to \$500 a month, 8.9  
17 percent said that they would like employment -- up to \$500 a  
18 month and not working. You know, they get their \$500 a month  
19 from Social Security or somewhere -- 8.9 percent said that they  
20 would like employment. When they earn from \$500 to \$1,000, 9.1  
21 percent said that they would like employment, and \$1,000 a  
22 month and up, 5.8 percent said that they would like employment.

23 MS. HEDBOR: We are running quite late. Could you  
24 give that report to Tino, and some of that information needs to  
25 be included within our report. Are there copies available of

1 that, Barbara?

2 MS. LEITENBERG: Of this? These are limited, but we  
3 could take the pages out about employment. That's easy. I  
4 don't have terribly many.

5 MS. HEDBOR: Maybe you can take care of that, Tino.  
6 If Tino could just copy those pages.

7 MS. LEITENBERG: I can give you all of that.

8 Finally, I think a major factor that's been mentioned  
9 before, but I think it deserves mentioning again, is the Social  
10 Security's earning limitation test. I don't know how much you  
11 know about that.

12 After you retire and you go on Social Security, if  
13 you are between the ages of 65 and 69 years old and you  
14 continue to work or you get another job or something, if you  
15 make more than \$8,880, for every \$2 you earn over that amount,  
16 your Social Security benefit is reduced by \$1. In other words,  
17 there's a 50-percent tax on everything you earn over that  
18 \$8,800 a year.

19 MR. LAGRANDEUR: That's \$2 gross, and you lose a  
20 dollar.

21 MS. LEITENBERG: Yes. That's really a great  
22 disincentive to looking for meaningful work.

23 MS. HEDBOR: By the time you're 70, your skills are  
24 outdated.

25 MS. LEITENBERG: By the time you're 70, the earnings

1 limitation is off, but you're under 65 -- if you're between 62  
2 and 65 and you've started to collect Social Security but you  
3 still want to work, the earnings limitation is lower -- \$6,480,  
4 and that's still -- that 2 for 1 deal applies. That has been  
5 relieved somewhat starting in 1990.

6 In 1990, you lose \$1 for every \$3 instead of \$1 for  
7 every \$2. So, that's a little bit better, but still, it's a  
8 major disincentive.

9 I would like to emphasize another thing that again  
10 was brought up here in various kinds of ways, and I can give  
11 personal evidence of it.

12 If you've work for 20 or 30 years, I think lots of  
13 people, including me, would like a change, and one of the  
14 things that came up in one of the testimonies -- the dietician  
15 who tried to change her job and had very unfortunate  
16 circumstances.

17 What I think would be very important to promote --  
18 and this is a cultural thing; I don't see a way to legislation  
19 this -- is besides making it okay to have flexible hours and  
20 part-time positions and shared positions, it should be part of  
21 the workforce culture to allow people to change and have  
22 training available and take advantage of people's interest in  
23 doing different things.

24 That's why I say this thing is much more complicated  
25 than just a question of employers discriminating.

1 I think lots of older people -- they have worked a  
2 long time -- they have different kinds of desires for what they  
3 want out of a job, and the workforce is often -- the standard  
4 work culture is often too rigid to deal with that sort of  
5 thing, but I think there is no -- we're going to change whether  
6 we like it or not. The demographics are forcing it, and that's  
7 going to be that.

8 MS. HEDBOR: Thank you very much.

9 Did you have a question?

10 MR. WOOLFSON: Barbara, do you have any figures on  
11 how many people over 65 in Vermont are employed?

12 MS. LEITENBERG: Yes -- 18.4 percent, 14,692. That's  
13 that whole range of 60-plus, and then, I probably have how that  
14 breaks down. That's in this book.

15 MR. HAND: It's as of 2 years ago.

16 MS. LEITENBERG: Yes. I don't think it's much  
17 changed.

18 MS. HEDBOR: Barbara, as far as you know, do those  
19 figures include self-employed?

20 MS. LEITENBERG: It should. I don't think it was --  
21 it wasn't broken down like that.

22 MS. MALONEY: If you feel that that information would  
23 be advantageous to you as a Committee, contact our research and  
24 statistics section. They do have that information.

