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Transcript of Hearing on Effectiveness of Affirmative Action in the Public Sector

Assembly Select Committee on Fair Employment Practices

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California Legislature

ASSEMBLY SELECT COMMITTEE

on

FAIR EMPLOYMENT PRACTICES

ELIHU HARRIS

Chairman

Transcript of Hearing

on

EFFECTIVENESS OF AFFIRMATIVE ACTION

IN

THE PUBLIC SECTOR



October 1, 1980
Sacramento, California

MEMBERS

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City of San Diego - Affirmative Action Program

County of San Diego - Affirmative Action information

City of Santa Rosa - Statistics and Policy Statement

City of Berkeley - Supplemental Affirmative Action statistics
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County of Santa Clara - Work Force Composition Distribution

(Note: Copies of the above listed testimony submitted to the
Select Committee on Fair Employment Practices can be
obtained by contacting the committee office.)

MR. ELIHU HARRIS: My name is Elihu Harris and I am the Chairman of the Select Committee on Fair Employment Practices. To my right is Assemblywoman Sally Tanner, a member of the Committee. We expect at least two other members of the Committee to be here during the course of the hearings today. I'd like to introduce the staff of the Committee. LaMar Lyons, Committee consultant, and the support staff; Debbie Kronenberg, Charlette Green and Harriet Fukushima. The hearing is being transcribed, and will be made available at a later time for those of you who would like to peruse the comments that will be made by the witnesses at the hearing today.

The subject of today's interim hearing is one of the most sensitive of public policy issues; affirmative action in public employment.

This Committee will be examining the state of affairs of the state and local governments efforts relative to affirmative action and equal employment both in the areas of "hiring" and upward mobility. Additionally, the Committee will develop proposals to encourage and stimulate more effective affirmative action programs in the private and public sectors.

The Select Committee on Fair Employment Practices was established by the Assembly Speaker Leo T. McCarthy, in response to a request from the Assembly's Legislative

Black Caucus. During the life of this Committee, we will be studying and examining the California Legislature's support service, the legislative support services of local government state agencies, local government and its employment practices, the University of California, State Colleges and the Community Colleges.

We will be studying the existing state policy which requires every state agency and department, as well as any program receiving state funds by the state, to achieve an equitable representative work force of minority groups, women, the aged and the disabled by occupational classification and salary level.

This committee will seek to determine the success of state and local governments efforts in implementing and maintaining the administration of affirmative action programs, as well as zero in on the methods used to compile data in effectuating affirmative action programs for minorities and women.

In the 39 years since the employment of the first black clerk by the State of California in Sacramento in 1941, equal employment, fair employment practices and affirmative action still is of material concern.

Blacks are approximately 9% of the labor force, yet still are not receiving parity in promotions. Spanish Speaking Surnames were approximately 13% of the labor force in 1970 and still are not adequately represented in the labor force or receiving equity when it comes to promotions,

and women still are concentrated in dead-end jobs.

We, as the legislative body, are obligated to insure affirmative action in employment occurs. Our goal is simple: a) to examine fair employment practices of public sector institutions with the thought in mind that public agencies must be the leader and not the followers of the private sector in affirmative action; and b) to clean up the public sector's background and then say to the private sector, match it. The stagnation and resistance to affirmative action hiring by select communities in the public sector must be uncovered and identified. Therefore, the Legislature must take a more active role in assuring that affirmative action works.

This hearing is the first of many steps in a long process to clarify what are the responsibilities and resources needed to make affirmative action for women and minorities more effective. We must determine what is not working, and why it is not working and offer effective solutions.

Our lead witness was to be Marty Morgenstern from the Governor's Office of Employment Relations. Mr. Morgenstern has been delayed but is on his way. We'd like Mr. Ron Kurtz, the Executive Director of the State Personnel Board to lead off our testimony this morning.

MR. RON KURTZ: Good morning. Mr. Chairman, members of the Committee, my name is Ron Kurtz. I'm the Executive Officer of the State Personnel Board. With me is

Laura Agulara who is the Chief of our Public Employment and Affirmative Action Division. I'd like to thank the Committee for this opportunity to discuss our affirmative action program. Let me begin by saying that the Personnel Board takes very, very seriously its responsibility to provide aggressive leadership for the state's affirmative action program. I think that is best illustrated by the achievements that we cited in our September 29th letter to you and in the extensive collection of materials that we provided to your staff.

Significant affirmative action concepts and activities have already been integrated within the state's civil service operation and structure. California is among only a few states which have systematically established functional affirmative action programs. Systematic actions, such as centralized affirmative action recruitment, increased use of open examinations rather than promotional only examinations, systematic selection and classification planning and resource allocation through use of performance contracts and the initiation of an aggressive affirmative action plan for the disabled well in advance of any other state.

The State Personnel Board recognizes there are still very significant challenges. I would like to discuss what we are doing to continue and accelerate affirmative action progress. First, I feel it is important to clear up what is a commonly held misconception about the degree of direct control and influence we have. Our initial affirmative

action efforts were focused on developing systems that did not exist to institutionalize affirmative action and to create an environment that would lead to change. As a result, our program has been evolving--constantly changing. We have become more and more sophisticated in our affirmative action approaches, our procedures and our data collection and our presentation methods. In the past year, once we had a sufficiently well-established data base, we took more assertive monitoring and enforcement action with the well understood and known sanctions orders directed at specific departments that had not achieved at an acceptable level in, as you say, changing from lip service to reality. Such measures we believe must be carefully developed if they are to sustain as a result of their operation a legal challenge. Therefore, we have used these techniques after less drastic measures have been fully explored and operated.

Affirmative action requires a commitment, from our point of view, from everyone--the Administration, the Legislature, the Department of Finance, very importantly the department directors, managers, supervisors--everyone. There are in our system over 100 separate appointing authorities. We have provided leadership through a clear articulation of goals and policies; first in the form of an executive order which we developed and implemented, and second, in legislation which followed that executive order and reflected broad public policy in California. Second, we provided aggressive leadership by development of innovative tools, such as the use of

goals and timetables and focused recruitment. Third, we provided what I would generally describe as persuasion, the use of audit reports on affirmative action progress and the extensive preparation of data and public reports. I doubt if any public agency subjects itself to more scrutiny with respect to the composition and character of its work force than we do. And finally and the most important recent development is the use of direct judicial orders, sanctions. For a number of years we have been ordering remedial action with respect to individual discrimination, but I think as the Committee has been told, we now have a broader concept of sanctions in which we are directing departments to change their hiring policies in very specific ways to make them sensitive to the need to change the composition of the department in those instances where achievement has been poor.

Departments have been given wide discretion and latitude in administering and carrying out their programs. Each department has been encouraged to carry out affirmative action programs to meet the state's objective of a balanced work force in a framework most conducive to making progress within the department's particular program and organization structure. We provide a strong influence, but we don't dictate or control the selection of each individual for a specific position except under very special circumstances of individual discrimination.

In short, we have tried to create an environment that

produces results that does not ultimately lead to divisive challenges or claims of discrimination by one group or another. It's our belief that positive, assertive, voluntary actions will ultimately lead to the most effective transition of a state's work force. Virtually every indicator that we have shows change. I think the central issue, and a very legitimate issue is whether that rate of change is acceptable public policy from a legislative point of view.

As I have indicated, implementation responsibilities for the state's affirmative action program have been given both to the departments and the State Personnel Board. Whether or not the program is successful depends heavily on the joint effort of those responsible for administration of the program. The Board strongly encourages the full, active participation of interest and advocate groups and has sought to establish, and I think effectively maintains, very open channels of communication to assure that all points of view from all concerned communities are dealt with in an honest and open manner within the confines of the public employment system this state has.

Again, I'd like to thank you for the opportunity to make this general presentation and let me assure you that our energies are devoted to the change that underlies this hearing. We will be here during the day to answer questions and of course are prepared to respond. Thank you.

MS. SALLY TANNER: In your affirmative action

program, do you consider salaries, the wages of women for instance?

MR. KURTZ: The central issue in employment for women is, there are two central issues from my point of view; one central issue is distribution in the work force and our goal setting process and our measurement of success distinguishes between the stereotype occupation of the past, largely the clerical and other kinds of occupations, to see that departments are making employment efforts in creating change in the latter area. But more fundamental than that, the second major issue is the issue of the relative pay levels of the clerical work force and other categories of work force that are heavily occupied by women. The policy of the Personnel Board in recent years has been to assertively push up the lower level parts of the pay structure as a --

MS. TANNER: Mr. Kurtz, what I'm interested in is say a man and a woman both enter public employment, and this man and woman are both high school graduates, let's say, does the woman generally receive less pay than the man with the same kind of education? Isn't that the case?

MR. KURTZ: Yes, that is the case.

MS. TANNER: I think that that is a real serious problem in affirmative action.

MR. KURTZ: It's a matter of that problem, which is endemic in the society we live in and is a very fundamental problem and one that we have wrassled with and the E.E.O.C. has wrassled with, and the U. S. Civil Rights Commission. Our

approach to that problem has been to be on the pushing side with respect to those occupational groups.

MS. TANNER: What does that mean?

MR. KURTZ: Well, in any pay program we are given, when we have options which have been frequently less and less with the political aspects of pay administration, but where we have options we have under-funded, so to speak, in comparison with labor market data the higher-level occupations and those occupied more predominantly by men and tended to, you have minimum increases for the clerical work force and to have, to be sure that we're allocating a bigger share of the money to that level than otherwise. Now that's a modest adjustment --

MS. TANNER: How has that affected the pay?

MR. KURTZ: My honest perception is it's had a very modest impact in terms of the total issue. We tend to be in a community which is a relatively high payer for those classes and of course that creates reactions in the community, too, but it's been a kind I would describe as a leadership and a nudging, not a revolutionary change. And I think there's a national debate going on now that will affect us and everyone else.

MS. TANNER: Because women today, many, many women are the heads of households.

MR. KURTZ: That's absolutely true. We have looked at that very same information and know that the myth of second income is just that, it's an irresponsible myth. It

doesn't even work as a second income in today's economic environment, it doesn't mean that secondary consideration should be given.

MS. TANNER: Mr. Chairman, I think that's something we should really address and stress.

MR. HARRIS: Yes. We will have a hearing that will strictly address the problems of women in terms of fair employment practices and the sexual harassment, and pay disparity.

Mr. Kurtz, there are a number of important questions, but before I ask them, I would like to acknowledge the presence of my colleague, not to my far left, Richard Alatorre.

Parity figures established by the State Personnel Board reflect only overall state labor force percentages as of 1970. However, federal regulations required (a) utilization analysis, (b) availability studies and parity levels, which must include unemployment consideration, (c) general availability of minorities having requisite skills, and (d) availability of promotable minorities within the organization. Since it is not reasonable to expect consistent availability of minorities with requisite skills throughout the state, does the State Personnel Board use the criteria established by federal regulations? If not, what are the criteria that we use in establishing labor force parity?

MR. KURTZ: First, the State as an employer reflects the society in general, and after considerable debate the Personnel Board has adopted a policy related to

the general labor force as its broadest role. Each department must annually establish goals and timetables and it is in that process that the department is responsible for examining the availability in the geographic and labor market areas it serves in attempting to establish realistic goals which are then reviewed by our staff each year. It's the relevant labor market, and the availability is a key issue. In terms of the second aspect of your question, the promotion aspect, we very much do look at the labor pool that is immediately entered in establishing goals for Correctional Sergeant. The character of the correctional officer pool is very much considered.

MR. HARRIS: You mentioned there were over a hundred appointing authorities within the State. What action do you take where there is a recalcitrant appointing authority, as it's been indicated, for example, in the Department of Forestry. Can you withdraw that appointing authority? I wish to know what sanctions, if any, are ever exercised?

MR. KURTZ: Okay. Let me describe just what we did exercise. We had a hearing several months ago and issued direct orders related to hiring. The sanction process essentially operates in this way: The Personnel Board itself, after appropriate public hearings, discussions, input from labor groups and affected interest groups, directed the Department of Forestry to establish higher goals than it had previously established and not achieved, and second it

changed the certification procedures surrounding employment in state government. This is a very important point. The statutes governing the operation of the civil service system call for certification on the basis of the rule-of-three and the rule-of-three-ranks on the whole. In the case of the Department of Forestry, the Board set aside that law by judicial order and said that in the certification procedure the Department will have certified not only the three highest scoring individuals, but also those individuals highest scoring from each of the protected groups that are under-represented. This effectively eliminates any civil service barrier, so to speak, to the employment of those groups. And in addition to that, we ordered significant changes in the operation of the personnel system, employment of the affirmative action officers and changing some aspects of the training and development systems. The bottom line is change has to take place. Now in those instances where there is no one on the list who meets the required goal, we then authorize the department under circumstances we control to make appointments through what we call a T.A.U. or temporary appointment process from the protected group with a kind of special screening process to insure they have the basic ability to do the job. So it's a very aggressive and a very direct kind of program and we are currently preparing a second hearing for another department that has a poor achievement record.

MR. ALATORRE: Let me just ask you, could you make

some distinctions between, I guess an order by the Governor, an executive order by the Governor to, say, the Personnel Board, and what effect does that have in relationship to the under-representative groups? And let me give you an example: 1964, the then Governor of the State of California issued an order to the state to all of the agencies as well as State Personnel Board to do everything possible to try and make up for the under-representativeness on the part of Spanish speaking people. It is my understanding, I think, that there was an executive order by this Governor, the junior, basically talking about under-representative groups in general, not specifying any one group. Now, what affect do these orders have in relationship to the way that government operates and the various agencies operate?

MR. KURTZ: I think there's no doubt they create a climate, a positive climate with respect for affirmative action. In the final analysis, I think the public employment system itself carries the bulk of the final authority, and I think that the impact of the judicial order from the Board, such as that one in the case of Forestry, has more practical effect. I think that affirmative action is like any other aspect of the personnel management system or administrative system of government, and that is that it takes system changes. And the executive order and the statute simply create a climate and a direction that is very well understood by the departments that are under the executive branch.

MR. ALATORRE: Now, in terms of your own operation,

one of the questions or the last question Mr. Harris raised, was sanctions, do you have any sanctions or you do not have any sanctions over those agencies that somewhat violate the spirit and the direction of the administration, and I can cite you many agencies that do that, that continue to do that regardless of what is said by the Governor and what is said by the Personnel Board. Now, in terms of your agency, in terms of the State Personnel Board, how many people do you have on board that monitor affirmative action?

MR. KURTZ: Thirty-eight in the division responsible for public employment and affirmative action. That's out of a total work force of approximately six hundred.

MR. ALATORRE: So you have thirty-eight. And at least it's my understanding that as an example the Department of Social Services has somewhere, and this is just for one agency, has in the neighborhood of forty-some people responsible for affirmative action. Now, I don't know what the other departments have, but do you think that with the number of agencies that you have to work with that your division or whatever you call your affirmative action component is capable of effectively monitoring what other agencies of government are doing?

MR. KURTZ: There are two issues underlying that question. One is the systems issue and it's not been a simple problem from a management point of view to design systems of goal setting and tracking in a work force of

140,000 people with 3,000 classes. In terms of having developed the capability for doing that from a concept point of view, I think we've, after, three or four years of trial and error and different techniques have some pretty good management systems. I think that the truth is that our staffing is meager for the kind of oversight and we are continually asked by advocate groups to do more things and to engage in more discipline. Let me just describe the sanctions process itself. In order for us to execute the sanctions process, to be frank about it, we simply had to divert staff from some of our operational requirements. And those of you who sit in these committees know the departments want examinations more promptly and changes in the pay plan more promptly, so the efforts we're undertaking do require resources and we could do a lot more if we had more. We have budgeted this year for four sanction procedures. It would be very desirable to double that number this year, and I think conceptually we could do that.

MR. HARRIS: In terms of the sanctions; sanctions as I understand it, do not involve the suspension of an agency's appointing power, is that right?

MR. KURTZ: That's right, it comes close to suspension. It says that you must meet this goal and timetable and a certification will be in this way.

MR. HARRIS: Or what?

MR. KURTZ: If a department did not comply, we would have two alternatives. One would be to seek court action and

the other would be to take over the appointing process ourselves. My perception is very clearly that the department is directly responding to the sanction order and that will not be necessary. Understandably it is difficult for my staff to choose a fire apparatus engineer or a firefighter to work in a fire station. What we can do is tell the department that their hiring practices must conform in this particular way and I believe, in the two departments that we've been working with, one the Department of Forestry, we got a very assertive stance taken by the Director. The second is the Department of Fish & Game and we're getting the same reaction there. They're anxious to comply with the order.

MR. HARRIS: They're anxious to comply. What have they done to comply?

MR. KURTZ: In the case of the Department of Forestry, they have, both their hiring rates have changed to conform to our order and they have implemented the vast bulk of the procedural changes. They now have an affirmative action officer in each of their regional offices, and departments that have been pro-active in affirmative action have had those kinds of staff. It takes resources and energy and they have been very aggressive in doing that, I might add, from within their own budgeted resources.

MR. HARRIS: Have you ever exercised either one of the two options? Either taken an agency to court or suspended the appointment power?

MR. KURTZ: We have not yet, no.

MR. ALATORRE: In relationship to your affirmative action officer, I carried a bill several years ago that some agencies have not been very happy with. That one asked for a report and the other one I guess basically mandated that an affirmative action officer have direct access or work directly and be accountable to the director of the given agencies, and it's my understanding that that legislation has not been carried out to the full letter of the law. Maybe you'd like to respond to that.

MR. KURTZ: My perception, there are a whole series of requirements in that bill. With respect to the reporting relationship, which we had some discussion over, we did implement and we told all departments that they must have the affirmative action officer reporting to the director. There's a continual tendency, in my view, and here and there to slip that person back down in the structure and I'm continually having to go put a finger in the dyke. I personally, as I'm sure you know, have met with some directors over that issue from time to time as I find any change. Second, we have prepared a -- we have, of course, complied with the reporting requirements, and what one of the things we report on is department's compliance with the procedural aspects of the law. And there are still some departments, which we feel very impatient about, which have not complied with all the requirements, but I think by and large, the central underlying thrust in the law, however, is the bottom line change in the composition of state government. That's

really, and I won't think that's achieved until the composition of the state work force is fully representative.

MR. ALATORRE: We'll put aside forestry service and we'll put aside fish and game. Those are obviously two of the most blatant. I don't think that they are going to have a tremendous impact on the people that I'm interested in, I think the people of this committee are interested in. What agencies, now you said that some have complied, others have not. Can you give us a breakdown of the agencies that have complied and if you don't have this I'd like to get it, those that have complied with the provisions of the bill, and the agencies that have not complied.

MR. KURTZ: We can quickly supply you with that. Essentially those results are contained in our most recent report. We can update that and will do that. In our report to the Legislature, we're very direct about identifying the departments that have achieved and have not achieved in a bottom line sense as well and plan to be similarly direct this year.

MR. HARRIS: You use 1970 statistics in determining your parity goals. Could you tell me why those statistics are not updated? I know for example that you list the dissipation of Blacks in the work force at 6.3 percent. Yet all the statistics that I have seen relate to 7.5 to 8, and I would assume they are also higher for Spanish surnamed people as well since 1970. So then when you talk about meeting goals, then perhaps the goals

that you're attempting to meet are not realistic from the standpoint of the work force.

MR. KURTZ: I would point out that we are rising above those percentages. The reason we use that is that's the only official labor force data we know of with respect to the composition of the work force. That's the reason, and we will be changing, of course, very shortly to 1980 data and we do of course, as everyone does, expect a significant change, but that's the reason. It's the best tool we have available. And in fact, I think everyone knows that for Hispanics the 1970 census wasn't effective, didn't operate, and as a consequence of that we have had to derive, the census has had to use derived figures the best we can. Similarly with respect to disabled, which we require goals and timetables for, which is kind of a first in the nation. We've had to compute because they not only were not included as a separate subject in the 1970 census, they are not in the '80 census either, and that's very troublesome to us as a policy creating board.

MR. HARRIS: I'd like to ask whether or not the State Personnel Board does an analysis of the existing procedures. Now to give you a specific example the use of preliminary review committee banking systems, there have been court decisions which have found that those systems have had adverse impact on fair employment practices and I was wondering whether or not the State of California uses these preliminary review committees and whether or not any

studies have been done as to the impact on hiring.

MR. KURTZ: The community groups that are on staff raised the question of the potential negative effect of the use of a preliminary review committee and a supervisor rating process and we recently changed our policy to require representativeness in those panels, and that's a result of our review. We didn't undertake a specific analysis in that case of adverse effect; we reached the conclusion that the committees should be representative, and that's the only effective way to insure an effective process, and we made that change. With respect to the other kinds of committees we have, we have similar policies requiring representativeness. We have reviewed the effect of panels, oral kinds of processes, and find that they do not produce adverse effect; the oral process does not. The written test often does because of, I think, historic patterns of education discrimination in society. And we've deemphasized very significantly the use of that tool as a result of that finding on our part.

MR. HARRIS: According to the April 1980 annual report of the Personnel Board you've delegated to departments over the years substantial position classification authority, and I'm wondering about that as it relates, of course, to minorities at large, particularly the adverse impact of that delegation on women in terms of these classifications systems, the lack of reclassification of people, for example, who have been in traditionally low-paying kinds of positions where responsibilities and other things are changed because

of technology, for example.

MR. KURTZ: It's important to distinguish between what we have delegated and what we have not delegated.

MR. HARRIS: I'd like to know.

MR. KURTZ: What we've delegated is decision making within the existing classification structure. So a department in 90 percent of the instances can decide if an employee should be in Class A or Class B. We have not delegated and by constitution cannot delegate the creation of job classes, and in fact our staff has been very assertive in creating technical occupation groups and classes between clerical classes and professional classes. A classic example of that is our own staff where we have what is called a Personnel Technician which ten years ago we hired our professionals from outside and hired our clerical employees and the two really didn't -- and now we have a major occupational group in between that is fundamentally an upward mobility class. So we do maintain control. And in our contracts with departments, those issues get raised and dozens of bridging kinds of classes have been built. We've had extensive hearings on that. There's a general change taking place to create a series of steps in the structure.

MR. HARRIS: Mr. Kurtz, I have a final question and then the other committee members and the consultant might have questions. That is, that in your 1980 annual report you stated as of September 30, 1979 that Blacks, Asians and Filipinos were represented at or above parity in the work

force of State of California public employment, and Spanish speaking surnamed and disabled people were under-represented. Could you explain to us why that under-representation continues?

MR. KURTZ: The under-representation continues because our affirmative action efforts have not yet bridged the gap. They're assertive and aggressive and perhaps not as aggressive as the Legislature wishes in that direction we understand, but they have not yet bridged the gap. Now with respect to Hispanics, I think everyone knows we've been making very, very strong efforts to bridge that gap. With respect to the disabled, the program we have, affirmative action for the disabled is a product of HEW Regulation 504 which is a very new thing, and I would point out with some pride that of the major tests of affirmative action programs for the disabled that have been developed by HEW, California is the only state in the country that has conformed to all of the tests and we have a very assertive program and are making very significant progress in both of those areas.

MR. HARRIS: Well, is the problem outreach efforts, recruitment, are you getting a sufficient number of applications from Spanish surnamed people? What's the problem?

MR. KURTZ: My perception of the problem with respect to Hispanics is that the affirmative action program for Hispanics in earnest is a newer part of the affirmative action program nationally and in California, and it hasn't

yet fully -- our lower level tests and examinations are doing quite an effective job in outreach. We're getting good representation in our classes and making substantial progress. We need to make a lot more and that surge is moving up through the system now.

MR. HARRIS: So the problem is not in terms of people applying for the jobs?

MR. KURTZ: In some cases it is, in some occupations. The same distribution issue that effects blacks and the disabled and other groups, women, affects the Hispanic community as well, so in terms of engineering classes and those kinds of classes, we have to make a more substantial -- for the bulk of the entry hiring kinds of classes where the large numbers of state employees are hired in the clerical jobs and the correction supervision types of jobs, we have, and psychiatric technicians, we have the techniques and the availability is very, I don't believe that it's an availability issue myself at all.

MR. ALATORRE: In terms of your efforts in the recruitment, in the recent report by the U.S. Commission on Civil Rights for State Advisory Committees, they had a chart and I'm sure you're familiar with it, and they broke down all of the various groups and one of the recurring problems, at least for I believe probably most of the groups, particularly the Hispanics was the problem of hiring and the problem of retention. And retention seems to be a recurring problem that you have had. Well, it's fine to go

after a work goal and say that you're able to accomplish that, but then there becomes a problem every year. And you look at the latest statistics, I think in 1979, and while you had a great number of people that were employed you had just as great of a number that separated from state employment. And I guess my question is what are you doing in relationship to retention.

MR. KURTZ: First, any employer the size of the state is going to have a very high level or have large numbers of employees leaving in all races and sexes and it's discouraging to look at the back door and see all of this recruiting effort in that exit. We had, I think an honest answer is we have not devoted attention to finding out if we can slow down the exit of protected group members, and we're doing that now.

MR. ALATORRE: How?

MR. KURTZ: First we're going to diagnose where the losses are and second we're going to look at what kinds of additional assistance and help can insure, we're going to look at the possibility of requiring reports from departments and information to be made available just to get some basic exposure on the issue and find out to what extent we have a problem of adverse effect in separation as well as other kinds of --

MR. ALATORRE: So in other words if you go back to say the last six or seven years, I think you see, at least from the statistics I saw which I think are your statistics,

I mean it's been a problem.

MR. KURTZ: What's happening is we're getting a net gain, but I think what that report effectively points out is we could have a bigger net gain if we could plug some of the exit as well, and that's a question we're going to address.

MR. LAMAR LYONS: Mr. Kurtz, you made mention of the source of your data when you're doing work force parity. It seems like the gist of your remarks is that you put a lot of emphasis on population data.

MR. KURTZ: Labor force.

MR. LYONS: I mean labor force data.

MR. KURTZ: There's been an extensive debate involving the board itself over the use of client served population and labor force, and the Personnel Board has adopted a labor force policy which is widely used in society and has been widely used by the courts as a benchmark for determining results.

MR. LYONS: So would it be accurate to infer, then, from your comments, that the federal criteria is utilized along with criteria that courts also utilize is not compatible with the requirements of the state?

MR. KURTZ: No. The courts have used different measures, but have relied heavily on availability and labor force data as a basis and federal regulations similarly accepts and uses labor force data.

MR. LYONS: So in other words the State Personnel

Board just extracts from several sources in order to come up with their own particular criteria for labor force parity.

MR. KURTZ: We use U.S. census data, the same data that others use. It's our perception, and we would be pleased to explain in detail to you just where those figures come from. We use the same basic data that the Department of Employment uses from the census and we'll change it when we get the new data.

MR. LYONS: In your 1977 State Personnel report you made mention of the fact that there was a problem relative to upper mobility of blacks. The same is stated in your introductory remarks here in 1980. Now, because of, you're talking about three years and then I believe one of the members of the committee made mention of things that have gone on over a period of time, and I guess lastly, in January you made mention again of the utilization of the sanction process. What length of time will it take before the State Personnel Board actually starts zeroing in on deficiencies that seem to be well known over the years?

MR. KURTZ: I think the issue of zeroing in is a matter of definition of rate of acceptable progress, and that's a judgment that you have to make and give us, I'm sure, guidance on. Each department has goals by level and those goals reflect the distributional needs, and so it's not--we have an extensive occupational group level system of goal setting. So it's not an environment or problem that we've been at all indifferent to. The data that I see and

understand with respect to change shows that we are making progress, significant progress in achieving distribution. I think that community groups understandably feel that progress is not sufficient and that's, I guess, what this hearing process is about. Whether or not it is sufficient, whether we should be directed to accelerate.

MR. LYONS: In your area of examinations, you made mention of the fact that the oral process has its advantages versus the written process. Do the examination boards reflect on their affirmative action thrust in the departments, because it is our information that it does not.

MR. KURTZ: The panels that we establish, the Qualifications Appraisal Panels and the E.D.A. Panels, which are under our direct control, reflect good ethnic and sex and disabled composition. I would be frank to admit that the major contributor to that composition is our staff because we are very representative as I'm sure you know. And the departments that have excellent representation also contribute. So there is a problem that's perceived in the community and that I share that a very key person of that panel, a departmental representative, is often an anglo male. With respect to the second question, the use of the PRC, which is a departmentally controlled committee which we simply exert policy, that whole issue was subject to an extensive hearing recently and frankly I believe the PRC committee, we're going to recommend its elimination so the

point will be moot. We had so much criticism of the use of that committee that I think a change should be made to bring it under closer central control and scrutiny and I don't expect there will be PRCs at all six months from now. Our staff is going to specifically propose their elimination and one of the reasons is the civil rights issue, equal employment, affirmative action issue.

MR. LYONS: According to your annual report, appeals from the Department of punitive or disciplinary actions increased 18 percent, yet there are no figures relative to discrimination complaints prior to appeal. Would it not be reasonable to infer that the punitive or disciplinary actions were a result of discriminatory practices?

MR. KURTZ: Some of them are, and in the punitive action area which is handled in a somewhat different way by virtue of legislation, there are often cases that involve discrimination and the board acts on them. We have defined for management purposes discrimination complaints as those complaints that are filed under the discrimination complaints system. There are a significant number of complaints in the employment tenure area that involve an element of discrimination that are not listed as discrimination complaints. An interesting question and an issue I hadn't, frankly I hadn't thought of as a separate but it might be a good idea to identify those in our record keeping as a separate matter. So we have discrimination sometimes as an issue in those and it's

taken into consideration by the board in its deliberations and granting of appeals.

MR. LYONS: In your discrimination process, is it not basically parallel to your grievance procedure in the sense that you allow departments from the very inception of a complaint to address them?

MR. KURTZ: Yes. The general belief of those who dealt with discrimination complaints over a number of years is the best thing to do is get it resolved down in the ranks if you can, to avoid everyone getting angry and a high degree of formalization. So the procedure we have requires departmental efforts to reach a reconciliation, and one of the things that came out of this report, the series of questions that the committee addressed us is a good question and that question relates to our maintenance of data of what is happening down in the departments. We do not have a central data system with respect to that kind of grievance in the department. We only deal with and know about those that come to us.

MR. LYONS: One last question. In the discriminatory complaint procedure, does it not give the impression that a person's due process is basically being violated when you ask that person to go to the person who he is alleging has done a wrongful act against him and ask this person to resolve the problem by going through the department first. By the time he goes through the department, the department has the upper hand in regards to coming up with a very

substantial and responsive defense?

MR. KURTZ: I don't think, but I understand the significance of your question, I don't think that it denies a person due process. The department is required, in dealing with discrimination -- first the department is not, as everyone knows, a head with a whole bunch of people who do everything the director says. It's not that cohesive. So the director very often doesn't have any awareness of the situation. If there's a discrimination complaint in a district office of a department, the director, for all practical purposes, is as much an outsider at the outset as we are. And what we require the department to do is have a specific way of managing that discrimination complaint procedure that involves counseling and independent investigation within the system. But an argument could be made that all such complaints should be handled completely outside by an independent agency.

MR. HARRIS: Thank you, Mr. Kurtz. We appreciate very much your testimony. Mr. Morgenstern, do you want to testify after lunch rather than now? Well, if we promise not to keep you too long, would it be all right to get you to do it now?

MR. MARTY MORGENSTERN: I want to apologize very much for being late, and now I'm going to have to apologize to the cabinet secretary for being late again.

I would like to thank the Chairman and members of the Committee for inviting me to testify --

MR. HARRIS: Excuse me, would you identify yourself for the record?

MR. MORGENSTERN: I'm sorry. My name is Marty Morgenstern. I'm Director of the Governor's Office of Employee Relations.

It was requested that I present an overview of the Administration's policies and philosophy relative to the subject matter of this hearing. While our office does not bear the major responsibility for affirmative action, we have been closely associated with all Administration initiatives relative to State employment, and I feel reasonably confident to reply to this request. The Governor has tried to make it clear that one of the major goals of his Administration is to bring into the workings of government people who have been heretofore excluded. Specifically, this means Blacks, Chicanos, Asians, Women, disabled and anyone else who because of past discriminatory hiring practices has been given no opportunity to serve in the high or not-so-high positions of State Government. Further, it is the belief of this Administration that, given the enormity of the State civil service, this task cannot be accomplished simply by a nondiscriminatory hiring policy, but that affirmative action is necessary. That is to say, it is essential that we take affirmative measures to see to it that the large and largely autonomous institutions of State Government are sensitive and responsive to the new personnel mandates, and that they regard them as an

essential part of their mission. The tasks of recruiting, retaining and promoting people from what we now call the disadvantaged classes of society are a high priority of this Administration and hopefully of all of its administrators.

The State Constitution clearly mandates that hiring, promoting and retention, the basic elements of the merit principle, are fundamentally within the responsibility of the State Personnel Board. Probably with that in mind, our previous Governor assigned by Executive Order affirmative action to the Board. The State Personnel Board is an independent constitutional agency whose members are appointed by the Governor with the approval of the Senate for 10-year terms. Governor Brown has had three appointments to the Board. All three are women, one a Chicana civil rights activist, the second a Black lawyer and an activist, and the third a woman who works to support herself and her children. There can be no doubt as to the Governor's message here, especially in that the appointees themselves have, we believe, demonstrated both before and since their appointment their absolute commitment to the same principles of affirmative action that the Governor himself has often voiced.

While these appointees demonstrate a commitment to affirmative action, the Governor has not limited his activity in this area to State Personnel Board appointments. In his appointments in the highest levels of State government, the Supreme Court, the Governor's Cabinet, the

Department heads, and throughout the Administration reflect his concern and are an attempt to set an example to all the appointing authorities of the State, and we have, as has been testified, over a hundred separate appointing authorities. Further, the Governor has called (and even attended) special Cabinet meetings devoted exclusively to discussing the progress or lack thereof in the many departments and agencies of State Government. He has made it clear that he expects all of his appointees to accept as a primary part of their mission and responsibility the maintenance of an effective affirmative action program.

In general, we believe the SPB has carried out its responsibility with diligence, dedication and efficiency. We know that they have not accomplished everything the Governor and they themselves would like to have accomplished. We must also recognize that, given the legal and constitutional mandates of the merit system, this can be difficult. In frankness, we also admit that the legal obstacles are not the only ones. We don't believe that there is any conscious racism in the State civil service or among the Governor's appointees, but it is probably that in this large group, as elsewhere, there are those with unconscious prejudices, and there are varying levels of commitments to the affirmative action priority. Often it is easier to pick someone we know personally to be competent than to reach out for someone not from our own circle of personal friends and acquaintances. And for those of us who are white middle

class people, this usually means choosing other white middle class persons. Reaching out requires more effort, more time and more risk. It is our hope and belief that the continued diligent pursuit of affirmative action by the Board and the Administration will overcome these problems and that every possible effort to improve our affirmative action record will continue to be made.

We have recently seen where the U.S. Civil Service Commission has been critical of the Board's efforts. While that report reached my office only yesterday and has not been seen by the Governor, it will certainly be given close study and consideration. If the U.S. Civil Service -- Civil Rights Commission or anyone else feels that the Administration or the Board has failed in any aspect of affirmative action, we are anxious to listen to their concerns and rectify any and every shortcoming that may be uncovered in our system. There are statistics that the Board will probably present that would seem to indicate we have made a great deal of progress. But I am sure that this Committee is aware of the Administration's record in this matter. Rather than patting ourselves on the back for past achievements, we are prepared to look for whatever failures or shortcomings that may exist and join with you to find ways to correct these situations.

We are anxious to work with the Legislature and especially with this Committee on affirmative action. We feel we owe a great deal to the Chairman who last year carried a very important legislation implementing an

Administration initiative in the area of affirmative action as it relates to layoffs. We are anxious to continue to work in this cooperative fashion in the next two years to implement any and all policies that will achieve the important goals that our affirmative action program is designed to meet.

MR. HARRIS: Mr. Morgenstern, I don't think anyone seriously doubts the Governor's visible commitment to affirmative action. I think we're much more concerned with the enforcement of that commitment as it relates, for example, to the agencies and the departments and the lack of ability to reach parity in some cases, and we've mentioned a couple of the extreme cases in our discussions with Mr. Kurtz. And I'm wondering what kinds of sanctions, what type of enforcement would be proposed and what type of reporting exists into the Governor's Office to give him some perspective as to, for example, the number of grievances that have been filed. Do you know, for example, how many grievances have been filed with the State Personnel Board? I meant to ask Mr. Kurtz that, I know it's probably a question that should be directed to him, but those are the kind of things that I'm wondering in terms of coordination and in terms of how well your office is able to monitor the fair employment practices and affirmative action as it relates to promotions, et cetera.

MR. MORGENSTERN: We haven't been asked to monitor the Personnel Board. They have direct access themselves to

the Governor and their chairman is a Special Assistant to the Governor and she has made repeated reports to the Governor, not to my knowledge on the number of discrimination complaints but certainly on the progress and on the lack of progress in certain departments and agencies, and least of all reported to cabinet that the State Personnel Board meant to take sanctions against some of his appointees. We encouraged them. We did not say hey, wait a minute, that's one of our people. I think that the State Personnel Board received encouragement from the Cabinet and the Governor to go ahead and take those sanctions. I think it's fair to say basically we relied on their expertise and given encouragement at every opportunity.

MR. HARRIS: In Mr. Kurtz's reponse to my inquiry on the State Personnel Board, he mentioned that it takes a combined commitment of the Governor's Office and the Legislature and other public bodies in order to achieve goals as it relates to fair employment practices and affirmative action. And I'm wondering whether or not, certainly as it relates to the Legislature, the Legislature either directly, indirectly, frustrating or somehow inhibiting the efforts of the Administration on affirmative action?

MR. MORGENSTERN: I don't think that I would say the Legislature has frustrated. Certainly, look, in frankness we know that there are a lot -- this is a very political area -- there are charges or there have been charges raised in the past of reverse discrimination. I

think many legislators, individually at least, have expressed concerns about that. In all honesty, it is difficult to try and be careful not to violate the rights of the non-minorities while guaranteeing an affirmative action program for others. And I think legislators have expressed this concern. But I can't honestly say that we want to pass off all our problems and responsibilities on the Legislature. I think they're our problems and I think we have to work harder at it and I think some of the problems lie with our own people and some just in that it's difficult to change an institution as big as this even in four or five years.

MR. HARRIS: But you're not aware of any specific legislative enactments that inhibit your efforts relative to fair employment?

MR. MORGENSTERN: Not a specific legislative enactment during this Administration or any. I think, I suppose that I might view the merit principle in the Constitution more liberally than others have in order to fully implement the program. But even that is just a partial problem.

MR. HARRIS: So therefore we could assume that the State Personnel Board has the authority to implement any regulations necessary to achieve fair employment practices and affirmative action.

MR. MORGENSTERN: We can assume they have not had an authority problem at this point.

MR. ALATORRE: In terms of the Governor's Executive

Orders, how are the executive orders monitored? Because I mean a Governor has issued Executive Orders on many issues and issues that I agree on. But I guess my question is how they have been monitored and have they really been successful?

MR. MORGENSTERN: Sometimes. I think it's the same as a law. The Executive Order, if it's a legal Executive Order, it has the same power as a law passed by the Legislature. The problem often is implementation in any rule.

MR. ALATORRE: Then whose responsibility is it to implement the Executive Order?

MR. MORGENSTERN: Well, the one, the Executive Order in it, specifically this one on fair employment practices, gives the enforcement responsibility in the employment area, the Executive Order that I think we're talking about here is a broad one, the Reagan Executive Order, and calls for affirmative action policies in many areas of government. But in the State employment it gives the enforcement authority to the State Personnel Board.

MR. ALATORRE: Now, say that, and you know, I don't have any real problems per se with the State Personnel Board. Now if they're not doing it, and I guess it takes votes like anything else, like we're here in the Legislature to find out if they can implement anything, what can the Governor's Office do, you know, with agencies? Let's face it, the Governor appoints the heads of agencies. Now if the

heads of agencies aren't doing a damn thing about affirmative action, then to me it seems very simple: you get rid of them.

MR. MORGENSTERN: It's a little less simple with respect to the State Personnel Board.

MR. ALATORRE: I know it's a little less simple. Let's talk about what the Governor can do. You have a Director of an agency or a secretary of an agency that's not doing anything, all right? Now it just seems to me that that person that appoints can be the person that removes. My interest is, and there's a lot of them, and I'm not talking directly of -- and many times it's not the Director of, the secretary of the agency, but it's the people somewhere down the line. Now, what influence can the Governor's Office put to bear on some of the agencies, and we'll put aside the ones that are always stoned because I have to be very honest with you on that, I like the force and everything else and that's all fine and good, but you know, if we don't have a job we're never going to get to the damn force. So what I'm concerned about are those agencies that directly affect our respective communities. And our respective communities, let's face it, come pretty much from urban areas and for some others in some rural areas, but the rural areas are a tremendous problem but they still get their urban areas. What can the Governor's Office do? It seems to me that if I was Governor I'd just fire people that just didn't carry out my orders and I'd get people that could carry them out.

MR. MORGENSTERN: It's sometimes a little difficult, does cause some problems, but you're correct, the Governor can remove any department head and any agency head who does not follow his mandates. It is, and I don't want to make any excuses, any department heads who have found to be lax can make their own excuses. I think the Governor has made it clear to people that he expects them to follow this as all his other mandates. Some have had more problems than others; some have had more success than others. I don't think it's ever been put to us that this or that Director has simply flat out failed in this area and should be removed for that purpose. If it is, the Governor has to make a decision as to whether or not he agrees with the people saying that.

MR. ALATORRE: In other words, if I come to you, Marty, and I show you a couple of them that haven't done their job, what do you think, hypothetically, and I know that you have a great deal of influence with the Governor, at least on personnel matters, do you really believe that, you know, he's going to get rid of them?

MR. MORGENSTERN: I really believe that if someone is not doing their job, the Governor will get rid of them. You may have to cross that bridge to find who agrees that they're not doing their job. But I think the Governor has shown a willingness to get rid of people who are not doing their job.

MR. HARRIS: What about the role, if any, of the

Department of Finance in enforcing AA; in other words, they come back, and I know they testify in every bill I ever have on the Ways and Means Committee. Why don't they testify as to affirmative action, for example, in the agencies, or could it have impact some other way with the Governor on Forestry Department. The resources agency lied, I think Richard sort of alluded to it. Let's be a little bit more direct. It has been one of the more recalcitrant as far as I'm concerned, the agencies in terms of fair employment practices. What sanctions can be exercised?

MR. MORGENSTERN: Well, clearly the department controls the purse strings, at least through the Governor it does, and I guess you could go for a lesser penalty than just firing the Director in terms of cutting off, it works both ways, cutting off money or allowing more money because of greater progress. I know that they have on occasion been involved in these discussions relative to providing a resource here or a resource there. I don't know that we've ever used as a sanction failure to meet a specific goal, therefore we're going to cut off some of your money.

MR. HARRIS: Do you think that that --

MR. ALATORRE: I'll tell you something, that's the one thing that everybody understands. Because I remember the University of California at the Law School, they didn't understand affirmative action until Willie Brown and I cut off their money and then within a week they all of a sudden figured out what affirmative action was and came up with a

plan. I guess my question is, what remedies, I mean obviously we can cut off their money, but I think that the Governor has a greater influence in the Legislature because, let's face it, the Legislature at this given point and time, I mean we're just fighting to keep whatever we have been able to gain up to this time, but it just seems to me that, you know, as the head of the State that there are direct and indirect ways that I think that the Governor's Office can exert his influence and the influence of the Administration in seeing some of these objectives met because let's face it, we haven't done a very good job. We've made gains, and I will stipulate that the Governor has made great appointments, all right, made a lot of appointments of people that have been historically under-represented. That's here, all right. But what I'm concerned, I'm concerned about here, but I'm also concerned in terms of numbers because one person versus a hundred, I'll take the hundred. Where we're lacking is not only in our entrance but also in the mobility factor and also in the retention factor, and it just seems to me that we need some leadership in that area.

MR. MORGENSTERN: I think there's no question that the Governor has authority to remove people or cut off funds. There is also no question that progress has not been as fast as a) we would have liked, or b) we expected it to be when we started. I think when you get in the administrative job you start to hear the reasons or excuses or whatever the problems that exist in implementing this program or any

program. This program is difficult, is tricky. We look at the figures on the face and they seem to be in most areas fairly good, certainly a failure or much less of a success in the area of Mexican-Americans than in others, but a failure in every area certainly as to -- I don't want to be saying that the program is a failure, but I do say we don't have the number of women and Blacks and everybody else in the higher levels of government that we should, at the middle management levels. And I don't know that anything other than continued diligence and your staying on our back and the Governor staying on the department heads' back, I don't think there's any easy cure. I think it's a question of it's a constant and a long fight. I honestly do. There are legal inhibitions and there are human inhibitions against doing everything we would like. The figures on the surface can be quoted to look very good, yet I didn't come here quoting those figures because I think we're willing to acknowledge, or try to acknowledge that we think we have to do more, but it's just not always as easy as we would like, and maybe we should apply more resources, putting some pressure here. Maybe that will mean that there will be some more evaluations and there will be an Administration decision to put more resources, look harder at what the board's doing, put more pressure there on agency heads. I think if the judgment is made in the Cabinet that's the same as the judgment you are making here, that may well be the result.

MR. HARRIS: Is there anybody in your operation

that has the responsibility for monitoring affirmative action?

MR. MORGENSTERN: No. It's the responsibility of the Board and they report directly to the Governor, and I get involved essentially on the issues that might impact on labor organizations, like the one we dealt with last year. That's when the labor organizations were, we thought, likely to have some concerns about so I get involved, but basically my job is to deal with the unions and the labor organizations.

MR. HARRIS: I would certainly think that it might be appropriate that there be an individual within the Governor's Office that has that specific responsibility, can sometimes trace down responsibility, that is helpful for us.

MR. ALATORRE: One last point, Marty. I think you've recognized that you've been here long enough to see, you know, what is the complexion of the Legislature and it's changed somewhat. Their commitment to some of the, I guess it's just that dynamics have changed tremendously. I guess what we're going to be looking for, because I don't really think they're legislating, I mean we've legislated on affirmative action and to an extent I think it's worked, some areas it hasn't worked. I guess we're really going to be looking toward some leadership from, you know, the Administration on this because I think that a lot of things don't have to be legislated. We can legislate an issue

to death and I think that what we need is not only leadership from the part of your Administration, obviously some leadership on the part of the State Personnel Board to really effectuate some of the things that I think this Committee is going to be addressing. We're going to be addressing some issues that we have addressed time and time again and maybe we're going to be focusing a little bit more on somethings, but I really think that it's going to take some diligence on the part of the Administration to really be able to accomplish some things, and if it means sanctions, then I think, I don't think the Administration can be afraid of sanctions. I think that they've got to start doing some of these things because I think that we're going to start throwing some of, we're going to start throwing the ball in your ballpark and seeing what can be done, because I think to take some of these issues before the Legislature is going to be very difficult. But I think some of the things that we're concerned about are not only the access, not only the mobility factor and the like, I think some of these can in fact be accomplished by having sensitive people, because I think there were two agencies that have shown great progress as far as I'm concerned in terms of affirmative action at all levels, and it's the Department of Motor Vehicles, it's the Department of Health. And then if we can just use those as examples of having people that were sensitive in those areas, I think that we need other people that are also sensitive. And we're not interested in

employing incompetents, but there are people, I think that everybody historically has said that we're interested, we can't find. I think those two agencies have been able to find and I think that other agencies of government can also find and I think that it's incumbent upon this Administration not only to put people that are the Directors but making sure that those Directors can in fact have the influence over their respective agencies to be able to accomplish some of these objectives.

MR. MORGENSTERN: I agree that we can accomplish more and that we should be making every effort to accomplish more. I agree that we've had outstanding administrators in DMV from the very outset of the Administration and in Health and that in other areas the people, all of the administrators have not been as outstanding in this area and maybe that means the Administration has to work harder. I do think that, while I tend to agree that laws are not necessary, some legislative support on some of these matters will be -- I believe there's going to be a lot more sanctions taken. I think we're getting to the point now where departments facing sanctions and we're going to be implementing them, and in some ways it's almost as if some of them want the sanctions, frankly, because it gives them more leeway. At least I think that's the case. But when those things start to happen there may be some counteractions and reactions and I think some of that may get before the Legislature.

MR. HARRIS: I have a question, Marty. In your responsibilities relative to employee relations, what about the grievance procedure. Has that been workable, has there been complaints about that, has that been an item in terms of employee bargaining? How is our grievance procedure as far as you're concerned? Is that an area that needs to be addressed or is the grievance procedure an adequate remedy?

MR. MORGENSTERN: I don't think the current grievance procedure is viewed as adequate by the employees but I think that they will address it as soon as they get to the bargaining table. I think it's as good a one as you see a management implement unilaterally and let's face it, it's essentially a unilaterally implemented instrument. We try hard to make it work. Sometimes it does. I think the employees will insist upon a neutral at the final step and some more streamlining of the steps and I think we'll be able to work that out with them.

MR. LYONS: Two questions. It's our information based upon data provided by the State Personnel Board that no administrator has ever been reprimanded for impeding an affirmative action program or not meeting affirmative action goals. Does the Administration, when it looks at performance of departmental heads as part of their evaluation for effectiveness, include as part of the criteria for evaluating their effectiveness the implementation of affirmative action programs?

MR. MORGENSTERN: I think I can say that it definitely has been where there's been a question raised on that matter. The Governor and, the people who evaluate and criticize or reprimand department heads are above my level. I answer to the same people the department heads do, namely the Governor and Gray Davis. And any, I would think, good personnel practices would indicate that any reprimands would be in private, generally speaking. I know that this has been a topic of discussion in the past and I think it continues to be. Maybe not as often as it should be or as some people feel it should be, but it has come up, reports have gone to the Governor, complaints have gone to the Governor and Gray and I know they've been topics of discussion between them and their administrators.

MR. LYONS: One last question. Both the Department of Finance and the Chief Analysts hardly ever make mention of budgetary items that have to do with affirmative action, yet when I look at the budgets, most of the budgets are really allocating funds from general contingency type areas rather than line items. Is any consideration being given in the 80-81 or 81-82, whichever year is coming up, as to actually putting in a line item so his departmental heads cannot use the excuse that they don't have resources?

MR. MORGENSTERN: Well, I don't think the Governor ever accepts that excuse anyway. He has generally said that the responsibility for affirmative action lies with the department head, and his secondary consideration

is whether how many special assistants he has in one area or another but he doesn't take that as an excuse that affirmative action only works when the agency secretary or the department head make it their personal responsibility to implement it. The numbers of people is always referred in every area, everybody needs more people, and there's an attempt to cut back, and it's probably more difficult for the affirmative action people and others because they're new, and it's always harder for the newer groups to get a piece of a declining amount of dollars. But I know the Governor's attitude from the very beginning when that came up is that first round when he sat with every department head on the budget, he said to them it's your job, and he especially alluded to his own role when he was Secretary of State where he said the complexion of that office changed tremendously while he was there and he told every department head to do the same thing, with or without x number of affirmative action officers.

MR. HARRIS: Last question is this, Marty. In the 1981-82 budget, are you anticipating any massive layoffs of public employees that may have an impact on our fair employment practices?

MR. MORGENSTERN: If there is a mass layoff it will have a bad effect. The bill you carried last year would limit that effect but it still wouldn't be good. We're not, I believe, anticipating, at this point, though we've never had a Cabinet meeting or any other meeting that

Mary Ann Graves has been present at, or her precedences for that matter but especially in recent months when we haven't been warned that next year we're going to come up against it moneywise and I don't want to predict what that's going to mean. At this point we are not preparing for any layoffs. But I believe we expect to be able to deal with or without layoffs. We have frankly looked at alternatives to layoffs if we really get pushed, and we prefer, I think, it's always been this Administration's preference to say, look, let's let everybody take a little less rather than laying anybody off.

MR. ALATORRE: But if in fact, say, the negative now, there is, what steps are you taking or the State Personnel Board taking to insure that the old adage 'The last hired is the first fired'.

MR. MORGENSTERN: Well, we took two steps, we're taking two steps. One, we asked Mr. Harris to carry a bill that allows us to adjust a layoff procedure on that basis, last hired first fired, so that we don't come out of the layoff any worse off than when we went into it with respect to classes that are not at parity, or below parity. Procedures for that are being worked out by the Personnel Board. I don't think that's the solution because that still means some minorities lose jobs, it doesn't protect all of them. We have prepared a heretofore confidential report in my office that, because I'm worried about this problem, though I don't want to be an alarmist on it but just in case, we have

looked at all the various things other employers have done or thought about in lieu of layoffs, reduce the work week, job sharing, various other things like that which I don't think it's profitable to go into it at great length but I think we've looked at alternatives to layoffs so that nobody loses their job. Of course those will be negotiable, the unions will have a say about that as will the Legislature, I'm sure. But we're looking to protect against that and hoping and believing that it won't come to any of it.

MR. HARRIS: So if you think there are lower manpower ceilings you'd be able to deal with that through attrition?

MR. MORGENSTERN: At this point, yes. I think any lower manpower at this point we will deal with through attrition. I don't expect to have to go to these other solutions.

MR. HARRIS: Thank you, Mr. Morgenstern, we appreciate it.

Ms. Joanne Lewis, Director of the Department of Fair Employment and Housing, and also Mr. David Garcia, the Executive Director of the Fair Employment and Housing Commission, might come forward together. Good morning. Would you identify yourself for the record and Ms. Lewis, if you would lead.

MS. JOANNE LEWIS: Yes. I'm Joanne Lewis, Director of the Department of Fair Employment and Housing.

MR. DAVID GARCIA: I'm David Garcia, I'm the

Executive Secretary for the Fair Employment and Housing Commission.

MS. LEWIS: We have prepared a written response to the questions and I believe the sergeant could give them to you, and I think our discussion might be more profitable if you had an opportunity to go beyond or ask with more specificity -- May I say for the record that I'm very pleased to be here and have an opportunity to assist in your study.

MR. ALATORRE: Maybe the most helpful, at least for me, if you could give us an overview of where your agency is at, then maybe from that we could probably get some questions.

MS. LEWIS: Very well. The department is ending its first year as a department. In January of 1981 we will have been a department for one year. Prior to that we were a division within the Department of Industrial Relations. Many of the questions addressed to us by the Committee speak to the increases in and improved sanctions that have been given to the Fair Employment Practices Act, now called the Fair Employment and Housing Act. We are now within the State and Consumer Services Agency and have been able to improve our enforcement ability through an increase in staffing levels, through an opportunity to expand the locations where our offices are located so that we are reaching a wider service group within the state. We have been able to work with the commission to clarify the law

that we are mandated to enforce and have published one set of employment regulations that I'm sure David is willing to expand on, and are in the process of completing the employment regulations and have a draft set of regulations for the contract compliance which is our affirmative action portion of the law.

MR. HARRIS: You have no authority over public sector employees who come within the jurisdiction of the State Personnel Board?

MS. LEWIS: That's correct. They are currently under a legal mandate, a court order.

MR. HARRIS: Is that under appeal or has that been resolved?

MS. LEWIS: That is on appeal.

MR. ALATORRE: What's the status of the appeal?

MS. LEWIS: We are hopeful that our case will be heard by the Supreme Court at the same time, no, that's not correct.

MR. GARCIA: Well, the point of fact is, I'm most recently informed that what has occurred is that the matter is now being briefed before the Court of Appeals and the briefing schedule requires that the Commission and the Department file their brief on appeal, I think, by the end of the month, so that's the status of it, okay. So the Supreme Court has preferred that the matter proceed through the normal rather than accelerate it.

MR. HARRIS: Does the department, though it has no

jurisdictional responsibilities relating to state employees who come under the jurisdiction of the State Personnel Board, in fact have jurisdiction over University of California employees?

MS. LEWIS: Yes, it does.

MS. SALLY TANNER: I would like to know just exactly what your agency does, what responsibilities do you have?

MS. LEWIS: We are responsible for enforcing employment discrimination over ten protected classes for race, national origin, ancestry, sex, religion, age, physical handicap, marital status, medical condition, and when a employee or a potential employee believes that they have been discriminated against by a potential employer or employer, they are allowed to come to our agency and file a complaint. We're an administrative law enforcement agency and we will investigate that complaint and if necessary issue an accusation which is heard by the Fair Employment and Housing Commission. We also are responsible for enforcing housing discrimination, public accomodation discrimination, and civil rights -- we have the Ralph Law which prohibits violence. I don't think we've ever used it but we do have that authority.

MS. TANNER: How many people in your agency?

MS. LEWIS: Currently we have 243 positions. Of those, 100 are the investigators who look into the, they're actually the general level of investigators, the remainder

are supervisory and administrative staff.

MR. HARRIS: Located where?

MS. LEWIS: In ten locations throughout the state. We have an office in Sacramento, San Jose, San Francisco, Oakland, Fresno, Bakersfield, Los Angeles, San Bernadino, Santa Anna and San Diego.

MR. HARRIS: Let me ask this, an individual public employee who has a complaint relative to fair employment practices or affirmative action in upward mobility, if he is a state employee other than University of California employee, would take that complaint to the --?

MS. LEWIS: To the EEOC. He has two options --

MR. HARRIS: EEOC or State Personnel Board?

MS. LEWIS: Correct.

MR. ALATORRE: But don't you have to exhaust your administrative, in other words take it first to the state and then to the Feds?

MR. GARCIA: You can have some things filed as each occur. Of course, there's a problem you understand that there are some categories of coverage which do not exist under EEOC. There are some people for whom the Fair Employment Practices Act extends protection that the Title VII does not extend protection.

MR. HARRIS: But the Fair Employment Practices Act covers all state employees, but jurisdiction is the only thing that differs, is that right?

MR. GARCIA: Well, the Fair Employment Practices

Act in fact extends, the Legislature has extended coverage over all employees over the entire public sector. However, the State Personnel Board has taken issue with that because of its constitutional mandate to select and appoint individuals, to select and examine individuals and that's where the conflict has arisen.

MR. HARRIS: But again, the question is only regarding jurisdiction, not about --

MR. GARCIA: That's right.

MR. ALATORRE: Practically speaking, I'd just like to -- you're a lawyer, aren't you?

MR. GARCIA: Yes.

MR. ALATORRE: Practically speaking, do you think it's a good system where on the one hand we cover everybody and with the exception of the University of California, as far as state employees are concerned, you go one place versus going to, in other words state employee goes to State Personnel Board. I mean, who do you think is better equipped to do --

MR. GARCIA: Well, of course I'm prejudiced because I counsel with the Commission, but I would put it this way very simply. I think that what you have is, we create a very complex system and an extremely inefficient system and I think that what the Legislature has done by establishing the Commission and the Department is to establish a specialized agency, an agency charged with the enforcement of fair employment practice laws, fair employment housing

laws, anti-discrimination laws for the State of California. And then you have what is the civil service component of the state which has as a component some responsibility in the area of affirmative action and in the area of employment discrimination because it is an employer and as is natural all employers functioning as employers or appointing agencies have to have some concern over the law. But what the Legislature has done is to create a system whereby the Fair Employment Practice Commission, Fair Employment Housing Commission, establish the law for the state. What you have developing is the very real possibility that you could have parallel walls developing, parallel lines of authority, so that the State Personnel Board would interpret the Fair Employment and Housing Act in its way and the Commission and the Department following a different line, so you really could indeed, by virtue of this conflict, have one set of laws being applied to the bulk of state employees, another set of laws being applied to those employees who fall very clearly within the jurisdiction of the Commission and Department and that same set of laws, of course, applying to the public sector -- pardon me, the private sector as well as municipalities and other state political subdivisions.

MR. ALATORRE: Now, and I don't recall and maybe you could refresh my memory, do you know what the legislative history is as to why there was that separation?

MR. GARCIA: There is no separation. The Fair

Employment Practices Act states very specifically that the Department and the Commission have the authority to enforce the laws as against the state. The state is defined and all political subdivisions of the state are defined as being employers for purposes of coverage by the Fair Employment Practices Act. Now I think what you have occurring is that the Board, by virtue of its constitutional authority, claims that that Act as it applies to the Board is unconstitutional. The Commission and the Department have a different reading of the law and think that they can be read so that there is no unconstitutional infringement of the Board's prerogatives in examination and selection, and that's why we're pressing our appeal.

MR. HARRIS: I'd like to ask Mr. Garcia if you would do us the favor of giving us some perspective overview of the Commission, how it relates to the Department in terms of both responsibility and implementation and enforcement of the Fair Employment Practices Act.

MR. GARCIA: Having been the Secretary for a little over two years, it's frequently surprising to me just how little even lawyers who pretend to practice in the field of fair employment practices don't understand the distinction between the Commission and the Department.

There is a very real distinction. Of course this distinction was created by AB 738, the Lockyer bill, which went into effect in 1978. And the distinction that is established essentially is this, the Commission is a

quasi-judicial, quasi-legislative entity, which means that it adjudicates controversies and it passes and adopts, promulgates regulation. So it functions as something like a court and something like a legislative body as well. In that regard the Commission has, in regards to its quasi-judicial functions it has the power to adopt precedential decisions as a way of controlling the development of the law of fair employment practices, and indeed has promulgated some 30 decisions in the course of those two years' time, which are precedential. It's promulgated a number of other decisions, but only 30 which are precedential.

It has also adopted, in its quasi-legislative capacity comprehensive employment discrimination regulations for the State of California. Those regulations purport to affect the State as employer and all state subdivisions as employer. Pending for adoption are the contract compliance regulations which Ms. Lewis has previously referenced, and I think it's fair to say that the Commission has a regulatory package which extends beyond that, procedural regulations and licensing and testing activities that will go on that will impact in various ways.

The Department, on the other hand, is the investigative and the prosecutorial branch of the agency. What they do is they act as cops, if you will.

MR. HARRIS: Let me ask this, how many members are on the Commission?

MR. GARCIA: The Commission has legislatively established seven positions. There are currently five persons serving. There are two vacancies and there are three holdover positions, there are actually five positions that could be filled.

MR. HARRIS: And the Commission meets what, once a month?

MR. GARCIA: The Commission has a regular meeting on the first Thursday of every month. It does occasionally meet more frequently as is necessary.

MR. HARRIS: How many people are on the Commission staff?

MR. GARCIA: The Commission staff has eight people.

MR. HARRIS: Are they all lawyers?

MR. GARCIA: Five of us are lawyers, and three are clerical.

MR. HARRIS: Has there, from one of your perspectives, been any conflict in the role or does the law as it was enacted clearly delineate and divide the responsibility so that there is not a conflict or an overlap either in terms of responsibility --

MR. GARCIA: Between the Department and the Commission?

MR. HARRIS: Yes.

MR. GARCIA: No, I think that there is no ultimate conflict. I think that the Legislature has designed an

effective system, in the sense of its being a specialized agency with administrative laws. There is some overlap in the sense that both the Commission and the Department have by virtue of their roles some policy making impact in the context of rule-making and in the context of adjudications. The Commission has the final say so there is no conflict.

MS. TANNER: Someone comes to you with a matter of discrimination. You investigate and then take it to the Commission.

MS. LEWIS: If we're unable to get it settled or work out a conciliation.

MS. TANNER: But you attempt to --

MS. LEWIS: Oh, yes.

MS. TANNER: Now you meet once a month or more often as necessary. About how many cases do you take to the Commission?

MS. LEWIS: Well, that number has been steadily increasing since January of '78 and I believe that we now calendar approximately ten to twelve new accusations a month, which is a significant increase. We used to calendar ten or twelve in two years.

MS. TANNER: An employee who feels that he or she has been discriminated against knows how to reach you?

MS. LEWIS: Hopefully. We find that not as many know how to reach us as we would like.

MS. TANNER: What do you do to make that known?

MS. LEWIS: We try to walk a very careful line

between educational activities and soliciting, but we do publish brochures, we do participate in community seminars, we have just recently added some posters to the Bart trains and to the buses in Fresno County where we have found significant, well the practices there are discriminatory at a level that you don't find in the more sophisticated urban areas, so we are trying to call attention to our services in those areas.

MS. TANNER: Do you do anything in a positive way with employers?

MS. LEWIS: We have the ability in the law to provide technical assistance to the employers and we have in the past conducted seminars. We have developed publications addressed to employers that explain our laws and how they can avoid discrimination complaints. But we don't have resources at the moment to expand that activity. Most employers, particularly the larger employers are able to get that information through associations and other activities.

MR. HARRIS: Let me ask a number of questions and either of you can respond. One, are legislative employees also included under the Fair Employment Practices, and they would be able to go directly --

MS. LEWIS: To our office, that's correct.

MR. HARRIS: Or the EEOC?

MS. LEWIS: Correct.

MR. GARCIA: There may be some exemptions for a

certain elected official and their immediate appointees. They're not covered by the EEOC. Theoretically they're covered by the Fair Employment Practices Act.

MR. HARRIS: So they would have a remedy then?

MS. LEWIS: Yes.

MR. HARRIS: The Commission alone deals with regulations, is that correct? In other words, the Commission deals with cases brought to them on appeal, right?

MR. GARCIA: That is correct. The Commission adjudicates cases. Once the Commission promulgates its regulations, it can of course amend and repeal certain sections as it deems wise to do so, but it does not enforce the regulations in the sense that it's not going out into the field.

MR. HARRIS: The regulations do come from the Commission?

MR. GARCIA: They do come from the Commission, yes.

MS. LEWIS: They are issued by the Commission.

MR. HARRIS: Has the Commission developed any uniform complaint guidelines with any kind of corresponding time frames?

MR. GARCIA: I think that's the Department's responsibility.

MS. LEWIS: Yes.

MR. HARRIS: I want to make sure I understand you.

MS. LEWIS: Are you referring to procedural guidelines?

MR. HARRIS: Yes.

MS. LEWIS: We have what we call directives that are used internally. We have not yet put these in a form that could be issued to the public. Our law requires that we bring to accusation any complaint that is filed within one year. So we have 365 days to either settle it or issue an accusation. But unfortunately that information is not in a form that could be publicized at the moment.

MR. HARRIS: Do you have a rapid charge discrimination and complaint handling process?

MS. LEWIS: Yes. We have what we consider our version of that. We correspond to EEOC in many of our procedures. Our rapid charge processing differs slightly from EEOC's in that unless a settlement offer is made very early immediately following the service of the complaint on the employer, we proceed to investigate. We don't initiate, the employer has to initiate a settlement, an offer to close. This happens frequently in the private employment sector. Almost never in the public employment sector.

MR. HARRIS: How many complaints do you receive quarterly?

MS. LEWIS: Annually we receive a little over 9,000 that we actually file and consider under our jurisdiction.

MR. HARRIS: Now, these are again simultaneously filed with the EEOC?

MS. LEWIS: Yes. All of those complaints that meet Title VII jurisdiction are filed with the EEOC.

MR. HARRIS: How many do you resolve, as opposed to those resolved by the EEOC of that 9,000?

MS. LEWIS: We resolve presently about 7,000 of those 9,000.

MR. HARRIS: So the vast majority of the complaints then are dealt with by the state rather than by EEOC.

MR. ALATORRE: How about the backlog?

MS. LEWIS: We have no backlog.

MR. ALATORRE: You have no backlog?

MS. LEWIS: Well, in the sense that all cases under our jurisdiction must be resolved within a year. We're currently working on an eight-month turnaround, so most of our cases we're able to get to very quickly.

MR. HARRIS: Does your process include preliminary inquiries or do you conduct full investigation on every case?

MS. LEWIS: Preliminary inquiries tend to be limited to director's charges. In other words we don't do it on an individual charge, only on a broader based practice charge. Otherwise, if it falls within the jurisdiction, the investigation starts out full blown, whatever it takes.

MR. HARRIS: What are the qualifications for your investigators and do you have an internal training program for them?

MS. LEWIS: The investigators currently are required to have a Bachelor's Degree or an equivalent amount of work experience. And to have experience in an area that's associated with advocacy or human rights and so forth. We do have an internal training program that is tailored to our particular needs.

MR. HARRIS: About how long is that program?

MS. LEWIS: Well, it varies. It's an ongoing program. Initially, for a new investigator, there is a two-week intensive training and then periodically we have additional training on new procedures or new aspects of the law, precedential decisions or regulations.

MR. HARRIS: So an investigation, once a complaint is filed, would be concluded within eight months, and then once it's concluded, the eight-month period has run, at that point would it then go to the Commission if there was an appeal?

MS. LEWIS: If it's a merit determination on our part that this charge, that discrimination was found, we were unable to conciliate it, we would issue an accusation and it would be calendared before the Commission. Very often cases are settled at that point.

MR. HARRIS: And how many cases does the Commission receive?

MR. GARCIA: I think that relatively few. Indeed this year I would suspect that out of the cases that have been calendared we probably will have decided maybe 60

cases. I think that in reflection that's significant in that say, just two years ago the number of cases that were actually decided by the Commission was only two, and in any prior year cases actually decided by the Commission, the highest number that was ever decided prior to 1978 would probably have been about eight or nine.

MR. HARRIS: Of the 60, how many go on to a civil trial?

MR. GARCIA: The system that has been developed requires an election of remedies. If the Department issues an accusation, the Department acts as prosecutor, the Department representing the people of the State of California since the people's dignity has been affronted by the violation of the law. And once the Commission makes a finding and issues an order, which includes the full panoply of civil remedies that can be affected, the decision is final. However, there is review available to the Superior Court. Alternatively, a private citizen can elect to have private counsel prosecute a matter before the Superior Court. So that's where the election of remedies occurs, if a private citizen desires not to be represented by the Department, they go to Superior Court. If the Department elects to represent them, and most often the Department does elect to represent them, they elect to be represented, then it goes to the Commission.

MR. HARRIS: I have two final questions. As you know, the focus of this hearing today is on public sector

employment. As it relates particularly to the vocal ends of government, is there any monitoring, any coordination either done by the Commission or the Department as to their fair employment practices or affirmative action?

MS. LEWIS: Let me say yes and no. Yes, we do monitor local governments but it's usually after the fact. We've no resource to monitor prior to a complaint being filed.

MR. HARRIS: Would an example of that be the case that you're dealing with the firefighters in San Francisco?

MS. LEWIS: Yes, correct. Once we go in on an issue, we monitor that for a minimum of a year and perhaps, we're suggesting in that case five years.

MR. HARRIS: Does the Department offer or issue any uniform guidelines to local governments as it relates to affirmative action, regulations, compliance?

MS. LEWIS: No.

MR. GARCIA: The Commission has in fact adopted and incorporated by reference the Equal Employment Opportunities Guidelines on affirmative action as well as the Federal Uniform Guidelines on selection and testing so those are in fact the rules of law that are applicable to the state subdivisions, that is the local governments, by both federal and state laws so there's consistency there. I would say that the Department would probably have more monitoring activities relating to municipalities in the

future once this contract compliance regulations are implemented, once the Commission issues those regulations.

MR. LYONS: In responding to one of the questions that were posed by the Committee, you list 788 complaints were filed by state employees against state funded agencies and departments. Is there any way of breaking it down into a more precise framework, like 77-78?

MS. LEWIS: Surely. Yes, we could.

MR. LYONS: I notice that it says refusal to hire 199, termination 167, differential treatment 151, denied promotion 141. Is that somewhat high?

MS. LEWIS: These are complaints brought to our Department, which may not be the total number of complaints filed, but complaints brought to our Department by state employees during that period. The breakdown we show you is the basis that, right, the issues they're complaining of.

MR. GARCIA: You understand, of course, that even before the conflict between the State Personnel Board and the Commission and the Department that many of these state employees, being somewhat sophisticated about their rights, would file both with the Board and with the Department and with the EEOC.

MR. LYONS: One last question. In the area of class action suits, since this jurisdictional dispute has evolved between the State Personnel Board and FEH, would that somewhat hamper the authority you have in order to bring class action suits against the state?

MS. LEWIS: Against the state? Yes, we wouldn't be able to do that against state departments.

MR. HARRIS: But against the University of California?

MS. LEWIS: We certainly could.

MR. HARRIS: Thank you very much. Mr. Sillas, would you please come forward. This portion of the testimony will deal with federal regulatory agencies and the first witness is Mr. Herman Sillas, the Chairman of the State Advisory Committee for the U.S. Commission on Civil Rights.

MR. HERMAN SILLAS: Mr. Chairman, my understanding was that I was here to present the report that the State Advisory Committee issued which dealt with the California state employment. To my left here is Mr. Art Palacias who is the staff member of the Western Regional Office of the United States who was engaged in preparing this report. Basically the report was a compilation of the compiled statistics from the State Personnel Board.

MR. HARRIS: Mr. Sillas, with your permission may we enter the report into the record?*

MR. SILLAS: Yes.

MR. HARRIS: Thank you. Continue.

MR. SILLAS: First of all, perhaps I ought to explain that the United States Civil Rights Commission has

*"California State Employment," Report by the California Advisory Committee to the U.S. Commission on Civil Rights; July 1980.

state advisory committees from each state and this report is one that's been presented to the United States Civil Rights Commission from the California State Advisory Committee. The report attempted to evaluate the effort of the state to determine to what extent California has complied with laws to overcome any identified under-utilization of minorities and women. There are various graphs throughout the report but basically the summary and the conclusions of the report are found on page 21 which basically states that since the mid 1970's minorities and women have made minimal progress in attaining parity with the white male employees, but there's definitely a deficit as it pertains to Hispanics who are 50% below parity based on the 1970 census, and because the work force figures are ten years old attainment of parity in 1979 probably is not achieved by all groups. Minority women in state civil service with the exception of Hispanics meet or exceed parity with state work force percentages based on the 1970 census. The high rate of separation for minorities and women negate any progress from increasing rates of hire, while some departments have made significant progress others have made none. Existing apparatus to achieve equal employment opportunities have not produced results. The recommendations of the advisory committee are 1) that the Governor of the State of California establish an affirmative action task force to study the practices of those agencies which have demonstrated progress in hiring minorities and women. These

practices may provide guidelines for other agencies where progress has been minimal.

The second recommendation is that in the interim where minimal progress has been made and good faith efforts to achieve established goals is unproven, hiring and promoting authority should be revoked. All hiring and promoting for these agencies would have to be controlled by the State Personnel Board.

The third recommendation is that the Governor of the State of California establish a little Hoover Commission to analyze the feasibility of separating the affirmative action function from the State Personnel Board. I just might add to that recommendation is it is apparent to the committee that although the Personnel Board has attempted to deal with this problem the reality is that it has not met the achievement, the goals that it should have met.

MR. ALATORRE: Did the committee in its deliberations come to any conclusion as to if you take it away from the State Personnel Board where do you put it and under whose jurisdiction would it come under?

MR. SILLAS: I would see it having to, first of all, require some legislation and that may not be practical. But I would suggest that a separate body whose sole function would be to direct the affirmative action program with teeth, the ability to cut funds, recommend the cutting of funds to legislators, and with a life expectancy of maybe five years, that it sets up its goals within five years and

ride herd on directors and departments and the hiring people. That it be able to develop a reward and punishment process, a reward for those departments and persons that are meeting their goals and accomplishing affirmative action implementation, and punishment for those that are not. That seems to me to be a clear statement on the part of the State of California that it is committed to reaching parity in the various markets. That would be the suggestion and recommendation of the committee.

MS. TANNER: Would that be similar to the commission and department that were just here as witnesses, that kind of a situation?

MR. SILLAS: I think it's a little different. Their set-up is for an individual to complain when they feel they have not been treated properly. What I think we're addressing here is the overall approach in terms of recruiting and hiring, promotions, all of that. And right now that's left in the hands of the individual director in terms of his department and how much time he wants to spend on it. It's left to kind of a nebulous group out there in terms of people looking at statistics. But no one is riding herd on it. No one is saying if you don't do this, this will happen. There's also no reward to anybody who takes on the affirmative action plan and implements it. We don't reward people for it. And unless there's a reward process, why deal with it. If you're dealing with middle management and one person is busy recruiting and hiring minorities

and the other person is doing absolutely nothing except to maybe meet once a month with the affirmative action officer and kiss him in the ear and send him out the door, there's nothing happening for that person who is in fact carrying out the policy. In fact, what may very well happen is when it comes time for promotion, the person that has not been implementing the affirmative action program who may not have been causing many waves gets the promotion. Now what is that telling the middle management person who is out trying to carry out the policy? That's the real practical problem.

We submit the report to you and appreciate the invitation and the opportunity to address you.

MR. ALATORRE: In terms of the 1970 statistics that are used to figure out the work force parity, is there any way you can extrapolate that and look at in terms of, say 1980 or say 1979 and whether those numbers are in fact correct in terms of percentages of work force and the like and the under-representative nature of various groups within that?

MR. SILLAS: I think no one would argue that the 1970 Census, using those figures in 1979 is in anyway accurate. I think any figures that I've looked at would indicate that the Hispanic community has increased substantially and we will know, get some form of an accurate count, hopefully, following the census taken this year. And that really hits a very significant fact that we discovered. Right now, just using

the 1970 census, you have a 13.7 work force parity for the percentage force Hispanics. The best that you're doing in terms of hiring, the state is doing as to that group, is 11.7 which means that you're not even hiring a work force parity. Now, at that rate, when you reach 11.7 you're never going to hit 13.7 and that 13.7, I submit to you, is substantially lower than what it actually is. It could very well be as high as 20% or more. And when you recognize that what the state is involved in in terms of delivering services to people that live in the state and you're having people come from other parts of the world who arrive here with different cultures and languages, you're not planning to deal with those people, you're not planning to give them services. And the result is going to be, as I see, is chaos and a rejectment of government on the whole by a vast majority, a large majority of the population. That's why I think what this Committee is doing is very important because you've got to project out in terms of what that population is going to be like, and that gets to the guts of why you have affirmative action plans. It's so that the government can reflect to the people that it serves that it represents them and also for those people in government to be able to give input from their own cultural backgrounds to help the administrators know how to deal with the population they're serving. When you have a vacuum, then you destroy the impact and the image for government, and you are void of any ideas and approaches as to how to deal

with people that need special services.

MR. ALATORRE: In your experience as a former director of an agency of state government and in that capacity, what did you see as some of the factors that inhibited a person at say, the top level from accomplishing whatever goals that that individual, whether it be a man or a woman, in the area of affirmative action?

MR. SILLAS: Fear. Tremendous fear on the part of those within the system as to what that means, because basically what you're suggesting is some new criterias and they're happy and satisfied with the existing criterias. They know how to manipulate it, they know how to deal with the lists, they know how to get the people in they want in, and those out that they don't want in. When you start to deal with other factors, what you have to deal with is a fear of the unknown. Which means, then, to implement a good policy, it's a 24-hour job. To constantly meet with groups, with employee groups, you have to deal with every rumor, you have to give them access to you so that if they hear of some rumor that somebody got appointed because they were black and that was the only reason or they got appointed because they were Hispanic, you have to deal with that immediately and address that. I would say that's the main factor. And unless you address that with facts in terms of that, really what you're doing is you're opening up the inventory of selection to all people so that you get the smartest and the brightest from all walks of life from

all segments and deal with that, you're going to have a lot of reaction. And even that may be a problem. I mean I don't, we have situations where suddenly the white male finds himself having to compete against Blacks, Hispanics and women, and whereas before he could go into a room and not feel he had to deal with them in terms of competitiveness now finds himself having to compete against them and naturally because of fear this can be the charge, reverse discrimination. When really all you're saying is no, you now have to compete with these people on an equal basis. But you're talking about a full 24-hour job to do that.

MR. ALATORRE: And would you say that is a principal factor regarding agency heads or people responsible for affirmative action, besides fear, and is why the state has not been able to at least bring the work force up to parity as it's reflected in the population of northern California?

MR. SILLAS: As to why, I think there are a lot of reasons as to why. One of them is the system you have in terms of promotions, having to be a prerequisite in a certain type of work before you can move on to the next, and sometimes the relevancy of one job to the other has no bearing at all. It's just that that's the way the people have gone through so then they close the tunnel so that they don't have to compete against as many people. Each department starts to develop its own specialties so that it doesn't have to compete against other departments and you

start to close up the bureaucracy. I think the fact that you're dealing with middle management that for the most part view every administration as temporary and view every philosophy that approaches the Legislature as temporary. That they're going to be there after you're gone because they don't have to answer to constituents such as you do and such as the Governor does. So for those that have been there 20 years, they've seen centralization, they've seen decentralization, they've seen affirmative action, they've seen it all. And they know that they can just stay and survive. And when you couple that with fear and what that really means in terms of their future, there can be a tremendous reaction, a negative reaction unless you're willing to address that in terms of their own careers. And as long as there's no monetary reward or any reward for them for doing something, what they're fearful of is with the new administration coming in, are they going to be identified as the pro-affirmative action group when another administration comes in and uses words 'we're going to go solely on the basis of quality' and now they are singled out as the other group. And then knowing what the bureaucracy can do, they see their career as being shot. On the other hand, you get an affirmative action oriented administration and the other people are singled out. And this happens within a bureaucracy and this happens in a middle class or middle management that directors are not going to be aware of it or deal with it.

MS. TANNER: When we speak of minorities we generally are talking about black, brown, and then we're talking about women. More and more people are coming into the country from the orient. Are we dealing with that at all in affirmative action?

MR. SILLAS: I would say, I mean I haven't been in state government now for three or four years, but during the time I was there the Vietnamese were arriving and our department tended to address that by having Vietnamese manuals on driving and so forth done. I think you have to address that.

MS. TANNER: I think so.

MR. SILLAS: And the only way you can do that is to have those people immediately brought aboard government because, I'll give you a perfect example of what happens if you're not cognizant of the cultures that you're dealing with. You may recall all of the Vietnamese were stationed at a marine base, brought here and stationed there, so we hired one Vietnamese along with our driver's license examiner and sent them down there with the idea of giving them schooling and classes on just learning the rules about the highways here in California. And we were going to have classes and we prepared a sign and so forth, and it was translated, and then the Vietnamese person that we hired said to us, you've got to add one more thing on that sign. And we said, what. And he says, you've got to say that it's free. And we had assumed that they would know it was free,

but he said you've got to put it down that it's free because they believe they're going to have to pay for everything. And if you're sitting there with a limited number of funds and you don't know what your future is you're not going to go find out how to drive on the highway. You figure you're going to do that once you get out. We would have blown the whole program and we would have probably sat there and concluded the Vietnamese weren't interested only because we didn't have someone that could have dealt with that culturally. I think that's what you've got to do as these new people come into this country.

MR. HARRIS: Could you comment on whether the study that the commission produced dealt at all with the dead end problem of the lower paying phenomenon that seems to exist among minorities and women? They never were able to rise and what remedies might be available to that?

MR. SILLAS: I believe we have some statistics which again are the Personnel Board statistics in terms of how minorities and women are at the lower echelons in the government. I don't believe we dealt with specifically in terms of recommendations as to how you might address that.

MR. HARRIS: But just that the phenomenon does exist?

MR. SILLAS: Phenomenon does exist and the reality is that under the system where you have oral boards and if all the top people are at a certain level and they

interview the persons that are coming up, if all the top level are males then it becomes a very difficult process for people to, as they view, to move up. What we did in my department, since I had as a deputy director a black woman and a white male and myself, we sat on the oral board so that we could have input in terms of that and wherever we could we obtained women and minorities to sit on the oral boards. An interesting phenomena would occur. If a white male went into an oral panel and saw two women and a male, he felt somehow he was being discriminated against because he had never had to deal with that before. So I think that's part of the reason that you have this. I'm not saying that there's discrimination on the part of the white male just automatically rejecting the minority and women, but the reality is that we interpret things, we interpret body language and we interpret it based on our own perspective.

MS. TANNER: But historically that's so.

MR. SILLAS: And consequently we miss an awful lot.

MR. ALATORRE: If we put aside just for a moment the need for legislation, where can the greatest impact be made in relationship to affirmative action? Is it with the director of say an agency, is it middle management, or where specifically? Say if the administration decided that your report is in fact valid, it is just using the statistics of the State of California, and we decided to

make an all out effort to change the dismal picture as it relates to minorities here in the State of California, where would you attack the system?

MR. SILLAS: Well, you would have to attack it at all levels. But the director sets the pace. He or she sets the atmosphere and that sets it for everyone. If you could also have a hammer in terms of perhaps the budgetary process, whereby for example a director has to appear before the committee and have to respond to the budget committee as it pertained to their parity with the possibility that certain funds might not be available to them, I think that would help. I also think that some form of reward for those persons in middle management, because when you really boil it down they're the ones that are doing the hiring and the promoting. The director can set the direction but those people are the ones that are doing it. And if there was some reward process for them, by way of salary increase, I think you'd speed it up by light years. But as long as there's no reward process, middle management says, hey I've got enough to deal with just getting this work out of here and I ain't got time to sit down and talk to some guy that's talking to me about, you know, Hispanics and women and how they ought to be employed, I've got a job to do and I've got to get this work out and I don't view that that hiring process is a part of my total job.

MR. ALATORRE: Evidently from the testimony from

the Personnel Board there's basically two sanctions that they have at their disposal. One is court sanction and the other is taking away the appointment power. Which one do you think is the most realistic, taking away the appointment power? From the particular agency of government?

MR. SILLAS: When you say appointment power do you mean as to any --

MR. ALATORRE: To hire.

MR. SILLAS: Well, that may be a sanction but that's never going to happen. I mean in reality the Personnel Board is not in a position to do any hiring for anybody. And I think every director knows that, and I think everybody in the state structure knows that.

MR. ALATORRE: So in other words the threat of sanction goes in one ear and out the other.

MR. SILLAS: All you do is prepare another report and send it to them and it will take them six months to analyze it and then you update it. And you keep updating your reports. That's the name of the game.

MR. ALATORRE: So in other words, the State Personnel Board, I mean nobody is afraid of them.

MR. SILLAS: That's right.

MR. ALATORRE: But possibly if there is intervention on the part of the administration --

MR. SILLAS: A director who gets a call from the Governor's Office, he's on the phone. You get to that phone as quickly as possible, particularly if the call is

the Governor is waiting for you. I mean you get there. And again, that clearly is direction and I happened to be in the Governor's Office when he called a person in the Personnel Board and it opened a thousand doors where I wasn't able to do it. But given that direction, and I think in this administration in all fairness you have a Governor who is very much committed to it and he has, I know, leaned on his directors. He did when I was there, I assume he's still doing it. But again, going back to what I said earlier, people within the bureaucracy recognize that you're there temporarily and they're looking at the long run. You figure a long term being four years, they're figuring a long term being 35 or 40 years. That's a tremendous difference in terms of perspective as to what you want to get done. So I'd probably go back to a reward process. You reward management for carrying out your policies. And if you do that, then I think, whether I like the policy or not, if I want to get paid for it, I suddenly love it.

MR. HARRIS: Any other questions? Thank you very much, Mr. Sillas.

We're going to try to finish up in the next 25 minutes and then take a break until 2:00 and if we might have Mr. Reylea and Mr. Gladden from the Federal Agencies EEOC and Department of Labor, respectively, come forward. We might first hear from the EEOC and please identify yourself for the record.

MR. FRANK QUINN: I'm Frank Quinn, the San Francisco District Director for the Equal Employment Opportunity Commission.

MR. CHESTER REYLEA: I'm Chester Reylea, the Acting Regional Attorney for the San Francisco District Office.

MR. QUINN: We very much appreciate this opportunity to appear before the Select Committee on Fair Employment Practices. I do bear the regrets from the Regional Attorney, Francisco Consino, that he cannot be here. He is on leave today. From what I hear we may all be on leave in the Federal government today.

We were asked several questions. One was what's the general jurisdiction of the Equal Employment Opportunity Commission in the area of affirmative action relative to the state and local governments of California. The Equal Employment Opportunity Commission enforces Title VII of the Civil Rights Act of 1964, the Equal Pay Act and the Age Discrimination in Employment Act. With one exception, these acts prohibit discrimination but they do not require affirmative action in the sense to insure equal opportunity where no unlawful discrimination is involved.

Mr. Chair, I don't know if you want me to read this entire statement.

MR. HARRIS: If you have one printed we can accept it for the record.

MR. QUINN: Right, why don't I do that. I also

brought two copies of a handbook which I think you'll find quite useful. It's Eliminating Discrimination in Employment, A Compelling National Priority. It's a handbook we developed for state, local, county governments on how to, particularly since the Webber decision, carry out affirmative action programs. And I also brought some information on the number of charges which we have received from state employees since February 1st when the hiatus occurred between State Personnel Board and the California Department of Fair Employment and Housing. We have 214. And finally I would like you to know that we think very highly of the California Department of Fair Employment and Housing. We have the largest contract in the nation with that Department, over \$2 million to handle some 5,000 plus charges. We accept 97% of the findings which they send to us. It's a very high acceptance rate. It's quite an efficient department, has improved greatly in the last few years. On the other hand, my Commission has a policy of not recognizing state personnel boards as 706 agencies with whom we contract to resolve cases of discrimination. The policy is based on either a conflict of interest or the appearance of a conflict of interest.¹

1. Correction: Per letter from Frank Quinn, District Director, EEOC, dated 10/7/80: "EEOC will defer to a Personnel Board if there is not another State 706 Agency in existence. The Commission will not defer to two agencies in one state. The Commission recognizes first those agencies which administer a law most like Title VII of the 1964 Civil Rights Act. In California, this would be the Department of Fair Employment and Housing."

MR. HARRIS: And your only stance is a standpoint of contracting.

MR. QUINN: That's true. And recognition that it's a 706 agency which is an agency to which we defer. Under our law we must defer charges we take in to the state for a 60-day period for them to resolve. We have an arrangement with the state because the state receives so many charges, many more than we do, that charges that we send they waive jurisdiction that we handle initially.

MR. HARRIS: The conflict argument that you made is compelling, at least persuasive, to me at least in terms of the State Personnel Board and their ability to either resolve those kinds of complaints, I think it goes back to consultant's earlier comment about having to take your complaint to the guy that you think is discriminating against you in the first place.

MR. QUINN: Yeah, at the very worst there is a conflict and at the very least there's the appearance of a conflict of interest.

MR. HARRIS: Okay. Mr. Reylea, do you have any comments you might give to us in terms of the grievance procedure as it relates to the state, how in fact it overlaps the EEOC's programs?

MR. REYLEA: I'm not sure what the question is.