25 MS. HEDBOR: Okay. Thank you.

1 MR. HOLLAND: Would they also have information on how  
2 many of those who are not employed would be employed if it were  
3 not for the Social Security cap?

4 MS. MALONEY: They would probably not have it broken  
5 down as fine as what you are asking, but they would be able to  
6 give you some information in reference to that. If you wanted,  
7 you can contact me or you could contact Mr. Lovely -- Ray  
8 Lovely.

9 MS. HEDBOR: Okay. Robert Appel.

10 MR. APPEL: I am Robert Appel. I am the Assistant  
11 Attorney General. I am the only Attorney General who has a  
12 full-time assignment to the civil rights unit.

13 Our current staffing pattern is myself and three  
14 investigators; a full-time secretary, who has been with the  
15 office now 40 years; and a part-time intake worker, who Pat  
16 Elmer made reference to. It is unfortunate that we only have  
17 her 2 days a week, because the need to have somebody respond  
18 immediately to persons with potential complaints and referrals  
19 is critical.

20 That's a resource problem that we'd like to address,  
21 but given the current state of the fiscal status of the Vermont  
22 Government, it's unlikely to occur in the near future. That is  
23 probably our biggest -- number one on our wish list would be to  
24 have a full-time intake person immediately available for people  
25 who have questions and concerns, and I share the frustration of

1 calling a government office and being told that it would be 2  
2 days or 3 days before the call was returned, and we'd  
3 frequently miss returned calls, so that this is a frustration  
4 that we share, as well.

5 Since I'm the only representative here of Vermont  
6 enforcement agencies, I'd like to give a brief overview of our  
7 involvement with enforcing civil rights laws in Vermont and  
8 particularly with regard to age.

9 For 14 years, the civil rights unit of the AG's  
10 office has acted as the deferral agency for the Federal  
11 enforcement agency, the Equal Employment Opportunity  
12 Commission. I should say for 14 years with regard to Title VII  
13 claims -- those being complaints based on race, color,  
14 religion, national origin, or sex. Age, on the Federal level,  
15 is prohibited by the Age Discrimination in Employment Act of  
16 1967.

17 In 1981, the Vermont legislature passed amendments to  
18 Vermont's Fair Employment Practice Act which outlawed age  
19 discrimination and defined age as over the age of 18, no other  
20 cap. When initially enacted, the Age Discrimination in  
21 Employment Act covered persons in the then-protected age  
22 category of 40 to 65. It was subsequently broadened to 40 to  
23 70, and recently, the 70 cap was totally removed.

24 So, since 1981, we have had concurrent jurisdiction  
25 with the EEOC on a number of age complaints, and we have had a

1 contract with the EEOC to process Federally-jurisdictional age  
2 complaints from Federal fiscal year 1982 to the present.

3 When we initially gave that contract, the number and  
4 percentage of age complaints in our caseload was approximately  
5 30 percent. At that time, our new charges annually fluctuated.  
6 In FY 82, we had 120 cases, and by comparison, it's expected,  
7 in FY 90, we will receive in the vicinity of 250 cases, which  
8 is a dramatic increase. Unfortunately, our resources have not  
9 increased in kind.

10 Interestingly, though, the percentage of age  
11 complaints has decreased over that time from approximately 30  
12 percent to 18 percent last year. I don't really have an  
13 explanation for that, other than the anecdotal information you  
14 heard earlier from people who have experienced discrimination  
15 firsthand. The difficulty in proving any discrimination claim  
16 is considerable, but when you're talking about age, it's even  
17 more difficult, because age differentials are not as obvious as  
18 sex or race or, in some cases, national origin or handicap  
19 claims.

20 It certainly is prevalent in the workforce. I don't  
21 think we hear about the broad-ranging numbers of complaints  
22 that are out there. The types of complaints we do receive are  
23 similar in nature to the complaints you heard about tonight.  
24 Those are failure to hires, and we're seeing a radical increase  
25 in involuntary layoffs and terminations, with the recent



1 economic downturn.