MR. HARRIS: Well, I'm trying to ask whether or not from your perspective, the legal sanctions that are available to the state, how it relates to EEOC. The overlap

is obviously currently a conflict between an individual who works in public sector employment for the state and his ability to file a grievance. At one time he had three options apparently: to go to the State Personnel Board, the EEOC or go to the Fair Employment and Housing Department with his complaint, and now he can only go to EEOC and the State Personnel Board. Are you finding that there is an increased number of complaints coming to the EEOC because of the feeling of conflict that he feels for the State Personnel Board as a biased arbiter in that kind of situation?

MR. REYLEA: Yes. We do have a substantially large number of complaints coming to us from the state employees who cannot receive proper address under the state law. And one of the most serious problems that arises there is the fact that the EEOC cannot sue the state of California or any public agency so he's forced to Title VII. This means that, as far as EEOC is concerned in this individual there are no court remedies. The Department of Justice can sue a public agency but their resources are very limited; the number of suits they have filed are very few. Under the State Department of Fair Employment and Housing there is an opportunity for both administrator enforcement and court enforcement. This is a serious disadvantage faced by state employees now.

MR. QUINN: In addition to that, Mr. Chairman, we have in the private sector the ability to initiate the

class action suits on a large scale and we do that. We theoretically have the ability to investigate the state and local government class action suits, but because we do not have litigative responsibility, that's with the Department of Justice, we do not investigate for state and local governments class action suits. You heard the testimony from Joanne Lewis from the Department of Fair Employment Practices. From all standpoints, state and local government is home free because justice has a very limited staff and does very, very few class action suits and investigations against state and local government.

MR. HARRIS: Basically from a staff resource problem?

MR. QUINN: Yes. But I think it's a very serious gap. States such as Hawaii have no jurisdiction whatsoever over the state and local government and in this state the resources are the problem.

MR. REYLEA: We made one slip-up there in talking about our enforcement authority. We can sue states and public agencies with respect to age discrimination and equal pay discrimination, a very narrow area relative to the whole problem, but we can do that.

MR. QUINN: As a matter of fact we are very close to doing that with one department in the state of California.

MR. HARRIS: Mr. Gladden, please identify yourself for the record and give us your testimony.

MR. WILLIAM GLADDEN: I'm William Gladden, the Assistant Regional Administrator for OFCCP. We submitted our response to the questions in the mail. They should be here. I had just one or two comments that I wanted to make.

We're responsible for the enforcement of Executive Order 11246, the Rehabilitation Act of 1973, and the Vietnam Era Veteran's Readjustment Act in 1974. No government contractors. Now the handicapped requirements extend to those contracts that are as low as \$2,500. The contract provisions for the Executive Order 11246 and the Veteran's Program are established at \$10,000. One thing that I would like to comment on from the report we submitted is that we are not in a position to react to the overall clients of any particular state agency. The requirements that we enforce extend to those instrumentalities or subdivisions of the local and state government that have the contracts. Now, in terms of one of the questions that was put to us --

MR. HARRIS: What sanctions do you have available to you?

MR. GLADDEN: The debarment, cancellation, termination of the contract or referral to Justice for other kinds of sanctions which would be injunctive in nature.

MR. HARRIS: For example, the recent threat to the Secretary of Labor to withhold funds from the

University of California, would that be an example of the kind of sanction that might be exercised for failure to comply?

MR. GLADDEN: That is correct. The contracts that the University of California - Berkeley have could be terminated in the event of non-compliance.

MR. HARRIS: What, and since this is for the record, and your statement in answer to our questions has already been received, I'd just like to ask what kind of monitoring goes on relative to compliance with fair employment practice requirements in the federal government?

MR. GLADDEN: With the state?

MR. HARRIS: Yes.

MR. GLADDEN: Most of our monitoring is related to responding to complaints. The reason for that is, except for the universities and the medical institutions, we do not find that the entities which receive the contracts are of substantial size to warrant an ongoing prioritizing in the annual work lane.

MR. HARRIS: My colleague from Los Angeles has arrived, Assemblywoman Gwen Moore, and she has a question.

MS. GWEN MOORE: Let me apologize for being late but sometimes we can't control the air delays. I'm sorry, I may have missed some of your testimony that may address the question that I have. It's along the line of the question that Mr. Harris just posed in terms of monitoring. Once an affirmative action plan is submitted to the federal

government in compliance with the contract, what monitoring activities take place to see what they've done in terms of complying with that which they said they would do?

MR. GLADDEN: The plans are not submitted to the agency at will. They are requested. And the universities and the medical institutions are required to have a plan. Now the other entities do not come under our jurisdiction in terms of a requirement to have a written affirmative action program. But they are responsible if they have contracts. But we do not request that they submit affirmative action programs. When the plan is submitted and a review is conducted and that is the time that they will be requested, the review is completed and there may be a letter of commitment for minor deficiencies and violations or there may be a conciliation agreement. Now that conciliation agreement may include provisions for certain kinds of reports to monitor the compliance with the agreement, and if those agreements or conditions are not met, then the contractor can be cited for sanctions with a 15-day notice. You don't need to go through the whole process of show cause all over again. But there is usually no monitoring of whether they have the plan unless we plan to make an on site compliance review. And then if the plan is submitted, and we find that the contractor has a program that is complete and there are no deficiencies that have come to our attention within the previous 24 months, the plan may be accepted without an on site review. But that

is a relatively rare case.

MS. MOORE: It's a relatively rare case that you accept the plan without an on site? Have there been any instances where you have monitored a contract and found there was not a compliance, and if so, what action did you take?

MR. GLADDEN: There have been some instances where there were suspicions that a contractor had not complied with a prior conciliation agreement. And in those cases we have advised him of this and in that 15-day period they have been able to demonstrate that they have made an effort to comply. Because it is usually in the area of whether they meet the goals that they established.

MS. MOORE: Would that fall under the category of making an effort and just not being able to find any qualified people?

MR. GLADDEN: That could be the case.

MS. MOORE: The concern that I have is that we have lots of affirmative action programs and most of them have a boiler plate type plan of action. And I can't recall, and I'm sure you can help me, of any Federal contracts of late being rejected on the basis of failure to comply with affirmative action. Yet we're continuing to hear that we're falling farther and farther behind in terms of affirmative action type activities, in terms of minorities in the work place other than in the entry level or semi professional kinds of positions. I just really

wonder about the, it seems that everybody has developed the mechanics of developing a plan that would meet the requirements, but there seems to be no real interest in making sure that that plan is adhered to.

MR. GLADDEN: Well I think that my response to that concern would be that as you know the Office of Federal Contract Compliance Programs was recently consolidated under the Labor Department. Prior to October '78, the program was administered by 11 and sometimes 17 different agencies. Those agencies had requirements that were not always in accordance with the Labor Department's overall policy guidance. So in terms of administering the programs, in many cases contractors had not developed the kind of paper compliance that is a viable action oriented affirmative action program. And as the program developed, the sophistication of the EOS's became better and they were more mature. The tools that we had to work with have been improved. And where we are now is at a point where we're having a battle over the displays and the array of the data that will enable you to identify and get to those subtle kinds of actions that indicate a systemic problem in a particular contractor's operation. Now, the University of California - Berkeley case is a typical example of that. The data that was requested by HEW back in March of '78 was data that was requested on several schools, rather departments, where there was an indication of possible discrimination. Now to have come forth and provided that

data would either refute or substantiate the possible discrimination. The data was not provided and so therefore you are at a position where you're fighting a battle over the access to information that would enable you to make a finding one way or the other. Now this is not peculiar to the University system. We have contractors who are engaged in that same kind of activity, the resistance to provide the data in a way that the government needs to have it provided so that we can get to the problem. I think some of the classical cases are those involving some of the airlines where you start a compliance review and they give you a room full of data, boxes of information, and the boxes and the printouts just aren't in the form that you need to work with. And you have to then make a decision of do you set aside the resources in terms of personnel to work on that data to get it into shape it ought to be in or should they be responsible to provide it in the matter that is requested and as the regulations require. So what I'm saying in response to your question is that yes, there is an apparent difference between what should be happening in this program and what the facts show. A lot of it is based on, that situation is based upon the fact that we are still battling to get the kind of submissions that will enable us to move forward. The cases that have been made have been cases that have required tremendous amount of time and resources devoted to develop the data, and almost every instance we have to either go to discovery after the case

has been filed or we have had to go the administrative enforcement route in order to get the data to determine whether or not there was a violation.

MS. MOORE: I think what scares me about what you say is that of all the groups that we have before us now, you're the group with the big stick. You have the contract compliance. And when you tell me, I'm not an attorney but it would appear that if certain rules and regulations are set forth that one must meet in order to be in compliance with the contract that was awarded to you and they don't do it, then it would appear to me that you have no other recourse than to set aside the resources. And that has not occurred in recent years. Again it goes back to what you just stated, that we appear to be bending over backwards, deploying personnel to have to go through the records and try to help and provide technical assistance for them to get the affirmative action plan into some order that still may not show that they are in compliance with whatever the contract called for.

MR. GLADDEN: Now, the technical assistance is very minimal. The technical assistance that we are authorized to provide is less than three work days. So there is not an inordinate amount of technical assistance. Most of that technical assistance is provided in the course of the compliance review or in a seminar type of arrangement where we ask several contractors to come in. Now as to the allocation of the resources, the program as it is

presently constituted is two years old. Now I don't know that you can fully appreciate 1400 people being moved together from 11 different agencies into one agency and files being transferred from office to office, and offices being established, people who were in one part of the country being transferred to other areas. Whether you can really appreciate that or not, but what happens in a kind of reorganization such as this, and I think it would happen in any organization, there is a tremendous amount of disruption to whatever momentum that might have been built up. And we are still dealing with a number of cases that were started pre-consolidation. The U.C.-Berkeley case was started in March of '78. This was started by one of the compliance agencies. I think that, if my information serves me correctly, we have just had a settlement on the first major case that came out of the consolidation and that was with a case in Dallas recently. So we are in a position now where the resources are going to be allocated on a much more systematic basis. The priorities have been established. They have been established according to industry lines and the situations that have existed in the past will not continue to exist.

MR. HARRIS: Let me ask a question. Who is required to submit an EEOL?

MR. QUINN: EEOL's are submitted in the private sector by employers of a 100 or more.

MR. HARRIS: Whether they're federal contractors

or not, is that correct?

MR. QUINN: Well there is a provision in contracts, it's in there that you can be below 100 employees but if you have a contract of \$50,000 you still have to consider it.

MR. HARRIS: Is there any overlap between your office and EEOC in terms of review of these forms? I mean isn't that so there would be some preliminary data that comes in on a yearly basis that might be used to determine whether or not there is in fact any disparity?

MR. GLADDEN: Well, the data on those forms is made available to us. We do have access to it.

MR. HARRIS: You don't take action on the basis of that form --

MR. GLADDEN: It would not be adequate to take action on it, just that form. What we do with the EEOL data is to look at the contractors in our area and their report to determine whether they ought to be scheduled for a regular review or a priority review under the industry concept which might be whether it's a bank or insurance company or whatever. And we use the EEOL data to select in part the contractors that we review.

MR. HARRIS: Then your contract basically would be almost every state and local government in California, is that correct? Doesn't the federal government have contracts with almost every --

MR. GLADDEN: Oh, yes. Some entity of the state

and local government.

MR. HARRIS: Then your agency would be the appropriate federal remedy for at least monitoring and attempting to get some compliance with these individuals as it relates to those federal funds that they receive.

MR. GLADDEN: Yes.

MR. HARRIS: Not overall jurisdiction but as it relates to --

MR. GLADDEN: As it relates to those contracts.

MR. QUINN: If I can, one thing about the EEO1, they're really a very crude instrument. You might have what's called a prima facie case where you don't see anybody in one category and then you get bamboozled, very frankly, and state agencies do this, too, with all kinds of statistical information seen one way or another way and trying to work that stuff through on a class action is a complicated process. I've been trying to get the agency to make the EEO1's more sophisticated and I'm told that the mood of Congress at this time is not to ask for more information but for less information.

MR. HARRIS: It is very simple and there's no question about it. I fill it out for my clients and sometimes you can do it in a matter of a few moments and not worry about anything you've said.

MR. QUINN: And you can do it in very creative ways, too, so that somebody who is supposed to be a supervisor turns out in fact not to be a supervisor but a

lead person --

MR. HARRIS: It's all interpretation, no question about it.

MR. LYONS: I have several quick questions. When this jurisdictional dispute erupted between the Department of Fair Employment and Housing and the State Personnel Board, did EEOC attempt to inform the State Personnel Board that if they were to push it that state employees wouldn't really have effective remedy?

MR. QUINN: No. As a matter of fact we found out about the dispute rather after the fact. We were informed by the Department of Fair Employment and Housing. In the past we have told the State Personnel Board that we were not going to defer to them as a 706 agency. We changed our policy that at one time we did defer to the state personnel boards but because of the conflict or appearance of conflict of interest we changed it. We found out about this later and we immediately made arrangements with the Fair Employment and Housing to get the charges right off. We've taken in since February 1st 214 charges. That's as of 9/30/80.

MR. LYONS: So in other words the State Personnel Board has been aware of the fact that there was either the appearance or actual conflict when it came to discriminatory type complaints.

MR. QUINN: That's the Commission's position on state personnel boards having the fair employment activities

for state employees.

MR. LYONS: So it would be accurate to say that the EEOC takes the position that there's conflict.

MR. QUINN: Or appearance of conflict.

MR. REYLEA: It's not an appropriate agency to be handling complaints by state employees.

MS. MOORE: In essence what you're saying is they're monitoring themselves.

MR. LYONS: One question as it relates to DOL. Would it be accurate to say that 70% of all state agencies receive some type of federal dollars. That would give DOL the jurisdiction, some type of jurisdiction over them in the form of--if there's not compliance the DOL could step in if they so desired?

MR. GLADDEN: I wouldn't be able to say that it would be as high as 70%. You see, there may be a tremendous amount of money going into contracts with one or two or three state agencies, but some people sometimes confuse and mix contracts and grants and that is not our jurisdiction. We have no jurisdiction over the grants. But the contracts, they are substantial elements of the state that we do have contracts that would be covered.

MR. LYONS: One last question. On the question the Committee had posed relative to work force parity, you stated that the states are not mandated to use work force parity in the federal law. What are factors that they should consider in doing so? Is unemployment considered a

strong variable if work force parity is being used by the Department of Labor standards?

MR. GLADDEN: It is. That is an area that is negotiable with the agency and the auditor but it is something that has to be considered. The question would be how much weight would be given that along with the other factors.

MS. MOORE: Would not the State Personnel Board have responsibility for demonstrating how they are going to monitor their affirmative action plan?

MR. QUINN: I'd have to turn that to Mr. Gladden since we don't deal with affirmative action plans. We're law enforcement agencies.

MR. GLADDEN: Would you repeat that again, please?

MS. MOORE: I guess the bottom line to what I'm trying to get at is, is there any way that your agency would have any say so in terms of Congress in monitoring the force of the Personnel Board. Not saying that they're not complying but, in essence, they are not really monitoring their activities.

MR. GLADDEN: Well, I am not in a position to be able to react to what I have heard about a possible conflict overlap, but all I can say is that, for those incidents that we would review that are part of the state system, we would expect an internal auditing procedure and something in place to monitor the achievement. That is part of the requirement. And we would not be in a position to say that

it ought to be one state agency or another.

MS. MOORE: You're missing my point. I guess what I'm saying to you is that, could you not determine, because there are enough facts around that demonstrate that personnel departments, personnel managers or whoever has control of the equal opportunity office or affirmative action or whatever it is, and generally that has not been an acceptable manner, in terms of monitoring, a company or an agency or whatever's affirmative action plan. Accordingly, if you're finding that the Personnel Board cannot properly, or you're still getting the kinds of complaints you are that would suggest that there's some problem in that, would it not be appropriate for you to make some kind of statement to the Personnel Board that this, indeed, is not in compliance in the sense that the federal government would like to see it done. Not telling them where they have to put it, but to tell them what they're not doing.

MR. GLADDEN: Well, let me explain how it would work out in the course of a compliance review. In the course of a compliance review, if there were deficiencies of a systemic nature found, some of which should have been identified by the contractor, then the findings would relate to the degree to which the internal auditing and monitoring mechanism failed to do its job. Now wherever the responsibility was, we would be talking about the deficiencies in that part of the plan. And we would say then that these must be corrected. They would have to

agree to correct it. The corrective action might be placing it in some other office, but that would be up to them in terms of how it would be, where it would be placed. We would not say it ought to be in one office or another.

MS. MOORE: I'm not asking you to do that. Has it been pointed out to them that there is a problem and have they agreed to try to change it.

MR. GLADDEN: Wherever there has been a deficiency it has been pointed out to them.

MS. MOORE: Has that been done with the State of California's Personnel Board?

MR. GLADDEN: We have no reviews that relate to the State of California's Personnel Board. We have no reviews that looked at the State of California, to any substantial degree, as a larger entity than the University system, and that is on a campus by campus basis.

MR. HARRIS: In this particular situation we're talking about Berkeley?

MR. GLADDEN: Right.

MR. HARRIS: Okay, are there any other questions?

MS. MOORE: What relationship would you have with him, what did you say, you had 291 complaints?

MR. QUINN: 214. These are individual complaints. We enforce three laws, Title VII prohibits discrimination because of race, creed, color, national origin or sex; age and Equal Pay Act. We enforce those laws. He's working under an Executive Order on contract compliance, so in terms

of those individual charges, unless they were doing a review and asked us, as they do all the time, about charges, we would have no relationship.

MS. MOORE: I guess my question is that if you had 214 complaints and they're not being resolved in a satisfactory manner, would that not establish a pattern that they ought to be interested in?

MR. QUINN: Well, first, they are scattered throughout the state. Secondly, many of them are being resolved, but they're being resolved on an individual level. Thirdly, if we see in the private sector at least that charges are not being resolved then we proceed to litigation. We would not, as a normal course, bring to the attention of Mr. Gladden when we have a respondent where we're not resolving a number of charges. We would take them on ourselves, in the private sector. In the public sector, we don't because frankly we don't know who the federal contract compliants are and he has his own schedule, which I'm sure he'll explain it to you, of how they do reviews. And so they come to us and ask us information. Now, when we do our systemic in the private sector we always go to OFCCP and see what they have done against this particular respondent to determine if we're going to proceed and to get clues in how to proceed.

MS. MOORE: I guess then in answer to my question that if you had a number of cases that came from various people that were employed by assembly kind of agencies that

did not have any, that suggested to you there was some problem in the plan, the plan was not working correctly. There would be no way that you would tie that as a pattern?

MR. QUINN: No. What we would attempt to do would be to resolve them on behalf of the individuals. Now we try to always parlay it on as much as you possibly can. As a matter of fact, we don't even look at affirmative action plans. We go in there with a respondent and they say we have an affirmative action plan. We say well, what we want are the facts in this particular case. We don't want to know what you're doing over here. How did you treat this person, similarly situated people, and so forth.

MR. GLADDEN: Can I make a comment? Mr. Quinn mentioned our schedule. We have a plan for fiscal '81 that includes the priorities that we will address in terms of the industries throughout the country. Now in Region 9, the priorities are banking, insurance, electronics, aerospace, and coal and oil, universities. Now we get down to the state agencies when you begin to talk about the universities. Now the other parts of the state activities are not national, regional or area office priorities. So we just would not plow them in for review, ordinarily.

MR. HARRIS: Gentlemen, thank you very much. The testimony will now be in recess for one hour until approximately 2:15.

(recess)

MR. HARRIS: I'd like to reconvene the hearing.

And this portion of the hearing will have representatives from local government comment on affirmative action as it exists in their particular jurisdiction. And we would like to begin with the City of Los Angeles, Mr. John Driscoll. Is Mr. Driscoll here? Okay, then the County of Los Angeles, Mr. Kaplan. How about the City of Oakland, Ms. Greenlow.

MS. FLOYDEEN GREENLOW: Mr. Chairman, members of the Committee, I'm Floydeen Greenlow, the Affirmative Action Officer for the City of Oakland. I'm very grateful for the invitation to come and speak to you this afternoon relative to affirmative action in the City of Oakland. What I'd like to do is give you sort of an overview of where we are, where we should be, and some of the problems that I think are causing us not to be where we should be.

MR. HARRIS: Ms. Greenlow, before you proceed I'd like to introduce to my right my colleague Assemblyman Curtis Tucker from Englewood and Senator Bill Greene who is visiting from the Senate and obviously concerned on this vital subject. Thank you, proceed.

MS. GREENLOW: Oakland's affirmative action policy dates back to 1969, which is a very early date in terms of the history of affirmative action in local government. That's because at that point and time, Oakland developed what was called a General Plan. And part of that General Plan spoke to employment opportunities within the city. We have continued to look at the employment sector of

Oakland because, first of all, we have a very high unemployment rate there, much higher than the state even, and there are certain pockets in our city that it's extremely high, up to at least 15%. So one of the major concerns has been the discussion of what should we set our goals on, what should our policy address in terms of employment.

On July 20, 1976 the council adopted relevant labor market as the yardstick for measuring equal representation in city jobs. This is a fairly common practice. However, there was a great deal of discussion and community input and this item went back before the City Council and after many work sessions, it was decided that for the City of Oakland the policy was changed to reflect the following: that employees as a whole, as well as for each city department, the racial and ethnic makeup of personnel in all job categories will bear a reasonable racial balance to the racial and ethnic composition of the city's general population. So our goals have been set by the council and that is general population, some parity with the general population of Oakland. The California State Employment Development Department reports that Oakland's general population for 1979 reflects 67.5% minority. Black, of course, is the highest minority group in Oakland at 47%. Hispanic is the second largest group, Asian, native American. White represents 32.5%. Now in terms of where we are --

MR. HARRIS: Could you repeat those figures again?

MS. GREENLOW: Yes. The total minority population

for the City of Oakland based on the latest census statistics is 67.5% minority. In July of 1977, Oakland had a total work force of regular, full time positions of 3,764. Minorities represented 42.7%. Women, 24.3%. In April of 1980, the minority group had increased to 47.7% or an increase of approximately 5%, and women had made a 3% gain. It is significant to note that the 1978 data takes into consideration all of the cuts that were made as a result of Prop. 13, so we lost a total of 592 positions. In spite of that loss, we have continued to show some gains in meeting our goals or at least striving toward them. Our hires have been very good. We're able to recruit minorities with the requisite skills. We focus primarily on the Oakland area because of the unemployment situation there. One of the problems that we have is, we bring them in the front door and somehow they leave through the back door. This is a problem that we're focusing on. Retention, I guess, is a problem to a lot of the public agencies since Prop. 13 passed. People are feeling very anxious in public employment. At budget time every year, there are rumors that we're going to lay off hundreds and hundreds of people. It's those individuals that have good marketable skills who tend to go to the private sector.

MS. TANNER: I'd like to ask you a question. Of those percentages that you gave us, how many people, women and minorities are in supervisory kind of positions?

MS. GREENLOW: In 1977, for instance, we had 87 management positions. Minorities represented 25.3% of that group, women 13.8%. In 1980, we had 87 positions and our minorities have increased to 33.3% and women 20.7%. That's our management group, the higher level positions.

One of the problems that we have is upward mobility. We bring people in, we are aware that we have a problem with retention but in the middle of all of that we have a problem in losing people to some of the higher level positions. One of the ways that we address that is the city has approximately 100 positions that are designated management-exempt. These are unclassified positions. They are not under the civil service structure at all. For instance, you have your city manager, your assistant city manager, the support staff there that would not go through the civil service testing procedures. These positions offer a great deal of flexibility for affirmative action, simply because you do not have to go through the formalized testing and certification process. You can quickly move to fill these positions. We have experienced a great deal of success there, over the last three years, in terms of changing the composition of this group. And the numbers that I gave you a few minutes ago, tend to reflect that in terms of the management group.

MR. HARRIS: Let me ask some directed questions. The city has a formal affirmative action plan or policy?

MS. GREENLOW: Yes.

MR. HARRIS: What are the hiring sources, who has the appointing authority? The city manager, department head? How many different hiring entities are there in the city?

MS. GREENLOW: Okay. The city manager has responsibility for hiring.

MR. HARRIS: All hiring?

MS. GREENLOW: It goes through the city manager's office for final approval. The department heads simply make a recommendation as to the person they would like to hire, but the final authority rests with the city manager.

MR. HARRIS: So you do have centralized hiring.

MS. GREENLOW: Yes.

MR. TUCKER: Even for those non-civil service positions?

MS. GREENLOW: For all positions. The city manager's office signs off on them. The requisition to fill them, yes.

MR. TUCKER: Mr. Chairman, I'd like to pursue this a little further. When were you first appointed Affirmative Action Officer for the City of Oakland?

MS. GREENLOW: January the 8th, I believe it was, 1979.

MR. TUCKER: And at that time the percentage was about 67.5 minorities?

MS. GREENLOW: That figure goes a little bit further back than when I was hired.

MR. TUCKER: And at that time you had a work force of what percentage?

MS. GREENLOW: At the time that I was hired?

MR. TUCKER: Or the time your affirmative action program was, what I want to do is compare where we were then and where we are now.

MS. GREENLOW: Okay. That's what I tried to do a little earlier in terms of showing some progression over the last three or four years.

MR. TUCKER: But you never told us what was there at the beginning, you see. You told us what was there now. I can't compare those. Why don't you just repeat those figures, do you have them there?

MS. GREENLOW: Yes, I do. The figures that I have here are 1977, and the reason that I chose 1977, maybe that would have clarified, is because at that time we had a new administration. We had a new Mayor, we have a black Mayor in the City of Oakland and that was the time in which he came into office. And that's why I selected that particular point and time for this analysis.

MR. HARRIS: Let me ask this. In terms of the departments, do they set goals, do the individual departments set goals relative to affirmative action?

MS. GREENLOW: The departments have goals. The goals are there in terms of the city's policy. Now the hiring, the short range goal, depends on the number of vacancies you have.

MR. HARRIS: The police department, does it have a goal in terms of affirmative action?

MS. GREENLOW: Yes. Not only affirmative action, but the police department is under a consent decree.

MR. HARRIS: Okay, the fire department, then. They have goals, right, for affirmative action?

MS. GREENLOW: Yes.

MR. HARRIS: What are the sanctions if those goals are not met?

MS. GREENLOW: Well, it's viewed as departmental, that the managers of the departments are responsible for implementing affirmative action in their departments. That is part of the management responsibility. If the department head does not do that, then he or she is not performing their duty in that particular position. The city manager would have the authority to deal with that department head relative to the shortcomings in that particular area.

MR. HARRIS: That's also true in promotions?

MS. GREENLOW: Yes, that's true in promotions, too.

MR. HARRIS: Any other members of the Committee have any questions?

MR. BILL GREENE: In terms of your response to the Chairman, you say that the city manager has the authority to deal with, what does deal with mean specifically?

MS. GREENLOW: To discuss. To certainly make his, to make whatever he wants done in those departments in terms of his mandates carried out by that manager.

MR. GREENE: So they discuss, that means to talk it over. So what else can they do besides talk it over?

MS. GREENLOW: Well, he has the authority to hire, to hire and to fire.

MR. GREENE: So he has the authority to do so. One other question which relates to your opening statement. You stated that your policy was built, that your rule, that your regulation, whatever, was built on the percentage of minorities to the general population. Is there a distinction made there, general population as opposed to what other aspects of the population?

MS. GREENLOW: Of the labor force.

MR. GREENE: What does general population mean?

MS. GREENLOW: That means the total population of the city.

MR. GREENE: The thing that aroused the question is why you used general in front of the word population rather than just saying population. Because legally there is a distinction.

MS. GREENLOW: There are several terms used in the area of affirmative action relative to data base and general population includes everybody.

MR. GREENE: So that's just a word of art. Okay, thank you.

MR. HARRIS: Any other questions from the Committee? Mr. Lyons, do you have any questions? Let me ask one other question. Now your city employees, are they

all given copies of the affirmative action policy or the grievance procedure? How do they know that there is in fact a policy? How is that communicated? Whether it's through managers, general public, what is the dissemination?

MS. GREENLOW: When employees are first hired, they go through an orientation program that's handled by our personnel department. Part of that orientation is giving them certain written documents. The affirmative action policy is a part of that as well as a statement signed by our city manager to every employee in the city stating that discrimination will not be tolerated. So they are made aware at that point. We have an Intercom, which is a publication within the city, that we also carry information about affirmative action. And there are posters in each department indicating that this department has an affirmative action coordinator, the name of that coordinator, and the number that that person can be reached at.

MR. HARRIS: Tell me briefly what the grievance procedure would be. If someone had a complaint that they had in fact been denied employment on the basis of race, sex or any of the other effective classifications, what would they do?

MS. GREENLOW: In the city or outside?

MR. HARRIS: Let's go both, outside first.

MS. GREENLOW: An applicant who comes to the personnel department to make an application, felt they had

been discriminated against. They would call the personnel department -- normally this is the way it works -- call the personnel department to find out why they did not pass the exam, for instance. They will be referred to a personnel analyst who will explain whatever happened, their perceptions. From that point on the person will be advised that if they have more problems, then they should call the affirmative action officer. I should also point out that on our application form we have printed on the form that if the person has any problems relative to affirmative action, there is a number of the person to call, and that's made available to everyone.

MR. HARRIS: Well, then they come to you or then what?

MS. GREENLOW: They come to me and I will accept a complaint. They will fill out a form stating why --

MR. HARRIS: Then you will investigate that complaint?

MS. GREENLOW: Yes.

MR. HARRIS: Okay. You conclude that there has been discrimination. Then what happens?

MS. GREENLOW: Then I go to the personnel department, get all of the information. If there has been discrimination I try to see how we can resolve the complaint, basically.

MR. HARRIS: If you can't resolve the complaint, then they have the regular remedies, at the Fair

Employment and Housing Department?

MS. GREENLOW: No, they're always told when they come to me there are several options open to you, you can file with FEPC, you can file with EEOC, I can look into it internally which I will do anyway, but I certainly will advise them of those options at that point and time.

MR. HARRIS: What about internally? Do they come to you directly?

MS. GREENLOW: Internally the coordinators who have representatives, affirmative action representatives in the various departments, and employees are encouraged to use this resource.

MR. HARRIS: They go there and then to you?

MS. GREENLOW: If it is not resolved.

MR. HARRIS: And then the outside remedies, administrative remedies within the --

MR. TUCKER: By that time they've found that they're not qualified to hold a position and in most instances they're fired. This is generally the way they operate.

MR. HARRIS: LaMar, do you have a question?

MR. LYONS: Yes. Two quick questions. What type of reflection relative to minorities and women are in your managerial area, in general. Do you have statistics from top to bottom when it comes to managers, department heads, those who are in the hiring categories of employment.

MS. GREENLOW: I don't have them broken down in

terms of department heads and assistant department heads.

MR. LYONS: Could you obtain that information and send it to me?

MS. GREENLOW: Yes, I can certainly include that in the written report that I will make.

MR. HARRIS: One last question and that is, do you lump minorities together and some minorities don't like to be lumped together. How do you break that down in terms of what the parity is in general work force and what it is by ethnic resource and women?

MS. GREENLOW: That's true, I did minorities and non-minorities here in this report. However, when we are looking at parity we look at each of the racial, ethnic groups in terms of what their percentage is in the general population as to what it should be in our work force and it's not lumped as a minority figure.

MR. HARRIS: Well, in terms of breaking it down by ethnic groups, are you reaching parity in some groups more than in others or are you not meeting it at all?

MS. GREENLOW: There are some groups where we have reached parity in certain classifications. There are ethnic groups that we are not having that kind of success.

MR. HARRIS: Will you give us that breakdown for purposes of review? Not now, I'm just talking about when you submit to the Committee.

MS. GREENLOW: In the report, yes, I will. There is one other thing that I would like to say, if I may

have just a minute more, and that is that one of the problems that I'm faced with in terms of trying to implement affirmative action at the local level is that we have been told our positions have been reduced to the point that we cannot get training positions for women in the non-traditional job area. It is very difficult to get women there who have skills already, so we should focus our attention, in my opinion, to trying to create entry training level positions. The cities do not have the monies to do that. The departments do not have the luxury of downgrading a position into the training level. And I don't know about the other groups, this is what I feel very strongly about. If we had some assistance in this area--to have apprenticeship programs, perhaps in the departments, that people could get in and receive that training, it would be very beneficial.

MR. HARRIS: Well, aren't you coordinated at all with the community college? I mean, we're putting a lot of money into education in this state, why do you have to have internal trainers?

MS. GREENLOW: The programs there --

MR. HARRIS: I mean, what jobs do you have that you cannot get people trained for in community colleges, adult education, vocational education, apprenticeship programs?

MS. GREENLOW: We have not been able to tie into that successfully. For instance, I have spent a great deal of time trying to recruit for electronic technicians. We have a terrific need. We cannot fill positions. We cannot

find people out there. I go to the junior colleges, I go to the training center, EDD. The people that they have in the programs are already spoken for. There aren't that many there to begin with and when you try to work on affirmative action plus filling special technical needs you run into some serious problems. That's my own comment.

MR. GREENE: Mr. Chairman, I'd like to advise the witness that I put a bill on the books last year, Senate Bill 132, which will take care of all your needs in that regard.

MS. GREENLOW: Thank you. Glad you did that.

MR. GREENE: Many cities have been utilizing it.

MR. TUCKER: You said that most of the people who apply for those basic positions have no prior experience and you can't hire them because they have no prior experience.

MS. GREENLOW: That's true.

MR. TUCKER: How will they ever get prior experience?

MS. GREENLOW: They get their experience through going through formal training programs for that particular example that I gave you.

MR. TUCKER: For the city administrator? For an assistant to the city administrator? Where would you find minorities who have that type of experience?

MS. GREENLOW: I was talking about the electronic technicians.

MR. TUCKER: I'm talking about anybody who goes in to ask for one of those positions. Give me the positions that you have, not one specific. How will they get experience unless you're willing to give them a chance, to see that they can learn. I'm talking particularly about minorities. We're talking about affirmative action. Where would they get a course in, to be an assistant city administrator? Other than hiring them on the job and training them.

MS. GREENLOW: You don't. They could have some kind of managerial experience coming in, but will have to be able to learn on the job.

MR. TUCKER: You know, we hired, for the State Capitol here, an analyst who has never worked in the capitol before. All they have to do is have a certain amount of intelligence and education and we train them. Otherwise, minorities would never be employed for those positions.

Mr. Chairman, do you intend to have Fish and Game and Department of Forestry here?

MR. HARRIS: We commented on that briefly earlier today but they're the worst violators, if that's your point. We know that. We're going to look at them more specifically at another hearing.

MR. TUCKER: Do you have the power of subpoena?

MR. HARRIS: Well, they'll come.

Thank you, Ms. Greenlow, appreciate it very much.

Ms. Johnson, please, from the County of Alameda. Welcome and good afternoon.

MS. REBECCA CHOU-JOHNSON: I'm with the County of Alameda in Oakland and I'm the Affirmative Action Officer for the county. I really appreciate the opportunity to be here to share with you some of our successes as well as concerns in the implementation of affirmative action programs.

The county has had a program since 1972 and I submitted a very brief written testimony to you last week. If you have copies in front of you, you can see that since 1972 our work force representation for minorities had increased up from 32% up to 41.9%.

MR. HARRIS: What is the percentage of minorities in Alameda County?

MS. JOHNSON: Okay, let me back up. The percentage for minority in the aggregate is 32.8%.

MR. HARRIS: So you have above parity.

MS. JOHNSON: Yes, over 10% above parity. And our female representation has increased from 59% to 61.3% in the last eight years. And this increase is not just in the bottom line. It's also throughout occupational groups. We grouped our jobs, we have 900 classifications, 9,000 employees. We grouped our jobs into about 8 major areas, officials, administrators who are the policy makers, and then we have professionals -- our public health nurses, our engineers, attorneys, public defenders, you name it, social

workers. And then we have technical jobs, service maintenance jobs, skilled craft, protective service -- that's the Deputy Sheriff type investigative jobs. Then we also have paraprofessional office and clerical categories. So we noticed the increased, not only in just, say, the bottom level jobs. We have them throughout. And that's been our emphasis, too, is to have better representation.

MR. HARRIS: How are goals set?

MS. JOHNSON: Goals are set based on population.

MR. HARRIS: For each department?

MS. JOHNSON: For each department. The county structure is different from a city structure in that we have the board of supervisors and we have a county administrator who sort of serves as the agent to the board of supervisors. And I work in the county administrator's office, reporting to the county administrator. And my role is really just to coordinate county policy, make sure that the policy is implemented, and make my reports of progress to the board of supervisors. And I'm sure you're going to ask me how are we going to, you know, make sure our department heads are doing their job and how do we monitor affirmative action. I can tell you that my role is that of advise-persuasion, and using the current structure to the best potentials. Alameda County is very much open to the public, like the city, and we are subjected to public scrutiny to a large extent and when our department heads are not doing their job, we make reports to the board of

supervisors and it's public information. The press will usually come in and get a piece of the information, put it in the paper, and that usually works. We don't do it on purpose, we only do it when there's a need, and the board needs to be informed in order to make their policy decisions.

MR. TUCKER: Question, Mr. Chairman. Out of all those people you have employed in that county, how many of them would be considered supervisory or administrative personnel? I'm talking about public health nurses level, et cetera.

MS. JOHNSON: We have a very large health agency. We have 3,000 employees there.

MR. TUCKER: Let's take all administrative personnel.

MS. JOHNSON: All administrative throughout. We have about 300 officials and administrators, really top level.

MR. TUCKER: And what percentage of those are minorities?

MS. JOHNSON: About 26% minorities. 33% females.

MR. HARRIS: Tell me this, what is your grievance procedures, both as the previous witness testified, internally and externally. If somebody comes in and applies for a job and doesn't get it, and then also the case of an employee who feels he's been passed over for promotion.

MS. JOHNSON: We are pretty proud of our grievance procedure at this point, so I really don't feel that it really deters filing of complaints. In fact, our procedure

facilitates a resolution of complaints, too. We have several avenues. We have the grievance procedure in the memorandum of understanding with the unions. We have our administrative code procedures. We also have a uniform procedure for processing complaints. And in that uniform procedure we provide for counselors located in the work unit. Their names are publicized so people can seek help with more than one counselor, they have their own choice. If the problem is not resolved at that level, we have departmental affirmative action coordinators doing the full investigation and make recommendations for resolution to the department head. If that's not resolved, then it goes to me. If that's not resolved, it eventually goes to arbitration; a binding hearing.

MR. TUCKER: In those procedures, generally before an association or union will take it, it must have been a proven case of discrimination. I was in civil service for approximately 40 years and I know how that system works as far as promotions are concerned. They have something called the evaluation of promotability that you can play with and you can tailor that to the person you want to reach. And that's a common practice in civil service organizations or in municipalities and counties. You undoubtedly have seen that happen where a job spec is tailored to one individual. The County of Los Angeles was guilty of that for many years, even at the time when I retired. They were still doing it. They did it for

me. I was the recipient of one of those special deals where the job was almost created for me. It's generally done, and you know that, they can get anybody they want to and they can justify it before any board that hears it and unless you have, you know, just guidelines or goals that you intend to set and you work on it from month to month and you go before your council and present them with the progress that you've made, you haven't accomplished anything. You have to set an affirmative action goal and work towards that goal and say each month we will do this and depending upon the number of positions you have available, and somebody on that council or somebody on that board of supervisors should be responsible for reviewing this periodically to see that you're trying to reach affirmative action goals. There are so many ways to get around it, you know that they're getting around it, they're still getting around it. I asked about the Department of Fish and Game because they defended the Department of Forestry. They don't hire females and minorities. If they have them, fine, but I doubt whether they've hired any in years and years and years. Most of the people they send before our Committee as affirmative action officers were appointed yesterday or they were appointed last week, and they were appointed for a specific purpose. They give them a lot of statistics and they come and give them to us. But you know, those conditions still exist out there. You find some of those municipalities are not hiring minorities or not promoting minorities and

they're not promoting females, particularly Black ones and Chicano, they're not promoting them, and they're justifying their positions. And these are the things that we would like very much that, not necessarily the affirmative action person who is put in that position because that's your job, and if you don't do a good job and be responsible for those people who hired you, you're going to get fired and they're going to hire somebody who will meet their desires. Is that not correct?

MS. JOHNSON: Yes. Affirmative action officers a lot of times are caught in a double bind.

MR. TUCKER: I know you're in a double bind, I can sympathize with you.

MS. MOORE: Let me see if you can for me differentiate between the grievance procedure and the affirmative action complaint procedure, if there is any difference.

MS. JOHNSON: Our grievance procedure has a specific provision like you follow the steps within a time frame. You normally pursue it with your first line supervisor and then onward to the division chief, the department head, within, say seven days at each level, eventually to maybe a panel of department heads and that's it. If it's a grievance procedure, it eventually goes to arbitration but you have to kind of follow the chain of command in pursuing it. But for the uniform complaint procedure that I talked about, it's different. It doesn't

require you to go to your immediate supervisor. It encourages you, but you don't have to, a lot of times because it's not possible. And the counselor council will also tell you about all your options at that point and also to help you identify and define the issues involved, to see if you really have a complaint or whether it's a frivolous problem or whether it's discrimination, unrelated problems with discrimination. It could be personality, it could be supervisory.

MS. MOORE: Let's stick with my question. My question is process. You said that the grievance procedure is the regular union type grievance procedure where you go to the first line supervisor, then to the department head and eventually to arbitration. On your uniform complaint procedure you go to the counselor. Now where do these counselors come from?

MS. JOHNSON: They are designated by department heads to serve as counselor and they are workers in the department but there are usually more than one. We have a ratio of one to every 200 employees. And so for a department with 1,000 or more employees, you will have a few counselors and you can choose which counselor you go to. You don't have to go to the one in your own unit.

MR. HARRIS: Is that their full time responsibility?

MS. JOHNSON: No, it's their part-time but we provide for it, time off and compensation and they will not be evaluated on this by their regular supervisor on their

affirmative action counseling duties.

MS. MOORE: So generally it's a position that carries with it a certain amount of prestige since you have one for certain numbers, so people that get appointed counselors kind of like to stay there so they may not rock the boat as much as they might if they were --

MS. JOHNSON: Well, if they don't rock the boat we don't want them. We do evaluate them and make progress reports to the board.

MR. HARRIS: They are trained?

MS. JOHNSON: They are trained. Oh, yes, they really need training, too.

MS. MOORE: So they get training, they get compensation, they get time off, they rock the boat.

MS. JOHNSON: But if they are not effective, we know about it. The complainants will come to us.

MS. MOORE: How do they get to you then?

MS. JOHNSON: My name is publicized in the county's telephone directory, in the regular local telephone directory, and also in application forms. It's posted on bulletin boards, you know, county wide affirmative action plans.

MS. MOORE: Wait a minute, let's go back again. I'm just trying to get process so that we can compare with other county and city governments as they come before us. The process, we're letting people know what rights they may have to follow a uniform complaint. It's posted. Is

there any information given, is it a requirement that the affirmative action plan is presented to new employees, do they get a copy of it?

MS. JOHNSON: The requirement is for departments to publicize the availability of a plan and where they can get it to review it.

MS. MOORE: Do you monitor that to see that that is done?

MS. JOHNSON: Yes. We make site visits just to check if the posters are obvious, if the plan is available, a number of things.

MS. MOORE: Wait a minute. You said two different things. You told me that they're required to let them know that the plan is available and then you say you go to the site and see if the posters are there and if the plan is available. There is no county wide thing that when you get new employees who come in and get their W-2 form--there's no way that they get it at that point so that we are sure that everybody gets it.

MS. JOHNSON: The county really doesn't have an orientation program for new employees. That's one of the things we want to do. So there's no existing system to tap. We can inform our payroll clerks to disseminate the information. That's one of the actions that we were taking. At this point, we only have affirmative action related questionnaires for new employees and we do have policy statements there on the questionnaire.

MS. MOORE: Just one other question. If you had a, and I'm interested in patterns today and I guess I'm just kind of hung up on patterns, if you had a supervisor that you got a complaint from Elihu Harris and it was resolved and found that the supervisor was in the, you know, the complaint was valid, and you got one from Mr. Tucker, then you got one from Ms. Tanner and you got one from me. What happens to that supervisor?

MS. JOHNSON: Well, the supervisor won't stay there very long. We will issue reprimands, put it in the personnel file, or we will suspend an employee or a supervisor who has not performed the job properly.

MR. HARRIS: Has that in fact happened?

MS. JOHNSON: Yes.

MS. MOORE: Okay. You said that you would issue a reprimand. You per se or whom?

MS. JOHNSON: No. I will recommend to the hiring official, whoever the responsible official is above that supervisor that this should be done and so I do not issue, I don't have the authority to issue reprimands or suspend people. All I have is to recommend. But it does carry weight, you know, because I have the power of persuasion and information communication to the board and for the county administrator.

MS. MOORE: Okay. You said the person wouldn't stay there. Have you ever had anyone removed from being a supervisor or a executive who had habitually been discrimi-

natory in their practices?

MS. JOHNSON: I can't give you a concrete example of, you know, actually firing someone because of a discrimination problem.

MS. MOORE: I didn't exactly say firing. I said --

MS. JOHNSON: Yes, like demotion or transfer out of the unit. We would usually freeze a person in a non-people oriented type job so similar problems wouldn't occur and a lot of times you find that the person is fine otherwise, you know, the technical skill is there, the employee's been with the organization for a number of years. It's just that part of the person that's really just not working out for the unit. So we would do a number of things, but this is the kind of example I'm giving you.

MS. MOORE: Well, I don't want to put you on the spot, but do you feel that your position has enough teeth in it for you to be effective?

MS. JOHNSON: I don't have enough teeth, as much as I want. I don't know how many more teeth I really need in order to make it work, but the way it looks right now, I'm hopeful, optimistic that our program will be successful.

MS. MOORE: I guess the real problem that I have is that so often we have great affirmative action plans but no real ability to enforce them, in the sense that there's no action that you could take that would compensate for whatever failures were in the program. Particularly if you have someone that continues because you could not fire

them, if that was not a condition under which they could be fired in terms of union contracts and other kinds of clauses in the personnel policies and practices of the county. So one last question. What is your relationship with the State of California in terms of monitoring contracts where you may have money from the state in various departments or whatever. Do you ever have any contact with this?

MS. JOHNSON: Yes. Our relationship with the state is on a very frequent basis. We work together with the State Merit Systems Services Division of the Personnel Board. They are there to enforce or monitor our performance under the federal Office of Personnel Management guidelines and we also work with a number of other state agencies. When we get monies from them we usually have affirmative action obligations. So we work with a number of funding agencies. As far as federal funding agencies --

MS. MOORE: I recognize that but does the state come and monitor your activities to any extent?

MS. JOHNSON: Well, once in three years they will come in and audit our personnel system, and affirmative action is a part of that auditing duty.

MS. MOORE: How many people work for you?

MS. JOHNSON: I don't have anybody working for me.

MS. MOORE: And how many employees did you say they had?

MS. JOHNSON: Nine thousand.

MR. HARRIS: All right, one last question. How many complaints did you receive in last fiscal year?

MS. JOHNSON: Last fiscal year we had about thirty. That's an average.

MR. HARRIS: Thirty complaints?

MS. JOHNSON: Thirty, fifteen formal and fifteen informal. When I say formal it means filed with FEP or the EEOC.

MR. HARRIS: There have been relatively few. And that's both internal and external?

MS. JOHNSON: That's right.

MR. GREENE: Mr. Chairman, I have a question. I have discerned from your comments that your affirmative action goal for minorities based upon their percentage of population. Do you have, does that same formula exist for women?

MS. JOHNSON: Yes.

MR. GREENE: What percentage of women of your population are in government?

MS. JOHNSON: We have 51% in the county population.

MR. GREENE: So what is your percentage of women employed?

MS. JOHNSON: We have 61%.

MR. GREENE: So you're in excess. All right. Now, here at the state Legislature we know now that there are five counties, San Diego, Imperial, Los Angeles, San Francisco and San Bernadino who have a majority minority

population. We also know that regardless of what happens, by 1990, California's population in total will be majority minority. Do you imagine that your county will continue that same policy after 1990, or would you be willing to venture a guess in that regard?

MS. JOHNSON: If I'm still around I imagine we will.

MR. HARRIS: Thank you, no further questions.

MS. MOORE: May I ask you one last question. What is your relationship to the county personnel department?

MS. JOHNSON: I work for the county administrator and the personnel department also works for the county administrator as well as for civil service commission.

MS. MOORE: Okay, so --

MS. JOHNSON: My relationship with them is that of monitoring, overseeing what's happening and making reports to the administrator.

MS. MOORE: Would you say that your position is equal to the personnel officer?

MS. JOHNSON: Personnel director? I don't get as much pay.

MS. MOORE: Women seldom do. But is your position commensurate in salary?

MS. JOHNSON: It is. She didn't actually finish the question. But I consider myself to be sort of on the scale above. I don't have any direct line but I do have a dotted line and I do make reviews of their performance.

MR. HARRIS: Okay, thank you. Mr. Driscoll, of the City of Los Angeles, would you come forward. Would you please give us your name for the record, and most of the questions will probably not come from me since everybody else here is from Los Angeles.

MR. JACK DRISCOLL: Members of the Committee, my name is Jack Driscoll. I'm the General Manager of the Personnel Department for the City of Los Angeles. I had one copy of the prepared statement which was just delivered. I will read that, and maybe as opposed to --

MR. HARRIS: Why don't you enter it just for the record.

MR. DRISCOLL: I'll run through it real quick and try to be more summary than go through it and allow for questions. The City of Los Angeles obviously is a city, as is indicated by Senator Greene, is a city that is predominantly minority. It certainly will be as a result of the 1980 census.

MR. GREENE: It's 51.3% now; it has been for three years.

MR. DRISCOLL: The city's affirmative action program is under my responsibility. The network that's established to influence that really is multiple. We have committees in each department which are made up of employees within that department that represent Blacks, Hispanics, Asians, women in the work force. Those affirmative action committees feed to the department and then to us. And

there's an over, kind of a big task force that is appointed by the mayor that includes myself, members of the mayor's staff and some other key people in the city and a representative from each affirmative action advisory group that work in the city. We've dealt with a number of issues in the city, I think, over a period of time. With some background, though, I think it's of note because the major issues which I see us having to deal with are changes of the system because of the restrictive nature of our civil service system. We probably, maybe in the country, have the most restrictive civil service system and even in excess of the federal government. We operate by the strict rule of three, the mayor has instituted an executive order that really brings us to a rule of one and that was intended as a positive effort where when somebody does not want to select number one or number two on the list they must write a letter to the mayor, for review by staff, in order to determine why the individual is being non-selected. The idea behind that, of course, was to avoid, within the restrictive system that we have, if a woman or minority were among the top three that the departments had to justify a non-selection of that individual. One of the big problems that we have in Los Angeles, again, is the system. It's an old system, it was designed in 1930 and we still have it. I think some of the major efforts that we've undertaken is to try to open that system up as best we can within the constraints of the charter.

MS. TANNER: How are you doing that?

MR. DRISCOLL: We have on the ballot now, and hopefully it will be approved by the voters a charter amendment which will create a management service program which is similar to the state system but not exactly. Right now, and just a little background to describe that. Right now, in order to move in the system of the City of Los Angeles, you really have to start from the bottom. Somehow I made it in there two years ago as a general manager from the outside, but it's a very tough system to break into and let me describe why. The exams must be announced on a promotional basis absolutely, not just on an open basis. They have to be announced on a promotional basis. They can be announced on a promotional and an open basis. In order, if the exam is completed, in order to look to a person from the outside, that person has to have scored higher on the exam by charter than anybody from the inside or you can't even look at that open list.

MR. TUCKER: How do you have the privilege of taking that exam in the first place if it was not an open?

MR. DRISCOLL: They can announce it on a promotional basis and an open basis. In my case it was promotional and open. But even to get to the open person, that person has to have scored higher on the list than anybody from the inside. Even then it's all in parity as to whether or not the appointing authority wants to use that open list or the promotional list. Now the

management service program will open up our ranks in the city to outsiders as well as insiders. We will reduce approximately 250 civil service classes to 30. As opposed to using the strict rule of 3, we are proposing we group people in categories of outstanding, adequate and satisfactory. The way it would work would be that if the appointing authorities, an example myself, if I were to appoint an assistant general manager right now I would give an exam and I would have to hire from the top three names on the list, most likely from the inside. In the new system we would pool large groups of management types as opposed to specific requirements that you have 342 years in personnel, we would be testing you and examining you on broad management experience, management skill. We would then end up with a pool of people and I could select anybody from that outstanding pool. We think that's going to open up the system tremendously. The city has a history of narrow classes which restricts us in terms of minimum or the rule of three and it really defines down our ability to promote people from within. We think the management program will do it.

MS. MOORE: Let me ask you a question on who's going to be determining outstanding, what were the other categories?

MR. DRISCOLL: Outstanding, satisfactory, adequate. We'll give an exam for people, probably using assessment centers, and we'll have a criteria against which people

will be measured. We'll use assessment centers heavily. If there's a particular exam that doesn't require that kind of an approach, we may use oral interviews, et cetera, but it would be our staff and the civil service department, personnel department, that make that determination.

MS. MOORE: And you feel that that opens it up more?

MR. DRISCOLL: Absolutely.

MS. MOORE: It opens it up more for the subjectivity that's involved in that and who's determining who's outstanding and who's not?

MR. DRISCOLL: Well, that's been kind of a charge by the people who oppose the process. I would argue on the other hand that written exams have a history of discriminating against the minorities. I would say all interviews have a history of discriminating against minorities. It seems that any test we approach it has some disparity impact. I think this evaluation in an assessment center, particularly when you insure that the board is representative of the community and that you utilize women and minorities in your community to sit on assessment centers, on honor boards, I think you undertake a much better approach to insure that at least there will not be that kind of an effect.

MR. HARRIS: How does it all tie in to monitoring and compliance with an affirmative action plan or goal? In other words, if you have a more subjective system then

I can see some positive benefit if in fact there is an incentive to meet these goals and therefore we can utilize open process and have a broader pool toward meeting this goal. Without it I can choose a minority or I can choose a woman because I have a broader pool and there's a minority or woman among members of that class, members of that pool. How does that all tie in?

MR. DRISCOLL: The issue becomes one of getting minorities and women into the pools. Right now, the way the system is structured, in the management ranks, even though we've made improvements, that's a very difficult task. So the first issue becomes one of opening the system and getting people into the pools who can assist us in improving our employment profile. The second issue then becomes if people are in the pool, how do you deal then with the appointing authority, not to mandate but to make sure that they're carefully reviewing their situation. We would do that from our department and from the mayor's task force. Obviously we have under-representation at the management ranks. General managers of the City of Los Angeles are fools once we open this process not to make a selection of women and minorities. Otherwise I'll just have another judge to report to on a consent decree. And then the courts will mandate how we do it as opposed to us doing it voluntarily.

MS. MOORE: Would you advertise for these?

MR. DRISCOLL: Oh, yes. And we would go out on a search. The plan really is to make this a dynamic

process. It will cause us to run out and push doorbells or --

MS. MOORE: Because if the insiders all have the advantage --

MR. DRISCOLL: Well, they won't have the advantage in this process because we've also put on the ballot that we do away with seniority. That's another issue in the city system that's tied to the charter where for each year of service in the system you get one quarter of a point.

MR. HARRIS: This is on the ballot in November?

MR. DRISCOLL: That's right. There's a lot of quiet opposition coming primarily from city employees who do not see that in their best interest, obviously.

MS. MOORE: I wanted to ask you, on the criteria, in speaking of incentives are there any kind of, as you indicated at one point, city employees get a quarter of a point or whatever it was added on for every year of service. Is there any kind of incentive given, like an extra point for minorities or for an under-represented group in whatever the category is?

MR. DRISCOLL: That would be a charter issue. It is not in the charter. We were successful, or unsuccessful depending upon your position, of modifying the veteran's credit which we felt did some things to women in terms of our work force. We modified it in terms of how long one has that advantage and for how many exams. But no changes

have been made within the system that would give percentage points on the basis of race or sex.

MS. MOORE: You're not telling me that on the ballot, that in the ballot argument is the criteria that will be utilized in determining who goes into the pool.

MR. DRISCOLL: No. There is not a specific criteria pointed out. To put that on a charter amendment I think would be far in excess of anything you would want to do, and the fact remains that we will change our exam approach as time goes on. We will use the assessment center, sometimes we use oral interview. That truly is kind of the nits and grits and we felt that that ought not to be put on the ballot.

MS. MOORE: The perception being initially from what you say, would be that it's so that you can get this broader representation into the city work force. But there's nothing that you're saying that you're going to build-in to insure that that goal is accomplished.

MR. DRISCOLL: It will be accomplished. It will be accomplished through recruitment, it will be accomplished through the exam process, it will be made successful through open recruitment, being able to go outside and attract women and minorities.

MS MOORE: Let me say something to you. Everything that you suggest or everything that you've stated is certainly a way of broadening the things, but it all, as you pointed out, depends on how you use it. For example,

when you talk about broadening the recruitment, a lot depends on where you go to recruit. If you go and recruit at all men's college and I don't care, you go all over the world and recruit that's not going to bring us any more women in the work force. If you concentrated on trying to get women in or if you're trying to get minorities in, we were just told by one group that they were trying to recruit minorities and they went to Brigham Young University. So that doesn't tell me that they're trying very hard where minorities are likely to be found. So what I'm saying is that if you're telling me that you're broadening a category with the intent of broadening the work force, then it would appear that there would have been some criteria of some kind of incentive to insure that that goal is accomplished.

MR. DRISCOLL: Such as, you know. As I indicated we do have a minority recruitment division within my department. There is no doubt about the Mayor's commitment to affirmative action in the city. I think, even though there may not be something specific in the charter ballot itself, I think the mechanisms, you know, the internal mechanisms are --

MS. MOORE: I was talking about the criteria that you were talking about, building up.

MR. TUCKER: I understood you to say that you take something into consideration other than seniority on the promotion of these people, is that correct?

MR. DRISCOLL: In the new system?

MR. TUCKER: In the new system.

MR. DRISCOLL: No. What I was saying is the seniority credit would not be provided for tenure in the city service. It is now.

MR. TUCKER: Would you consider not using seniority in the layoff procedure?

MR. DRISCOLL: I would advocate that.

MR. TUCKER: You would advocate something other than seniority on a layoff situation.

MR. DRISCOLL: Sure.

MR. GREENE: But that's not in the charter amendment.

MR. DRISCOLL: That is a charter and a labor issue that you're, I'm sure, familiar.

MR. GREENE: The seniority is included in the charter?

MR. DRISCOLL: Yes.

MR. GREENE: Let me ask you a question because I'm a bit confused. Your new system will apply to the attainment of management people, correct, and all other employees will be brought in under the normal civil service system, is that correct? Seniority will apply to all or to management only?

MR. DRISCOLL: The charter amendment does deal only with the management service.

MR. GREENE: So seniority will only relate to the management service as well.

MR. DRISCOLL: Yes, or the lack of it. The seniority credit that is still given to employees within the city, other than managers, will remain. We've not altered that.

MR. GREENE: So we really don't have the nature of the problem that it might appear.

MR. HARRIS: How many employees are affected?

MR. DRISCOLL: There are probably about 500 positions, maybe 700 to a 1,000 employees, depending on how many we fine-line. We did not state by title who would go into that but we're looking.

MR. GREENE: I see why I haven't had any constituents contacting me on the subject.

MR. DRISCOLL: And it's interesting because management is the one who's afraid of it in the system.

MR. GREENE: Because they're surprised?

MR. DRISCOLL: Certainly not. What we're saying here is that we're going to open it up and of course they don't like that.

MR. GREENE: Eventually we would have a can of worms on our hands which would equal the busing issue if this applied across the board.

MR. DRISCOLL: By the way, there is another thing that we're doing and we did get authorization from the council to go out with a request for a proposal to study the entire civil service system of Los Angeles. We bid, got out on a bid, and we're now reviewing those bids to make

the selection. And the bases for that review has a lot to do with affirmative action and the city's inability to influence it at all levels because of the restrictive nature of the charter. And the real intent there is to look at the system and try to open it up to allow for either more entry at mid-levels and other levels, opening up the rule of three, broadening out the classification structure, so there's a whole series of issues that we feel need to be dealt with in the City of Los Angeles and the best way to do this is to take the system apart in review and come back hopefully with some recommendations out of this consulting that's going to occur to change the charter.

MR. GREENE: Let me ask you a question. We know that the rule of three, I do not subscribe to the argument that you have to revamp the entire civil service system in order to meet affirmative action goals. There are some things you have to do within the system. Have you considered, rather than having human beings grade those scores, maybe having computers do it so where, if a person doesn't like my natural I don't get graded down or -- if I don't say sir in the first word, someone like Curtis Tucker, who's got 40 years, doesn't feel that I'm not showing him the proper respect.

MR. DRISCOLL: It's interesting because I understand what you're saying. The city does give a number of different kinds of exams, written exams where

it's a hundred percent written, multiple choice, somebody sits down, they go over it, we send it through a computer and it's scored. I think when you come to oral boards, one of the critical issues is that if you're going to increase representation you've got to insure that your oral boards have representation of women and minorities on them. And when I came to work for the city, two and a half, almost three years ago, we had approximately 20% of our oral boards represented, or had representation on them. We now have 100% of our oral boards who have representation of women and minorities on them. It's interesting because when I first got there, the numbers of protest, and the city employees are a very protesting lot anyway. And the numbers of protests we had in terms of the same issue you've just raised, discrimination in the oral, we have not had a protest on an oral board in a year and a half in terms of feeling that someone was discriminating against them on the basis of race or sex. I think that is due wholly to having representation on those boards.

MR. HARRIS: Mr. Driscoll, tell us for statistical purposes what are the total number of employees, the ethnic breakdown of the city, the ethnic breakdown of the work force of the city.

MR. DRISCOLL: There are presently approximately 37,000 employees. The population is 51.3% minority.

MR. HARRIS: Do you know the percentage of minorities within the work force?

MR. DRISCOLL: Within the work force we're about 30%. But without, you know, that's not bad and it's not good. And I will say to you that the distribution of minorities is not throughout the whole process. We need to influence the middle and the higher levels. Most of the increase that has occurred, and I --

MR. HARRIS: What are the percentages for the upper levels?

MR. DRISCOLL: Management for minorities, it's about 12%. With women it's approximately, I want to say 5% or 6%.

MR. HARRIS: What consent decrees are presently facing the city?

MR. DRISCOLL: We're under consent decree in the fire department. We're discussing in the police department settlement of a case, we have a consent decree in water and power. Those are basically the three major.

MR. TUCKER: How many minorities do you have head departments in the City of Los Angeles?

MR. DRISCOLL: I want to say none.

MR. HARRIS: How many departments are there?

MR. DRISCOLL: We have two general managers.

MR. TUCKER: Two women?

MR. HARRIS: How many departments are there?

MR. DRISCOLL: Well, bureaus and departments, approximately 30, give or take.

MR. HARRIS: So there's 2 out of 30 women and

none out of 30 minority, okay. Tell me this, what is the grievance procedure and how, internally and externally, what would happen? If someone came and applied for a job, what would they do if they went to the city and complained that they didn't get the job they thought they should have gotten?

MR. DRISCOLL: It would be the same. We don't hire people off the street as such. People come in and they take the exam and they get put on a list. If they take the exam, initially, and don't do well on the exam and they protest on the basis of race they can file a complaint with our affirmative action division. Our people will investigate that. If they are high enough on the list or they are refused the job or they aren't good enough to take the job then the same process would apply. If they are within the system, similarly they take an exam and protest it, then that protest would be filed first through my office because normally it's a protest against part of the exam. Then that would go to investigation by our affirmative action department. Now, that investigation occurs and then it is forwarded for public hearing in front of the Civil Service Commission. If the Civil Service Commission, as an example, finds discrimination on the basis of race or sex and for the sake of discussion let's say it was a city employee who found discrimination and charged a supervisor with discrimination. Our Commission then would make a finding and they would forward

that finding to the department with recommendation to either reinstate, provide back pay, and on occasion to discipline the supervisor who was involved in the discrimination. At that point we run into problems because our Commission can only recommend. It cannot mandate. Problems in terms of absolute authority but not so much problems in terms of influencing. Because then normally if the departments become reluctant to deal with it, they've got to really seriously question what they do next because we as a board have made a finding of discrimination. That is a good legal document for which one could go to court and probably the department could suffer more as a result of that than what they could by virtue normally of reinstatement of some issues because there would be long term back pay, attorney's fees and other things. We normally get the Mayor's office involved if we're not able to persuade the general manager of the department to deal with the problem.

MR. HARRIS: Who's the final arbiter within the city?

MR. DRISCOLL: Final arbiter --

MR. HARRIS: Is it the council, the Mayor, is it anybody?

MR. DRISCOLL: Civil Service Commission.

MR. HARRIS: They recommend and that's it. Then it goes through regular administrative channels outside of the city like FEP or EEOC.

MR. DRISCOLL: If the department head refuses to accept that recommendation, refuses persuasion by myself, the Mayor, or Mayor's staff, then the only option then for the individual who's been harmed in the process is to go to court.

MR. HARRIS: How many complaints were there received in the city last year?

MR. DRISCOLL: About a hundred.

MR. HARRIS: Formal and informal?

MR. DRISCOLL: Yes, and we investigated about thirty of those, and about ten came forward to the Civil Service Commission for a full hearing.

MR. HARRIS: So it's a hundred, thirty and ten.

MR. DRISCOLL: Yes, approximately.

MR. HARRIS: Are there any other questions?

MR. LYONS: You've named the fire department and police department, DWP; what other departments or agencies within the City of LA are presently facing lawsuits relative to discrimination?

MR. DRISCOLL: The actual court cases as I recall is Water and Power.

MR. LYONS: What about planning agencies?

MR. DRISCOLL: No.

MR. LYONS: Is there a big issue about discrimination in planning agencies?

MR. DRISCOLL: There's a big issue in planning. There were a number of cases that we investigated and we

found discrimination. We found discrimination on the basis of sex, on the basis of religion, on the basis of race in three cases. As a result of those findings, in our recommended settlement and this is an example, we recommended settlement, the department determined to settle and then it went forward to the council for, you have to file a claim and I think it was forwarded to the council for resolution. As a result of those cases there was a debate in accounts as to whether to go outside and hire a consultant to come in and review the department or allow my department to do it. The council as a whole determined that we should be the department, and we did an exhaustive study of the Department of Planning. We had questionnaires, two sets of questionnaires for everybody in the department. We interviewed individually every single employee of that department. We interviewed everybody who had resigned, retired, quit, been discharged or whatever from that department in the last five years. And we completed that study, made some fairly specific recommendations, made some charges and some allegations, directed the general manager of that department to undertake some specific actions and that's where we are now.

MR. LYONS: So what would your conclusion be relative to the planning department then in terms of their overall thrust?

MR. DRISCOLL: What was it or what is it?

MR. LYONS: What are the conclusions that you've

drawn?

MR. DRISCOLL: The conclusions were that, some of the major conclusions were a lot of insensitive people in the department and generally in terms of comments with respect to race, religion, which was primarily aimed at Jewish people, and sex issues. Our conclusions were to deal with it, there were individuals in the department that we felt had to be dealt with on an individual basis because we found it centering around certain people within the department. Those people were brought to the attention of the general manager to be dealt with. As yet they have not been dealt with formally but that process is going on. There were some issues where we found that all the Blacks in a department were in the actual planning function, professional planning function, were isolated over in one division. I don't recall what division it is. The argument there was that all the Blacks wanted to be in that division, so that's where we allowed them to stay. And in discussions with the staff over there we invited as to have you ever offered people an opportunity to go somewhere else and they said oh, sure, we ask every once in a while whether people want to transfer. Obviously the motivation was, the word was out that that's where you hang in and if you want to move someplace else, don't rock the boat. We have agreed with that department and the Mayor to establish a formal rotation policy for the department. So that was another finding and an issue

that we dealt with. I'm trying to think off the top of my head, I can't recall if there were other major issues or not.

MS. TANNER: I have a question. There are positions in the city that are appointed.

MR. DRISCOLL: No. Only in the Mayor's office, the council offices, those are the only --

MS. TANNER: Those positions are held by how many minorities?

MR. DRISCOLL: I don't know what the representation is in those offices.

MR. HARRIS: How many employees fall into that category?

MR. DRISCOLL: Oh, the Mayor maybe has 150 to 200, council probably has, yes, a thousand.

MS. TANNER: Have you any idea what the --

MR. DRISCOLL: Not off the top of my head. For my relationship more with the Mayor's office than with all the council offices because there are fifteen council offices and a central staff. I know the Mayor's office has good representation of minorities and women and I think the council is careful enough. Now individual council people might be different.

MR. LYONS: What about the support service, or the CLA office?

MR. DRISCOLL: That's where I'm not sure just exactly what their representation are. I know that in

the last selection that they made, we worked with them to make an effort to, they created an IMU which is an internal monitoring unit as a result of CETA and some other positions. We've been working with them to try and influence their affirmative action profile. But I don't have the numbers.

MR. HARRIS: Could you send that at a later date? What is the general scope of their affirmative action program? Who monitors that?

MR. DRISCOLL: We would. We require them, the Mayor's office and everybody else to submit to us the statistics and data in terms of where they are and in their short term and long term goals.

MR. HARRIS: And then what would you do with that information?

MR. DRISCOLL: If they're under-represented we would meet with the CLA and the President's council if we thought there were some serious problems.

MR. HARRIS: Are there any serious problems?

MR. DRISCOLL: I don't think so on a broad basis. There's been a number of individual allegations that we've investigated and tried to deal with. All in all as I recall, generally with that last effort we undertook they have better representation.

MR. HARRIS: With the exclusion of the IMU unit, what type of representation would they have?

MR. DRISCOLL: I'm not sure.

MR. HARRIS: An exempt employee or non-exempt employee would come to your office with a complaint, right?

MR. DRISCOLL: Yes.

MR. HARRIS: Any other questions? Okay, Mr. Driscoll, thank you. We appreciate very much your testimony and we look forward to see what happens with the ballot process in November.

MR. DRISCOLL: We'd appreciate support from anybody.

MR. LYONS: Let me ask one other question. Is there anything to your knowledge that the state can do in support of affirmative action at the city level? I mean that from the standpoint of monitoring or fair employment practice. It seems to me the City of Los Angeles has a significant problem relative to affirmative action. It has a 30% minority employee base with a 51% minority population. That is obviously way out of conformity. Whereas the County of Alameda, for example, is 10% above, rather than below parity. And I'm just wondering whether or not it's the kind of thing that an outside force, such as EEOC or other federal agencies have been able to do in terms of getting compliance.

MR. DRISCOLL: We've asked and invited people from EEOC. I'm not sure, at least since I've been there, we haven't with FEPC. There is an on-going monitoring process. I honestly think we know what our problems are. I think

we're trying to kick them. I think it's not a matter of issue of the policy makers, meaning the council and the Mayor, and the general, the general managers not having an understanding and commitment to try and do something, I think in part we do have some recalcitrant folks, but in general that's not the case and they're dealt with vis-a-vis the Mayor. I think it's a matter of systems and processes that we really need to try to break apart.

MR. TUCKER: There was another answer you could have given when the chairman asked what could the state do. Maybe you could have suggested that the state set the example.

MR. HARRIS: How many people are in your firm?

MR. DRISCOLL: We have 24 people in my affirmative action division. We've got a special recruiting unit that involves 12 positions. We've got about 22 in our police and fire recruitment division. All relating to affirmative action.

MR. HARRIS: You also have counselors?

MR. DRISCOLL: Yes.

MR. HARRIS: What is the ratio of counselors to employee? I mean, they're indicating one to two hundred.

MR. DRISCOLL: Oh, no. We've got maybe three counselors to deal with upward mobility. But it's centralized, I would say, and a lot of the counseling that might go on would occur in the departments themselves, in the individual departments.

MR. HARRIS: But that's what I'm saying, there are counselors within?

MR. DRISCOLL: Each department has a personnel function.

MR. HARRIS: That's what I'm talking about. Is the ratio a one per department kind of thing?

MR. DRISCOLL: Oh, I would guess that, yes.

MR. HARRIS: Thank you, Mr. Driscoll. We appreciate your testimony. Mr. Rainwater from the Department of Personnel Management for the County of Sacramento.

MR. GREENE: Mr. Chairman, may I direct a question to you. Does the Chair know or does the secretary know, does Mr. Kaplan plan to appear? Will we get a chance to deal with the County of Los Angeles.

MR. HARRIS: Well, we can deal with them but not at this hearing.

MR. GREENE: Okay. Well, that county has a minority population of 50.27%.

MR. CLYDE RAINWATER: Mr. Chairman, respective Committee members, Clyde Rainwater, Chief of Special Employment and Affirmative Action for the County of Sacramento. I have attempted to address the questions that were forwarded to us and will attempt to expound on the questions that I've heard before me. First of all I'd like to submit to you a document which addresses specifically those questions.

First of all, I'm not here to tell you that everything is all that fancy because me and my staff of 22 would not exist. However, I would like to share with you some information. Sacramento County employs approximately 6,000 employees. Of that number, minorities represent approximately 20.81% and women represent approximately 41.55%. Sacramento County has adopted a parity goal of population parity, and in the County of Sacramento, according to the 1975 census, minorities represented 17.13% in this community and women represented approximately 50.47%. In 1974, the Sacramento County Board of Supervisors adopted a affirmative action policy and thus hired myself and ultimately a staff of 22 individuals. Sacramento County's work force, you can appreciate I'm sure at 6,000 is small enough to be manageable and yet large enough to have significant impact on a community of this size. Parity, as you can see, has been reached; however, aggressive efforts are being made to deal with upward mobility and the representation of women. Basically the business of the County of Sacramento is clerical in nature and also we are striving to relieve the historical and traditional barriers against women. Women of Sacramento County, of the promotions since 1975, there were 4,457 promotions. During that period 1,019 or 22.86% of those promotions went to minorities. And 2,284, or 50.43% of those promotions went to women.

We define upward mobility as job enrichment and equal compensation or more money. Sacramento County's affirmative

action program is monitored by an affirmative action committee which is commissioned by the board of supervisors. This committee consists of 15 members. The State Legislature here is represented, the community at large, management, minorities, women, employee organizations as well. Sacramento County's community is very sensitive to affirmative action which is evidenced by the fact that during the budget hearings this year the County Executive had proposed to delete the affirmative action unit and the community rallied and sensitized the board of supervisors to the extent that they rejected his recommendation and retained the affirmative action unit.

Sacramento County is a merit systems county operating under the Civil Service Commission. It also funds jointly with the City a Human Rights Commission to deal with issues regarding discrimination. It also interfaces with FEPC and EEOC within the State and Federal system. Complaints are attempted to be resolved at the earlier possible time. However, that not being the case the Civil Service Commission would be the proper forum to speak to and of course going through the regular grievance procedure with the employee organizations. Ultimately perhaps getting to FEPC or EEOC. There have been approximately five cases of discrimination within the last year.

MR. HARRIS: How many were found to be valid?

MR. RAINWATER: None. The Sacramento County board of supervisor's commitment to affirmative action is reflected

in the case of the district attorney lawsuit against the Civil Service Commission and the Board of Supervisors regarding his apparent unwillingness to hire minority prosecutors. I believe at the time, in 1975, he employed better than 60 deputy district attorneys, of which only one was a minority. The Civil Service Commission has adopted a rule called the minority preference rule which, when we notice a significant disparity of representation of minorities in a particular department, this rule is applied as a sanction by the Board of Supervisors and the Civil Service Commission. The rule is called Rule .710 and it is indeed a minority preference rule whereby the Commission orders the district attorney, much like a court of law would in terms of ordering the district attorney to hire a quota of minorities as he hires individuals on an ongoing basis. This suit went to Superior Court and the district attorney won. He was alleging that it was unconstitutional. The County Board of Supervisors appealed that at the State Court of Appeals Circuit Court and lost. We then appealed the case to the U.S. Supreme Court and won. This case was a very significant one in that it was much geared to the Webber and the Bakke case. During the time the case was under litigation the rule was suspended.

A number of special employment programs under my jurisdiction operate for the county to enhance upward mobility and appeal to minorities, and they include: special intern programs with the local educational

institutions, universities; special programs for the handicapped. Another affirmative action activity that is significant is an examination tracking system whereby every individual who files for an examination is tracked throughout the examination process by adversity and sex to make a determination as to whether that examination had any adverse impact on any protected group or sex discrimination.

As I said, I'm not here to paint a glorified picture. I think you need to know that we do have problems. For example, we had a problem in the Sheriff's Department whereby women alleged discrimination on the basis of sex because they were not being transferred to patrol duty and yet retained in the jail while men were. And the case went before the Equal Employment Opportunity Commission and there it rests. I suspect that they will indicate to the Sheriff, well, the Sheriff's posture was that he just didn't have enough women. Well, the answer to that is find them and recruit them and get them on the list so that you can move those people around on an equitable basis.

MS. TANNER: The answer to that is find -- who is telling the Sheriff to find them?

MR. RAINWATER: Equal Opportunity Commission. Sacramento County operates under the rule of three ranks. I have heard here the rule of three. The rule of three ranks expands the list significantly and allows the numbers to include a larger candidate group of eligibles.

MR. HARRIS: Explain how that happens.

MR. RAINWATER: Well, for example, you could have twelve people in rank one or you might have two people in rank one, depending on the scores and the way they're rounded off.

MS. TANNER: I don't see. Explain it.

MR. RAINWATER: Okay. Say you had a 98, 96.5 and five people that had perhaps the same score. All of those individuals would be in rank one. Then you would go to the next rank and then round them off. So what the appointing authority has before him or her is the ability to appoint any individual within those three ranks. That may be a choice of between three or twenty-three people, which is an affirmative action tool.

MS. TANNER: Or it could work in opposite.

MR. RAINWATER: That is correct. The County also uses in some cases where there are classes that are broad classes and the minimum qualifications are specific. The rule of the list, where you have everybody on the list is considered to be eligible and qualified and therefore that again is an affirmative action tool.

MR. HARRIS: Mr. Rainwater, let me ask some rather specific questions. Perhaps other committee members would like to do so as well. Do you have your minority populations broken down by ethnic groups?

MR. RAINWATER: Yes. I do not have that with me. I can provide it.

MR. HARRIS: How many people would be classified

as management in the county employment?

MR. RAINWATER: Of the 24 department heads, there are two Black department heads and one female.

MR. HARRIS: No Hispanics, no Asians?

MR. RAINWATER: No. We recently had an Asian county executive who is now down in Alameda County.

MR. HARRIS: One of the things I'm interested in is the procedure that an individual who had a complaint would come to your office, and from there it would go to the Civil Service Commission?

MR. RAINWATER: Very possibly. It might exhaust at an intermediate step with the employee organization. And the employee organization would in fact represent that individual at the Civil Service Commission.

MR. HARRIS: What would you attribute the low number of complaints filed to? Is it just the fact that there is no discrimination, or is it a fact that people don't understand the procedures? Is it a fact that the procedures are time consuming. Is there any thing or things to which you would attribute the low number of filings?

MR. RAINWATER: I would attribute a large number to the fact that we have a very comprehensive supervisory management training course and that is provided on an ongoing basis and managers are required to participate in that.

MS. MOORE: You indicated that the union or the employee organization, by that are you speaking of unions?

MR. RAINWATER: Yes.

MS. MOORE: So the affirmative action complaints procedure is the same as the grievance procedure or do you have two separate procedures?

MR. RAINWATER: Each employee organization has its own grievance procedure for its protected members. However, the County, in and of itself, has its formal procedure which rests with the Civil Service Commission and through my office.

MS. MOORE: Are you saying that the unions with the County of Sacramento have negotiated contracts that recognize protected employees?

MR. RAINWATER: Do they recognize protected employees?

MS. MOORE: I'm saying did they negotiate a contract, because generally affirmative action plans are not usually the kinds of things that unions negotiate.

MR. RAINWATER: Each employee organization has in its contract agreement an affirmative action statement in support of affirmative action as well as the grievance procedure.

MS. MOORE: Okay. So what you're saying then that they have a boiler plate disclaimer of course that they don't or that they support affirmative action in that disclaimer, then if I had a complaint and I would go to my union as part of the affirmative action process?

MR. RAINWATER: You could go either. You could

come to my office or you could go to your employee organization. We try not to intercede if in fact the employee organization is a reputable one. Which doesn't necessarily have to be the case. We found cases where people we felt were not adequately represented and we interceded.

MS. MOORE: Let me ask you this. In order to initiate a complaint does one have to go to its employee organization?

MR. RAINWATER: The employee would not have to, would not be mandated. That is available to the employee.

MS. MOORE: Would that be suggested by your office that they start at that level?

MR. RAINWATER: We would certainly wonder why that the employee did not go through the employee organization. If there was a valid reason for not doing so, if the employee chose not to for his or her own choosing, we would intercede.

MS. MOORE: Would you think that, isn't it a little bit irregular that the practice is through the union representative for affirmative action?

MR. RAINWATER: I wouldn't say for affirmative action. I would say for a grievance. If it were a case of discrimination as such, my office would definitely be involved.

MS. MOORE: Well, that's what I'm saying, if you differentiate between the two. So there is two separate processes then, one for affirmative action and one for

grievances. The other question that I have, I see that your statement is on department stationery which indicates that you probably report to the personnel director.

MR. RAINWATER: That is correct.

MS. MOORE: I guess this is like asking you when's the last time you beat your wife but does that pose problems for you in terms of reports?

MR. RAINWATER: Well, I can cite you an example. During budget hearings this year I was in dissent with my superior and the county executive because what it would entail if the motion passed would be to eliminate the affirmative action unit. And I could not support that. At a public hearing --

MS. MOORE: That must mean you must be doing a good job.

MR. RAINWATER: Well, I said I was in a very untenable decision because I'm publicly in dissent with my boss and his boss. And the county exec said go ahead, you can speak. And one of the supervisors said yes, but when he gets upstairs, why, we're going to take care of him. I haven't had that problem and I have found a very genuine commitment among the Board of Supervisors which is evidenced by them following my direction rather than the county executives and the directors.

MS. MOORE: But your recommendations are signed off by the personnel director.

MR. RAINWATER: That is correct. This was a case

where we were in discord.

MR. HARRIS: Okay. Any other questions? Thank you very much, we appreciate your testimony.

MS. DONNA GILES: Mr. Chairman, members of the Committee, I'm Donna Giles, Director of Personnel for the City of Sacramento. I'm very happy to be here on behalf of the City to share some information on affirmative action with you. We are in the process of preparing a written statement to submit to you, but I think it would be more useful for both of our times to summarize some of our responses to the questions that you asked and answer your questions.

The City of Sacramento developed an affirmative action policy statement in 1971. This laid out various eight points that gave some direction to the city in terms of the kind of affirmative action they wanted to see. It dealt with advertising of vacancies, ballot selection process, efforts to find appropriate positions when minorities were qualified on an examination. Minorities were encouraged to take advantage of city training processes and tuition reimbursement.

MS. TANNER: How is that done?

MS. GILES: Well, there was a notice posted that indicated minorities and women were encouraged to take advantage of the city training functions. The city has a tuition reimbursement program. It was suggested that they use this to go back to school to gain the necessary skills

for upward mobility.

MS. TANNER: So it's posted in the City Hall?

MS. GILES: The policy was shared throughout the department and posted in various departmental areas.

MS. TANNER: So it's within, sort of an in group kind of a situation.

MS. GILES: The policy statement was supposedly posted on all bulletin boards throughout the city at that point and time and all employees had access to this kind of information.

MS. TANNER: But people who were not employed by the city --

MS. GILES: No. It didn't affect them.

MS. MOORE: But there was no attempt to distribute it individually?

MS. GILES: I don't know. I am fairly new to the city.

MS. TANNER: Well, the reason for my question is it really wasn't an outreach kind of a program for minorities or women.

MS. GILES: I know that they did contact minority groups and organizations within the community to let them know of the equal opportunity policy and these were sent to, we have a rather extensive mailing list of minority organizations that this kind of information is constantly exchanged with. These are some of the things that were done back in '71 to start the affirmative action efforts in the

city. We are at this point in time in a different era. I think we've accomplished some of the original goals that were set out for, we had an overall work force goal that was set to population parity in '73. That goal was met in '75, the 31% minority work force. So we do have a fairly good representation. However, we're now embarking upon a new affirmative action plan and our job now I feel is much tougher in terms of we're trying to accomplish a much higher level of goal in terms of vertical representation within our work force. And we are in the process of drafting our affirmative action plan now, getting response from community organizations, departmental managers, and hope to have our plan concluded by the first of January next year.

MS. TANNER: What is your plan?

MS. GILES: Our affirmative action plan is designed after the guidelines developed by the Office of Federal Contract Compliance Program which lays out the various steps you need to go through in investing an affirmative action plan. It lays out the clear responsibilities of who's involved with the plan and who has the responsibility. It does a complete utilization analysis and goal and timetables and again we are in the process of setting those goals and timetables at this point and time. There are some other things we're doing in terms of trying to come into the modern era. We have our charter amendment on the city ballot for November which will revise the personnel sections of our charter and hopefully broaden our certification process. We

had the same ballot measure on our ballot last year and it failed by a narrow margin. We have tried to meet with employee organizations and community representatives to get support for this charter amendment and we hope it will be successful this year.

MS. TANNER: What is the charter amendment, or the ballot measure?

MS. GILES: The ballot measure deals with the number of sections in the personnel section of the charter. The primary one for affirmative action purposes deals with the certification process. Right now we have a rule of three and we're trying to broaden that to no less than a rule of three ranks for entry level positions, which would give us a lot more flexibility in bringing minorities and women into the system.

MR. HARRIS: Could you give us a statistical breakdown first of the number of employees and minorities and all that?

MS. GILES: Yes. We have approximately 2,700 permanent employees within the city work force. Of that, 67% are White, 13% Black, 13% Hispanic, 4% Asian, 1% native American, .7% Philipino, .14% Polynesian, and then others.

MS. TANNER: How many women?

MS. GILES: We have approximately 16% women.

MS. MOORE: How many departments do you have?

MS. GILES: Sixteen.

MS. MOORE: How many of the city departments

have no minorities or women?

MS. GILES: None of them have no minorities or women. Some of them have very few.

MS. MOORE: How many don't meet the work force parity, population parity?

MS. GILES: I would think none of them meet them for women parity.

MS. MOORE: No, I mean in general. I'm sure there must be some departments, like Department of Sanitation.

MS. GILES: Again, it's the way our departments are construed.

MS. MOORE: For the City of Los Angeles, it's the city manager's office.

MS. GILES: Okay, they would be low on women. They're still low on Hispanics. They have adequate representation for Black males but not for Hispanic males or women.

MS. MOORE: When you say adequate, what does it mean?

MS. GILES: What our target has been in the past.

MS. MOORE: What is your target? What is your target based on?

MS. GILES: Our target, our 31% goal was our population goal throughout the city. Again we're in the process of setting new goals and we haven't gotten total confirmation on what those new goals are going to be. We

are looking at various kinds of goals.

MS. MOORE: Often in an affirmative action plan, sometimes we look when we talk about population at the availability of the work force, which means that we're looking at how many people were in a given field. When you talk about the 31%, does that apply for everyone within the city or in certain departments do we use work force availability?

MS. GILES: This is where we're embarking upon our new plan. Our new plan is not going to go for an all-inclusive goal of 31%. We're going to break it down by occupational category and set a goal for each occupational area and each department so that we have much more specific goals to work for. And we're in the process of determining what those goals are going to be. When you've done a complete utilization analysis in terms of labor force, population records, skills, unskilled and so forth, in terms of making this decision. But this is the kind of decision that's going to have to be decided by our council within the next several months.

MS. MOORE: How many people do you have working for you?

MS. GILES: I have a total staff of 37. But again, this is the entire Personnel Department. The affirmative action officer for the city also reports to me. There's one person who's responsible for affirmative action. I'm the director of personnel.

MS. MOORE: So the affirmative officer reports to you. How many staff members does the affirmative action officer have?

MR. HARRIS: Just one.

MS. GILES: It's just the affirmative action officer position. That was just established in 1979.

MS. MOORE: So essentially as the personnel director you're responsible for the affirmative action program for the City of Sacramento.

MS. GILES: Right.

MS. MOORE: One last question since you are personnel director, something we have not raised before and it's something that often comes up with clerical and less, not professional positions. People who have already gotten into the work force, so to speak, do you ever post for positions that may, some jobs are more desirable than others, may be at the same level, a lateral transfer type, but some clerical positions have a little more prestige or, you know, a little nicer job to have than others and generally a lot of people would like them but no one ever knows when these open. How do you handle that?

MS. GILES: We don't have adequate means for handling it yet. Our plan does speak to that situation in terms of how to process available vacancies and make sure that information is known across the board. So we're developing some systems of addressing it, but at this point in time we are not addressing it.

MS. MOORE: And are you doing any real work with your department heads and your supervisors?

MS. GILES: Well, that I think is a crux because I feel affirmative action can work but you've got to have the commitment for it to work. All the mechanisms that you can develop are not going to be any good unless that commitment is with the city manager who has total appointment authority over all managers and the department heads who have appointment authority over their subordinate staff.

MR. HARRIS: Does the city manager sign off on all personnel actions?

MS. GILES: No. The city manager appoints all management personnel.

MR. HARRIS: All management personnel appoint all people in their departments?

MS. GILES: Each department head is an appointing authority for the non-management staff.

MR. HARRIS: You hear, for example, that in the City of Oakland, the city manager signs off on all appointments. But the only way that the city manager of Sacramento or you can really do is after the fact monitoring?

MS. GILES: We can monitor. Again --

MR. HARRIS: You're not monitoring hiring as it takes place?

MS. GILES: We can. We have the mechanism to do, to monitor as it takes place.

MR. HARRIS: How do you do that?

MS. GILES: Because of the clearance forms and the process that they flow through. We don't have a mechanism in place yet but we certainly, it's essentially possible that we can monitor beforehand when the vacancy occurs and make the accountability happen for when the hire is made.

MS. TANNER: Do you have women or minorities as department heads or in management, and how many?

MS. GILES: I'm one department head and our city clerk is the other female department head.

MS. TANNER: And how many department heads and people in management are there?

MS. GILES: There's 16 department head positions and we're the two women who are considered department heads.

MR. HARRIS: You're the minority and woman and there's another woman, right?

MS. GILES: Well, there's another minority woman also who's the city clerk.

MS. TANNER: Is she elected?