2           Those cases are even more difficult to prove in  
3 certain circumstances, because there is a legitimate business  
4 reason for reducing the workforce. So, the way discrimination  
5 cases, in general, work is if you are a member of a protected  
6 category, you suffered an adverse action, there is an initial  
7 inference that your membership in that class may have played a  
8 part. It's then up to the employer to state a legitimate  
9 reason to rebut that inference. In a downturn in business,  
10 it's relatively easy for an employer to say our sales have  
11 decreased and we needed to cut back.

12           So, there is that initial threshold, and then you  
13 have to compare persons within the protected category of 40 and  
14 over with those who are not. The statistical analyses are  
15 difficult, because the numbers involved are relatively small,  
16 and you don't end up with stark statistical disparities. They  
17 tend to be the exception rather than the rule.

18           The other issue which was raised tonight, and I guess  
19 Phillippa brought it up, is the concern about retaliation.  
20 Under both Federal and State law, it is unlawful for an  
21 employer to retaliate against an employee filing a charge, or  
22 even thinking about filing a charge, under State law. It's  
23 also unlawful to discriminate or discharge an employee for  
24 cooperating with an investigation by my agency.

25           We take retaliation charges quite seriously and give

1       them as high priority as our resources allow us to do, feeling  
2       that if we don't protect people who come forward with  
3       complaints, we might as well not bother being in existence.

4               MS. HEDBOR: I think you're probably missing the  
5       point there, though. The words gets around is what Phillippa  
6       is saying.

7               MR. APPEL: I do understand that.

8               MS. HEDBOR: You know, they just don't get hired.

9               MR. APPEL: In terms of a potential troublemaker.

10              MS. MALONEY: Yes, unfortunately, but I know what  
11       you're saying and I agree.

12              MR. APPEL: Well, I acknowledge that point, but I  
13       think at the same time, I'd like to alert the Committee, as  
14       well as the public at large, that that is as priority in our  
15       office.

16              Our current caseload is about 200 cases, of which 10  
17       percent are age cases. Sixteen are State and Federal claims  
18       and four are State only.

19              Besides the difference in age protection, the number  
20       of employees is another difference in the Federal and State  
21       law. Under State law, any employer employing one or more  
22       persons is covered by Vermont law. Under Federal law, you need  
23       to employ 20 or more persons.

24              We have exclusive jurisdiction in the area of age  
25       discrimination in employment, with the exception of claims

1       against State agencies. Now, those cases are referred to the  
2       Human Rights Commission, as Phillipa was saying.

3               Susan Sussman was unable to be here tonight. She  
4       asked me to deliver this to the Committee. I can either read  
5       it into the record or just present it to you.

6               MS. HEDBOR: If you'll just give it to Tino, we'll  
7       make sure it's distributed to all of us.

8               MR. APPEL: Okay. I'd be happy to answer questions.  
9       I'm not sure if I have addressed the areas that the Committee  
10      wanted to hear about in this regard.

11              MS. HEDBOR: I just had one question. On the 20-  
12      some-odd cases that you now have that involve age  
13      discrimination, are any of those failure to hire or all they  
14      all discharge?

15              MR. APPEL: I can't say with certainty, but the bulk  
16      are discharge. It would be unlikely for one or more not to be  
17      a failure. It probably breaks out three-quarters to one-  
18      quarter.

19              In looking at the questions which I was to answer,  
20      there is a question, "What percentage of complaints resolve in  
21      favor of the worker and what percentage in favor of the  
22      employer?" Our general break-out in that regard is  
23      approximately one-third of all charges settled, come to  
24      resolution prior to a formal determination. Those that go to a  
25      formal determination, it's about 50/50 cause/no cause. That's

1 on the entire bulk of our caseload.

2 I think on age cases, our no-cause findings would  
3 probably be slightly greater than our cause findings because of  
4 the difficulty in proof.

5 In terms of recommendations from an enforcement  
6 perspective, we are facing a serious resource crisis. I can  
7 leave with the Committee a recent press release that was issued  
8 by our office talking about a 40-percent increase in our  
9 overall caseload in the last 2 years.