MS. GILES: She's appointed by the Mayor and the city council. I'm appointed by the city manager. In our management ranks, we have about 12% minorities of approximately 88 managers. Well, no, there's about 120 managers within the city.

MS. TANNER: About 12% minorities? And what percentage of women?

MS. GILES: I think it's 6% if I'm not mistaken.

MS. TANNER: That's about as bad as the Assembly, isn't it.

MS. GILES: It's moving forward but it's got a long ways to go.

MR. HARRIS: How many complaints were filed in the City of Sacramento alleging discrimination, either in employment or promotion?

MS. GILES: Within the last year, since we've had an affirmative action officer on board we have established an interim discrimination complaint process. It takes the discrimination complaints out of the grievance process. And during this period of time we've had approximately 20 alleged discrimination complaints and of these all of them have been conciliated.

MR. HARRIS: So none have gone to the Civil Service Commission?

MS. GILES: No. The process that we're currently using would not go to the Civil Service Commission. It would go to the city manager for resolution, unless it was strictly exam-related, then it would go through the Civil Service Board.

MR. HARRIS: But they all have been resolved within the city, none have gone to any administrative --

MS. GILES: Any of the outside agencies, no.

MR. HARRIS: Okay, fine.

MS. MOORE: Any result in favor of the complainant?

MS. GILES: Yes. Several of them were in terms of inappropriate action being taken and being resolved mutually.

MR. HARRIS: Were most of these relative to promotion or what were the nature of the complaints?

MS. GILES: Oh, several involved assignments, I'm not aware of any that actually dealt with promotions. In some cases discipline, yes. Now, discipline, if it's filed as a discrimination complaint charge then it's handled one way. However, we have a normal disciplinary procedure which goes to the Civil Service Board and through that process.

MR. HARRIS: Any other questions from the Committee? Thank you very much.

Is Mr. Rackerby here from the County of Butte? Good afternoon, how are you. Would you identify yourself for the record.

MR. JIM RACKERBY: Mr. Chairman, my name is Jim Rackerby, I'm the Director of Personnel for the County of Butte. Looking at your agenda and schedule, Butte County is not always last but least.

MR. HARRIS: No, you're next to last. County of San Francisco is last, if not least.

MR. RACKERBY: All of the other counties and agencies that have testified for you today are relatively large agencies. Butte County probably has less population than some of the numbers of employees found in the other

agencies. I've given you a written statement. I don't intend to read it but I would like to go over some of the points in it. I think it's extremely important that the Committee put in perspective the small county situation in this whole area of affirmative action as opposed to what you find in a metropolitan area of the large counties.

Butte County is north of Sacramento, population of about 140,000 people. Our county employee work force represents only about 1,000 workers. We have all of the mandates and restrictions and responsibilities for carrying out equal employment opportunity programs placed on us as a small agency as the larger agencies. Consequently we do many of the same things that you have heard before you today. We do them a little differently because we are not large. My responsibility as personnel director is also affirmative action. I also administer a \$9 million CETA program as the director of that. So we have a lot of combinations of duties and activities found within our departments. So I think that looking at the work force of the county and another very important situation that we find in the northern counties is that most of the work force in the labor market, not only in Butte County but a lot of the northern counties, is predominantly White. Our county is 91% White, about 9% minority. We are also the county that has about one out of four workers in government, which means that for those minority workers that in the work force, government agencies that are competing for

minority hirings to meet their parity --

MR. HARRIS: Do you have military bases?

MR. RACKERBY: No, we have a University, Cal State University - Chico. We have a Community College, we have five incorporated cities, a variety of school districts and special districts.

MR. HARRIS: But that's much higher than average.

MR. RACKERBY: Right. National average you'll find is about one out of five is in government. We are higher. So it makes a situation where government is always competing with government for the highly qualified minority women. Our statistics are all on parity. Our minority hiring is with the county work force. Our women are above parity. It might reflect the fact that we are the only county in the state of California who's majority of the Board of Supervisors are women. And they do take a very active role in seeing that our activities in hiring of women and advancing women to department head positions are carried out. Of the county departments there's around 15, about half of them are elected officials, the other half are appointed, and of that latter half three out of the eight are female.

As I said the problems that we face are all pretty much the same. We have in place a lot of the system and procedures for obvious recruitment and effectively handling grievances and such that you've heard before so I'm not going to delve into those. I can answer some few simple

questions if you might have them regarding them. I do want to make a point, though, that as you consider the testimony of the other counties that you consider in focus with that the smaller county and the unique situation.

MR. HARRIS: Granted that unique situation, and I would assume, therefore, because of the fairly low minority population that you don't have perhaps either a formal affirmative action program or an affirmative action officer. How are complaints resolved, how many complaints are there, what's the nature of the problem, if any? Butte County has had a lot of adverse publicity in terms of race relations in the past year and they have not emanated, of course, from county government but from the population at large. I'm just wondering about the sensitivity and how it's being dealt with.

MR. RACKERBY: I think the first part of your statement I do have to correct. We do have a formal system. The county voters in 1976 established through the charter a personnel system and we are in the operation of an active affirmative action program through my office. I have that charge and responsibility. You're right, in the area of personnel, county personnel hiring practices and such we have had good relations with the community. Our hiring practices involves a lot of community people on or off our boards and our outreach recruitment. The publicity that the county has gotten has been from other sources. We tend to see that that sharpens our concern for the community

because it does focus in on the county and we've been aware of that. As far as the complaint process, it's similar to what you've heard. We have really two complaint processes in our system, the grievance process for employees to handle conditions of working conditions through grievance. The affirmative action or the discrimination complaint process is a separate process whereby an applicant for an examination or an employee can file directly with me informally. I investigate it and try to resolve it. If not, we do have an impartial commission that has binding power on the county but not on the complainant. We have never had an occasion to use that process. We also have clearly indicated on every one of our job announcements the process so that individuals if they choose to go through this way could or they could go through the state or federal agencies.

MR. HARRIS: Would you say that basically the small number of minorities within your population has either negated or minimized the problem? I mean it's simply a matter of the people accepting the system, and it's not a really-worth-fighting kind of thing. So if you stay in Butte County at all you just say well, that's the breaks.

MR. RACKERBY: I don't think that's true. I think that there may be some feeling along that line. We have through our outreach recruitment efforts in our work with the various minority and women's rights groups, particularly out of the Chico area developed good relationships and assistance.

MR. HARRIS: Is Chico the county seat?

MR. RACKERBY: No, Oroville is the county seat. Chico is the larger population center. So we have been able to develop these liaisons and I think that that effort has been recognized.

MS. MOORE: In your county employment, how do you interrelate with the University there at all, if at all?

MR. RACKERBY: Well, in a variety of ways.

MS. MOORE: You indicated that one out of every four are involved in governmental service. Are you including the University?

MR. RACKERBY: Yes. If you're looking at it from the work force, the interrelation is that we become the training ground for the University because county salaries are not competitive with state salaries and therefore when we get people on board and trained, openings in Cal State - Chico for various kinds of jobs will attract them away from us so we start training again. So we do become a training ground.

MS. MOORE: So since you do count the state university system and the county employment in terms of governmental, on your own affirmative action plan or program or whatever which was adopted in, I guess you said 1976?

MR. RACKERBY: We've had an affirmative action plan since the early '70's because of requirements of federal and state, but the formal personnel system was

adopted in 1976.

MS. MOORE: Which was supposed to --

MR. RACKERBY: And it included and incorporated and the affirmative action plan expanded on it, the grievance process and such that we didn't have before.

MS. MOORE: Has there been considerable growth since that time?

MR. RACKERBY: In the county? Yes, not considerable. In the last three or four years probably several thousand people. The type of growth we experience is primarily in the retirement people coming into the Paradise area of the Oroville recreation area and settling down, so it hasn't been in the active labor group.

MS. MOORE: How many minorities do you have employed with the county. I'm sorry I didn't get that.

MR. HARRIS: What's the total number of employees and breakdown.

MR. RACKERBY: Total number of employees in the county is about 1,000 and we have broken down statistically out of that thousand, 93% are White, approximately 2% Black, 2% Hispanic, 1.9 or 2% native American Indian, and about .3% Asian.

MS. MOORE: That's the county's work force?

MR. RACKERBY: That's the county's work force. The county of Butte's work force, yes, not the labor market. Of that group, 52% are female and 48% male.

MS. MOORE: Do you have any minorities in

management positions?

MR. RACKERBY: Yes. In management, not department heads. In management meaning assistant department heads and middle managers, yes we do. Our Assistant Director of Welfare is Black, a number of the other departments have minorities and women in various management positions. Not as significant as we'd like to see, but they're there.

MS. MOORE: Next question. All the adverse publicity that has occurred from Butte County indicating some very serious racial relations and problems, has that impacted on your affirmative action program or outreach or whatever?

MR. RACKERBY: I don't think it's impact directly if anything, it might have insisted that we be a little more aware of the groups. They have been better organized, we have been able to identify community leaders more than we have in the past and by working with them I think we've developed a very good liaison from the personnel standpoint. From some of the political aspects --

MS. MOORE: You mentioned the CETA program. Are many of your minorities concentrated in the CETA program, either as administrators or whatever?

MR. RACKERBY: Not that significant, no. About the same balance as we have in the rest of the county. The CETA staff in Butte County consists of about 55 workers. And administering about 800 to 1,000 participants at any one time. Our CETA participant statistics are just about

double for minorities than we find for the county, but in CETA administration we do have representation of practically all minority groups and my assistant is female.

MS. MOORE: Do you count that in your work force?

MR. RACKERBY: I count the 55 CETA permanent administrative staff people in that work force, yes, because we are required by federal legislation to have them in our civil service merit system.

MS. MOORE: And 2% of those are Black, 2% of those are Chicano?

MR. RACKERBY: Only in that 55? In that 55, we have one Black supervisor senior level position in charge of our monitoring unit, the Hispanic in charge of our investigative unit in services, the services manager, which is a deputy director, is female; our payroll supervisor is American Indian. So we have, as I say, a smattering. If we could have the rest of the county max as that we would be well in exceeding parity.

MR. HARRIS: Thank you very much. We appreciate your testimony, Mr. Rackerby.

Ms. Sylvie Jacobson from the City and County of San Francisco, please. Good afternoon.

MS. SYLVIE JACOBSON: Good afternoon. Mr. Chairman and members of the Committee, I was informed officially as late as yesterday that I was going to be the person to testify before you. On the basis of that I would ask your indulgence on specific data questions.

MR. HARRIS: Anything that we ask we would hope that you would submit them for the record at a later date.

MS. JACOBSON: That's fine, thank you. I am the affirmative action coordinator for the Civil Service Commission for the City and County of San Francisco. We have a strange form of government in our city and county which you're probably aware of. We have a Mayor, we have a Chief Administrative Officer, we have a Board of Supervisors. Below that we have various assundry commissions, the central personnel agency is the Civil Service Commission that forms policy. County work force is approximately 28,000 people, and currently to the best of my recollection we base our goals on available labor force. The minority labor force, per the 1970 census, is 39.1%. The county labor force for minorities is 47.5. However, like most other jurisdictions we're very well aware that the 1970 census figures don't have very much meaning in 1980. And again when we quote you block figures like 47.5% minorities, we're also very well aware of where minority persons are clustered in the service. So the questions you've asked about officials and managers, the last figures that I can give you were that some 80% of officials and managers of the City and County of San Francisco were in fact Caucasian. So we're talking roughly 20% minority presence as officials and managers.

MR. HARRIS: What about women?

MS. JACOBSON: That's something that I will

submit to the Committee. I really don't have the figures on that.

MR. HARRIS: Well, then let me do this. Let me tell you the kinds of thing we'd like you to submit to us. I think it might save us some time. We'd like you to break down parity by ethnic group. Also, we'd like you to comment whether or not there is in fact an affirmative action policy, how managers are judged on their compliance or lack of compliance, and what is done to make that policy strong enough to meet goals and timetables in terms of affirmative action. The grievance policy, how are disputes resolved, how many complaints were filed in any given period last year; year before last; for three or four years; how many were formal, how many were informal, and how many were resolved or found to be valid.

MS. JACOBSON: I can address some of those very briefly. The City and County of San Francisco is currently under a compliance agreement with the United States Department of Treasury's Office of Revenue Sharing. That relates to the entire city and county of some 42 departments in total. Our police department is under a consent decree, our fire department is under a consent decree, and adult probation is under a consent decree. So we've got a pretty good track record with the federal government at this point. The compliance agreement which I have submitted through Ms. Fukushima today spells out very clearly to the city and county exactly what we have to do in the area of

affirmative action. The affirmative action office in Civil Service is the affirmative action office for the county. As I specified earlier we have some 28,000 employees and in professional staff there is six of us. Now, our total responsibility is to the 28,000 employees and to people seeking entry into the classified service. We are responsible for all discrimination complaints filed internally or externally. We have a civil service rule that relates to discrimination complaint procedures; grievance procedures are done by the employee relations division which has recently been contracted out. So we would deal with any complaints based on selection and discrimination complaints relating to current employees of the county. We are responsible for city-wide recruitment, and when we talk of some 1,500 job categories that the city has, that's a mammoth task for any one agency or department. We are responsible for all counseling which we provide in English, Spanish and Chinese. We assist people through their careers in the system, addressing upward mobility, lateral mobility, training programs, and anything related to movement within the city. Now this is fairly new, even though San Francisco is an old hand and an old county, the newness of it is what's happening in affirmative action. There is a commitment on the part of what I've heard called here the Personnel Director, who is my boss, the Mayor, the Board of Supervisors and the Civil Service Commission have signed the agreement that you see in front of you. We have some

problems that we anticipate with some of the unions that did not share the meet and confer part of the signing of this agreement. However, we are told by the Mayor's Office this agreement is legal and binding and as a result of that we are for the first time producing some 42 separate departmental affirmative action plans with goals, timetables, and action steps to achieve those goals. This is a first for the county. We've had a city-wide plan since 1977 and part of that, we had what is called a policy statement, which in terms of people that work in affirmative action has very little meaning whatsoever. It will be interesting for, I'm sure, the state, certainly the federal government, and for those of us involved in affirmative action to see what happens with departmental affirmative action plans. The monitoring of those plans will be done by an agency of the City Corps. of Human Rights Commission and obviously the Office of Revenue Sharing. They will help monitoring. We are under a merit set of systems and work very closely with them in the specific department that they audit.

MR. HARRIS: Do you know how many complaints were filed last year or any given year?

MS. JACOBSON: I would say roughly between 70 to 90 complaints.

MR. HARRIS: Formal and informal?

MS. JACOBSON: Correct.

MR. HARRIS: And do you have any idea how many were resolved or how many were found to be valid?

MS. JACOBSON: We have, again, a slightly different system. Any individual, be it an individual that feels that they were discriminated against in the selection or currently within the city force can file a complaint with my office. We will conduct an investigation and come out with findings. It is then calendared in front of the Civil Service Commission for resolution. I think, and I've listened to, as I said, many of my colleagues from other jurisdictions, if you're in affirmative action you wear two hats. You're employed by the city and the county and at the same time you're working obviously for and with minority employees either trying to get into the system or who are currently in the system. There have been recently two such investigations conducted by my office and we found against the city. Both of those were upheld by the Commission.

MR. HARRIS: How many exempt employees are there, do you know?

MS. JACOBSON: Yes.

MR. HARRIS: And also, do you monitor those as well?

MS. JACOBSON: Yes, we do monitor them. Again it is new because they will come into the specific departmental plans where there are exempt positions. There is, I would say, over 1,000 in the city and county that are exempt.

MR. HARRIS: Okay.

MS. MOORE: Are you going to start monitoring the exempt employees?

MS. JACOBSON: Yes.

MS. MOORE: Is that going to be a part of your affirmative action plan?

MS. JACOBSON: Yes. We've requested the departments to report all of their exempt employees and to have goals for those exempt employees and those will be monitored, too. We have a problem with judges in the municipal and superior courts, that's the only area where we anticipate and we are having some problems in getting them to put down goals.

MS. MOORE: Will exempt employees be included in the overall affirmative action plan in terms of goals for San Francisco city and county?

MS. JACOBSON: Yes, they will. It is much more difficult to hold them to those goals, however.

MR. HARRIS: Thank you. We appreciate it very much. We look forward to getting the written information and any other things you think would be appropriate to add to it that would give us some insight as to how we can do a better job at the state level to help you do your job in San Francisco. One other question before you leave, is there any reason why San Francisco seems to have so much, not only litigation but sanctions being exercised against it. It doesn't seem to be any more the villain in terms of affirmative action than a lot of other jurisdictions.

Is it just the fact that there are much more active public advocacy organizations?

MS. JACOBSON: We have a very sophisticated population in San Francisco. I know that's somewhat of a braggart statement, but we do. We have a very active Black, Hispanic and Asian population. And they do not rest with whatever the administration says is going to be so.

MR. HARRIS: Thank you. Mr. Arias, Chief Deputy, County of Los Angeles, Office of Affirmative Action Compliance. Would you please give us your name and title although I've already given it for our record and we'd be pleased to receive your testimony.

MR. ROBERT ARIAS: Thank you. My name is Robert Arias. I'm the Chief Deputy for the Los Angeles County Office of Affirmative Action Compliance. I appreciate the opportunity to talk and I'd mentioned to Mr. Lyons that I wanted to share with you what we feel in the county is probably the most innovative approach within the State of California in regards to affirmative action. I'm not here to speak on behalf of Mr. Kaplan. I only came to Sacramento to participate and observe what some of my peers would be saying. But again I'd like to share with you the fact that we feel that in the County of Los Angeles we have what is probably the only operation of its kind in the state. The county has a completely independent department of affirmative action compliance. I think that's very important. We do not report to the director of

personnel. We're not assigned a reporting function to our chief administrative officer. We report directly and only to the County Board of Supervisors. Now, I think those of us that are in affirmative action know that that is extremely important. If we feel that we have an issue of discrimination or failure on the part of a county department to cooperate enthusiastically with affirmative action edicts, then we can go directly to the board, so instruct that particularly the department is not functioning and on any Tuesday it only takes three votes and that department head can be removed. Fortunately, the county has developed, I think, some different approaches. We have, as you may know, a work force of 70,000 to 75,000 employees. Our county population is about 8 million. Based on the 1970 census which is what our goal figures for parity would be, we have parity figures of 11% for Blacks, 18% for Hispanics, 1970 census, less than 1% for the American Indian, 3.5% for the Asian community, less than 1% for the Philipino community, and roughly 51% for women. At present, though we're not satisfied obviously, we have a total, we've reached parity for Blacks at 13%, but that's misleading in that it's total. Obviously the majority of the Blacks are in entry level positions and lower level and not necessarily in management. We have 11% for Hispanics so we're below parity. With American Indians and Philipinos, we're going through a whole new process of identifying each group.

MR. HARRIS: Is that the population parity or

work force parity?

MR. ARIAS: Population parity. We decided that population would be more accurate in that LA county employees from throughout the county.

MS. MOORE: At one time the County of Los Angeles did use work force availability?

MR. ARIAS: Yes. And as of, I believe 1976, we went to the population parity. We felt that would be more accurate. It would reflect our pool a little more accurately.

MS. MOORE: You indicated that Blacks had reached parity but not in terms of management.

MR. ARIAS: That's overall, right. I think the same thing that affects the Hispanic in that when county positions are announced, it's an internal mechanism and the old boy system where the individual that is going to fill the position already knows that he's been identified. Consequently Blacks and other minorities and women may not know of the position. So to remove that as a means of entrance into the county, what we have recently done, we meaning our department, we have completely eliminated the county's mechanism for announcing jobs for county employment. We no longer use just the LA Times. We use the LA Times, plus we use a new media group that deals primarily and exclusively with the minority community. So if we have an engineer position, if we have a doctor, nurse, whatever, it will, for example in the Black community, we will get

into the Black newspapers, the Black media, the Black radio.

MS. MOORE: Are you saying that you contract with the special, are you saying that you contract with a special group?

MR. ARIAS: Yes, we do. There was a contract in the past, but that contractor for whatever motive was very selective in how it was doing it. We now know that by dealing with this new consulting group that if we want to reach a particular targeted group, if we want to focus recruit, for example if we want to increase the number of Black applicants trying to seek entry into the LA Fire Department, we know that we're going to saturate and get our message into the Black community. Before that was questionable.

MS. MOORE: Well, let me ask you this then. Is this one firm or is this several firms or --

MR. ARIAS: This firm, and I believe the firm is Fouch-Roseboro Corp., I believe that's correct.

MS. MOORE: How is the firm selected?

MR. ARIAS: In their ability to reach all of the community.

MR. HARRIS: I guess she's asking was it a bid process, was it a proposal?

MR. ARIAS: No, not at this point. Not a bid process.

MR. HARRIS: In other words they submitted a proposal and the Board of Supervisors said this is a good

proposal and I'll contract with you.

MR. ARIAS: Yes. Our efforts were to correct the deficiencies in parity figures.

MS. MOORE: Okay, so they're primarily relating to the Black community?

MR. HARRIS: No, all communities.

MR. ARIAS: All communities. For example, if we want to reach particular Spanish-speaking nurses for the East Los Angeles area, we know that this particular firm will contact the eastern group publication firm which is a chain of seven newspapers in the Spanish-speaking area of Los Angeles.

MR. HARRIS: They are simply media consultants who will go to whatever market you have identified with and make sure that it's mediated to that market.

MR. ARIAS: That's correct. And we think that that's a very simple process and it really doesn't take much initiative on anyone's part.

MS. MOORE: I happen to know the group that you're talking about. I know they're excellent.

MR. ARIAS: They've been out there for quite a while.

MS. MOORE: But then what do you do?

MR. ARIAS: Okay. We make sure that they get the contract and if they, if we have a particular exam that they're going to announce, we know that they're going to get the announcement. Once the applicants come in, if

they need any kind of help in passing the exam, we will do mock exams, we'll do mock orals. For the firefighters we'll do the mock agility test, if need be. So that's how we tie in.

MS. MOORE: How large is your unit?

MR. ARIAS: Right now our office is 22 individuals.

MS. MOORE: Is that professional and clerical or 22 professionals?

MR. ARIAS: We have 15 professionals.

MS. MOORE: And they primarily concentrate in helping people to get whatever skills are necessary to pass the exam?

MR. ARIAS: One component would assist the individual that is attempting to get into the county, whether it's fire department, health service. Our other component would do the investigations that come in off the street from employees wishing to file a complaint. One component deals exclusively with the county CETA contract, in working with the CETA employees, not county employees, but those employees that are the recipients of CETA monies under the contract.

MS. MOORE: One of the complaints that I hear about LA County all the time is, I guess really relates to the CETA or what is it, your community worker positions where you bring people in under the CETA program and apparently there's been some kind of freeze forever, at least for a long period of time, and no way of moving

people around and the county has developed some strange system of classifications and putting people on one item and shifting them around. What does that do to your affirmative action?

MR. ARIAS: Playing the game that I think has kept us from reaching parity. An example of that might be that you may be a CETA employee for 18 months, a bulletin comes out for a typist clerk and the bulletin says must have been a county employee for at least six months, excluding CETA employees. We've removed that exclusion so that CETA employees are a source of entry level employees for us. Again it's not perfect but I think it's something that we've realized should be removed, that if you're going to use CETA, we have to open the door to allowing them to come into the system.

MS. MOORE: Well, my question is a little broader. I want to know what your unit can do. Say it's, what is it, the Health Department, Department of Hospitals, something like that, that has, you know, all these people and you find out that this is going on. What can you do? You've got a component that you've just described that does look into that kind of thing. You know, where is your clout?

MR. ARIAS: Our clout again I think is very effective in that if we do find a unit, and we've had cases where departments have not cooperated for whatever their motive. We can conduct an investigation. The facts to the investigation will be delivered personally to the

Board of Supervisors. They then will take the action.

MR. HARRIS: How many people are in the department?

MR. ARIAS: We have 25 right now.

MR. HARRIS: You deal with both counseling, investigation.

MR. ARIAS: Mostly investigation.

MR. HARRIS: Tell me this, what is the number of complaints that you received in the last reporting period?

MR. ARIAS: In the last six months, for CETA we've had approximately 50 to 60 of different types. Ninety-five percent of those were administrative complaints, five percent may be affirmative action discrimination. County employees coming to us, permanent county employees, we have in the neighborhood of anywhere from 15 to 25.

MR. HARRIS: In the last six-month period.

MR. ARIAS: Yes. The majority we're able to settle before they reach the hearing stage or any form of serious investigation.

MS. MOORE: How do you work with the county department personnel directors or officers?

MR. ARIAS: My boss, the compliance officer for the county is one of the individuals that must sign off on the evaluation form yearly of every county department head. That's an annual evaluation of that department head. That's one of his relationships.

MS. MOORE: Okay, so you've got a county

department head who has established this pattern that nobody will admit that it exists that I've been trying to establish all afternoon and you've got a, anyway you've got one, and your boss refuses to sign off on his annual evaluation on the basis that he has habitually discriminated or used discriminatory practices. So what?

MR. ARIAS: That individual would be found to be in failure in areas of affirmative action. That would be automatically flagged and shared with, I don't know if you're aware but there are five county supervisors. Each supervisor has x number of departments that are their responsibility. The person that must do the final sign-off on that department head's evaluation is the supervisor. So if the department head is deficient in affirmative action, it will come to the attention of the Board of Supervisors and in most cases that does not have to happen. We're working out good accommodations. They are allowing us to get involved in focus recruitment for them. They don't want to be confronted with a supervisor that's going to be upset, obviously.

MS. MOORE: Indeed, generally when you're dealing with the LA County departments, generally where you've got, what is it, 80,000 employees in LA County?

MR. ARIAS: 75,000 right now.

MS. MOORE: That when you get to the level of the department heads, they generally are not the ones that are doing the hiring or the ones that are generally the

ones that are accused of doing the things. So failure to sign off on his yearly evaluation, does that really get to the problem?

MR. ARIAS: Well, if the person is -- take the Department of Health Services, 20,000 employees. That department head may not be the one responsible directly for whatever problems are going on in his department but ultimately that is the one that has to be accountable. We do meet with, good example, that department head has been very cooperative and we told the individual, particular personnel unit in a particular hospital is not functioning the way it should. We want to assist you to clean that up and we've been given the authority.

MR. HARRIS: How many departments are there and what is their makeup in terms of minorities and women?

MR. ARIAS: There are 57 county departments and districts. As I indicated, the total for the county would be, Blacks as a total represent 13% of all the employment figures.

MR. HARRIS: No, I'm talking about department heads of the 57 departments.

MR. ARIAS: Department heads, we have, I believe, and I could furnish you with accurate data, we have six department heads that are Black, we have four department heads that are Hispanic, four department heads that are Asian, no American Indians, we have of the minorities there are two women and two white females.

MR. HARRIS: So approximately then somewhere in the area of 28, 30%.

MR. ARIAS: Right.

MR. HARRIS: And how many females again?

MR. ARIAS: We have four females.

MS. MOORE: How do you interreact with the department of personnel or what is it, the personnel department.

MR. ARIAS: The director of personnel, the Chief Administrative Officer, and the compliance officer are part of the ordinance forming affirmative action. They deal on an equal basis in so much as affirmative action.

MS. MOORE: Tell me that again.

MR. ARIAS: The ordinance that created the office of affirmative action compliance states specific responsibilities. The overall person in charge of affirmative action is the compliance officer. Anything dealing with affirmative action, if it comes through personnel, the personnel director must go through the compliance officer.

MS. MOORE: Let me see if I'm understanding you correctly. My general understanding of the County of Los Angeles and its operative manner is that the CAO is all powerful, they control the money, the budgets, et cetera. And all that they don't control, personnel director controls. And you're telling me that the affirmative action compliance officer is equal with --

MR. ARIAS: It's an independent department, and it was formed independently because of what you just said. Prior to 1976 affirmative action was part of the department of personnel.

MS. MOORE: In fact the personnel director used to have control --

MR. ARIAS: That no longer exists. They do not have the responsibility for affirmative action. The Board separated that.

MS. MOORE: In essence, you're very comfortable with the power that you have?

MR. ARIAS: That would be one recommendation I would make, that in dealing, and we provide a lot of technical assistance to other counties and cities throughout California, and we tell them first of all separate yourself from personnel and from CAO.

MR. HARRIS: Okay, thank you. If there are no other questions, we appreciate it. Our consultant has one question.

MR. LYONS: Does affirmative action also apply to the support services to the Board of Supervisors?

MR. ARIAS: To the political appointments, no, obviously.

MR. HARRIS: Each supervisor has a number of people who are exempt. How many employees would that be?

MR. ARIAS: Each supervisor has in the neighborhood of 12 to 15 employees.

MR. HARRIS: That are exempt.

MR. ARIAS: Only the secretarial positions are covered by civil service.

MR. HARRIS: Somewhere between 60 and 75 employees total.

MR. ARIAS: That's correct.

MS. MOORE: That's not exactly so. Don't department heads and some others have exempt positions?

MR. ARIAS: Department heads also are not covered by civil service. They're appointed.

MS. MOORE: And they also have access to exempt employees and consultants and that kind of thing that would not fall under your purview?

MR. ARIAS: The department heads that are elected officials themselves, the Sheriff, the Assessor, the District Attorney, they do have their own employees that are exempt from --

MR. HARRIS: Only those that are elected. What's that, probably about 6 to 10?

MR. ARIAS: Probably.

MS. MOORE: Yes, but if you've got how many in the DA's office, five, six hundred people?

MR. ARIAS: Not all of those are exempt. Only his key deputies are exempt.

MS. MOORE: So all the attorneys are civil service.

MR. ARIAS: County council the same thing.

MS. MOORE: So you're telling me the department heads do not have access to consultants and others that would not be, for all intents and purposes could be considered exempt.

MR. ARIAS: All the staff would be covered.

MS. MOORE: You're saying that they don't have that authority.

MR. HARRIS: Right.

MR. ARIAS: The only exception would be if they have a special grant from the state or federal for an outside consultant. But they do not have exempt employees. Only the elected officials.

MR. HARRIS: I'd appreciate any written testimony you can give us and you've been very helpful. I'm impressed with what you've put together in terms of Los Angeles County. It seems to be exemplary and I can understand why people are asking for technical assistance from you.

MS. MOORE: Are you involved, on your recruitment, are you involved in the recruitment for the individual departments?

MR. ARIAS: Yes.

MS. MOORE: Your unit is from the very beginning, what if I have a position I want to fill I contact your unit to let you know I'm getting ready to do that?

MR. ARIAS: There is a reason for that obviously and that's to insure that we meet our goals.

MS. MOORE: So I mean, that is a must.

MR. ARIAS: Yes.

MR. HARRIS: Thank you. Now we're going to hear from special interest employee advocate groups. We have twelve groups that have signed up and I would ask the testimony be limited to this extent. We've got some ideas as to what the various departments at state and local levels do in terms of affirmative action and do not do in terms of affirmative action. What we'd like to zero in on are questions that we can address in terms of problems in the coming work of this Committee so that we will be able to come back with recommendations to the Legislature or to the Administration's agencies and departments and/or state and local government in other regards on affirmative action and fair employment practices. So please limit your testimony to that and give us written testimony. We will follow up on it. I'd like to begin with Mildred Becker from the Gray Panthers and if there's anyone else from the Gray Panthers, I would appreciate them coming forward, or if there's anyone else who's going to speak on behalf of senior citizen's groups I'd like to get that testimony at this point.

MR. TED RUHIG: I'm Ted Ruhig. I'm substituting for Mildred Becker. I represent the Gray Panthers of Sacramento. I want to thank the Chairperson, Mr. Harris, for this opportunity to speak before the Committee.

The record will bear out that contracts and many laws

on the subject, the State Department of Aging and the State Personnel Board have been consistently derelict in carrying out any and all aspects of the legally mandated affirmative action employment policies for older Californians. By this dereliction all the elderly of California are being victimized. This employment failure has resulted in the Department of Aging's staff, without even an appropriate token leadership corps of over sixty years of age people of whom its very business it is to serve. This deprives the staff of that special requisite sensitivity and a special sense of mission that is called for. This staff, without sensitivity, without a sense of mission, has had an annual turnover policy of over 30% a year. Not only is such a staff lacking in expertise, it extremely wastes personnel dollars in excess hiring and training costs, such an illegal personnel policy resulting in so weak and inexpert a staff also is endangering millions of the state's federal older American dollars.

MS. MOORE: Can I ask you one question before you go any further. Sounds like you're lodging a complaint against the Department of Aging and their inability to outreach for people over 60. Has that complaint been filed with the state's affirmative action, the board of personnel state affirmative action?

MR. RUHIG: The State Personnel Board says, I think it's an illegal statement on their part, that they

are not responsible for the over-60 affirmative action hiring called for by the federal government. I say that the State Department of Personnel Services, State Personnel Board says that they are not responsible for enforcing the 60-plus affirmative action hiring, preferential hiring called for under the Older Americans Act.

MS. MOORE: So you're saying that the State of California, you've been told and of course we'd have to check anything out, that we don't have a policy where we do not discriminate on the basis of age.

MR. RUHIG: Well, what I'm speaking about is the special policies. The State of California, along with other states, gets money under the Older Americans Federal Act and that Act calls for, since 1973, preferential hiring for people over 60. I am saying specifically that the State of California doesn't have a policy in this regard.

MR. HARRIS: Not just the Department of Aging but the state itself?

MR. RUHIG: Well, but peculiarly so they have to bring in the Department of Aging because the Department of Aging, by law, federal law, is supposed to be the advocate for 60-plus hiring. So if it fails in the Department of Aging it's failing in every other department in the state because they don't advocate it.

MS. MOORE: That's interesting that the federal government has not, you know, it would appear that they're not in compliance with their federal contract.

MR. RUHIG: Well, there's a problem there. The law states that, in the Older Americans Act, that they have to take into account the civil service regulations of every entity they're dealing with, so the feds up until this point have taken the stand that the state is the best interpreter of its own civil service regulations and therefore if the State Personnel Board in this instance states that the Department of Aging is in conformance, then the feds have accepted that. They're not going beyond that state because they didn't want to intervene, in their judgment, in the internal mechanisms of the state's hiring.

MS. MOORE: So indeed a complaint has been lodged with the State Personnel Board.

MR. RIHIG: That's right, they're aware of it. They're perfectly aware of it.

These policy failures brought on by the inappropriate managerial staff screened behind a token 66 year old director has provoked outcries from many quarters.

MR. LYONS: Excuse me, sir. Are you reading from a prepared statement? Can you just submit that into the record?

MR. RUHIG: Let me make a last final comment because I think it's relatively important.

MR. LYONS: You would like to enter this into the record?

MR. RUHIG: Yes. I want to verbalize it at this point. It might provoke some questions.

It should be stated as a general proposition that all programs and activities of and for the elderly should be staffed by a majority who themselves are elderly. Who else has the requisite sensitivity? Who else will the elderly more readily identify with? Where else can the elderly who want to work be employed, if not among their own peers?

We of the Gray Panthers profoundly believe in our slogan: Age and Youth in Action Together. We welcome and seek out the company and help of younger people. But we view this as a partnership. We believe that we elderly should not be used and treated as children. We are more than competent to handle our own affairs - the California State Department of Aging and its personnel policies notwithstanding.

Preferential hiring of the elderly on programs for the elderly have been on the law books for seven years. In that time the California State Department of Aging has managed to have but a token 6% of their staff professionals 60-plus years of age - 6 out of 104 staffers. This in a department that is mandated by Federal and State law to give preferential hiring to the 60 and older person. We call for a redress of this intolerable situation.

MR. HARRIS: I was just going to say I think that's certainly an appropriate subject for this Committee. I would also ask that you address those concerns to the Committee on Aging because they are a policy committee and

together with them we should be able to at least address this problem and look to both the Department of Aging and the State Personnel Board and other appropriate agencies for some reasons and some explanations as to why the phenomena that you speak of exists.

MR. RUHIG: Let me make this observation. I listened with interest this morning of the testimony of the State Personnel Board. This is a board that comes up with a yearly count of various categories of affirmative action. In their census there is no category whatsoever of 60-plus hiring. They don't even take figures. They'll have figures on the age spread of the state employees but they'll make no provisions at all for 60-plus hiring in any way. And this has an impact beyond the state, by the way. The State Department of Aging forms the Older Americans Act in every area of the state and they're by contract to go to county and local government and the private groups. They're supposed to oversee that 60-plus hiring in all these other agencies, and because they don't do it themselves they don't do it. So this impacts upon hundreds of jobs for older citizens throughout the state of California. So what you have is a group of younger people herding and meeting the needs of the older people who by their actions are denying that these people have the ability to handle their own affairs throughout the whole state.

MR. HARRIS: Thank you. We appreciate your

testimony. Mr. Marcos Nieto. Excuse me, can we get a copy of your written testimony for our record, Mr. Ruhig? Thank you very much.

MR. MARCOS NIETO: I'd like to preface this one page statement, if I may, to the concerns and recommendations we have about the State Personnel Board's policies. On behalf of CAFE de California, the largest Hispanic Employee Advocate Association I've been associated with in state government, I'd like to thank you for the opportunity to testify today.

MR. HARRIS: Thank you. Does CAFE stand for anything?

MR. NIETO: Well, the acronym was once Chicano Advocates for Equality. Because often it's been said the 1980's could be the decade of Hispanics. Somebody even predicted that Hispanics would be the dominant political and economic force of the decade. However, if progress made by Hispanics in state government in the 1970's is any indication of how Hispanics will do in the 1980's, it would appear that this decade would not yield the promise that some believed. The fact of the matter is that Hispanics have been and continue to be the only under-represented ethnic group in state government. If current projections are accurate it would take approximately 5,600 new Hispanic hires, not including those who would terminate, separate from state government, to reach parity. This figure represents approximately 4% of the total state

government work force. Although much of the responsibility for insuring that affirmative action takes place in state government rests with the State Personnel Board itself, they are not responsible for the actions of the departments and agencies who actually do the hiring because by statute the hiring power rests outside the State Personnel Board with these departments, agencies and other boards. For example, when a department or agency makes a new hire, it's not officially acknowledged as a statistical hire by the State Personnel Board until three months later when the computer picks it up and logs it in. As a result it makes it very difficult for the SPB to reverse a department or agency non-affirmative action hire made three months earlier. So you really can't get a handle on who's being hired. CAFE de California believes that the entire monitoring procedure that the SPB has the power to authorize can be more effective than the current affirmative action contract process to have each department, this was a result of AB1350.

In taking time to point out that the affirmative action contract process is relatively new to state government, it does not do in our estimation what departments or agencies can do to insure that Hispanics and other minorities are hired. We believe the following recommendations would go a long ways in insuring that affirmative action in state government becomes a reality for Hispanics and other minorities in the decade to come.

One of the most important aspects we find in the SPB's responsibility is the AB1350 mandates and one of those mandates that was pointed out this morning by several of the testimonies deals with the reporting relationship of an affirmative action officer to his or her director. In many departments it doesn't take place. Instead, through the management scheme of things, that affirmative action officer would report to a chief deputy so that the continuity of the management structure remains in place. This in essence stifles whatever access, if you want to call it that, that the affirmative action officer would have to the director in making that person aware of the current standards and allocations of hiring within that department.

A good example why this would work, if in fact the Board would enforce it, rests with certain agencies such as the Health and Welfare Agency whose mandate that affirmative action officers report to the directors, and in doing so they have a direct line to the director's ear on who's doing what in their department. Within that process, there should be a further monitoring system, a documented monitoring system with a personnel document that would authorize that affirmative action officer to sign off and approve on all hires coming through that department. Now, the most successful departments in state government that were mentioned this morning are in the Health and Welfare Agency. And it's primarily because

these departments within the agency have a personnel document that essentially was called a 3001 process; it's taken on different names now since the Department of Health reorganized, that allows the affirmative action officer to sign off on any and all hires. If you don't have that authority, if you don't have that gauge, that constant monitoring gauge of who's being hired in your department the three month tabulation will be already accomplished and you won't be able to do anything about it. I mean, it's a plain simple fact that if you don't know what's going on, three months down the road you're not really going to have anything to do about it.

MR. HARRIS: Mr. Nieto, let me ask you a couple of things. I want to ask a couple of questions. I wanted to ask what feeling you had about the comment that Mr. Morgenstern made this morning about a central freeze and that impact on the already existing problem relative to Hispanics, and lack of parity in the state's work force. And also what you think are appropriate remedies in terms of the problem? Is the problem one of recruitment, or do you think the biggest problem, in terms of reaching parity is the lack of commitment. There certainly were signs and statements made to indicate that's not the case. So why can't the goals be reached?

MR. NIETO: I think the main problem, although in part it's the responsibility of the State Personnel Board, the main problem rests with those hiring authorities.

It's written throughout personnel's rules and procedures that the hiring authority has responsibility to do this and that; has the discretion to use management direction to effect policy. I think the problem really rests with agencies and department heads throughout state government. Although the arguments used that the hiring freeze will negate any new hiring coming into government, I feel that the vacancy and turnover rate is high enough where you could have enough employees on the examination list ready and primed to be eligible candidates for those vacancies when they do occur. Through the attrition process I believe that, despite the fact that we have a freeze, you can make progress in meeting parity goals established for under-represented minority groups if you have this reaction arm of recruitment, active reservoir of personnel and commitment with the directors and agency secretaries to hire.

MR. HARRIS: So you think the applicants are there. In many cases they're being recruited, but they're simply not being hired.

MR. NIETO: That's undoubtedly true.

MS. MOORE: Apparently you have a great deal more faith in the State Personnel Board than most people that have come before this hearing. I see where you're advocating that we allocate more money and more authority and all these things and apparently you feel that they can do a better job than the individual departments, et cetera. Aren't you somewhat concerned about the policy or the lack of policy

that exists now with the State Personnel Board?

MR. NIETO: Well, you can write policy memos every day until you get blue in the face. It's the actual execution of those policies that is critical to the hiring and achievement of affirmative action in state government. And again, you have personnel rules and procedures that's riddled with hiring authority referring to department directors and managers within those operations, that's where the power lies. The State Personnel Board gives the direction and the policy. The executive has to come by the departments and agencies. I'm not saying the State Personnel Board is perfect and has been doing their job. To say the least they haven't, the smallest division within the SPB is the affirmative action division itself with 38 employees. That in my estimation is totally inadequate to deal with the problems we have right now in reaching parity, especially for Hispanics. The recruitment unit itself consists of a manager and several non-permanent civil service personnel to assist him in their statewide recruitment efforts. It seems to me that the direction and allocation of resources within the SPB should be re-evaluated and given strong consideration to those two important units within that operation.

MS. MOORE: Let me put it like this. We just heard that the State Personnel Board, and you know of course everything has to be checked out, does not even have a policy towards older Americans. And yet you want to

allocate more resources to them. Is it not their job to do recruitment, don't they do job descriptions, and don't they do task analysis, and all the things that go into recruiting and bringing people in, isn't that the responsibility now of the State Personnel Board?

MR. HARRIS: So are we talking about new resources or reallocation of existing resources?

MR. NIETO: Reallocation of existing resources primarily. If the operation of the State Personnel Board is such that it's suspect, who else can you turn to in government. You don't have any shining examples for sure as a control agency to look forward to.

MS. MOORE: Would you support taking away personnel responsibilities from all departments and housing it with the State Personnel Board?

MR. NIETO: No, that's not the answer. The answer is for the State Personnel Board to get tougher and exercise the authority they actually have to make departments accountable for their hiring. You just can't come before a public hearing and chastise the departments and spank their hands and say you haven't done a job in the last two years and we're here to criticize you. That's not going to get it. That won't get it at all. I can go beyond that. If in fact the department directors are not doing their job hold them accountable at the end of the year, put their job on the line.

MS. MOORE: So you think that giving them more

money will make them tougher.

MR. NIETO: Well, to give them more resources to definitely see to it that their policies are executed properly by the departments will be a step in the right direction.

MR. HARRIS: Thank you, Mr. Nieto. Dr. Juana Barbarita, from the California Community Colleges. I'd like to also welcome my colleague Assemblyman Bob Hayes from the San Fernando Valley who has joined us. I'm sorry, Dr. Barbarita is representing La Raza Lawyer's Association.

MS. JUANA BARBARITA: Good evening. I'd like to have you make that slight correction in the written testimony.

MR. HARRIS: Yes. Please give your name again and who you're representing.

MS. BARBARITA: I'm Juana Barbarita. I'm the affirmative action officer for the California Community Colleges. I'm also the Public Relations Coordinator for La Raza Lawyers. Today I'd like to focus on my responsibilities as the affirmative action officer for the California Community Colleges, the state agency that is responsible for providing, in my particular office, assistance to 107 community colleges which employ more than 60,000 employees and which enroll approximately 1.4 million students.

I would like to focus on two aspects of public

employment that deter the full implementation of the affirmative action program in the California Community Colleges. The first is the level of support given to the affirmative action officer as determined by the State Personnel Board. The second is the absence of a realistic sanctions process that will move the state agencies toward affirmative action progress.

Regarding the first aspect, that is the level of support given the affirmative action officer, I would like to differentiate between the state agency affirmative action officer role and the system-wide affirmative action officer role; even though they're very closely intertwined I serve in both capacities. Since our agency is the head agency for 70 districts, the staffing in our agency is critical to the implementation of the programs and services offered throughout our system. Serving as agency affirmative action officer, I had found my role to be very limited until I requested the support of the State Personnel Board staff. Although the response has been very vague, and I am not exactly sure of what their supportive activities are, the actions resulting from my request have been positive in terms of the affirmative action hires in the agency. And by that I mean that because, well, I think it's pretty clear what I mean, because I've taken the issue outside our agency it's been more critical than ever to our administration to make sure that our hires were more affirmative action oriented. Unless the affirmative

action officer takes a matter outside the agency and to the State Personnel Board and other organizations, very little support for the program may exist internally. Even though the interaction of the agency officer and the State Personnel Board is recommended in the manual and in other memos that are issued periodically by the State Personnel Board, the consequences of such outside action for the officer include subtle pressure from the other employees to stop going outside and mild harassment to make one's job more difficult. The role of the affirmative action officer has to be made more secure especially since the agencies that need the most affirmative action results often have the most employees opposed to an active or effective role for the affirmative action officer.

The second area which merits discussion is the sanctions process. Whatever steps or sanctions are available to move agencies needs to be better publicized. Unfortunately, many employees are not aware that the State Personnel Board plays a viable role in complaints. Employees with equal employment opportunity complaints share them with the affirmative action officer but will not follow through because of the poor record that the State Board has in alleviating situations that need correction. The procedure for handling a complaint is too long and there appears to be no follow-up by State Personnel Board to see that its recommendations in any grievance process are carried out. I'm still personally awaiting a reply to two memoranda

that I sent the State Personnel Board staff three months ago. Confidence in that agency's staff needs to be reestablished or even established so that affirmative action programs can be effective. Commitment to the implementation of our civil rights laws must be demonstrated. Thank you.

MR. HARRIS: Okay. I'd like to ask a couple of questions very quickly so that we can move on because I would like to conclude this in the next 30 minutes and will make every effort to do so.

Do you have a support staff or are you alone?

MS. BARBARITA: I'm the only person in my unit. This year I received a full time clerical person.

MR. HARRIS: Is your job basically one of coordination in terms of developing system-wide models for affirmative action programs and also collection of information and data for the Chancellor?

MS. BARBARITA: Well, my interpretation of Senate Bill 1620 leads me to believe it's more than that, and every two years beginning with July 1980 I'm to report to the State Legislature on the progress of the California Community Colleges, the individual districts, in the progress they're making and not making in hiring more minorities and women.

MR. HARRIS: As far as I know, the employees of the community colleges don't come under the authority of the State Personnel Board.

MS. BARBARITA: No, unfortunately they don't, but our agency is under SPB.

MR. HARRIS: You mean the staff itself?

MS. BARBARITA: Yes, we number approximately 140 employees in the agency itself.

MR. HARRIS: But your responsibility extends beyond the internal staff and also includes the 70 or, what is it, 107 colleges relative to resources.

MS. BARBARITA: Very definitely. I haven't been allowed to, well I haven't received any additional staff in the last year I've been there.

MR. HARRIS: That's a major item of concern and also I think it's something that we need to address to the Governor. He's certainly expressed some support for affirmative action at the State Universities and Colleges and the University of California, and the Community Colleges.

MS. BARBARITA: Well, my friend Ray over there used to have a budget of just under \$300,000 for the UC system and I don't know what Jeffrey has but I know that my budget was \$52,000.

MR. HARRIS: We will work with you on that in going more to the head honcho on the community colleges.

MS. MOORE: I know Juana Barbarita from the LA Community College district where she started as affirmative action officer. I just want to say that I would think that Dr. Barbarita's problems extend well

beyond the Personnel Board because you've got 70 community college districts with 7 elective boards who don't believe that they have to follow the guidelines that are set forth by the state.

MR. HARRIS: Well, with the state's funding of the community colleges being so critical, it seems like we ought to be able to provide some sanctions there. We can't provide them anywhere else.

MS. MOORE: Well, let me put it like this. Many community college issues have ventured into collective bargaining, but there are a lot of problems that are in that area so it's not a matter of just giving more staff and resolving the problem. There are a lot of things, and I think that the community colleges probably represent the tip of the iceberg in a number of areas that have probably similar problems.

MR. HARRIS: Could you get us some statistics similar to what we've asked for from the others as to what's going on in the community colleges. I don't know if they've done it by district or whatever.

MS. BARBARITA: Well, we will have the information available by district on the progress in the last two years. I think one of the points, though, that should be brought up is that we are covered by AB803 and it's, in fact, equal care to file individual complaints and follow them through, they would be appealable to our office with our responsibility ultimately of cut-off of state funds should the intermediary,

intermediate steps not produce any positive results.

MR. LYONS: Would you ask the Chancellor to submit to the Committee some type of pending report?

MS. BARBARITA: The EEO6 report that spells out our employee count?

MR. LYONS: I thought that was supposed to be finished in July?

MS. BARBARITA: That's right, the July 1980 report due to the Legislature. Yes, I can transmit your request.

MR. LYONS: Well, let me put it this way. Can you ask him to submit it to the chairman?

MR. HARRIS: Thank you very much, Dr. Barbarita, appreciate your testimony. Joyce Harlan from CASE. Ms. Harlan, I'll ask you as I've asked the other witnesses to be brief and to centralize on your concerns so that we can hope to address them. Thank you.

MS. JOYCE HARLAN: I'm Joyce Harlan and I'm representing CASE, Clerical & Allied Services. We're Local 909 of the American Federation of State, County and Municipal Employees, AFL-CIO. We represent clerical workers in the state civil service system, in the state colleges and universities. What I did was outline sort of briefly what problems we have faced with affirmative action of upward mobility, we don't feel that it's been successful, we've been trying for years and nothing has happened. We have attempted on page two to answer some of the questions

and make some comments on the areas that you were eliciting information on, and finally we set up some recommendations. And we would like to stress both numbers four and five in particular.

MR. HARRIS: Let's go back to number one. You recommend that accurate statistical information on women and minorities be maintained. Therefore you indicate by that recommendation that they are not currently maintained.

MS. HARLAN: We don't believe that they are. I know in several instances, I worked at one of the university campuses and if we had a Black woman who was disabled, she made it for our department because we had three and those are the kinds of things.

MR. HARRIS: So we need to look at the data and look at its reliability.

MS. HARLAN: Right. You know, you fill three things with one person and it hurts the other two categories. Numbers four and five in particular because we feel that what's been missing from affirmative action is really the action. There's some nice policies but nobody does anything and we would like to see something more positive going, and rather than a lot of time being spent on monitoring things, let's spend some time and some money on really making the programs viable. Inadvertently on number five, our last point was left off and unfortunately it's probably the most important. In talking about career development programs, that the employer should guarantee that the

employee get the job that he or she trained for upon the successful completion of the training. All too often we have women who take training to become upwardly mobile and then there's no position and people get disgruntled and dissatisfied and I think that's been one of the problems why people don't really feel that affirmative action upward mobility is worth very much these days.

MR. HARRIS: Don't you think that could be a double-edged sword? You could talk about limiting training programs to available job openings rather than helping people --

MS. HARLAN: I don't know. What we've had is seriously a very very severe problem and I can speak to within the colleges where I have known individual after individual after individual has gone after a career training and development course, positions were open for which they were qualified, and they were overlooked and white males were brought in from off the campus to fill those positions. Quite frankly the training and development seems like a waste of the state's money if they're trying to do it for their own employees.

MR. HARRIS: Maybe we might differentiate between training programs for specific jobs and the kind of career education opportunity that people volunteer for. Some people want to learn more about their job so that they can seek career options or maybe even leave and go somewhere else. It may not be specific, it may just be

management training. I understand the point.

MS. HARLAN: And in conclusion, out of the state's, 43% of the state's work force are female, almost 90% of those are in clerical classifications. This is, we think it really, in some ways it's a volleyball; on the other hand women who are clericals are professionals, we have skills, we don't feel that we have to develop other skills, what we do feel is that something should be done about pay equity. And we would encourage this committee to seriously consider going into the subject of comparable worth and investigating the real value of women's work in the work force.

MR. HARRIS: I think we, as I indicated before, we would like to at some point have a hearing specifically dealing with women's issues as it relates to sexual harassment, upward mobility and equal pay for equal work.

MS. MOORE: I think, if I hear you correctly, some of the problems off-hand that women have to have certain skills such as typing, whatever, and still receive less money than someone who may be a janitor or gardener that requires no skills.

MS. HARLAN: I had to make determinations on people's ability to transfer in and out of the University and I started at \$300 less than a car washer.

MR. HARRIS: Point well taken. Thank you very much. Marina Estrada from the Chicanas in State Service.

MS. MARINA ESTRADA: My name is Marina Estrada

and I represent the Chicanas in State Services. Harriet's given you the written presentation. I'm going to go over some of the points with you. First I want to thank you all for allowing us this opportunity that we've been saving up for a long time.

I'm going to go over the concerns first. We have a list of recommendations and I think you can make that a part of the record and go over that later. We are concerned with the present selection procedures for the major classifications used by departments as they do not provide opportunity for the appointment of Chicanas. The Department's Affirmative Action Programs are ineffective. According to the State Personnel Board's Annual Report on the State of California Affirmation Action Program for the fiscal year 1978-79 and I quote, "for those departments below parity..., the number of years to achieve parity..., for the Spanish speaking surnamed group is 2-37 years." That's according to the State Personnel Board itself.

When the State Personnel Board refers to Minority, Female and Disabled goals, no mention is made of establishing Ethnicity goals within the various components of an Affirmative Action Program. As a result, the serious deficiencies in Chicana representation are never addressed.

In the past, it has been the practice of some departments not to submit data which reflected a functional Affirmative Action Program. It is therefore assumed that a uniform data collection system was not in effect.

In reviewing the specification sheets for the major entry level classes identified as requiring remedial action the language was ambiguous and/or not job related.

The lack of training programs specifically for lower and entry level classifications in the departments. Current statistics show that 43.7% of the Chicana work force are at the clerical and that's out of work force of 4% of state service.

For all these reasons, I'm going to give you our strongest recommendation --

MR. HARRIS: Wait, let's go back over that. Four percent of the state work force are Chicanas? Okay. And 43% of the Chicanas are in clerical? Okay.

MR. BOB HAYES: How does that compare to women in general? Say Anglo women in percentage? Is that a higher or lower number?

MS. ESTRADA: It's lower.

MR. HAYES: In other words there's a greater percentage of Chicana women who are not in clerical? Is that what you're saying?

MS. ESTRADA: There are a greater percentage of Chicana women in clerical. They break them down in all the classifications and I can't recall the exact number of classifications. It's broken down, so we go from anywhere from the 43% in clerical to a .1%, I believe it is, in supervisory and law enforcement.

MR. HARRIS: We just had testimony that 90% of

the women in general were in clerical positions, so that would be the opposite of what you said. Didn't Ms. Harlan just testify to that?

MR. HAYES: We just received that and that's why I was wondering why the or how the Chicana women had made such great progress.

MS. ESTRADA: Well, I think, if you look at the past reports given to the Legislature from the State Personnel Board you'll note that most of the affirmative action hires have been made in the last five years. And because of that a lot of them will come in under programs such as CETA and they came in at the clerical level, which is either the assistant clerk or clerk, office assistants 1 and 2, and they are still there for the most part.

MR. HARRIS: In any case, we acknowledge that the problem exists.

MS. ESTRADA: Our strongest recommendation is that the Legislature require annual status reports at public hearings on department's progress for both the Legislature and public, prior to the approval of the department budgets.

MR. HARRIS: That's an excellent recommendation.

MS. ESTRADA: There's a much longer list of recommendations.

MR. HARRIS: And we will look at all of them and we look forward to meeting with you on continued deliberations on the subject. I certainly think that the budget review

process is one the Legislature has and should in fact exercise, and is one sanction available.

MR. HAYES: I have one question. With the Mexican-American women working in our staff force, do you think the inadequacies of the bilingual programs are a deterrent to finding the better jobs for those ladies who are of Mexican-American or Hispanic --

MS. ESTRADA: I don't think the bilingual program has anything to do with it.

MR. HAYES: I was just wondering if there is any correlation with the bilingual programs because I feel that, okay, if there is none, then it's over.

MS. ESTRADA: There is no correlation at all.

MR. LYONS: In your recommendation on page five, number four, it says the departments should adopt a policy of enforcement of the manager/supervisor's role in the Affirmative Action Program. You should adopt -- do you feel that that would impact or reverse certain situations that presently exist?

MS. ESTRADA: Yes.

MR. LYONS: Can you expound a little bit, because we've heard this on two other occasions, that's the reason I'm raising this question.

MS. ESTRADA: In the hiring process, as you noted earlier, the hiring is not done by the department heads, it's not done by the division chief, it's not necessarily done by division managers or on-line managers.

It's usually a first-line supervisor. Now that supervisor has a yearly report just like everybody else does and if they're not making progress in the affirmative action areas, somebody should make note of it and it should, somewhere along the line, show up and reflect in their promotions. That's not happening right now.

MR. LYONS: You said first-line supervisors?

MS. ESTRADA: It goes all the way up to, it works its way up, but it starts somewhere. Supervisors and managers are the closest to the hiring level.

MR. LYONS: What about these panels or whatever the State Personnel Board uses? I'm somewhat confused now. I thought the panels were the ones who do the initial hiring.

MS. ESTRADA: No, they don't hire. They interview and they put people on lists and those people are eligible to be hired but they are not hired.

MR. HAYES: You know at one time on some of these lists it was almost mandatory to hire the first person on the list and then we went to the first three and then ranks of three and things of this issue. Do you think that it would be an improvement if we --

MS. ESTRADA: I think the current system of ranks of three has probably aided the minorities in getting in.

MR. HARRIS: Thank you. Frederick Copeland, representing Blacks in the state service.

MR. FREDERICK COPELAND: Thank you, Chairman

Harris. The hour is late and I'm going to be extremely brief and if there is any additional material or elaboration you would like to have on this, I have a thesis here where I put most of my material concerning affirmative action. And I have a briefcase back at the seat there that's also chock full. So this is not the total of what I have to say. So I'll do this in about three minutes.

My request was to speak on six items and it would -- I'm sorry. My name is Frederick D. Copeland and I am retired from the State Department of Justice Organized Crime and Criminal Intelligence and I'm speaking primarily concerning the Department of Justice Crime Bureau and the State Personnel Board and it is concerning a lack of affirmative action and its uncorrected ills.

1. Many years practice of racial, age and sex discrimination.

I can testify that this has happened in the Department of Justice Crime Bureau, detailed facts I will be happy to give to you in writing.

2. A lack of upward mobility in civil service. For more than 58 years, and I think that can be stretched to about 60 now since I have been retired two years, there has never been a Black male supervisor in the Organized Crime and Criminal Intelligence Branch.

3. Total absence of a viable and effective affirmative action program. Such a program existed on paper at the DOJ, but only when there were murmurings at the Legislative level. The person in charge knew nothing about what the

program was all about and it has not gone anywhere since then.

4. A flagrant and willful abuse of the Civil Service Process. The number of occasions where the civil service procedures have been violated are legend. For example, where people who absolutely did not qualify for an upcoming examination were given "training" and then lateralled across into a position whereby they could compete in the examination, and this was particularly so if the examination was oral.

5. A total absence of an effective machinery for settling grievances. The situation was such that people soon learned that it was better not to voice a grievance because that set them up as a target and the grievance was never settled.

6. A lack of due process in dealing with grievances. The system they followed is going through channels. Well, if one stuck around long enough, he soon learned that going through channels could be totally disastrous because going through channels, meaning placing your grievance against whomever had violated your rights, and it was always the people who controlled channels.

So I'm going to cut that off here and if the Committee would like any further details on this, as I say I have plenty of material. I'd be happy to give it to you.

MR. HARRIS: I think that what we're really concerned about, as it relates to fair employment practices

and affirmative action is specific recommendations as to legislative or administrative actions that might be taken both to clarify, to strengthen and certainly to hopefully make more efficient the system of fair employment practice so the people first of all know that the policy is genuine; that there is a commitment to enforce that policy, and so the people aren't confused in their attempts to comply with that policy. I think we'd all just get caught up in more paperwork creating another bureaucracy or other levels of frustration rather than solutions to those problems. So we certainly appreciate your testimony. I think that you've laid out the problem as related to a specific agency and we welcome any ideas you might have as to meaningful solutions towards solving the problems you identified.

MR. COPELAND: Could I make one last quick statement. My most material comment would be this and it's been touched on already earlier, is that for affirmative action to ever be effective, they're going to have to put teeth in it and make the deputy directors and directors responsible.

MR. HARRIS: Sounds good. Appreciate it, Mr. Copeland. Thank you very much for your testimony. Susan Schapiro, please, for the Center for Independent Living.

MS. SUSAN SCHAPIRO: Thank you. I'm Susan Schapiro. I represent the Center for Independent Living which is a service organization run by and for disabled

people. And the reason we're here today is that we found out despite legislative mandates requiring affirmative action at the county and the city levels, there's essentially little or no problematic implementation of these mandates.

MR. HARRIS: May I interrupt you to ask something. You basically are saying that the state's efforts have been much more exemplary at least in the cities and counties.

MS. SCHAPIRO: Well, the State Personnel Board has taken steps and they seem to be in the process of achieving parity and they certainly are active on the state level. But we find that when groups like ours try to help monitor the local efforts, we find that they haven't implemented any of the standard affirmative action procedures, they don't have goals, they don't have timetables, they don't have any of the guidelines. They haven't established any data base so they won't even know whether they're achieving parity. So essentially what we're asking for is that if you look into this, you might make legislative recommendations to insure that affirmative action guidelines as they relate to disabled persons are monitored and enforced.

MR. HARRIS: Do you have any recommendations? Sanction certainly is one. If there is a possibility of withholding any state funding to local agencies that do not comply. Maybe we ought to put that into legislation,

I don't know. There's obviously a lot of federal monies, some of which filters through the state that we ought to be able to have some effect on.

MS. SCHAPIRO: Unfortunately most of the federal money doesn't carry with it an affirmative action plan unless they have a procurement contract. The federal mandates merely require non-discrimination. So in this case the state mandates are much stronger and any teeth that you could put into them we would be happy to see.

MS. MOORE: So what you're saying is that the state has already established policy which you're satisfied with in terms of --

MS. SCHAPIRO: We haven't had enough chance to actually study what the state is doing but the state does have a policy, they do have some kind of goals or timetables and they have established a data base. And at least they have figures so they can tell whether they are achieving parity. And this is a fairly new area for them to deal with. And it does seem that they have made active strides within the last few years.

MS. MOORE: I kind of find what you're saying a little bit inconsistent. You're saying that you're not sure how they're monitoring it --

MS. SCHAPIRO: We're saying there is active work in this area on the state level, in state employment. What I'm saying is that I haven't studied their system enough to want to tell you whether I think that system is good or

bad but there is an active system where there are people actively working to monitor and enforce it. But there's nothing comparable on the local levels.

MR. HARRIS: So the jury's still out on the state program and there hasn't even been a jury chosen at the local.

MS. SCHAPIRO: Exactly.

MS. MOORE: But you find a lot of the state, you know, locals probably more so than any other. You see them moving artificial barriers and --

MS. SCHAPIRO: We see some architectural barriers being removed on the local level, but we don't see affirmative action in employment being implemented by the local governments. They don't have their plan set up, they don't have their guidelines, they haven't done any of the standard affirmative action procedures.

MS. MOORE: That's what I was trying to establish earlier in relationship between the state and the state's affirmative action group and local government because we do give money and we require that the handicapped also be included in the protected class of those.

MS. SCHAPIRO: We were told this morning at the State Personnel Board is that they have nothing to do with the county and the city governments in this area. I don't know what they do in other areas but they told us this morning that that's totally outside their jurisdiction. And if that's true, we would like to know whose jurisdiction

is it.

MR. HARRIS: The Fair Employment and Housing Department would have jurisdiction as it relates to the local.

MS. MOORE: No. What would happen is that the individual, also individual departments, like if the State Department of Mental Health is giving contracts for certain things then they would have some monitoring aspect because they also have affirmative action officers as is the case with the Department of Social Services and some of the other areas. And all that is supposed to plug into the State Board of Personnel. Which is the same thing that we heard earlier when they were saying that there's no policy for the 60-plus and that they don't have the responsibility for that and so on. I think that's the real area that we need to look into.

MS. SCHAPIRO: They don't have any figures on local government at all. We asked about that this morning, also.

MR. HARRIS: I can assure you we will be looking into it and look forward to working with you, any advice you have or recommendations, specific areas of concern and cases we'd like to follow up on.

MS. SCHAPIRO: We'd be happy to work with you on this. And I didn't have written testimony for today.

MR. HARRIS: If you have anything in writing, please submit it, either for the record or for our notation

and response. Okay, thank you.

Lillian Moore and Diana Thompson from NOW. Ladies, we appreciate your patience in waiting but we're glad you're here. And also Mary Fernandez. May I have each of you please give me your names for the records and that you are in fact representing the National Organization for Women.

MS. LILLIAN MOORE: I'm Lillian Moore. I'm the affirmative action task force for the San Jose South Bay Chapter of the National Organization for Women. And I want to protest right away something which I think is part of the problem. That's the fact that you spent from 10:00 this morning until 5:00 discussing the problem and now you're going to spend one hour from 5 to 6 here everybody's tired and irritable and really most everybody has gone home discussing the solution.

MS. MOORE: Let me just make a comment on that. All this is going to be recorded and this is only the first of a series of hearings that we will be conducting.

MS. LILLIAN MOORE: So my understanding is this is the only one against government bodies as employers.

MS. MOORE: There will be a recorded book with all the testimony and all the statements and all that will have to be, we're not going to be able to divorce just local government or governmental agencies from all the other things.

MR. HARRIS: Let me interrupt you again. I'm

sorry that you're irritated. Hearings take a long time and I've tried to sit --

MS. LILLIAN MOORE: It's not irritation. I have been working in this area for so long.

MR. HARRIS: Well, I would hope that you would think that we're not going to solve the problem in a hearing. What we want to do is get input and information and we're going to follow up on it. The staff is going to continue to do work on it. We're going to have other hearings. We're going to have to have a hearing on the handicapped, going to have to have a hearing just on issues as they relate to women, and I'm sorry that you're upset, Ms. Moore. I tell you I'm upset, too. I'd like to have been home four hours ago. Now, would you also like to identify yourself, please.

MS. DIANA THOMPSON: I'm Diana Thompson and I'm NOW's representative to Santa Clara County's affirmative action program. It's an unfortunate role.

MS. MARY FERNANDEZ: I'm Mary Fernandez and I'm a member of San Jose South Bay NOW, and I'm also the coordinator of the Santa Clara County Ad Hoc Women's Committee.

MR. HARRIS: Thank you all for attending and also for your patience.

MS. LILLIAN MOORE: We really appreciate your holding the hearings. I think they're long overdue. Maybe you've been holding them regularly. And you sound

very knowledgeable about it and aware of ploys being used by the various government bodies to get out being effective in affirmative action. So I was really impressed with your whole presentation today, ever since I've been here at 2:30.

I could give you a little bit of my background. I've been involved with affirmative action since 1972 and I've worked for the county for twelve years. I was employed by the county in '67. I quit this spring because I was denied, I thought, a rightful promotion and quite legally, they did it quite legally. Santa Clara County. So we have already presented to you our allegations against Santa Clara County. We're into trying to get something done about it. And we have sent those allegations with substantiating statistics and information to the EEOC, and we both talked to them at the local level, and to Mr. Quinn at San Francisco regional level. We have sent them to FEH and received a letter back from Joanne Lewis saying that it's a class action situation, she cannot get their department involved in a class action situation, only in individual cases of discrimination. Mr. Minetta, our Congressman, has contacted the Office of Federal Contract Compliance, they have said there's only one contract compliance, only one department they can get involved with, they can't do anything about the whole county, just this one little agency. We have contacted the Office of Revenue Sharing and sent them our allegations and substantiating information.

They are the only body who has responded positively and will come out and talk to county administration and there's a possibility that \$10 million may be withheld from the county if they don't follow some sort of sanctions.

The problems that we have run up against at the county level and in enforcing these so-called affirmative action laws which they really are not any more affirmative action laws. They are now just individual discrimination and as I'm sure you know, individual discrimination complaints are very, very difficult to prove. The EEOC gets very few of offers to show cause.

So what we have here is a list of things which we think needs to be done at the state level and the county level to effectuate affirmative action. We were told by the Fair Employment and Housing people they couldn't take it because they have a year's time limit on anything that they do and because of the stalling tactics presently being practiced quite expertly by the county governments and the city governments and even the state, forget the state government, they can't do anything about the state government because they're not a constitutionally empowered department. So they can't do anything against the county governments because of the stalling tactics and the fact that in one year they couldn't do a thorough investigation of a class action complaint.

So our recommendation is that number one, you establish in your legislation this population parity that I have

heard you speak about today, and the first time I have heard it spoken about as a policy. It is not a policy. In our county the policy is work force parity and in the 1970 statistics it was 34.6%. FEH and Office of Revenue Sharing had a long conversation with Ms. Angela Jones, the civil rights investigator from back there. They haven't established population parity as a parity. So that needs to be established so that everybody knows that you have to meet population parity in all job classifications, not just over all, but in all job classifications. If an FEH complaint is filed and an employer stalls, then you have to, and does not respond to subpoenas in a reasonable length of time which should be written into the law how much time you're going to give them to respond, then you need to find them automatically guilty of discrimination and find for the complainant. You need to establish punitive damages in your laws. Right now there's only, you have to prove monetary damages and it's not a deterrent, it is not a deterrent. And specifically you should have the people who are in charge be eligible to be sued. In other words, the appointing authority, the department heads, the county executives, the board of supervisors, to be sued personally and collectively and have to pay punitive damages out of their own pockets.

The Fair Employment and Housing needs their own hearing judges, people with knowledge and experience in affirmative action. So that they know and can ask the

right questions. And they must have the power to investigate class action suits concerning lack of affirmative action. You're not going to see any significant changes, I don't think, until they have that kind of power. Works very effective in the private sector and down in our area. The VFA just got a major settlement against them and so did FMC and so did several other private employees down there. It's the governmental employees that the law doesn't cover, the EEOC won't do anything.

Another sanction is the departments which show little or no progress could have their employment taken over by a central personnel board and do the employment that way. And we do have a lot more we could say. I could have talked myself like Mr. Copeland. I really appreciated his comments. I have boxes of information at home. I could talk for hours on the subject. But I won't, I'll quit and let Diana talk. She's had a very harrowing experience with the EEOC and that's what she wants to tell you about.

MS. MOORE: Can I just ask you just a couple questions about your own situation. You started to get involved with it based upon your lack of promotional opportunity?

MS. LILLIAN MOORE: That's right.

MS. MOORE: And what happened as a result of that? I mean, what was the final resolution, none?

MS. LILLIAN MOORE: I worked for the Department of Social Services, like I said, for twelve years. I took

two of those years off on educational leave with no pay to get my Master's in Social Welfare Administration. I came back, worked two years as an analyst out of class job classification. I was paid and working at a social worker level but I was doing administrative analyst work. Then they gave me a job as a social worker/coordinator. It created a job. It was work that had to be done and they gave me that job. So I did that for another two years, still working out of class although my job was being "studied" for a year and a half of the two years I was working. Right before, the guy who was doing the study of my particular case had a heart attack so they didn't assign it to anybody else, they just waited for him to recover from the heart attack and come back to work and to reopen the job classification study. And right before the department was going to deal with a complete job reclassification study, they had about 35 jobs that people were working out of class, they abolished my job, quite legally of course because they had established it administratively so they abolished it administratively, and parceled it out to other people, and I went back to doing social work. And this was after four years of other kinds of experience. So I figured that was enough of a message.

MS. MOORE: So you then went to --

MS. LILLIAN MOORE: I sell real estate.

MS. MOORE: So you just quit and left. You didn't --

MS. LILLIAN MOORE: I just quit and left.

MS. MOORE: I mean you didn't pursue it.

MS. LILLIAN MOORE: I am pursuing it. That's what I'm sitting here for today.

MS. MOORE: I'm trying to follow your process.

MS. LILLIAN MOORE: My individual one, there was nothing for me to pursue because they did it all legally.

MS. MOORE: Were there other people, like did the 35 other jobs that were to be studied --

MS. LILLIAN MOORE: Mine was the only one had a line drawn through it.

MS. THOMPSON: We notice that women who are active and speak out on women's issues tend to have lines drawn through their names on their job when it comes to promotions. One of the issues that came up, and I'm going to talk about it as much as my own concern, is why there aren't more complaints filed. And because complaints are just a total absolute waste of time. The procedures, the systems are pure utter nonsense. If I had my way right now and I had any power I'd do away with EEOC, FEH, all of the affirmative action staff who run around justifying the status quo, and that's what most of them do. Very few of the systems really make any change in the complaints and the word gets out fast -- don't go, don't complain, because you're just bringing it all down on yourself.

MR. HARRIS: Would you replace them with anything or just wipe them out?

MS. THOMPSON: You wipe them out and you replace them with a person being able to get damages in the courts. Because see, what some kind of sanctions, what happens right now if I've got a complaint, if I win my complaint I will be worth years of work spending money with attorneys, doing all the stuff that has to be done where I would have been if the county had never discriminated against me, at best. That's what I'll get. At best I'll just get what I should have had in the first place. The other option or the other possibility is in all the time and this process, all the things that can go wrong with me. For example, a couple of weeks after my complaint was filed with the county, the head of the employee relation section came and explained to my administrator how they could lay off someone with my high seniority who'd been working in the county as long as I had and how I was vulnerable. Luckily my administration didn't happen to want to lay me off and so I still have my job. But I couldn't even add that to my complaint. EEOC would not let me add that to my complaint. They said that was a totally different charge.

MR. HARRIS: Let me interrupt you to ask a question. Given your right to sue, how are you in fact prejudiced by the bureaucracy. I mean, I understand and am sympathetic to the problem, don't misunderstand. But I'm trying to say, you still have a right to sue and you still can sue for damages.

MS. THOMPSON: No, you can't sue for damages.

All I can sue for is back pay under EEOC.

MR. HARRIS: No, you can sue for damages.

MS. THOMPSON: In private court, in the courts, not to the EEOC.

MR. HARRIS: That's right, I know. If you wipe that agency out as you said you couldn't sue for damages. You said that you would replace the EEOC by being able to sue for damages. I'm saying you can do that. I'm trying to clarify what she said.

MS. THOMPSON: Yes, in reality, if you go and you go for damages, one of the things unfortunately is I'm talking about a situation where I'm going for something. Normally the litigation that involves damages is when you've lost something. In other words, if they'd laid me off I would have a clear grounds. They didn't lay me off. But they took away from me by not giving me promotions that I was overqualified for. And so, you know, what I have to do right now is I have to put out thousands of dollars in attorney's fees, wait for all the years it will take for litigation and then at the end, and I know I will win, I will get what I would have gotten years and years ago if they had not discriminated, and that's no remedy. Just none at all. And you know, it's really funny, I'd just like to tell you about two things. The county has said, this is from the county's own information, within EEOC job categories it is apparent that a greater percentage of higher paid job classes are generally

occupied by men. This is a county at the end of a five year affirmative action plan stating its total failure to make progress for women. And then it says women of the group have not made significant gains in county employment since the adoption of the affirmative action plan. But there are no sanctions, nothing. The county can just say, we failed. That's really, I think, where the bottom line is. Who enforces it and what's going to happen?

MR. HARRIS: Who do you think should?

MS. THOMPSON: I think that state money shouldn't go at the end of five years if no significant changes are gained.

MR. HARRIS: How do you deal with the argument about local control?

MS. THOMPSON: I think that local control is fine if it's local money, but if it's state money, the state should have control over the state money.

MR. HARRIS: Well, we're finding that there's great resistance to that as it relates to education, as it relates to health care, as it relates to public assistance saying give us the money. We don't want strings on it because we have people who are much closer to their government here at the county level or here at the city level than those of you at the state level who don't understand our problems. We don't have access to, et cetera.

MS. THOMPSON: Well, there are either affirmative action laws, procedures, and the state either concerns

about what's done in terms of its money in terms of affirmative action or doesn't. You know, and I think if you're paying the money out and the money is being paid out to discriminate, then in a sense you're supporting and backing discriminatory practices. You know, people are welcome to have local control as long as it's not abused. And you know, my money goes there, I expect some of my money to come back and also treat me, and I think the women who come in all shades, all colors and all varieties have that right, that they're going to have some part of the system, and they pay taxes, too.

MR. HAYES: I would like to pursue something. Excuse my ignorance because I'm asking these questions purely out of a lack of knowledge. You said that you would have to hire attorneys and pay attorney fees and you'd go into some type of court and go back and after you're all done all you would get is the wages or et cetera that you would have gotten. You mean you're not entitled to punitive damages?

MS. THOMPSON: No, only under class actions.

MR. HAYES: You are prohibited from suing for punitive damages?

MS. THOMPSON: See, normally, let me explain to you. This is the problem that people who are discriminated against face. If you are in a situation, let's say I were working as an administrator and they fired me. At that point I could go for damages because I had something and

they took it away. But when you discriminate, you never get it to have it taken away. You don't even get the advantage of having it and then having it taken away for you so you can sue for damages. You just never get it.

MR. HAYES: But then again if the Court finds in your favor, then you have lost something and you have gone through this --

MS. THOMPSON: They find in your favor under the affirmative action rules. You see, normally you can't go to the Court and say look, I should have been promoted and I wasn't --

MR. HAYES: But how does this preclude you from asking for -- maybe you've got a better legal mind than I, maybe --

MR. HARRIS: No, you can ask for punitive damages, that was my point.

MS. THOMPSON: You said it's not part of the, it's not part of the discrimination guidelines.

MR. HARRIS: I know, but you can go to court and sue. There's not much likelihood of getting punitive damages.

MR. HAYES: In other words, it's more of a, not that you're prohibited from doing it, the courts aren't going to give it to you, I see.

MS. MOORE: I'm not an attorney, but isn't there a specific law or something that deals with civil rights litigation that does award punitive damages.

MR. HARRIS: You can get punitive damages, yes.

MS. MOORE: Yes, but I mean that there are some specific laws.

MR. HARRIS: It's under the civil rights laws, there are punitive damages.

MS. MOORE: And there is not that with affirmative action, that's what you're saying.

MS. THOMPSON: We'd appreciate the laws that made it possible to sue for punitive damages because you just need a couple of times where they have to pay you more than they would have had to pay you if they'd hired you in the first place and they'll stop doing it. But what incentive is there to an employer to promote or to treat people fairly if they can force them to go through all the procedures, all the hassles, all the battles at taxpayer's expense, because the attorneys, all the fees come out of taxpayers, and give them what they would have had in the first place.

MR. HARRIS: But how do you get the real suit, the legitimate suits or the illegitimate suits, unless you have some kind of a process, unless there are guidelines that you have to follow. It seems to me that almost anything of value involves sacrifice, and from the standpoint of minorities and other people they have sacrificed. I'm not saying that you should go through changes, I'm just asking how do you make sure a legitimate suit exists. Is it because you believe that you're going to win, because you

believe you're right? Is it because all you have to do is file a suit and send in the paper thinking it's not going to cost you anything? How am I going to make sure that you have a legitimate complaint, and that you're not just costing us money?

MS. THOMPSON: Well, there's the court process.

MR. HARRIS: I understand that. But you said, it still costs money. Somebody's got to pay it.

MS. THOMPSON: Well, I have to put the money, somebody has to put the money in.

MS. MOORE: With the civil rights thing, I think the same thing that she's saying, that one of the ways that you perceive making affirmative action if indeed we're going to continue to say that we have affirmative action is bringing about changes, and bringing the people into the system would be to make in the same manner that we did the civil rights, make punitive damages one of the compensations, one of the remedies you could get if you went to court and successfully won. You have to win the civil rights case in order to get the punitive damages.

MS. LILLIAN MOORE: I think the important thing is that the punitive damages comes out of the personal pockets of the people involved. Not out of our tax money.

MS. MOORE: That's what I'm saying. You could do that and you could do it still through some of the state

laws. We did it with that subpoena bill that I carried.

MS. THOMPSON: I really think that you'd see affirmative action -- it would happen like a whistle. You could do away with all the affirmative action officers, FEPC, FEH, the whole thing.

MS. MOORE: Maybe it's because I'm the only woman on this panel but I think it's a good idea. I like it.

MR. HARRIS: It may be a good idea. I don't think we'd be able to get rid of all those agencies just with that one thing.

MS. FERNANDEZ: I don't have too much left to say. I would say if we could get rid of all the agencies and we would save a lot of money.

What I'd like to see is we've been working on affirmative action for the past ten years pretty diligently and I haven't seen many changes. I worked in a county that has over 50% women in the work force, less than 20% in management. They had 17% when they started affirmative action in 1974. So after all this concerted effort, and much of the change has been made by changing statistics around, we haven't had statistics for years, you put some people here, you put some people there, I am just really hopeful that something can come out of these hearings that can put some teeth somewhere. We have a lot of affirmative action officers, a lot of affirmative action plans, we have the FEH, we have the EEOC, and it sounds like here we have the state employment board, and no one takes responsibility for

anything. And it's very difficult for one person to take on by themselves a discrimination complaint. And we have to look at patterns, we have to look at practices, and we have to make some sanctions against this continuing. And I think that our legislation, we've tried to be nice, we've tried plans, we've tried people, we've tried all kinds of things. It hasn't worked. It's got to be the law.

MR. HARRIS: I would appreciate any specific recommendations you might care to offer, either at this time or subsequently or at a later hearings. You might, try to work with our consultants and others to see what kinds of laws, what kind of remedies are not just reasonable but would be effective. We will see what kinds of legislative options may be available and we will try to work with you to see if those that you're recommending are feasible.

MS. FERNANDEZ: We have some things here but we also have some others that we haven't gotten typed.

MR. HARRIS: Then we'll look forward to hearing from you on this. Thank you. Appreciate very much your testimony.

MS. THOMPSON: We thank you for this opportunity and I hope we weren't too hot and heavy.

MR. HARRIS: Mr. Gaspar Oliveira from MAPA. Thank you. How are you, sir? Would you please give us your name for the record and the organization you're representing.

MR. GASPAR OLIVEIRA: My name is Gaspar Oliveira, and I'm Chairman of the local chapter of Sacramento County MAPA, and I'm here representing Ed Sandoval, who's statewide President of MAPA who is unable to attend your hearing. First of all I'd like to thank you for your patience, and as my friend who always advises me on political matters, you know, they save the best for last, so let's hope that it goes that way.

First of all, in terms of input, MAPA is of the opinion that affirmative action in California for Hispanics is a myth. And Hispanics, comprising the largest population group of minorities in the State of California, is being, I feel, caught between the proverbial rock and the hard spot. The 80's has some private sector or corporations portraying it's supposed to be the decade of Hispanics, but I think that reflects a mentality that pits one minority group over another. The moment the decade of the 80's becomes the decade of the Hispanics, the question becomes what happened to the Blacks and what happened to the women and what happened to the disabled. Isn't it their decade, too? So let me just for the record say that MAPA is very much concerned about what's happening to poor people in the state of California. MAPA is very much concerned about what's happening to minorities, to women, and to the disabled, and it seems that bureaucracies are pitting one group against the other and that I think is unreasonable, that I think is unfair because as the economic pie is

not expanding, it's stable, that means that the slices of that pie are becoming highly political, highly subjective in terms of the judgment as to how that piece of pie is going to be sliced, and what it does is it creates emotions, it creates feelings that one group is going to get had at the expense of the other. And MAPA is not in support of that kind of divisive mentality. For the record, MAPA is most definitely in support of equal opportunity for minorities, for women, for disabled across the board. And we will not allow ourselves to be used by political bodies that want to cause those divisions.

In terms of issues in the affirmative action arena, I think this Committee needs to look at the largest public employer in the state of California and that happens to be the State of California. I know that you have a charge, constitutional authority within the California State Personnel Board, and I know there have been several pieces of legislation that came out of the 70's, in particular the late 70's, AB1350, AB1309 and whatnot, but still affirmative action is not a reality in the state of California. And when you look at the 110,000 or so work force the State of California has and you look at the departments and the agencies structured within that mammoth state employer, you're invariably going to find that the departments and the agencies that are doing well in affirmative action are those that have demonstrated leadership in the commitment toward equal employment

opportunity. When the Secretary for the Health and Welfare Agency, Mario Obledo sticks his neck out, he gets a lot of political heat. Some of it from your own legislative body, but he also gets it from the political bodies across the state. But nevertheless he has put it out for women, minorities and disabled in that agency, and I think you've seen some track records of success since that administration. You don't see that leadership in other agencies. And let me focus on one. Huey Johnson. Huey Johnson is a very controversial figure. I think the Legislature recently took a stance in terms of what should be done about Huey Johnson. To be able to look at him and to be able to look at the departments that are in that agency, the lack of affirmative action for minorities, women and disabled is a relection of that lack of commitment at the top for implementing affirmative action. When you have that commitment, you're going to find some degree of success. When you lack that commitment, it's status quo, perpetuation of a lack of equal employment opportunity in spite of all the legislation, in spite of all the mandates for equal employment opportunity.

Let me talk about what makes a success. Generally when people attach accountability to money, there is going to be some response. For example, when a department says our managers are going to be reviewed as every other management objective, as every other management function, the implementation of affirmative action as a bona fide

goal and objective to be met. And when that performance in the affirmative action arena is evaluated and all of a sudden you're making some judgments in terms of whether it's standard or unsatisfactory or exceptional, outstanding, the accountability of the success of affirmative action becomes very real because it affects somebody's pocketbook. And I think the recommendations that BAS and IMAGE and CAFE and the slew of other organizations that testified earlier when they talked about affirmative action accountability, MAPA reinforces that. And when you have that measurement of, forget the attitude. Let's talk about behavior, let's talk about performance. And if there are indeed bona fide objectives being met in the affirmative action area and there is a manager that is doing well, it should be reflected in that performance evaluation that everyone is subjected to. But the bottom line is if that manager is not delivering in the affirmative action area, what kind of accountability is being reflected on that manager. If that manager were to mismanage the budget, I'm sure there would be some sanctions imposed on that manager. If that manager were to not meet the stated objectives in terms of client populations to be served, there would be some sanctions on that manager. I guess that accountability of that manager's failing to meet affirmative action goals and objectives, the same kind of accountability sanction should be imposed.

The State Personnel Board is, I think, moving in

that direction in terms of sanctions against the Department of Forestry. I know it's considering sanctions against Fish and Game and Food and Ag. and others, which all of them happen to lie in Huey Johnson's agency. I think that has to be reflected across the board and the State Personnel Board needs the support, I think, of the Legislature, in terms of the review of budgets. There should be some finance accountability and maybe some flat out, you know what, you really want that money, but why haven't you been able to deliver like every other agency and department has had to.

Okay. A couple of other things before I close. I know that we're all tired. As far as local government, and we have 33 chapters throughout the state, there are very few cities and very few counties in the state of California that can say they have met parity, whether it's population parity or labor force parity, there's very few that can say they have met that for minorities, women and disabled. And there's very few even more that can say that as far as Hispanics are concerned. So we feel that every time that a city and county talks about bail out money because of Prop. 9 or Prop. 13, there needs to be some accountability of hey, it should not be automatic. What are we getting in return. I think affirmative action is a bona fide item which can be expected when cities and counties want to be bailed out.

Let me talk about education. Unfortunately, and I

know some of the people in education that are working their darndest off to try to accomplish affirmative action. But from what I know of the law that talks about education at the community college level and talks about education at the high school level, it talks about education at the junior high and elementary school level, K through 12 if you wish, there are no guts to affirmative action at the school districts. And I know there's a unit within the Department of Education that's involved in inter-group relations and affirmative action. But as I see it, they're powerless. Unless the hammer comes from a community group that's pressing the political buttons or a hammer from a legislator who happens to have a pet project about affirmative action, no one else is going to place the emphasis on education affirmative action. And that has to be looked at. And the very same thing about accountability, that has to be addressed as to who is accountable at the educational level. Community colleges, high schools, junior high schools, all those school districts that purportedly are trying to meet affirmative action goals and objectives receive million of dollars of state money, but if you look at their track record, there's 92 community colleges, I don't know how many thousands of school districts, I think by and large you're going to get the picture that affirmative action is not being met.

MR. HARRIS: So you think economic sanctions for

local governments should be the appropriate remedy for their lack of commitment or enforcement of affirmative action?

MR. OLIVEIRA: Absolutely.

MR. HARRIS: What about the political problem in that, do you think that's something that can be dealt with?

MR. OLIVEIRA: I think the political problem again reflects leadership. And I think that in major population areas where you have a large number of Blacks and Hispanics and where women are organized and the disabled are organized, I think that if you will, a partnership, in working with those local constituencies there has to be initiated and the leadership of the Legislature has to be demonstrated in bringing forth that kind of an economic sanction. Otherwise, I don't think the school districts are going to recommend it'll happen to themselves, because it's not.

One other thing before I get off my testimony, there was mention of the parity, whether it's population or labor force or whatnot, I hope the 1980 census is going to give some clarity as to where the numbers actually lie. But I think that's going to be a big political game, and even in state government, the State Personnel Board has provided some minimum standards for parity and they've provided, I think, work force parity. But some state departments, and I'll cite an example, the Employment

Development Department, has chosen to use the higher of the parity figures. They've gone to population, and they have met it. So when someone says it's hard, you can't do it, the realities are that the people are not available from the market, I don't think so. It's a matter of effort and commitment in wanting to do it.