10 MS. HEDBOR: And how many new attorneys?

11 MR. APPEL: I think the need is more in investigators  
12 than it is attorneys.

13 MS. HEDBOR: How many new investigators have you had  
14 to cope with 40 percent?

15 MR. APPEL: None. In the period that we've had  
16 contracts with the EEOC, from 1982 onward, the staffing pattern  
17 at that time was two investigators, of which I was one, and two  
18 attorneys. That has now switched, to have three investigators,  
19 one attorney. The real need is for investigators to be out  
20 there gathering information and trying to find whether or not  
21 evidence exists to find cause.

22 The drawback to being a single-attorney unit is that  
23 I end up not having an opportunity file as many lawsuits as I  
24 would like because of my obligations to supervise ongoing  
25 investigations and do a certain amount of administrative work,

1 but I still say that our immediate crunch is for a full-time  
2 intake worker. I think that's a real frustration and impedes  
3 the entire function of our unit, because the person we have now  
4 is 2 days a week on temporary funds that will probably  
5 evaporate in the next couple of months.

6 Without any intake assistance, that job falls on the  
7 investigators, and it keeps them from being out in the field  
8 gathering the data which they need in order to make  
9 determinations.

10 MS. HEDBOR: Any questions?

11 MR. HOLLAND: I understand that the EEOC is pursuing  
12 some action in Vermont at the present time.

13 MR. APPEL: The only pending lawsuit I'm aware of is  
14 pertaining to Justice Peck. Is that what you're referring to?

15 MR. HOLLAND: I was just talking to the personal  
16 assistant to Clarence Thomas, and he told me that they were  
17 about to become involved in some action in Vermont.

18 MR. APPEL: That's the only case I know of that the  
19 EEOC is pursuing at this time. That was a case that the EEOC  
20 did not refer to our office because of the potential conflict  
21 between -- well, Justice Peck is a State employee, and  
22 actually, it should have gone to the Human Rights Commission,  
23 but that's a fairly high-profile, high-level charge, and EEOC  
24 is pursuing it. I believe it's now pending. I believe there's  
25 to be oral argument, or it just occurred, before the Second

1 Circuit in New York.

2 MR. HAND: Did the Attorney General's office not  
3 pursue that case initially because of other reasons? It was  
4 farmed out.

5 MR. APPEL: There was a request for an Attorney  
6 General's advisory opinion by the Court Administrator's office,  
7 and the opinion issued was that Vermont's mandatory retirement  
8 provision in the Constitution was preempted by Federal law.  
9 So, our office in agreement with the EEOC's view on that  
10 particular case.

11 Thank you for the opportunity to speak with you.

12 MS. HEDBOR: Thank you very much.

13 John Barbour, I'm sorry to keep you waiting so long.

14 MR. BARBOUR: Thank you.

15 This is John Barbour, and I am the Executive Director  
16 of the Champlain Valley Agency on Aging.

17 I recently wrote a letter to someone who had written  
18 an article about Meals-On-Wheels, and I had taken some minor  
19 offense that the article went to some length to describe the  
20 program but did not mention area agencies on aging as the major  
21 funding and source of support for that program. Defending your  
22 turf in this world is a dirty job, but somebody has to do it.

23 At any rate, the article said that funding came from  
24 community and government. I noted the role that area agencies  
25 on aging played and said that I hope to God we don't fall under

1 the category of "government", and then I was asked to appear  
2 tonight on what was being call the "governmental mental panel",  
3 and I swallowed hard, of course, but accepted, and now, I see  
4 that it's been changed to "quasi-government", and I guess  
5 that's in deference to me.

6 At any rate, the Champlain Valley Agency on Aging is  
7 one of five area agencies on aging in the State. We are a  
8 private non-profit agency. We try to deal with a variety of  
9 issues relating to aging in four counties in northwest Vermont.

10 We do receive a lot of government money, which I, of  
11 course, accept without complaint.

12 Through a variety of programs, we have some sort of  
13 contact with more than 5,000 older people in our area and  
14 telephone contact with several thousand more from around the  
15 State, through a statewide access-for-elders phone-line.

16 Our focus is one people who have the greatest "social  
17 and economic" needs. The people we have the most regular  
18 contact with are people who come regularly to senior meal  
19 sites, 1,000 or so people who get Meals-On-Wheels, 2,000 people  
20 who receive help through a team of advocates on our staff.  
21 Frequently, we are dealing with people who are in their mid-  
22 70s and older, who are not able or interested in work.

23 An occupational hazard is to characterize everybody  
24 over the age of 60 by the people we see most frequently. Far  
25 and away, older people are active, independent, able to drive,

1 and able to work. Whether they want to work is another matter,  
2 but they are able.

3 Yesterday, I took a look at our own staff to see how  
4 old they were. We have 68 staff on our payroll. Average age  
5 is 55. Fully 30 employees are over the age of 60, and 16 are  
6 over the age of 70. I would not give out these numbers if I  
7 were not somewhat proud of them.

8 Just to be clear, these are not, for the most part,  
9 training positions or "A" positions. We are talking about core  
10 staff positions, including office manager, meal-site managers,  
11 drivers, cooks, advocates, and so on.

12 While some of the older people have less ability than  
13 some younger people, the reverse is just as true. It is not  
14 age that matters.

15 Vermont has already seen a tight labor market. The  
16 Secretary of the Administration said something to the effect  
17 the other day that an economic slowdown was inevitable, partly  
18 in response to a slowing in the rate of growth of the labor  
19 force. In the future, the crunch will be even greater.

20 In a different but related context, I have learned  
21 something about the coming labor shortage. In large part  
22 because of lower birthrates, the population is not expected to  
23 grow at a rate as fast as the labor force.

24 In the other context, which has to do with allowing  
25 and encouraging the participation of women in the labor force,



1 we are told that women will constitute two-thirds of new  
2 entries into the workforce between 1985 and the year 2000. The  
3 proportion of the workforce that is male will decline by 15  
4 percent, while the portion that is female will increase by 15  
5 percent. Some companies, such as IBM, estimate that women will  
6 triple as a percentage of their workforce and men will decline  
7 by 25 percent.

8           These are dramatic numbers, and clearly, they show  
9 that there will be a societal challenge to draw into the labor  
10 force people who have not been a part of it for whatever  
11 reason. One of the challenges that will face employers and  
12 agencies such as ours would be to facilitate participation by  
13 women by offering programs that allow people to balance family  
14 obligations, such as child care and elder care, with work  
15 obligations. I would suggest that another way to deal with the  
16 labor shortage is to make better use of older workers and  
17 people with disabilities.

18           To some extent, strategies for working on behalf of  
19 these groups are similar. First, we need to remove barriers  
20 and disincentives to employment. For women, this may mean  
21 dependent care initiatives, including assistance with both  
22 child care and elder care responsibilities. For people with  
23 disabilities, it means making workplaces accessible. For older  
24 people, it means eliminating the discriminatory manner in which  
25 Social Security deals with earned income. For all workers,

1 this certainly means a watchful eye in terms of discriminatory  
2 employment policies.

3           There is a substantial overlap between these three  
4 groups of people -- women, older people, and people with  
5 disabilities. Most older people are women, and many older  
6 people have disabilities of some degree -- sometimes slight,  
7 sometimes more severe.

8           I spoke today to a man in his early 60s, who said he  
9 had been told he had to retire because of his age. He also  
10 said he had a back problem. I asked if the cause for  
11 retirement was age or inability to do the work. He said 50/50,  
12 but emphasized that his employer had a longstanding policy of a  
13 mandatory retirement age in certain departments.

14           I told him I thought such a policy was not legal and  
15 that the State civil rights division would be very interested  
16 in receiving a complaint. He did not want to complain. He  
17 felt that his employer would hire him into another department  
18 and felt very loyal to an employer of many years.

19           The point is that the availability of a complaint  
20 procedure is never quite sufficient, because so many people are  
21 reluctant to complain. I think this is certainly the case  
22 with older people.