MR. HARRIS: So you think that the pool of workers is available so truly it's again either a matter of recruitment and/or the actual hiring or not by those who have the responsibility for making those appointments.

MR. OLIVEIRA: That's right. Why is it that a Marion Woods or Doug Patino can have an excellent track record in their departments and you look at others and they find 20 excuses as to why they can't do it. Well, I think I know and I think you know. It's because somebody's commitment to do it is demonstrated in the numbers. Numbers alone is not going to get it. Administrations come and go and Mr. Harris, you have political aspirations like everyone else on this Committee does, but you know, in every civil service structure, whether it's state or federal or local, you have this codgery of middle managers that stay on and they stay on regardless of the partisan administrations that keep going back and forth. And I think if this Committee is going to have an impact, it has to really address at that layer of middle managers, whether a city government or county government or school districts or state government, where are the Blacks, where

are the Hispanics, where are the women, where are the disabled, because they are the guts of the bureaucracy being effective or being rendered ineffective. And if affirmative action is going to be successful, it has to be at that level. And I think you know and I know that no matter what the policy may be at the top, no matter how sincere the policy may be at the top, if you have an insensitive, a nonresponsive middle manager you're going to be stonewalled, there'll be ways of sabotaging the programs that the commitment is intended for.

I thank you very much for giving me the time.

MR. HAYES: I want to ask you the same question I asked the lady a little earlier and I possibly should explain why I'm asking this question. Just today I was asked to chair a new Sub-Committee on Bilingual Problems in the State of California for the Commission of the Californians. So this is one of the things that I'm asking as to do the bilingual, deficiencies or things in bilingual training, are they a handicap to Hispanics in getting into the affirmative action job market in the state of California.

MR. OLIVEIRA: If you allow me, I have not a short response, perhaps a medium length response.

MR. HAYES: If you have a lengthy response on this I'd appreciate if you could get it to me.

MR. OLIVEIRA: Fine. Let me just say that obviously the provision of services goes hand in hand with

affirmative action. And if you have bilingual capability, services are going to be enhanced. And bilingual positions and bilingual exams and whatnot. Not just for Spanish but whether it's Tagalog or whatever the language need is, is going to help affirmative action absolutely. But whether or not someone is willing to identify what that need is and then hire accordingly, that's another matter.

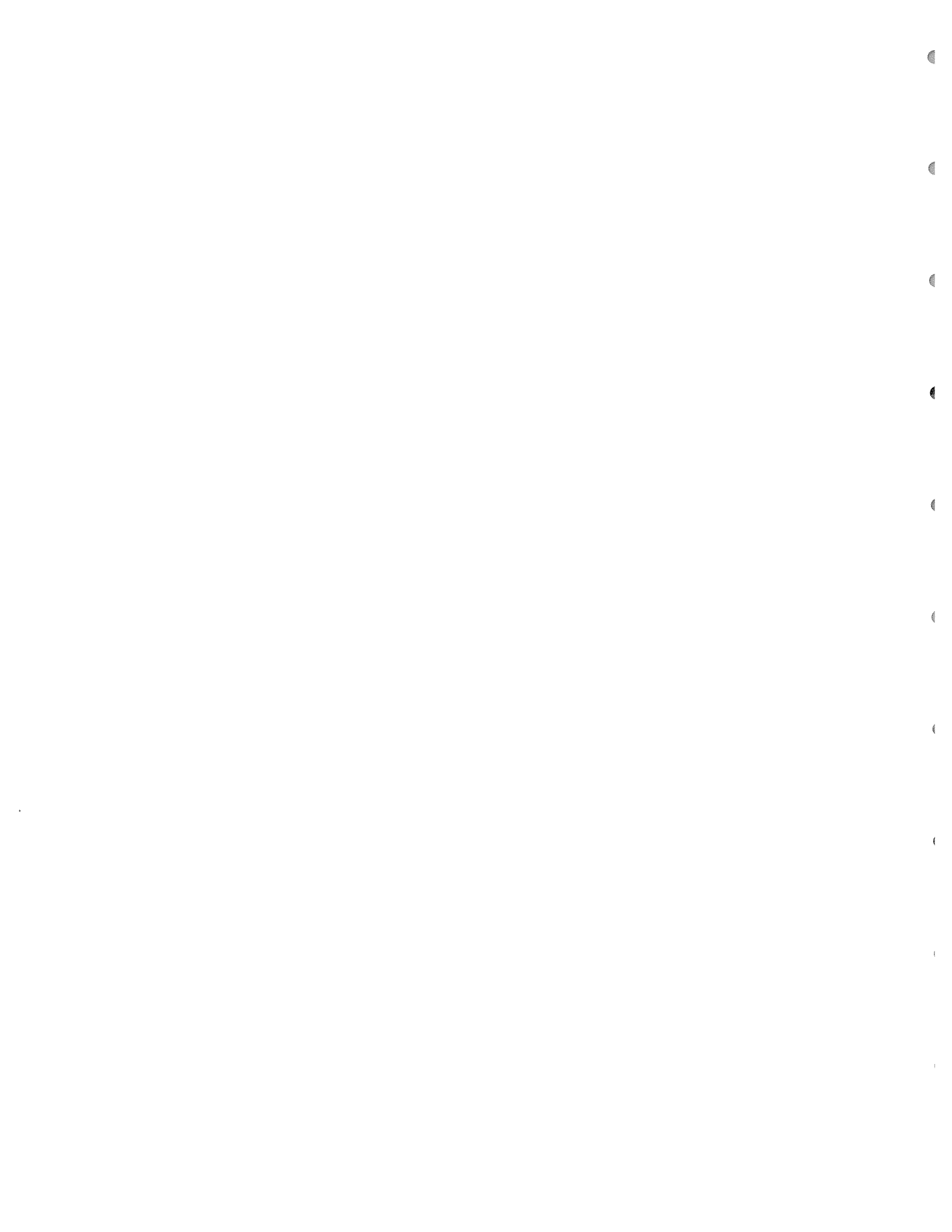
MR. HAYES: Of course with the Commission of the Californians we don't have the legislative clout but we do have a great deal of fact finding, and maybe I could talk to you later on this.

MR. OLIVEIRA: Fine. I will be preparing a written statement with a series of recommendations. I'll have it to LaMar by Monday of next week.

MR. HARRIS: Okay, we look forward to receiving it. Thank you.*

I thank everyone for their testimony. We're going to adjourn the hearing. If there's anyone that has testimony, the consultant will accept that testimony, and again I appreciate your patience and indulgence. We wanted to finish up today and with your help, we've done so.

*Appendix D



WRITTEN TESTIMONY SUBMITTED BY:

State Personnel Board

Governor's Office of Employee Relations

Department of Fair Employment & Housing

Equal Employment Opportunity Commission

U.S. Department of Labor



CALIFORNIA STATE PERSONNEL BOARD

801 CAPITOL MALL • SACRAMENTO 95814



September 29, 1980

The Honorable Elihu M. Harris
 Chairman, Select Committee on Fair
 Employment Practices
 The State Assembly
 1116 - 9th Street, Room 31
 Sacramento, CA 95814

Dear Mr. Harris:

Thank you for your letter of September 17, 1980, indicating that the Assembly Select Committee will be holding interim hearings on the effectiveness of affirmative action programs. I would be happy to attend the hearings and make a presentation regarding the State Personnel Board's affirmative action programs and progress. Attached for your information is a response to questions requested by your consultant, Lamar Lyons. I hope they provide some additional insight into the State's overall goals, objectives and accomplishments.

I believe that the State has made very meaningful and substantial progress in its affirmative action efforts:

1. The civil service ethnic minority work force has increased from 14.0% as of 1970 to 26.5% as of June 30, 1980.
2. General labor force parity has been achieved for all ethnic minority groups except Spanish Speaking/Surnamed.

<u>Group</u>	<u>Labor Force Parity</u>	<u>June 30, 1980 Representation</u>
Black	6.3%	9.3%
SS/S	13.7%	9.0%
Asian	2.3%	4.9%
Filipino	0.7%	1.6%
American Indian	0.4%	0.5%
Other Minorities	<u>0.3%</u>	<u>1.2%</u>
Total	23.7%	26.5%

September 29, 1980

3. During this last year, all ethnic minority groups were hired into State service at percentage rates exceeding civilian labor force parity except Spanish Speaking/Surnamed. They represented 11.9% of all new hires.
4. During this last year, all ethnic minority groups except Blacks were promoted in percentages exceeding their current representation in the State civil service. Blacks received 8.7% of all promotions to full-time jobs.
5. Women in positions other than clerical positions have increased from 19.7% as of 1974 to 29.8% as of June 30, 1980.
6. An Affirmative Action Program for the Disabled was initiated in 1978. As of June 30, 1980, 4.2% of the State's work force had identified themselves as having a disability.

I want to assure you that minorities, women and disabled persons are indeed being hired and promoted.

The Personnel Board takes very seriously its responsibility to provide leadership for the State's Affirmative Action Program, and I believe that the data outlined above is a primary indicator that the State civil service system is taking the necessary steps to assure equal representation at all levels of State employment. An additional indicator of the Personnel Board's leadership role is the extent to which affirmative action concepts and activities have already been integrated within the State's civil service operations and structure. It is my belief that California, through the leadership of the State Personnel Board, is among only a few states which have systematically established functional affirmative action programs, e.g., systemic actions such as centralized affirmative action recruitment, increased use of open examinations rather than promotional-only examinations, systematic selection and classification planning and resource allocation through the use of performance contracts and the initiation of an aggressive Affirmative Action Plan for the Disabled well in advance of other states.

The Board recognizes that while this overall status is encouraging, we still have significant challenges ahead. I would like to discuss what we are doing to continue and, in fact, accelerate affirmative action progress; but first, I feel it is important to clear up what appears to be a commonly held misconception about the degree of control and/or influence we have. Our initial affirmative action efforts were focused on developing systems where they did not exist to institutionalize affirmative action and to create an environment that would lead to

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The Board recognizes that while this overall status is encouraging, we still have significant challenges ahead. I would like to discuss what we are doing to continue and, in fact, accelerate affirmative action progress; but first, I feel it is important to clear up what appears to be a commonly held misconception about the degree of control and/or influence we have. Our initial affirmative action efforts were focused on developing systems where they did not exist to institutionalize affirmative action and to create an environment that would lead to

change. As a result, our program has been evolving--constantly changing. We have become more and more sophisticated in our affirmative action approaches, our procedures and our data collection and presentation methods. Only in the past year have we thought that we had a sufficiently well-established data base to take more assertive monitoring and enforcement action--like sanctions and/or issuance of direct orders. Such measures we believe should be carefully developed if they are to be sustained as a result of a legal challenge. Therefore, we have used these techniques only in the most extreme situations and only after other less drastic measures have been fully explored.

Affirmative action requires a commitment from everyone--the Administration, the Legislature, the Department of Finance, department directors, managers and supervisors--everyone. In our system, there are over 100 separate appointing authorities. We have provided leadership through a clear articulation of goals and policies; development of innovative tools such as goals and timetables, focused recruitment, etc.; persuasion - audits, data and reports; and, if necessary, orders--sanctions. But departments have been given broad discretion and wide latitude in administering and carrying out their own programs. Each department has been encouraged to carry out affirmative action programs that meet the State's objectives of a balanced work force in a framework most conducive to making progress within the department's particular program and organizational structure.

We provide a strong influence but we do not have the authority to dictate or "control" the selection of individuals for specific positions, except under very special certain circumstances (e.g., where it can clearly be shown that a specific individual was discriminated against).

We have endeavored to create an environment that produces results but does not ultimately lead to divisive challenges of discrimination or reverse discrimination--by all groups, majority or minority. It is our belief that positive, assertive but voluntary actions will ultimately lead to the smoothest transition of the State's work force.

It is clear that there have been and continues to be failures and/or unanticipated factors that have limited the rate of progress that is desirable. Some of the actions recently taken or which are in the process of discussion or implementation are:

1. Public Hearings/Sanctions

In cases where departments have not made adequate progress toward achievement of a balanced work force, the Personnel Board has initiated public hearings and ordered corrective actions. The first such hearing was held during the past

fiscal year on the Department of Forestry's Affirmative Action Program, and corrective actions are now being implemented. During Fiscal Year 1980-81, three additional hearings are planned, at least one of which will deal with an occupational classification series used by many departments, as well as individual departmental programs.

2. Training

One gap which has become obvious is a general lack of affirmative action program knowledge linked with a lack of knowledge of the overall personnel management process. To help meet this need, the Personnel Board has arranged for a training program to be developed with a focus on the needs of departmental affirmative action staff. In conjunction with this training program, the development of which is to be completed during the 1980-81 Fiscal Year, the Affirmative Action Handbook is also to be revised and updated.

3. Timetables and Goals

As the State's Affirmative Action Program has developed, several modifications to the original annual affirmative action goal-setting process and measurement practices have been made, all of which have resulted in complex methods for measuring and reporting results. Additionally, the methods used have tended to limit emphasis on long-range goals and objectives.

To address this problem, the State Personnel Board staff in September 1980 proposed revised methods of goal setting tied to a formalized system of timetables. After obtaining the suggestions and comments of departments and concerned community groups, the State Personnel Board plans to implement procedures which will provide a commonly understood standard of measurement as well as expand the concept of goals and timetables as an effective affirmative action program management tool.

4. Upward Mobility

During the past year, two steps were taken to strengthen the State's Upward Mobility Program, i.e., processes to assure that the skills of State employees are maximized at all levels within the system. As a first step in expanding the setting of specific upward mobility goals, departments were required

to establish goals for the movement of employees from lower level, lower paying classifications into entry-level technical, administrative and professional classifications. This step is consistent with the specific requirements of the upward mobility legislation governing this aspect of the Affirmative Action Program. As the results of this effort are evaluated and as departmental upward mobility program sophistication increases, this concept will be expanded so that specific goals are established at other levels where there are specific needs for focused planning and upward mobility efforts.

Because an upward mobility program for higher level positions requires different methods and procedures, the Personnel Board is in the process of modifying procedures to be used in recruiting for C.E.A. positions as well as monitoring the effectiveness of affirmative action efforts in filling those positions.

Additionally, departments are strongly encouraged to develop specific plans and promotional goals for mid- and higher level supervisory and management classes in which positions are filled through regular civil service selection processes.

5. Technical Assistance/High Level Program Review

In Fiscal Year 1980-81, two special project positions were funded at the Personnel Board. The purpose of one position is to evaluate where technical personnel management actions to improve affirmative action programs can be most immediately effective and to work with departments to develop the plans and procedures necessary for implementation, including making proposals to the State Personnel Board.

The function of the other position is to coordinate periodic discussions between Agency Secretaries and department directors and their respective staffs responsible for coordinating and directing affirmative action programs.

Through these efforts, the Personnel Board hopes the awareness of affirmative action program needs will be further emphasized and that improved planning and implementation efforts will result.

As noted, the program responsibilities for the State's Affirmative Action Program have been given to both departments and the State Personnel Board. Whether or not the program is successful depends heavily on the joint efforts of those responsible for administration of the

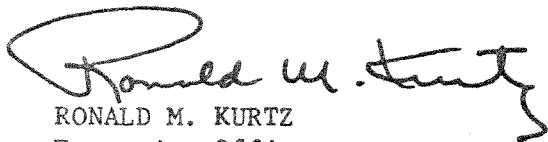
The Honorable Elihu M. Harris

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Program. The Board strongly encourages the full, active participation of interest/advocate groups and has sought to establish and maintain open channels of communication to assure that all points of view, all concerns about the system are identified and dealt with in as honest and open a manner as is feasible within the limits of a civil service and governmental environment.

Again, I want to thank you for the opportunity to discuss our Affirmative Action Program and look forward to the hearing on October 1. Let me assure you the Personnel Board will continue to devote its energies toward achieving a balanced work force at all levels. If you have any questions or if you want any additional information, please feel free to call me.



RONALD M. KURTZ
Executive Officer
(916) 445-5291

Enc.

RESPONSES TO QUESTIONS FROM
THE SELECT COMMITTEE ON FAIR EMPLOYMENT PRACTICES

We have endeavored to provide as complete an answer to the questions raised as we could, given time limitations. In addition, we have attached reports and/or documents that we believe may be of assistance to the Committee as it reviews the State's Affirmative Action Program. If you have any questions or if you wish additional information, please feel free to contact Laura Aguilera, Chief of our Affirmative Action Division (445-2767).

- 1.a. In reviewing your reports to the Legislature on affirmative action achievements, it is evident that the report format changes each year making it difficult to compare reports and determine year-to-year change or progress relative to the effectiveness of Affirmative Action Programs within. Why?

The Personnel Board prepares reports to the Legislature as required by Government Code Section 19293. These reports have included the accomplishment of departments in achieving their stated affirmative action goals for the preceding fiscal year, and information on laws which discriminate or have the effect of discrimination.

In preparing each of the two reports the Board has developed to date, it has taken into consideration both departmental and community and advocate group suggestions for inclusion of information that would be useful to them. The changes are part of a natural evolution of new systems. In this regard there has been some change in the format of the reports and in the level of detailed data included. The format and content of the third annual report to be completed for Fiscal Year 1979-80 will be similar to the one done for Fiscal Year 1978-79, and as with the two earlier reports, will include information on point in time work force representation, goal achievement and departmental compliance with legislative mandates.

In addition to the annual affirmative action report to the Legislature, the Personnel Board since 1974 has also produced an Annual Census Report which reports on the status of minorities, women and disabled.

- 1.b. Do your affirmative action goal-setting procedures and standards change yearly? If so, why?

Since 1975, departments of 50 or more full-time employees have been required to set two types of annual goals: intake goals which are goals for employees new to the department's work force; and promotional or upward mobility goals, which are goals for the promotion of employees within each department.

The first major change in the type of goals occurred for Fiscal Year 1980-81, when departments were required to identify target classifications and establish goals and supporting plans for the movement of employees from lower level classifications into entry-level technical, professional and administrative classifications. (Consistent with Government Code Sections 19400-19406).

There have been several changes in the methods for measuring goal achievement as staff have worked to develop a more and more effective, manageable and responsive system for tracking departmental goal achievement. Currently, staff have proposed additional modifications which are being discussed with departments and advocate groups with the intent of finalizing a system which will include specific timetables and will be the base for goal setting and measurement for the foreseeable future. (We have provided a copy of our proposal for your information.)

- 1.c. Why does your Affirmative Action Program criteria measure departmental intake, i.e., hires, and not yearly net change?

The goal setting and measurement processes have put emphasis on appointments and hires in order to establish pressure for inclusion of affirmative action in all selection planning in the civil service system, both for open hiring and for promotions. During the early stages of the Affirmative Action Program, this emphasis was considered necessary and desirable to institutionalize affirmative action as an integral program function.

Measurement of net change has not been neglected, having been reported annually in several public reports, and is in fact the basis of the proposal to refine the goal setting and measurement process staff is now developing. The Affirmative Action Program has progressed to the point where the Personnel Board can more easily delegate responsibility for planning affirmative action in selection and can focus more on the areas of greatest need - as compared to an initial need to develop and place a whole governmental system in effect.

2. According to reports released by State Personnel Board for the past three fiscal years, 80% to 85% of all State departments have failed to meet affirmative action goals established by the Board, or even come reasonably close to meeting the subject goals. Why does the Board tolerate these lags?

In preparing their affirmative action goals, departments attempt to project what is feasible and realistic (based on historical rates of employee turnover, the annual rate of increase of individuals from underrepresented groups, labor market and/or promotional pool availability data, etc.) and plan accordingly. The Board reviews these goals to see if they are realistic and negotiates to increase goals where this appears warranted.

In evaluating the departments' effectiveness in achieving goals, the Board attempts to determine why departments have or have not met their goals. If we find that a department has legitimate reasons for not meeting its goals, we may "tolerate" the lags. However, if it is determined that a department has been lax, Board staff will hold meetings to discuss the situation and strive for a more aggressive planning and internal appointment/monitoring process.

As noted before, our Affirmative Action Program is still in a state of evolution. Initial staff efforts concentrated on developing and putting into place affirmative action systems--to capture necessary data and to institutionalize affirmative action focus and consideration in the main line personnel management system. We believe that the data outlined in the beginning of our letter to the Committee clearly illustrates that substantial, bottom-line progress has and continues to be made.

We recognize that there is a need to closely monitor departmental programs and to take enforcement action where problems exist. We have initiated a public hearing/sanctions processes to do just that. Under this new process, if a department, a program area, or a class is significantly deficient, the Board will conduct a more intensive investigation and, if necessary, hold public hearings and recommend remedial actions to correct underrepresentation on a more timely and effective basis. This approach has been used in one department and has proven to be an effective affirmative action tool. The Board is now investigating the use of this process in other departments and some classes with severe underrepresentation.

3.a. What has been the positive impact of your affirmative action performance contract review efforts? Please be specific.

The overall purposes of establishing the performance contracting process were to:

- (1) Systemize the planning processes of personnel management and
- (2) Improve the SPB methods of staff resource allocation and budgeting.

Affirmative action as a relatively new program was particularly in need of more systematic management. The use of performance contracting has:

- (1) Increased SPB and department effectiveness in planning and prioritizing selection and classification functions of which affirmative action is an integral part.
- (2) Assisted SPB affirmative action staff in identifying those departments unable or unwilling to establish affirmative action priorities.

- (3) Acted, through the establishment of target dates for affirmative action objectives, to improve SPB monitoring capabilities.
- (4) Resulted in departments being more aware of the State Personnel Board intent to institutionalize affirmative action in all aspects of personnel management.

The performance contracting method allows departments to systematically assess personnel management needs including projects with significant affirmative action potential or impact a year in advance. Such planning provides time for departmental Personnel Officers to consult with top management and Affirmative Action Officers to determine which classification and pay and examining projects will enhance the departments' affirmative action efforts and submit these to the State Personnel Board as a portion of the overall request, for personnel management work to be done. Staff of the State Personnel Board's Departmental Services Division, in turn receives input from staff of the Affirmative Action Division and the Recruitment Unit, when appropriate. Thus, aware in advance of those projects requiring their participation, these Personnel Board units can plan how most effectively to utilize their resources to complete the designated affirmative action projects.

- 3.b. Submit performance contracts for the following departments for the last three years: Department of Health Services, Department of Social Services, Department of Fish and Game, Department of Motor Vehicles, Department of Transportation.

Copies of the performance contracts for these departments are included in our Appendix.

4. There is evidence, based on information the Committee has, that the State Personnel Board provides inadequate technical assistance for affirmative action especially in areas dealing with department/Federal, EEO/AA relations. Is this true? Where and how have you assisted departments in this area?

The Personnel Board realizes the importance of giving departments technical assistance in the area of affirmative action. Although in the past we have not had the resources to provide as much assistance as we would have liked, recently we were successful in obtaining an IPA grant which funded a position to work in this area full time. In determining how to utilize this position's time most effectively, we solicited input from advocate groups, departmental directors, personnel and Affirmative Action Officers. After receiving input from all these sources, projects were selected which we felt would have the greatest impact in assisting departments in meeting their affirmative action goals.

In addition, we are also developing a detailed training program and an up-to-date affirmative action handbook. We want this to be practical and "how to do it" oriented.

We share your concern that individuals in departments given responsibility for the Affirmative Action Program need to be thoroughly familiar with the State personnel management system and Federal and State affirmative action laws, rules and procedures. We agree that many are inadequately prepared. We strongly encourage departments to be very selective--and to try to place only strong staff with demonstrated records of success in other program areas into these positions.

We will continue to do as much as we can within our available resources to provide assistance to departments - but they too share in assuring that their employees are capable of and do in fact carry out an effective Affirmative Action Program.

5. It is alleged by many departmental affirmative action staff that the State Personnel Board is more concerned with maintaining a merit system that fosters institutional discrimination. Is this true?

Section 18500(c)(1) and (2) of the Government Code mandates the Personnel Board to administer a merit system of employment; specifically, it authorizes the Board, "To provide a comprehensive personnel system for the state civil service wherein . . . Appointments are based upon merit and fitness ascertained through practical and competitive examination." The Board, however, is no less bound by Section 19702(a) of that same Government Code which reads, "A person shall not be discriminated against under this part because of sex, race, religious creed, color, national origin, ancestry, marital status, or physical handicap..." Therefore, the elimination of discrimination -institutional or otherwise - is as much a concern to us as is maintenance of a merit system.

Perhaps the most basic step taken by the Board to overcome discrimination is to ensure that all examinations and selection standards are job related. We have endeavored to focus on job relatedness to remove artificial barriers to employment. We have and continue to review job qualifications to assure that they are truly required and important to successful job performance. If this process determines that the qualifications being evaluated by traditional written procedures are not job related, the written tests are replaced and greater emphasis is placed on interviews, achievement ratings or other job related tests.

An emphasis on job relatedness provides a sound basis for hiring departments to select prospective employees because the hiring agency can have increased confidence that these persons are competent. We believe job-related selection procedures provide an empirical defense against those who wrongly perceive affirmative action as a subversion of the merit system.

Over and above the Board's continued attention to job relatedness in selection, there are a number of more specific means by which we address the possibility of institutional discrimination. Four of the more important of these are discussed briefly below:

- a. An entire division of the Board, the Public Employment and Affirmative Action Division, has been established to monitor departmental affirmative action efforts. If departments fail to meet their affirmative action goals in a timely manner, the Division can and will initiate remedial action.
- b. The Board's Recruitment Unit focuses much of its efforts on assisting departments to find qualified candidates to meet their affirmative action goals. Special attention is also focused on recruiting members of ethnic minorities for large statewide job classifications in which protected groups have historically been underrepresented.
- c. Written test pass points are now being set using ethnic raw score data tabs. These are computer printouts which provide information to the analyst concerning ethnic and gender performance on an item-by-item basis; therefore, where a written test has been identified as the proper selection procedure for a class, consideration is always given to protected group performance on the test prior to establishing a minimum passing score.
- d. The interview portion of an examination is always chaired by a trained chairperson, usually an SPB staff member. Not only does the required training deal, in part, with sensitivity to affirmative action concerns, but the chairperson is also trained to ask all questions in a nondiscriminatory manner, and see to it that the panel members do likewise. In addition, examinations are categorized into three levels to assure adequate minority and female representation on the most critical interview panels.

Whenever a job-related test or selection process has adverse impact, alternative tests or processes are sought that have substantially the same job relatedness but minimum or no adverse impact. In short, the Board's examining procedures do not foster institutional discrimination, but rather are set up in such a way that such discrimination will not occur. The twin concerns of maintaining a merit system and eliminating discrimination are, in fact, complementary rather than antagonistic to one another.

6. Would affirmative action and equal employment opportunity be more effectively implemented from an organization outside the State Personnel Board? Give specific reasons why Affirmative Action Programs should not be administered and monitored by a separate department other than for constitutional reasons.

We believe that by having the State's Affirmative Action Program administered and monitored by the same department that administers the general personnel management system, affirmative action is more likely to become an integral part of the regular, ongoing decision-making processes of State Government and more effective.

Under provisions of Government Code Section 19790, each department and agency is responsible for establishing an effective Affirmative Action Program. We, in turn, have been given authority to provide statewide advocacy, coordination, monitoring and enforcement of these programs. We take our responsibility very seriously. We endeavor to provide leadership in this program area and as previously noted, we believe that data will clearly show that the composition of the State's work force has changed dramatically during the last ten years. Most see us as among the most progressive of employers.

7. Why has the State Personnel Board not mandated that all agencies and departments post the posters stating what rights and remedies State employees have relative to filing discrimination or fair employment practices complaints?

The Affirmative Action Plan or Equal Employment Opportunity Policy Statement is the primary vehicle for advising State employees about their rights and remedies. The Personnel Board Affirmative Action Guidelines require that Department Directors advise all employees that the State of California is an equal employment opportunity employer, that employees have the right to EEO counseling and the right to file discrimination complaints.

The Personnel Board distributes an "EEO Complaint System" pamphlet. This pamphlet was designed specifically to explain how the discrimination complaint process works in State service. It provides a step-by-step explanation on how to proceed and whom to contact at the Personnel Board for assistance when an employee wishes to file a discrimination complaint.

8. What is the bottom-line termination data for Blacks and Hispanics? Which departments have the highest termination rates? What is the bottom-line termination data for probation civil service employees?

Bottom-line termination data is currently not available in a form that can be used for meaningful analysis. Aggregate data is compiled and has been included below for the first quarter of the year. However, because of the wide-range of reasons for termination classified as "involuntary", including such things as disability retirements, layoffs, and dismissals, interpretation of this data is difficult.

While termination data by departments is also available, the determination of which departments have the "highest termination rates" is open to interpretation. As suggested above, the definition of "termination", and even of "involuntary termination", is very broad. In addition, departmental termination rates may be affected by a number of variables, including department size, total separations, quarterly variance in separations, and absolute number of target group members within a department.

Bottom-line termination data for probationary civil service employees would also be subject to many of the interpretation problems discussed above.

We recognize that the systematic analysis of meaningful bottom-line termination data would be valuable in determining whether department's commitments to affirmative action and equal employment extend beyond the hiring process. The Public Employment and Affirmative Action Division plans to explore ways in which this data can be used in their review of departmental affirmative action compliance. It should be noted that intake and composition net change provides a reasonable basis for evaluating the effectiveness of our program.

BOTTOM-LINE TERMINATION DATA FOR BLACKS AND HISPANICS

			1/1/80		
<u>Voluntary</u>	<u>Total</u>	<u>White</u>	<u>Black</u>	<u>Hispanic</u>	
Full time	3068	2287 (74.5)	311 (10.1)	271 (8.8)	
Seasonal	135	71 (52.6)	21 (15.6)	29 (21.5)	
Other than full time	1192	848 (71.2)	144 (12.1)	125 (10.5)	
<u>Involuntary</u>					
Full time	804	571 (71.0)	130 (16.2)	67 (8.3)	
Seasonal	674	371 (55.0)	98 (14.5)	119 (17.7)	
Other than full time	4008	3218 (80.3)	281 (7.0)	331 (8.3)	
Employment %		73.9%	9.2%	8.8%	

The data above was taken from quarterly statewide records. Separations are defined as:

Voluntary: Resignation from State service for personal reasons; in lieu of Involuntary Transfer; in lieu of Military Leave; Failure to meet conditions of employment; unfavorable circumstances; Leave of Absence; or Service retirement.

Involuntary: AWOL; Layoff, Termination of TAU, LT, Exempt, Emergency, C.E.A. with or without fault; Termination for Medical Reasons; Displaced by Mandatory Reinstatement; Dismissal; Disability Retirement; Decision by SPB or Court Action; Rejection during probation; and death.

These major categories are further divided into full time, seasonal, and other than full time. Data has been presented as number of persons separated, with percentage of total separations indicated in parentheses for Whites, Blacks, and Hispanics.

9. With the Fair Employment Practices Commission no longer having jurisdiction over State personnel regarding grievances and discrimination complaints, does the State Personnel Board have a workable mechanism to investigate discrimination complaints at the "initial" point of the filing? Explain how the discrimination and grievance procedure operates.

On the question of jurisdiction between the Fair Employment and Housing (FEH) Commission and the State Personnel Board, it should be noted that the two departments have worked cooperatively for many years and on numerous occasions have settled specific employment discrimination complaints filed against the various departments in State service. The matter was litigated by FEH because FEH sought to gain exclusive jurisdiction over discrimination complaints involving the civil service. The Personnel Board believes it has constitutional authority over discrimination cases involving the civil service. Recently, the Superior Court in Sacramento County declared that the Personnel Board does, in fact, have exclusive jurisdiction in this issue. However, even while the issue of jurisdiction was being litigated the two departments continued to work cooperatively. For your information, we have enclosed a memorandum that directed all State agencies and employee organizations to cooperate with FEH and other Federal compliance agencies.

The second part of this question deals with whether the Personnel Board has "a workable mechanism to investigate discrimination complaints at the initial point of filing". In 1976, the Board adopted a discrimination complaint process applicable to all departments in State service. The process is very comprehensive and explains in detail the levels of review involved, roles and responsibilities

of individuals and specific time frames for resolution. However, a basic principle of the complaint process is for complaints to be resolved informally at the lowest administrative level possible. If this is not successful the complainant is advised to proceed with a formal complaint. To explain how the discrimination complaint process works we have enclosed:

- SPB Rule 547, resolving allegations of discrimination in State employment.
- SPB Memorandum of April 30, 1976, to all State agencies, "Resolving complaints of discrimination in State employment."
- SPB Memorandum of June 1, 1976, to all State agencies, "Criteria for Selection of Equal Employment Opportunity Counselors and Investigators".
- SPB Pamphlet, August 1978. A pamphlet for public distribution on how to use the EEO Complaint System.

Finally, you requested that we explain how the grievance procedure works. The State of California grievance process (SPB Rule 540) has been in place since 1961. The purpose of adopting a discrimination complaint process was to allow the complainant a separate process to pursue allegations of employment discrimination. Please refer to the Appendix, Section 5, for a detailed explanation on how the grievance process works.

10.a. By the State Personnel Board investigating discrimination complaints itself, does it not raise a credibility issue?

As indicated in response to the last question, the Personnel Board requires that discrimination complaints be first investigated at the departmental level. If the matter can not be resolved within the department, the complainant has the right to appeal to the Personnel Board.

The Appeals Division of the Personnel Board was established to be independent of the operational and standard setting divisions at the Board. The Appeals Division conducts independent investigations and arrives at recommendations based solely on the facts and merits of each case.

10.b. How many discrimination complaints and grievances have been filed by State employees within the last 36 months? Do not include appeals.

Again, as indicated previously, the discrimination complaint process was designed to allow the appointing authority (the department director or his or her designee) to resolve most complaints at the departmental level. If not resolved, the complainant has the right to appeal to the Personnel Board. Consequently, the number of appeals filed with the Personnel Board is relatively small compared to the number resolved by departments through their formal and informal processes.

Listed below are the number of complaints received by the Personnel Board:

	<u>1978/79</u>	<u>1/ 1979/80</u>	<u>Projected for Cur- rent Year 1980/81</u>
Grievances	110	267	200
Discrimination Complaints	35	42	50

1/ includes a 13-month period

Information on grievances and discrimination complaints is not available prior to 1978. The Appeals Division was established in 1978; prior to 1978, grievances and discrimination complaints were assigned to a variety of staff in other operating divisions as part of their ongoing workload.

11. In comparison to other units within State Personnel Board, does the SPB Evaluation and Liaison Unit receive the necessary allocation of resources and staffing to insure effective monitoring of the Affirmative Action Program?

It is probably true that if the Evaluation and Liaison Unit had more staff it could do more detailed and effective program development, monitoring and enforcement work. However, it would not be fair to say that this unit in comparison to other Board units is receiving insufficient resources. All Divisions of the Personnel Board have, for some time, had limited resources relative to programmatic and workload demands. Virtually every review of operations has suggested that clients - departments and individuals want more service. Given limited resources, we have endeavored to reprioritize workload and/or modify procedures to deal as effectively as we could with the constant and increasing workload demands. It is not possible to do everything for everyone or refine systems to perfection.

Many of our positions are "special fund" positions. So, while it may appear that some units have more resources than others - typically these positions must do very specific work to carryout obligations of a grant or contract.

12. Why does the State Personnel Board need special units within its intra-organization such as the Sexual Preference, Women's Program, Disabled and Hispanic Units if the Board is supposed to be about affirmative action in general? Why are there not units for other special interest groups?

While the Affirmative Action Division has a general responsibility to serve as an advocate for women, minorities and the disabled it also has many specific project demands - legislatively mandated reports must be prepared; systems must be evaluated, reviewed, re-fined and developed; and affirmative action goals, performance contracts, and monitoring and enforcement actions prepared. This means

that to assure strong advocacy and open communications, special positions need to be established (from time to time) to devote full-time, focused attention to the particular needs of those groups most severely underrepresented or with the greatest "distributional" problems. Even though there may be potential for overlap, each has specific, unique problems and/or concerns that might not get sufficient attention through less assertive organizational means.

- a. The Spanish Speaking/Surnamed Project was established because Hispanics are the most severely underrepresented group in State service. All other groups have achieved work force parity, although many still have distributional problems. Hispanics represent only 9.0% of the State work force although they represent 13.7% of the State's civil work force (as of 1970's census figures).
- b. The Disabled Unit, which is funded by the Department of Rehabilitation and Federal grants, was established in recognition of the special needs of disabled persons -- work facilities (and accessibility), myths and stereotypes about disabled persons' abilities to perform certain types of tasks, etc.
- c. The Women's Program Manager was established because women have historically been hindered from full and equal employment opportunities. They represent 40% of our civilian labor force, yet are not fully represented in all occupations or at all salary levels. Additionally, there are a number of issues, like sexual harrassment that are of particular concern to women.
- d. The Sexual Orientation Project is not an affirmative action project rather it emphasizes nondiscrimination. It was established, with funding from IPA, as a result of Governor Brown's Executive Order B-54-79. The position is responsible for assuring that job discrimination does not occur within the State civil service system on the basis of one's sexual orientation.
- e. A position is to be established to give added focus to Black concerns, particularly upward mobility and distribution. It will also serve to provide liaison with and open channels of communication to the Black community.

It should be noted that we endeavor to maintain open communication with all employee advocate and community interest groups regardless of whether there is a position established to "represent" the particular group. This open communication policy has resulted in all groups being able to participate in the formulation of our affirmative action and personnel management systems and has lead to a greater amount of acceptance of these programs.

We believe very strongly that all employees within the civil service system should receive fair treatment within the merit context - and should be selected, evaluated and/or promoted in all occupations and at all levels of government on the basis of job-related work behavior, experience and qualifications and not on such nonjob-related factors as sex, ethnicity, disability or sexual orientation.

- 13.a. How many State Personnel Board examinations over the last 36 months have been determined to have had "adverse impact"? Why were they given? What are the titles of the examinations?

The Personnel Board currently has no report which accumulates examination information identifying the adverse impact of individual examinations or examination processes.

Beginning in mid-October, a computerized system will develop bottom-line data on each examination administered centrally. This new system will include (1) the institution of a microfiche file of all examination and hiring data in the system; (2) incorporation of the ability to combine existing data for each class into summary bottom-line hiring data report; (3) automatic adverse impact calculations; and (4) summary by examination (and by class) of the adverse impact computations.

Examination ethnic distribution reports are available for use in the analysis of specific examinations by those directly concerned with the administration of the examination, i.e., the analyst for the class and affirmative action staff monitoring departmental use of the class. Any determination of "adverse impact" based on the data in the reports must be made by the analyst. The only currently available summary of the ethnic distribution data from these reports is presented in the attached Annual Census of State Employees, pages 188 to 198, which categorizes the information according to examination base.

- 13.b. What is the bottom-line hiring data for each of the examinations that were determined to have had "adverse impact"?

Since the Board does not accumulate examination data based on adverse impact, there currently exists no system which will immediately specify the bottom-line hiring data for examinations with adverse impact except on a case-by-case basis. However, the Board recognizes the need for such a system and as noted above is currently in the final stages of development. The "bottom-line" data will be considered on at least an annual basis at which time both planned and completed actions including referral of exams for validation will be reviewed. This will allow the Board to identify and deal with any examination process which has adverse impact in the bottom-line hiring data according to the requirements presented in the Uniform Guidelines on Employee Selection Procedures (1978).

- 13.c. What is the number of State Personnel Board examinations given within the last 12 months? What is the bottom-line hiring data?

A total of 1451 examinations have been centrally administered during the period from July 1, 1979, to June 30, 1980. As indicated previously, the Board currently can retrieve bottom hiring data only on a case-by-case basis. The Board's computer system for calculating adverse impact based on bottom-line hiring data and developing the summaries by examination will be implemented in mid-October.

- 14.a. What priorities has State Personnel Board set relative to affirmative action for the past three years? Be specific.

The Personnel Board has given affirmative action a high priority. We have a separate division (the Public Employment and Affirmative Action Division) that spends full-time advocating systems changes and monitoring affirmative action efforts and/or results. Our own staff is fully representative at all levels for all groups.

Attached for your information are copies of "Key Objectives" for Fiscal Year 1978-79; Fiscal Year 1979-80; and Fiscal Year 1980-81.

- 14.b. Has the State Personnel Board incorporated its priorities into departmental contracts?

Yes - to the extent that we can, given resources limitations.

- 15.a. Explain how the Personnel Board negotiates contracts with departments relative to classification and examinations.

The basic steps in arriving at a performance contract are:

- (1) Departments, six months in advance of each fiscal year, develop plans and priorities for selection and classification actions and Affirmative Action Program development or enhancement activities.
- (2) The department proposals are discussed with staff of the two primary Board divisions involved (the Departmental Services Division and the Public Employment and Affirmative Action Division) and as a result of those discussions, priorities are assigned. Board and departmental staff resources available for the fiscal year are determining (and limiting) factors in negotiating the specific activities which will be carried out.
- (3) A final written agreement of the activities to be performed is reviewed by all staff units concerned, including the affirmative action advocacy units in PEAAD and affirmative action personnel in departments, and the agreements are signed by higher level managers.

- 15.b. Do the contracts have any impact on the State Personnel Board's Affirmative Action Program? If not, could they? If they do, how?

The performance contracts do impact the State's Affirmative Action Program, as noted earlier, primarily through a systematic analysis of needs and negotiation of selection and classification activities to be performed.

The performance contracting process, however, applies only to those selection and classification functions specific to individual departments, or limited groupings of departments. The Personnel Board goes through a similar internal planning procedure to determine affirmative action needs in the planning of selection and classification actions administered on a servicewide or statewide basis. Also, since there is increasing delegation of selection functions to departments, Board staff are strengthening procedures to monitor selection procedures and affirmative action results.

- 15.c. Do departmental contracts have remedies for breach by the departments?

As noted in each written contract document, both parties, the department and the Board are required to meet their stated obligations in order for the contract agreement to remain in effect. It must be restated that the primary purpose of the performance contract process is to systematize the State's personnel management planning procedures. The performance contracts are mutual agreements between a department and the Board which state the priority work to be accomplished during a given time period, but they are not contracts in any formal legal sense of the term.

16. How many policy statements regarding affirmative action have been issued by the Board within the last 36 months. Have they been codified. If not, why?

We do not have an exact number of policy statements issued by the Board -- there have been many. Since our affirmative action processes and procedures have been in a state of evolution, codification of rules would have reduced our ability to continue to refine and improve the system rapidly.

17. Is it true that the last time the State Personnel Board updated the Affirmative Action Handbook was during the Reagan Administration?

The first Affirmative Action Handbook was issued on November 1, 1976. Because of our limited resources and the pressures for broad systemic program development, we have not updated the Handbook. We are now in the process of developing a new, more up to date and substantially expanded Handbook. We expect to publish it in May 1981. The new Handbook should be more of a "how to do it" document.

18. Do Affirmative Action Officers have a manual that addresses the following:

- a. Goals
- b. Performance compliance
- c. Powers and authority of Affirmative Action Officers?
- d. Penalties for noncompliance

Some departmental Affirmative Action Officers have developed their own manuals, but most probably have not. If they have not, however, there have been many memoranda published by us on each of these subjects. A partial listing of the titles and dates of these memoranda follow:

a. Goals

State Personnel Board memorandum of September 16, 1980 - Goals and timetables - a proposal to expand affirmative action goal-setting and measurement procedures (the State Personnel Board issues goal-setting instructions to all personnel officers, Affirmative Action Officers and Women's Program Officers on a yearly basis.)

b. Performance Compliance

State Personnel Board memorandum of April 16, 1980 - The performance contracting process for the 1980-81 Fiscal Year.

c. Powers and Authority of Affirmative Action Officers

State Personnel Board memorandum of November 29, 1977 - State Affirmative Action Program legislation.

State Personnel Board memorandum of June 6, 1980 - Affirmative Action Overview.

d. Penalties for Noncompliance

State Personnel Board memorandum of January 29, 1980 - State civil service Affirmative Action Program - the sanctions process.

19. Does the Board have the capacity to effectively monitor and administer examinations in such a way as to prevent examination abuse, and insure that a department cannot impede the implementation of an Affirmative Action Program through the examination process?

Affirmative action is a key consideration in all examination planning. Prior to their administration, all examinations are reviewed to assure that content is job related. During the interview process, Personnel Board chairpersons work to assure that no discriminatory questions are asked and that final ratings are determined by job-

related factors. Interview panels are typically balanced ethnically and sexually, and handicapped panel members are also frequently utilized. Should a competitor feel that he/she has been discriminated against in any manner, he/she may appeal the results to the examination to the State Personnel Board.

20. Are administrators of departments evaluated on how effectively they implement Affirmative Action Programs? If not, why?

We are attempting to change evaluation documents to assure that Administrators/Managers are evaluated on their knowledge and implementation of Affirmative Action Programs. It must be noted, however, that this would only be one of many dimensions for evaluation not the only one.

The promotional selection process for Staff Services Manager I-III now includes steps which allow for formal evaluation of the employee's utilization and sensitivity of the State's affirmative action policies. For example, the current Employee Development Appraisal (EDA) Reports are designed to identify specific kinds of experience, skills and abilities (e.g., budgeting, personnel or management analysis experience; analytical and technical skills; administration and communication abilities, etc.) including the employee's knowledge and application of Affirmative Action Programs. An evaluation of this is included in interview portion of examinations. An employee's lack of knowledge and experience of Affirmative Action Programs would be a negative factor in the competitive selection process.