23           I had somewhat more success a number of years ago  
24 with a woman who was hired by a local outlet of a major  
25 national chain of stores. She was told when to start, what the

1 job would be, what the rate of pay would be, and asked to fill  
2 out a form. When she filled out the form and put down her date  
3 of birth, they said there must be some mistake. You said that  
4 you're 72. We have a mandatory retirement age of 70. That was  
5 at a time when Vermont had eliminated any age cap on its age-  
6 discrimination statute, while the Federal Government still  
7 stopped protection at age 70. This woman did file a complaint  
8 against the store and won.

9 The availability of a complaint procedure is  
10 necessary but insufficient. Many people will not complain. If  
11 it is true that the gentleman's employer does have a mandatory  
12 retirement policy, I think it is more out of ignorance than  
13 evil intent.

14 More public awareness and public education could have  
15 the effect of alerting employers and employees to a whole realm  
16 of fair employment policies. Such an effort might have the  
17 somewhat contradictory effect of increasing the number of  
18 complaints, while at the same time reducing the number of  
19 incidents that would never have resulted in a complaint anyway.

20 I'm told that one nonprofit agency was shopping this  
21 year for health insurance coverage. Several representatives of  
22 insurance companies came in. One specifically asked what kind  
23 of policy do you have for hiring women of childbirth age and  
24 people over 60? Clearly, if employers have to pay higher costs  
25 for fringe benefits if they choose to obey the law, they may

1 find that it pays to do otherwise.

2 I think that you'll find virtually all employers that  
3 offer life insurance offer a reduced benefit for workers who  
4 are over the age of 65. It's not a matter of choice. It's a  
5 matter of what the insurance industry makes available for  
6 purchase.

7 Employment practices can encourage participation in  
8 the labor force by people now underrepresented. If men or  
9 women are to balance responsibilities for family and work, they  
10 will need the opportunity to take leave in order to deal with  
11 the variety of family duties related to child care and elder  
12 care. These responsibilities may also mean the need to work  
13 flexible schedules, to work part-time, to leave and enter  
14 employment several times during a career.

15 Similarly, if older people want to experience some  
16 leisure but also remain employed, employers will have to offer  
17 flexible and part-time schedules. We've all heard people say  
18 that they could stand being retired, so they went back to work.  
19 Perhaps a choice in between would benefit employer and  
20 employee.

21 Recently, I heard a man speak who was employed as a  
22 futurist by the American Association of Retired People. One of  
23 his caveats was to beware of forecasting the future based upon  
24 characteristics of today. In particular, he warned against  
25 looking at today's elderly population and projecting a dire

1 situation where we have a huge number of very old people who  
2 are frail and chronically ill.

3 His theory is that there have been significant  
4 changes in lifestyle, particularly with regard to smoking and  
5 diet, that may mean that 85-year-olds in the year 2030 will be  
6 much more able than 85-year-olds today. We do not have anybody  
7 who is 85 years old on our staff. We do have people over 80.  
8 Perhaps in 20 or 30 or 40 years, we will chuckle at the thought  
9 that we were once concerned about discrimination against people  
10 in their 60s.

11 As much as anything, I would like to leave you with  
12 the message that we cannot afford to discriminate against  
13 prospective employees. Lack of access to the workforce today by  
14 a woman means one more future older worker who lacks job  
15 skills. Lack of access by a person with disability means one  
16 person who will have greater need for financial assistance in  
17 the future. Lack of access by anybody means a less-skilled  
18 workforce, less opportunity for economic growth. This is the  
19 message that we need to convey to workers and employers.

20 MS. HEDBOR: Thank you very much.

21 Any questions?

22 [No response.]

23 MS. HEDBOR: Do any other members of the audience  
24 have things that they would like to say to this Committee?

25 [No response.]

1 MS. HEDBOR: Seeing none, do any Committee members  
2 have anything they want to add to it, or are we, at this point,  
3 fairly well finished? We're going to postpone discussion until  
4 after we have the transcript and after we have any written  
5 comments that people submit, with Tino warning me that he can't  
6 predict how long it will be before the next meeting.

7 MR. HAND: Before the Commission expires.

8 MR. CALABIA: There is one item on the agenda about  
9 developing questions for EEOC. I have an appointment with the  
10 regional director in Boston, and I can make up some questions  
11 of my own, but if you have any --

12 MS. HEDBOR: Well, I think the thing that I'm hearing  
13 as loud and clearly as anything is this whole thing about the  
14 Social Security cap. That is having a devastating effect,  
15 because it's keeping people out of the workforce for a period  
16 of time during which time their skills become stale, and then,  
17 when they want to get back in, the skills aren't there. That's  
18 certainly a question I'd like to pose.

19 MS. WALDRUM: Most of this is relevant to the State  
20 of Vermont, and of course, my perspective is a bit more  
21 national, although there are a lot of things that coincide with  
22 what we see on the national front, but I have a question that  
23 I'd like -- I know that it applies to the State of Vermont, but  
24 EEOC has had a problem with processing cases, and the statute  
25 of limitations had run on a number of complaints filed, and I

1 think at the last -- probably in the last hearing, they had  
2 indicated that they were going to put some mechanisms in order  
3 to notify complainants about the statute, so their time would  
4 not run, and I'd like to know, one, if they have done anything  
5 --

6 MR. APPEL: I believe they have.

7 MS. WALDRUM: They have?

8 MR. APPEL: Their procedures have changed to require  
9 deferral agencies, local agencies, to complete processing of  
10 charges within 18 months of the date of discrimination.  
11 Routinely, it's a 2-year statute of limitations for filing in  
12 court.

13 There is no requirement, under the Age Discrimination  
14 in Employment Act, to have an end result from EEOC. It just  
15 needs to be filed for 60 days. So, it's somewhat deceptive.  
16 An aggrieved individual can file in a timely fashion but  
17 without the benefit of EEOC's final determination.

18 The other thing that has occurred is Congress has  
19 taken some -- passed an Act in 1988 to restore claims that had  
20 run because of EEOC's administrative problems.

21 MS. WALDRUM: I'm familiar with that, but one of the  
22 things -- and I don't know if this is really true, however  
23 there are some agencies that investigate for the EEOC. Like  
24 they will send a letter early, you know, about the case being  
25 investigated, something like that, and then the onus is on the

1 complainant to watch the time.

2 Now, if we send a letter that early, of course, and  
3 they're not diligently keeping up with what EEOC is doing, that  
4 also causes a lot of problems, and so, I'd like to know how  
5 they have arrested that, if that is, in fact, a practice, and  
6 the other thing was, have they improved the average time to  
7 process complaints.

8 MR. APPEL: I don't know the answer.

9 MS. WALDRUM: It seems like it's going to impact on  
10 your at some point, with a 40-percent increase in casework and  
11 no staff.

12 MR. CALABIA: You mentioned cases that are falling  
13 through the cracks at EEOC. I understand that, nationally,  
14 there were 7,500 cases whose statutes of limitation had run  
15 out. Would you know how many of those 7,500 were here in  
16 Vermont?

17 MR. APPEL: I'm afraid I don't. I don't believe a  
18 great number. We don't have a large age inventory, and I was  
19 not in the division until a year ago, and I'm not familiar with  
20 that particular issue, although this does bring up a related  
21 issue, and that is the Americans With Disabilities Act and its  
22 anticipated passage and an anticipated increase in claims of  
23 persons with disabilities, which, as John says, frequently  
24 would link up with complaints of age discrimination.

25 From an enforcement perspective, that's going to only



1 increase our resource problem without significant Federal  
2 funding to pursue those new claims. Our current caseload of  
3 handicap claims, under Vermont's handicap law, which is quite  
4 broad, runs between 30 and 40 percent of our overall caseload.  
5 It's an extremely significant portion of the charges that we  
6 face on a day-to-day basis, and I only see that increasing once  
7 the Americans With Disabilities Act passes and becomes  
8 effective, as everyone seems to be anticipating.

9 MS. HEDBOR: One other thing that I'd like to ask  
10 concerns if they have -- maybe this is not even a proper  
11 question to ask them, but I'm very, very concerned about the  
12 whole question of discrimination in hiring, which seems to be  
13 much more difficult to prove, much more difficult to address,  
14 and you know, do they have any criteria that they would measure  
15 to determine whether or not there has been discrimination in  
16 hiring, and I'd like to know what their statistics are  
17 nationwide on cases on discrimination on hiring.

18 It's an awful lot easier to say, gee, I was fired,  
19 because I'm, you know, 52, and they don't want anybody over the  
20 age of 30 in here, but I think it's very difficult on the  
21 hiring.

22 MS. ELMER: You have to also be willing to pursue  
23 with them training. Would they have resources to send someone  
24 into the State for older people? Public initiatives, services  
25 they provide, how do you pursue them? I think we could State

1 organizations and the State to cosponsor it if we could get  
2 someone to come.

3 The Attorney General's office has been very generous  
4 in terms of providing training. Once people know, I think your  
5 office, Denise Johnson, gave us some strategies as to how to  
6 get something that could be used as proof, and once people know  
7 that, then they can make better decisions.

8 MS. HEDBOR: Barbara?

9 MS. McINTOSH: The EEOC is very effective in getting  
10 employers to clean up employment tests, which were very  
11 discriminatory with respect to race, etc. This was back in the  
12 early '70s. If you look internally, performance appraisals are  
13 tests when it comes to promotion, and in terms of protecting  
14 the elderly, protecting anyone within an organization, I would  
15 really like to see at least suggested or ask them what they're  
16 doing in terms of requiring employers to validate their  
17 performance appraisal processes.

18 That's going to go a long, long way to getting fair  
19 and equal treatment within the workplace, and performance  
20 appraisal is an exact parallel to the testing situation in the  
21 hiring situation.

22 MR. APPEL: And it comes up in not only deciding who  
23 will be involuntarily laid off, but also in failure to promote,  
24 because they're very subjective in nature, and it's very  
25 difficult to go inside a supervisor's mind and detect the bias

1 in the subjective performance evaluation.

2 MS. HEDBOR: You might also ask them if there was any  
3 consideration to just requiring that the age question be left  
4 off applications.

5 MS. McINTOSH: Generally speaking, that is. On any  
6 applications that are sent through private industry, the age  
7 question is not there. They do not ask it.

8 MS. HEDBOR: Do they ask for date of birth?

9 MS. McINTOSH: No.

10 MS. MALONEY: The Federal guidelines on employment  
11 practices are very specific that you do not put age in  
12 applications.

13 MS. HEDBOR: What about date of graduation or  
14 something?

15 MS. MALONEY: They ask how many years you completed.  
16 They do not ask the year that you graduated, and if they do,  
17 then you ought to be very careful about whether you make that  
18 decision to fill that in or not. It needs to be a need to  
19 know, and it has to be a bona fide qualified.

20 MR. APPEL: A lot of people design their resumes in  
21 such a way as to reveal that data, though.

22 MS. MALONEY: Yes, they do that.

23 MR. HAND: We even get that at the university, where  
24 we don't know. We know they, for instance, will have a Ph.D.  
25 and where they got from.

1 MS. HEDBOR: Now, does that make it difficult to  
2 verify?

3 MR. HAND: Well, you'd verify it after you contacted.  
4 You get 30 or 40 applications for every person you actually  
5 meet with anyway.

6 MR. KRIEG: You can't write a resume without  
7 revealing your age, if you've got 40 years experience.

8 MR. HAND: Oddly enough, in some instances, you can,  
9 because you've been in the service x number of years. You  
10 don't reveal how long you've been in the service. You don't  
11 reveal your age. I have a colleague now who I misjudged his  
12 age by 15 years.

13 I think academics are somewhat different, because  
14 you're looking for academic credentials. You're looking for  
15 degrees. You're looking for publications, but I just mentioned  
16 the fact that these things have changed radically over the past  
17 6 or 7 years.

18 MS. HEDBOR: Well, I want to thank everybody for  
19 coming and sharing your ideas with us, and I know it's kind of  
20 a stormy night and people are anxious to get home.

21 [Whereupon, at 10:20 p.m., the meeting was concluded.]

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