Before gaining permanent status in a civil service classification (including those designated as management classifications), the employee's performance during their probationary period is evaluated (Form 636, Report of Performance for Probationary Employee). A pertinent qualification factor "Administrative Ability", is defined in part as "...understanding an effective implementation of departmental and SPB personnel management policies including equal employment opportunity and affirmative action". Positive performance in this area contributes to the overall probationary evaluation.

All permanent status employee's are evaluated annually. An annual "Performance Appraisal Summary" (Form 637) is to be completed by the employee's supervisor. Two categories (#8 and #9) specifically address the employee's utilization of affirmative action and upward mobility policies. Some departments have modified their forms to include affirmative action considerations. We strongly encourage this, but have not had the resources to undertake a project to change the whole performance evaluation program.

21. Does the State Personnel Board have a procedure to assure affirmative action is a part of the testing of a specific class?

The Personnel Board does have the capacity to effectively monitor and administer examinations so as to prevent examination abuse and ensure that departments do not impede the implementation of Affirmative Action Programs through the examination process. The Board's capacity is demonstrated by the following:

a. Minimum Qualifications

Before the Board agrees to proceed with an examination, the staff reviews the job relatedness of the "Minimum Qualifications" to ensure that the knowledges, skills, abilities, education and experience listed are not unfair to protected groups such as women, ethnic minorities and the disabled.

b. Examination Base

An analysis is made of the potential candidate group before an examination is given. The availability of protected group members is considered when a decision is made regarding use of an open only, promotional only, open plus promotional, or open nonpromotional examination. It has been the Board's policy to give examinations for higher level classes on an open basis to assist in affirmative action efforts.

c. Examination Weighting

The decision as to the weighting of the parts of the examination always involves affirmative action considerations. Generally, written tests are weighted only when the skills or abilities being tested are considered essential to the prediction of job success.

d. Examination Publicity

Prior to the final date for filing applications, sufficient examination publicity time is allowed so that the Recruitment Section, other Personnel Board staff, and departmental staff will be able to identify and distribute examination information to protected group members. We endeavor to conduct aggressive focused recruitment for key "target" examinations. Special advertising in community papers, on local media, etc., will be undertaken. We go into minority communities to stimulate interest and work.

e. Application Filing Locations

If applications are to be filed in person instead of by mail, the filing locations include areas where protected group members reside and are accessible to disabled.

f. "Continuous" Application Filing

The need to extensively recruit protected group members over a period of time is considered when deciding whether to announce the examination without initially giving a specific final filing date. Then a number of examinations are held as applications are filed and the eligible lists are continuously merged.

g. Examination Completed In Shortest Possible Time

One reason we try to complete our examinations as quickly as possible is so that protected group members who have applied for the examination will not become discouraged by the time lapse and therefore lose interest.

h. Written Test Locations

The public facilities at which our written tests are given usually include facilities in areas where protected group members reside and are required to be accessible to disabled.

i. Setting Written Test Pass Points

Statistical comparisons of the major ethnic groups and of both genders are considered when the passing or cutoff score is selected for a centrally administered examination.

j. Examination Interview Locations

The scheduling of interviews at locations close to the residences of protected group members is done to the greatest extent possible.

k. Examination Interview Panel Membership

Efforts are made to see that women, ethnic minorities and the disabled are represented on oral interview panels. We recognize this is not feasible for every panel so we endeavor to assure that all "key", "target" classes have representative panels.

l. Types of Examination Interview Questions

The chairpersons of interview panels are told in writing that they are responsible for advising panel members not to ask and competitors not to answer questions that contain discriminatory wording.

m. Selective Certification

After release of the list of names of those who passed the examination and are eligible for appointment, departments having jobs requiring special skills or needs may request a smaller, separate list composed of the names of those who have specific job-required skills (i.e., bilingual) or who meet specific welfare or rehabilitation job funding criteria.

n. Departmental Job Interviews

The Personnel Board staff provides information to hiring departments about the need to eliminate discrimination from individual job interviews. The Appeals Division of the State Personnel Board is set up to hear individual allegations of discrimination as they are filed.

o. Job Hiring Decisions

The Board monitors affirmative action hiring through the postaudit process, which requires departments to submit written reports. In addition, the Board soon will be monitoring "bottom-line" hiring data.

p. Personnel Board Postaudit

The Board staff regularly postaudits those parts of examinations that are delegated to departments. Affirmative action considerations are among those covered during the postaudits.

q. Extension of Eligible Lists

When departments request the extension or abolishment of existing eligible lists, the Board staff considers the numbers and reachability of protected group members on those lists.

r. Other Appropriate Eligible Lists

When an eligible list is exhausted and a department wants to use a current eligible list for another similar classification as an appropriate list, the Board staff again considers the number and reachability of protected group members on the requested list.

s. Temporary Authorizations

When a temporary authorization (abbreviated TAU) hire to a permanent position is absolutely necessary to prevent the interruption of State business, the Board staff reviews the department's efforts to locate a protected group member for the TAU job. An examination must be completed within nine months after the TAU appointee begins work, and that appointee usually will have an advantage over the examination competitors because the appointee has actually been doing the work concerned.

t. Rule of Three Ranks

Rather than limiting hiring authorities to only a single name or rank from which to hire, most certification lists employ the Rule of Three Ranks. This allows departments far greater flexibility and latitude in making hires for purposes of affirmative action or specific program needs.

u. Sanctions

When a department fails to meet its affirmative action goals in a timely manner, the State Personnel Board can and will impose sanctions on the department. A feature often involved in the sanctions process is supplementary certification, a process which certifies for hire additional underrepresented group members beyond the candidates appearing in the first three ranks.

22. Have any administrators within the State Personnel Board system or departments ever been reprimanded for impeding an Affirmative Action Program because affirmative action goals have not been met, or because of poor management in the administration of an examination or recruitment of minorities or women?

To our knowledge, no administrator has been reprimanded for impeding an Affirmative Action Program or not meeting affirmative action goals. Public Employment and Affirmative Action Division (PEEAD) has, on numerous occasions, admonished department directors when they have been lax in their efforts to achieve established affirmative action goals. If progress on goals is not satisfactory, meetings are conducted with department heads and, if necessary, tighter monitoring is put into place.

There have been several instances where the Personnel Board has directed certain departments to pursue punitive action against individuals whose conduct or judgment in an examination was poor or discriminatory. On other occasions, the Personnel Board has advised departments that certain interview panel members whose actions will no longer (or conduct was discriminatory) be allowed to participate in oral interviews.

It is possible that departments heads may have taken punitive action against individual employees. The Personnel Board generally would not have this type of information unless the individual appealed the action and the matter went to a Hearing Officer. Because of the short timeframe available to respond to these questions, we were not able to pursue obtaining statistical data on this topic.

23. Based on State Personnel Board's Annual Census, there is evidence a large deficiency exists in the supervising clerical and supervising professional levels within the State Personnel System for Blacks and Hispanics in the clerical and professional feeder classes. Why?

We recognize that underrepresentation exists for these two ethnic minority groups in these job categories and that continued attention must be given to training, developing and promoting Blacks and Hispanics.

Progress has, and continues to be made. The two charts below illustrate that more minorities are now in "feeder" classes and that they are beginning to move into the supervisory categories at a more rapid rate.

CHART I

Job Category	Blacks		SS/S	
	1974	1980	1974	1980
Clerical	7.2	10.9	5.4	10.9
Supervisory Clerical	4.5	5.6	3.3	5.4
Professional	6.3	6.5	4.8	6.6
Supervisory Professional	2.9	2.8	2.6	2.9
Administrative/Staff Nonsupervisory	3.8	10.4	2.4	11.7
Administrative/Staff Supervisory	2.1	6.5	1.8	7.1
Parity	6.3		13.7	

CHART II

	Asians		Filipinos		American Indian		Other Minorities	
	1974	1980	1974	1980	1974	1980	1974	1980
Clerical	6.3	6.7	1.6	3.0	N/A	0.5	0.7	1.2
Supervisory Clerical	6.9	7.1	0.5	1.4	N/A	0.6	0.3	0.7
Professional	5.4	7.5	0.5	2.1	N/A	0.4	1.2	2.1
Supervisory Professional	5.5	7.9	0.2	1.1	N/A	0.2	0.4	1.6
Administrative/Staff Nonsupervisory	4.6	5.8	0.2	1.1	N/A	0.7	0.4	0.8
Administrative/Staff Supervisory	1.3	4.9	0.1	0.2	N/A	0.5	0.1	0.7
Parity	2.3		0.7		0.4		0.3	

In order to provide the necessary experience and impact on higher level classes within the system in general, we have tended to focus most of our attention on "feeder" classes. To a limited extent, it is now more a matter of timing for some job categories. The charts illustrate that we are having some measure of success in the "feeder" classes.

24. Despite the large numbers of Black and Hispanic females in the clerical classes, there is evidence that Blacks and Hispanics are not adequately represented (upward mobility) relative to bridging classes. Why is this? How long has the Board been aware of this?

Since the early 1970s, we have endeavored to establish "bridging" classes to facilitate movement of women to subprofessional and technical positions. There are many bridging classes, and more are being developed. These classes now exist for most occupational areas but their utilization is uneven--in some departments and in some occupational areas, we have had success; other departments and/or occupations we have had great difficulty in gaining cooperation. At this point in the evolutionary process, we do not have the detailed statistical data to clearly analyze the extent or the causes of the problem you have identified. We are aware that upward mobility and distribution of Blacks and Hispanics, as well as other ethnic minorities, the disabled and women in general continues to be a problem.

We can only reiterate that we believe strongly that State Government should be representative in all occupations and at all levels and that we will direct our energies toward this objective. Until recently, efforts were primarily directed at intake into "feeder", entry-level classes as a way of meeting overall labor force parity. Recent changes and changes now being proposed to our goal setting process have focused more directly on and have directed that all departments establish goals for intake and promotional "upwardly mobile" classes.

Testimony by Marty Morgenstern, Director
Governor's Office of Employee Relations
Before the Assembly Select Committee
on Fair Employment Practices
October 1, 1980

I would like to thank the Chairman and members of this Committee for inviting me to testify before this Committee. It was requested that I present an overview of the Administration's policies and philosophy relative to the subject matter of this hearing. While our office does not bear the major responsibility for affirmative action, we have been closely associated with all Administration initiatives relative to State employees, and I feel reasonably confident to reply to this request. The Governor tried to make it clear that one of the major goals of his Administration is to bring into the workings of government people who have been heretofore excluded. Specifically, this means Blacks, Chicanos, Asians, women, disabled and anyone else who because of past discriminatory hiring practices has been given an opportunity to serve in the high or not-so-high positions of State Government. Further, it is the belief of this Administration that, given the enormity of the State civil service, this task cannot be accomplished simply by a nondiscriminatory hiring policy, but that affirmative action is necessary. That is to say, it is essential that we take affirmative measures to see to it that the large and largely autonomous institutions of State Government are sensitive and responsive to the new personnel mandates, and that they regard them as an essential part of their mission. The tasks of recruiting, retaining and promoting people from what we now call the disadvantaged classes of society are a high priority of this Administration and hopefully of all its administrators.

The State Constitution clearly mandates that hiring, promoting and retention, the basic elements of the merit principle, are fundamentally within the responsibility of the State Personnel Board (SPB). Probably with that in mind, our previous Governor assigned by Executive Order R-34-71 affirmative action to the SPB. The SPB is an independent constitutional agency whose members are appointed by the Governor with the approval of the Senate for 10-year terms. Each Governor gets to appoint one member every two years. Governor Brown has had three appointments to the Board. All three are women, one a Chicana civil rights activist, the second a Black lawyer and an activist, and the third a woman who works to support herself and her children. There can be no doubt as to the Governor's message here, especially in that the appointees themselves have, we believe, demonstrated both before and since their appointment their absolute commitment to these same principles of affirmative action that the Governor has himself often voiced.

While these three appointees demonstrate a commitment to affirmative action, the Governor has not limited his activity in this area to SPB appointments. In his appointments in the highest levels of State Government, the California Supreme Court, the Governor's Cabinet, the Department heads, judicial appointments at every level, and every other aspect of State Government, the Government has/ tried to set an example to the many appointing authorities of the State. Further, the Governor has called (and attended) special Cabinet meetings devoted exclusively to discussing the

progress or lack thereof in the many departments or agencies of State Government. He has made it clear that he expects all of his appointees to accept as a primary part of their mission and responsibility the maintenance of an effective affirmative action program.

In general, we believe that the SPB has carried out its responsibility with diligence, dedication and efficiency. We know that they have not accomplished everything the Governor or they themselves would like to have accomplished. We must also recognize that, given the legal and constitutional mandates of the merit system, this can sometimes be difficult. In frankness, we must admit that the legal obstacles are not the only ones. We don't believe that there is any conscious racism in the State civil service or among the Governor's appointees, but it is probable that in this large group, as elsewhere, there are those with unconscious prejudices, and there are varying levels of commitments to the affirmative action priority. Further, it is often easier to pick someone we know personally to be competent than to reach out for someone not from our own circle of personal friends and acquaintances. And for those of us who are white middle class people, this usually means choosing other white middle class persons. Reaching out requires more effort, more time and more risk. It is our hope and belief that the continued diligent pursuit of affirmative action by the Board and the Administration will overcome these problems and that every possible

effort to improve our affirmative action record will continue to be made.

We have recently seen where the U. S. Civil Service Commission has been critical of the Board's efforts. While that report reached my office only yesterday and has not yet been seen by the Governor, it will certainly be given close study and consideration. If the U. S. Civil Service Commission or anyone else feels that the Administration or the Board has failed in any aspect of affirmative action, we are anxious to listen to their concerns and rectify any and every shortcoming that may be uncovered in our system. There are statistics that the Board will present that would seem to indicate we have made a great deal of progress. But I am sure that this Committee is aware of the Administration's dedication in this matter. Rather than patting ourselves on the back for past achievements, we are prepared to look for whatever failures or shortcomings that may exist and join with you to find ways to correct these situations.

We are anxious to work with the Legislature and especially with this Committee on affirmative action. We owe a great deal to the Chairman who last year carried very important legislation implementing an Administration initiative in the area of affirmative action as it relates to layoffs. We are anxious to continue to work in this cooperative fashion in the next two years to implement any and all policies that will achieve the important goals that our affirmative action program is designed to meet.

Thank you.

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

TESTIMONY

ASSEMBLY SELECT COMMITTEE ON FAIR EMPLOYMENT PRACTICES

OCTOBER 1 & 2, 1980

10:00 a.m.

The Department of Fair Employment and Housing is pleased to have this opportunity to come before this Committee and assist in their study and investigation of hiring and promotional practices of the public sector. The Committee has provided the Department with twelve questions relating to the interpretation and enforcement of the Fair Employment Practices Act. In responding to these questions, I would like to point out that the Governor's Reorganization Plan No. 1, effective January 20, 1980, created a Department of Fair Employment and Housing within the State and Consumer Services Agency, and a Fair Employment and Housing Commission within the Department. These entities succeeded to the functions and responsibilities of the Division of Fair Employment Practices formerly housed within the Department of Industrial Relations.

Assembly Bill 3165, introduced by Assemblyman Fenton, relocated the Labor Code sections beginning with 1410 through 1432.5 into Section 4, Part 2.8 (commencing with Section 12900) added to Division 3 of Title II of the Government Code. The Fair Employment Practices Act is now located within Government Code Sections 12900 through 12994. I have attached for your convenience a transfer table which references the Labor Code section to the new Government Code section. (A)

Question 1. c) i.

How does the FEH define the public policy of the state in the area of fair employment practices relative to protecting and safeguarding the right to hold and compete for employment? How does it define public policy relative to affirmative action programs?

"12920. It is hereby declared as the public policy of this state that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age."

"It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment for such reasons

foments domestic strife and unrest, deprives the state of the fullest utilization of its capacities for development and advance, and substantially and adversely affects the interest of employees, employers, and the public in general."

*in discharge
your police powers
what are the
remedies*

"It is the purpose of this part to provide effective remedies which will eliminate such discriminatory practices."

"This part shall be deemed an exercise of the police power of the state for the protection of the welfare, health, and peace of the people of this state."

"12921. The opportunity to seek, obtain, and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age is hereby recognized as and declared to be a civil right."

The California Commission on Fair Employment and Housing has published rules and regulations clarifying the enforcement approach to be taken by the Department of Fair Employment and Housing. The Commission has stated that these rules and regulations are to be

construed liberally so as to further the policy and purposes of the statutes which they interpret and implement.

Question 1. c) i. (2nd part)

How does it define public policy relative to affirmative action programs?

CHAPTER 8. NONDISCRIMINATION AND COMPLIANCE
EMPLOYMENT PROGRAMS

"12990. (a) Any employer who is, or wishes to become, a contractor with the state for public works or for goods or services is subject to the provisions of this part relating to discrimination in employment and to the nondiscrimination requirements of this section and any rules and regulations which implement it."

"(b) Prior to becoming a contractor or sub-contractor with the state, an employer may be required to submit a nondiscrimination program to the department for approval and certification and may be required to submit periodic reports of its compliance with such a program."

"(c) Every state contract and subcontract for public works or for goods or services shall contain a nondiscrimination clause prohibiting discrimination on the bases enumerated in this part by contractors or subcontractors. The nondiscrimination clause shall contain a provision requiring contractors and subcontractors

to give written notice of their obligations under such clause to labor organizations with which they have a collective bargaining or other agreement. Such contractual provisions shall be fully and effectively enforced."

This section of the Government Code replaces Section 1431 of the Labor Code and is the Department of Fair Employment and Housing's affirmative action section.

Question 1. c) ii. a)

What is the FEH's interpretation of its delegated police powers relative to implementing the Fair Employment Practices Act and enforcing state and federal policy relative to affirmative action programs?

Our interpretation is spelled out in the rules and regulations published by the Fair Employment and Housing Commission in its March 6, 1980, Employment Discrimination Regulations and in the proposed regulations of the Department of Fair Employment and Housing on contractor nondiscrimination and compliance.

Question 1. c) ii. b)

not responsive

Does FEH feel it has sufficient legislative authority to monitor and levie sanctions for what in FEH's opinion may be viewed as violations of public policy in the area of affirmative action and fair employment practices?

The Department's powers and duties are described in Chapter 5, Government Code section 12930. The Department considers our police powers sufficient to enforce the laws relating to employment discrimination and affirmative action programs. The state furthers federal policy in these areas as it enforces its state laws. California's civil rights laws are equivalent to the following federal laws: Title VII; Executive Order 11246, as amended, (Revised Order 4); the Age Discrimination in Employment Act of 1967, as amended; the Equal Pay Act of 1962, as amended; the Rehabilitation Act of 1973, as amended, Sections 503 and 504.

Question 2. a)

What is the scope of FEH's authority to promulgate rules and regulations in administering the Fair Employment Practices Act and affirmative action programs?

Government Code section 12930(e) gives the Department authority to adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the functions and duties of the Department pursuant to this part. The FEH Commission in Government Code section 12935 is given the function, power, and duty to:

"(a) To adopt, promulgate, amend, and rescind suitable rules, regulations, and standards (1) to interpret, implement, and apply Sections 12920, 12940, 12941, 12943, 12990, 12993, and 12994, as well as any other section of this part pertaining to unlawful

employment practices, affirmative action, and public work contracts, (2) to interpret, implement, and apply Section 12955 pertaining to discrimination in housing and Section 12927 pertaining to affirmative action in housing, (3) to regulate the conduct of hearings held pursuant to Sections 12967 and 12980, and (4) to carry out all other functions and duties of the commission pursuant to this part."

Question 2. b)

Does FEH monitor or have oversight authority in enforcing compliance with federal and state laws relative to affirmative action programs in the public sector, e.g. state, county, and city, in civil service systems or for those employed by legislative bodies?

The Department imposes affirmative action requirements in two instances: 1) with state contractors and subcontractors; and 2) in shaping a remedy to correct past discriminatory practices.

The Department has the authority to monitor these agreements and requirements and to initiate enforcement actions when required. The Department does not have oversight authority for enforcing federal affirmative action laws.

Question 3.

What type of research has FEH engaged in to date? If none, what type is being contemplated for this fiscal year?

The Department has not engaged in original research efforts, but has initiated collection of information relating to employment trends, housing starts, population migration patterns, changes in workforce, changes in availability of workers in selected occupations, etc. A tabulation of resources available to the Department in meeting its obligations to monitor and enforce affirmative action programs is also part of our data collection. This information will benefit enforcement of individual and class action complaints.

Question 4.

Section 1413 (a) of the Labor Code defines affirmative action as follows:

- (g) "Affirmative actions" mean any educational activity for the purpose of securing greater employment opportunities for members of racial, religious, or nationality minority groups and any promotional activity designed to secure greater employment opportunity for the members of such groups on a voluntary basis.

Section 1413(a), as quoted above, has been replaced by Government Code Section 12930(j). This section gives the Department the authority to "investigate, approve, certify, de-certify, monitor, and enforce nondiscrimination programs proposed by a contractor to be engaged in pursuant to Section 12990. This Section, now in Chapter 8 of the Fair Employment and Housing

Act, was developed in recognition that an educational activity alone is inadequate for securing greater employment opportunities for members of racial, religious, or nationality minority groups. The Department has developed a set of rules and regulations encoding contractor responsibility for nondiscrimination and affirmative actions. These rules and regulations parallel the Office of Federal Contract Compliance Regulations and are consistent with the provision of Revised Order 4.

Question 4. b)

What is necessary for a state, city or county to have an effective affirmative action program? Explain.

An affirmative action program must include a reasonable analysis of the workforce by classification and by protected classes, a program for correcting identified deficiencies, and a timetable for correcting these deficiencies, and a clear line of responsibility and accountability for ensuring compliance with the program. These are the basic elements of all affirmative action programs and although there are many additional analyses to assist management, these are usually deferred until a special problem is encountered in achieving program objectives.

Although many local jurisdictions have developed affirmative action plans, it is often difficult to implement these plans since practices of many local merit systems are in conflict with affirmative action goals and objectives. The Department has routinely encountered great difficulty in reaching settlements with local jurisdiction because of their indistinct points of decision making. This allows procrastination by local elected and appointed officials and frustrates compliance.

During our investigations of discrimination complaints, we find there is no single individual who can make a decision for a local jurisdiction and this prolongs settlement efforts and often results in the filing of an accusation. We have also found that even following an order by the Commission, payment and compliance with the terms are often delayed for many months due to the approval required at different levels.

Community groups and advocate groups are unanimous in their complaints that local jurisdictions have failed to implement and achieve basic progress in affirmative action and nondiscrimination. This is an area where legislative sanctions might be strengthened in order to provide a stronger incentive for compliance with California's laws.

Question 5.

Section 1418 of the Labor Code gives the Fair Employment Practices Commission the authority to 1) formulate policies to effectuate the purposes of the Act, and 2) make recommendations to agencies and offices of the state and local government in aid of such policies and purposes. How does FEH interpret this law? What has the Commission done in this area? Be specific.

(TO BE ANSWERED BY THE FEH COMMISSION STAFF.)

Question 6. a)

What is FEH's interpretation of Section 1419.7 of the California Labor Code?

Government Code Section 12931 states:

"The department may also provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age which impair the rights of persons in such communities under the Constitution or laws of the United States or of this state.

The services of the department may be made available in cases of such disputes, disagreements, or difficulties only when, in its judgment, peaceful relations among the citizens of the community involved are threatened thereby.

The department's services are to be made available only upon the request of an appropriate state or local public body, or upon the request of any person directly affected by any such dispute, disagreement, or difficulty."

"The assistance of the department pursuant to this section shall be limited to endeavors at investigation, conference, conciliation, and persuasion."

The Department interprets this section to allow us to provide assistance on request in resolving disputes, disagreements, or difficulties.

Question 6. b)

What limitations does it place on FEH? Cite illustrations.

I can offer no illustrations of limitations this section places on FEH.

Question 6. c)

Has any state or local public body requested FEH's assistance? Has any person ever requested FEH's assistance under Section 1419.7 of the California Labor Code?

Several local public bodies have requested and received assistance from FEH. Most recently, requests from Santa Fe Springs in Los Angeles County, Galt in Sacramento County, Richmond, California, and San Jose to name a few. In Butte County, a request was received from an individual on behalf of affected members in that community.

Question 7.

What capacity do Human Relations Commissions serve relative to FEH's enforcing policy in the area of fair employment practices or affirmative action in employment?

Human Relations Commissions traditionally act as investigative, conciliation, and mediation groups and not as enforcement entities.

The Department is exploring means to expand our enforcement ability through closer working relationships with Human Relations Commissions.

Question 8. a)

Can the philosophy of the agency secretary influence the effectiveness of the Fair Employment and Housing Department? What has the difference in effectiveness of FEH been over the years, i.e. under prior executive administrations?

The Department of Fair Employment and Housing reports to the Secretary for State and Consumer Services Agency. The Secretary reviews all departmental requests for budget and resources, legislation, and other administrative matters affecting the Department. The Secretary has veto power over these functions. Philosophy influences the kinds of decisions made during this review process.

The effectiveness of FEH is difficult to measure since the appropriate yardstick would be the increase or decrease in discriminatory activity in California. The ability of the Department to more effectively enforce the laws covering discriminatory activity has been enhanced during this administration by providing additional enforcement tools to the FEHA; by separating the enforcement and judicial functions, and through a greatly enhanced budget from a total staff of 93 in 1977 to 243 in 1980.

Question 8. b)

Is there a material difference between a state agency such as FEH and the PUC? Explain.

The Department of Fair Employment and Housing is an executive Department located within the State and Consumer Services Agency, and responsible to both

the Agency Secretary and the Governor's office. The Public Utilities Commission is an independent regulatory Commission.

Question 9.

What federal agencies have concurrent jurisdiction with FEH?

Equal Employment Opportunity Commission

Title VII
The Age Employment Discrimination Act of 1967
The Equal Pay Act of 1962

The Department of Labor

The Rehabilitation act of 1973, as amended
Sections 503 and 504

Office of Federal Contract Compliance

Federal Contractors and Subcontractors
(Revised Order 4)

Department of Education

Title IX (employment)

Department of Housing and Urban Development

Title VI

Question 10. a)

How many discrimination or fair employment practices complaints have been filed by state employees or against state agencies within the last five years? Categorize the complaints as to whether allegations relate to examination, promotion, initial application for hiring or harrassment.

From January, 1977 through June, 1980, 788 complaints where filed by state employees against state funded agencies and departments.

Refusal to Hire	- 199
Unequal Pay	- 31
Termination	- 167
Differential Treatment	- 151
Harassment	- 52
Denied Promotion	- 141
Work Conditions	- 4
Referral Withheld	- 2
Union Discrimination	- 8
Other	- 33

Question 10. b)

How many complaints received had been reviewed by the State Personnel Board and dismissed for lack of merit, but in your opinion had merit?

The Department has no way of providing this information.

Question 11.

How many discrimination of fair employment practice complaints have been filed against cities and counties?

For the period January, 1977, through June 1, 1980, 2,322 employment discrimination complaints were filed.

Question 12. a)

In 1978 FEH was given the legislative authority to accept class action complaints; what does this mean? Has FEH initiated any class action suits? What is the criteria FEH uses to determine whether such action is warranted?

The Department has the authority to initiate class action complaints on behalf of a protected class. The Department has initiated several class action suits on behalf of aggrieved individuals. The criteria, used by the Department is described in the attached Directive.

Question 12. b)

Would this authority apply to state, county or city agencies?

Yes.

JAL/clu
10/1/80
Attachments





Equal Employment Opportunity Commission

Fox Plaza

San Francisco District Office

1390 Market Street, Suite 924

San Francisco, California 94102

Telephone (415-556-2118)

September 30, 1980

Honorable Elihu M. Harris
Chairman, Select Committee on
Fair Employment Practices
Assembly
1116 Ninth Street, Room 31
Sacramento, California 95814

Dear Senator Harris:

I very much appreciate your invitation to appear before the Assembly Select Committee on Fair Employment Practices. The following is a summary of my answers to the questions which you submitted to me for response.

1. Question: What is the general jurisdiction of the Equal Employment Opportunity Commission in the area of affirmative action relative to the state and local governments of California.

Response: The Equal Employment Opportunity Commission enforces Title VII of the Civil Rights Act of 1964, the Equal Pay Act and the Age Discrimination in Employment Act. With one exception, these acts prohibit discrimination but they do not require affirmative action in the sense of action taken to assure equal opportunity where no unlawful discrimination is involved. The exception is, generally speaking, the executive branch of the Federal government which is required by Title VII to adopt appropriate affirmative action plans.

Affirmative action aside, the above laws apply to state and local governments and agencies, except that they do not protect a person who is elected to public office; or a person chosen by an elected person to be on his or her personal staff; or an appointee on the policymaking level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office.

2. Question: How many discrimination or equal employment opportunity complaints have been filed by state employees with EEOC in light of the California court ruling that prohibits the California Fair Employment Practices Department from receiving subject complaints?

Response: Since February 1, 1980, when it was first ruled that the Department of Fair Employment and Housing does not have jurisdiction over charges of discrimination by State employees, 214 State employee charges have been filed with the EEOC. It is impossible to determine how many of these would have been filed with the EEOC if there had been no change in the jurisdiction of the DFEH.

3. Question: What is necessary for a state, city or county to have an effective affirmative action program?

Response: Stated simply, all that is needed is a careful and realistic evaluation of the agency's workforce and of the availability of persons with skills actually needed by the agency, and a reasonable and successful effort to make the agency's workforce truly representative of the people available to it. For a more detailed description of the elements of an affirmative action program, see section 1608.4 of the Commission's Guidelines on Affirmative Action, 29 C.F.R. Part 1608 (1979).

4. Question: Under existing federal law, are states mandated to monitor or do oversight of cities/counties relative to affirmative action programs?

Response: Not under any law that I am aware of.

5. Question: Does the Federal Merit System Act require compliance with equal employment opportunity laws or affirmative action mandates relative to state, city and county civil service systems?

Response: Yes, there are such requirements for any state,

county, or city receiving funds under some 21 Federal grant-in-aid programs.

6. Question: Do federal regulations permit contractors to count a person who is Hispanic or Black as being both part of an ethnic group and in the female category?

Response: Yes.

7. Question: Has EEOC threatened sanctions or levied sanctions against any California state agency or department because of deficiencies in affirmative action programs.

Response: The EEOC has no way of actually enforcing the laws it is responsible for except by civil suit. It cannot sue a state or local agency for a violation of Title VII, but it can sue such a public agency for a violation of the Equal Pay Act or the Age Discrimination in Employment Act. At present the EEOC is suing the California Department of Parks and Recreation for an equal pay violation we believe to have taken place in 22 of its Area III offices (EEOC v. State of California, Department of Parks and Recreation, Civ. No. 80-2157 WAI, N.D. Cal., filed June 3, 1980); and the California Youth Authority for maintaining a maximum age limitation of 35 for persons applying for the positions of group supervisor and youth counselor (EEOC v. Pearl S. West, Director, California Youth Authority, Civ. No. S-79-662 LKK, filed September 21, 1979).

Sincerely,



FRANK A. QUINN
District Director

FAQ:gs



U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Office of Federal Contract Compliance Programs
450 Golden Gate Avenue, Room 11435
San Francisco, CA 94102



September 29, 1980

Honorable Elihu M. Harris
Chairman
Select Committee on Fair
Employment Practices
California Assembly
1116 Ninth Street, Room 31
Sacramento, CA 95814

Dear Assemblyman Harris:

The attached written response is furnished to reply to your letter of September 19, 1980 to Mr. James Caudillo, Regional Representative, U. S. Department of Labor.

I will be present to testify at the interim hearing at 10 AM on October 1 and 2, 1980.

Sincerely,

WILLIAM GLADDEN
Assistant Regional Administrator
for OFCCP/ESA, Region IX

Attachment

QUESTIONS FOR RESPONSE

1. What is the general jurisdiction of the Department of Labor in the area of affirmative action relative to the state and local governments of California?

Answer

The Department of Labor's jurisdiction in the area of affirmative action relative to state and local governments of California is established under Executive Order 11246, as amended, and Code of Federal Regulations, Part 60-1, Obligations of Contractors and Subcontractors; Part 60-250, Affirmative Action Obligations of Contractors and Subcontractors for Disabled Veterans and Veterans of the Vietnam Era; and Part 60-741, Affirmative Action Obligations of contractors and Subcontractors for Handicapped Workers.

Section 202 of Executive Order 11246 requires that contracts of \$10,000 or more contain the following EEO clause:

"The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause."

Part 60-1, Obligations of Contractors and Subcontractors 41 CFR 60-1.5(4): Contracts with State or Local Governments

The requirements of the equal opportunity clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract. In addition, any agency, instrumentality or subdivision of such government, except for educational institutions and medical facilities, are exempt from the requirements of filing the annual compliance report provided for by 60-1.7(a)(1) and maintaining a written affirmative action compliance program prescribed by 60-1.40 and and part 60-2 of this chapter.

41 CFR 60-250: Affirmative Action Obligations of Contractors and Subcontractors for Disabled Veterans and Veterans of the Vietnam Era.

Purpose and application (41 CFR 60-250.1)

The purpose of this regulation is to assure compliance with Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, which requires government contractors and subcontractors to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era. This regulation applies to all government contracts and subcontracts for the furnishing of supplies or services, or for the use of real or personal property (including construction) for \$10,000 or more.

41 CFR 60-250.3(4): Contracts with State or Local Governments:

The requirements of the affirmative action clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract.

41 CFR 60-741: Affirmative Action Obligations of Contractors and Subcontractors for Handicapped Workers.

Purpose and application (41 CFR 60-741.1)

The purpose of this regulation is to assure compliance with Section 503 of the Rehabilitation Act of 1973, which requires government contractors and subcontractors to take affirmative action to employ and advance in employment qualified handicapped individuals. This regulation applies to all government contracts and subcontracts for the furnishing of supplies or services or for the use of real or personal property (including construction) for \$2,500 or more.

41 CFR 60-741.3(4): Contracts with State or Local Governments:

The requirements of the affirmative action clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract.

2. How many complaints has the DOL received from state employees, local government employees or special interest groups concerning the failure of governmental agencies and entities to comply with affirmative action guidelines? If any, how many? What resulted?

Answer

During the period of February 1979 to September 1980, DOL received a total of 77 complaints from State employees. Of these, 73 were filed against the University of California or the California State University colleges. The others were filed against the California State Employment Development Department (EDD) and the Department of Social Services, Sacramento, California.

All complaints were filed under Executive Order 11246, as amended. The bulk of the complaints involved sex discrimination. Disposition is as follows:

Received	77
Closures*	-44
Balance open pending completion of investigation	<u>30</u>

*Basis for closure:

- No jurisdiction.
- Coverage not established.
- Complaint withdrawn.
- Investigation completed - no violation.
- Transferred to EEOC (under Memorandum of Understanding).
(Individual complaints - not involving sex).

Complaints received from local government employees during February 1979 to September 1980:

Received	37
Closures*	-29
Balance open pending completion of investigation	<u>8</u>

*Basis for closure:

- No jurisdiction.
- Coverage not established.
- Transferred to EEOC (Memorandum of Understanding).
- Settlement (\$11,815, City of Menlo Park).

The 8 pending disposition and/or completion involve:

1. Department of Water & Power, Los Angeles
2. County of Los Angeles
3. Contra Costa College, San Pablo
4. Santa Clara County, San Jose

5. City of Oakland, Oakland
6. City of Los Angeles, Sheriff's Department
7. Los Angeles County, Museum of Natural History
8. City of Santa Clara

3. How does the federal government define adverse impact? How is it determined?

Answer

The Department of Labor defines adverse impact in 41 CFR 60-3 as a substantially different rate of selection in hiring, promotion, or other employment decision which works to the disadvantage of members of a race, sex or ethnic group.

While policies governing personnel transactions may be neutral on their face, they may have a discriminatory effect (adverse impact) upon the employment opportunities of minorities and women.

While this "substantial rate" can be determined in a variety of ways, the guidelines provide a "rule of thumb" as a practical means of determining adverse impact. This rule is called the "4/5ths" or "80%" rule. If a group's rate of selection is less than 80% of the most favored group, the group suffering the lower rate is experiencing adverse impact.

Adverse impact is determined by a four step process:

1. Calculate the rate of selection for each ethnic/sexual group (divide the number of persons selected from a group by the number of applicants--or candidates--from that group).
2. Determine which group is experiencing the most advantageous rate. (For positive personnel actions -- hiring, promotion, transfer -- the highest rate is most advantageous. For negative actions--lay-off, terminations -- the most favored group has the lowest rate).
3. Calculate the impact ratio by comparing the selection rate for each group with that of the most favored group.
 - a. For positive actions, place the most favored group's rate in the denominator position.
 - b. For negative actions, place the most favored group's rate in the numerator position.
4. Observe whether the resulting ratio for any group is less than .8. If it is, adverse impact is indicated against the less favored group.

NOTE: Any impact ratio of less than .8--regardless of whether it is a positive or negative personnel action--indicates adverse impact.

This four step process is easiest when comparing males and females since there are only two groups.

Example:

No. of persons in Job Group (by sex) beginning of AAP period	No. of promotions from job group (by sex) during AAP period
Men 30	10
Women 10	2

Using the 4-step process, the Impact Ratio Analysis would be as follows:

1. Calculate the rate of selection for each group (rounded off to two decimal places).

$$\text{Men} \quad \frac{10 \text{ promotions}}{30 \text{ potential promotees}} = .33$$

$$\text{Women} \quad \frac{2 \text{ promotions}}{10 \text{ potential promotees}} = .20$$

2. Determine which group is experiencing the most advantageous rate.

Since this is a positive personnel action, the most favored group is the group with the highest selection rate, i.e. men.

3. Calculate the impact ratio by comparing the selection rates for the two groups. (Again, round off to two decimal places).

Since this is a positive action, the most favored group's rate (in this case males) is in the denominator position.

$$\frac{.20 \text{ female rate}}{.33 \text{ male rate}} = .61$$

4. Observe whether the impact ratio is less than .8. If so, adverse impact exists against the less favored group(s).

Since .61 is less than .8, adverse impact exists against women.

4. a) Does the federal government use workforce parity or population statistics as the bases to determine bottom line data? If workforce parity is used, how is it defined and applied? What are the exceptions?
- b) Are states mandated to use workforce parity under federal law?

Answer

- a) No
- b) No

According to the Department of Labor regulations, a contractor must "consider" 8 separate factors in estimating availability for minorities and another 8 when estimating availability for women. Most of these factors are identical but some are different. Each factor is called an availability factor. Thus, the contractor is required to determine a bottom-line availability estimate for each job group after considering the 8 factors for each protected group.

Availability factors that contractors must consider when determining availability for minorities are as follows:

1. The minority population of the labor area surrounding the facility.
2. The size of the minority unemployment force in the labor area surrounding the facility.
3. The percentage of the minority workforce as compared with the total work force in the immediate labor area.
4. The general availability of minorities having requisite skills (the skills needed to do the work required in the job group) in the immediate labor area.
5. The availability of minorities having requisite skills in an area in which the contractor can reasonably recruit.
6. The availability of promotable and transferable minorities within the contractor's organization.
7. The existence of training institutions capable of training persons in the requisite skills.
8. The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.

The availability factors which contractors must consider for women are as follows:

1. The size of the female unemployment force in the labor area surrounding the facility.
2. The female workforce as a percentage of the total workforce in the immediate labor area.
3. The general availability of women having requisite skills in the immediate labor area.
4. The availability of women having requisite skills in an area in which the contractor can reasonably recruit.
5. The availability of women seeking employment in the labor or recruitment area of the contractor.
6. The availability of promotable and transferable female employees within the contractor's organization.
7. The existence of training institutions capable of training persons in the requisite skills.
8. The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to women.

--Contractors are not required to follow any hard and fast rules for using the 8 factors to come up with an overall availability estimate for each job group. The regulations say only that the contractor must "consider" these 8 factors.

--As a result, availability estimates are highly judgmental on the part of both the Department and the contractor.

Availability shows the proportion of women or minorities available for employment in a given job group. A contractor's AAP must contain an availability estimate for both minorities and women for EACH job group.

Availability indicates the level at which minorities or women might be expected to participate in a job group if employment decisions were made without regard to race or sex.

Availability is expressed as a percentage figure--for example, the availability of women for the auditor job group is 12%. Thus, availability attempts to translate the concept of nondiscrimination into numerical terms.

Availability also acts as the starting point for the utilization analysis, the determination of how well a contractor is utilizing (employing) protected groups within each job group in the establishment.

If the proportion of minorities in a job group is lower than their availability--no matter by how much--minorities are considered to be underutilized in that job group. Likewise, if the proportion of women in a job group is lower than availability, women are underutilized in the job group.

5. a) What counties and cities have been penalized for non-compliance with federal mandates for affirmative action in hiring and promotions either by court litigation or action by DOL?

Answer

None

- b) What were the circumstances that caused DOL to levy sanctions or threaten punitive action?

Answer

None

6. How does DOL view the overall affirmative action programs of the following cities and counties?

Cities

Los Angeles
Oakland
San Diego
San Fernando
Santa Rosa
Sacramento
San Francisco

Counties

Alameda
Butte
Los Angeles
Sacramento
San Diego

Answer

Inasmuch as these cities and counties are exempt from the formal written affirmative action programs, we have dealt with their programs in a very limited way, generally in conjunction with complaints.

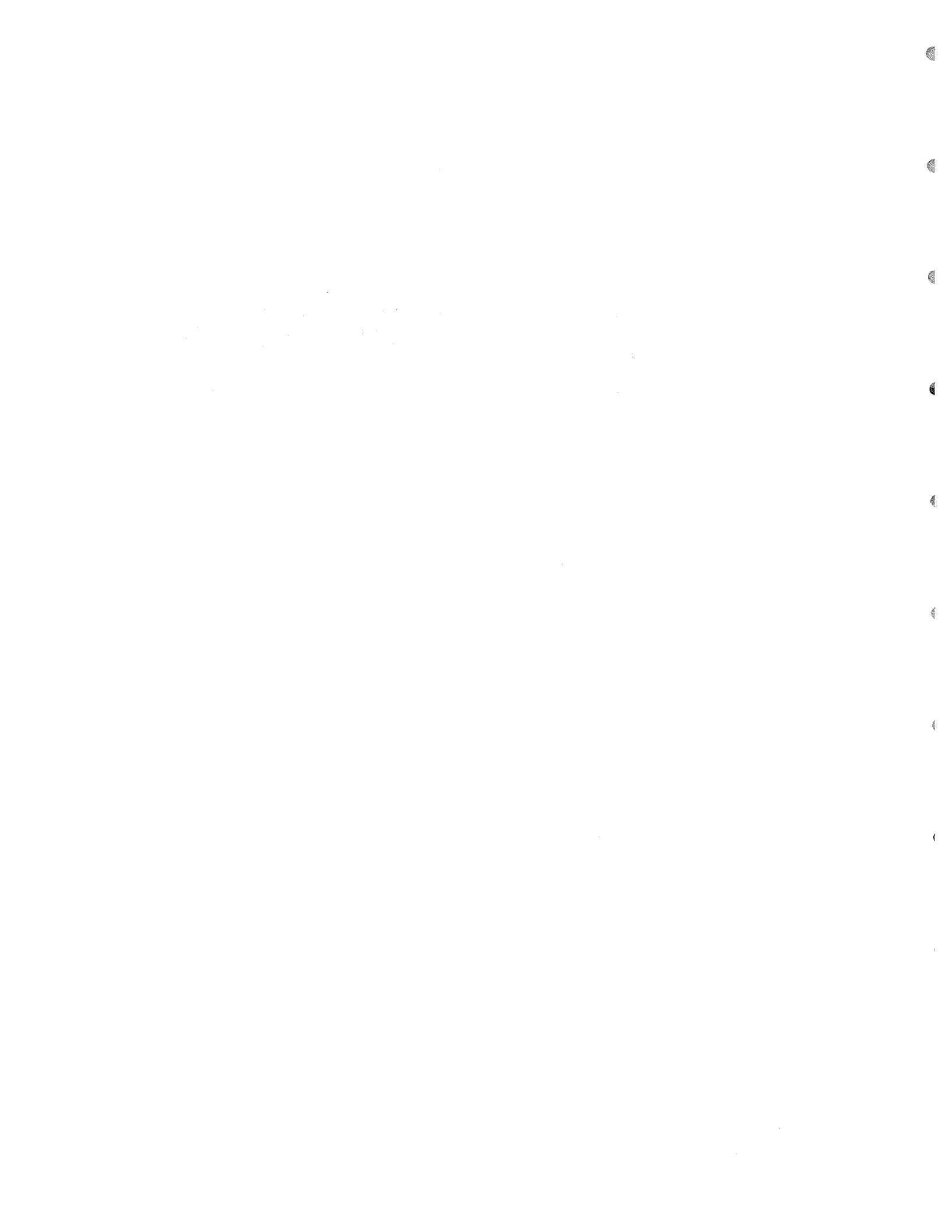
To the extent of our limited experience, the plans we have seen have fallen far short of what would be required of an industrial establishment.

A major problem seen in city and county programs is selection criteria and the use of tests and other selection methods that tend to have an adverse effect upon the selection of minorities and females. We also see unrealistic job prerequisites that work to the disadvantage of minorities and females.

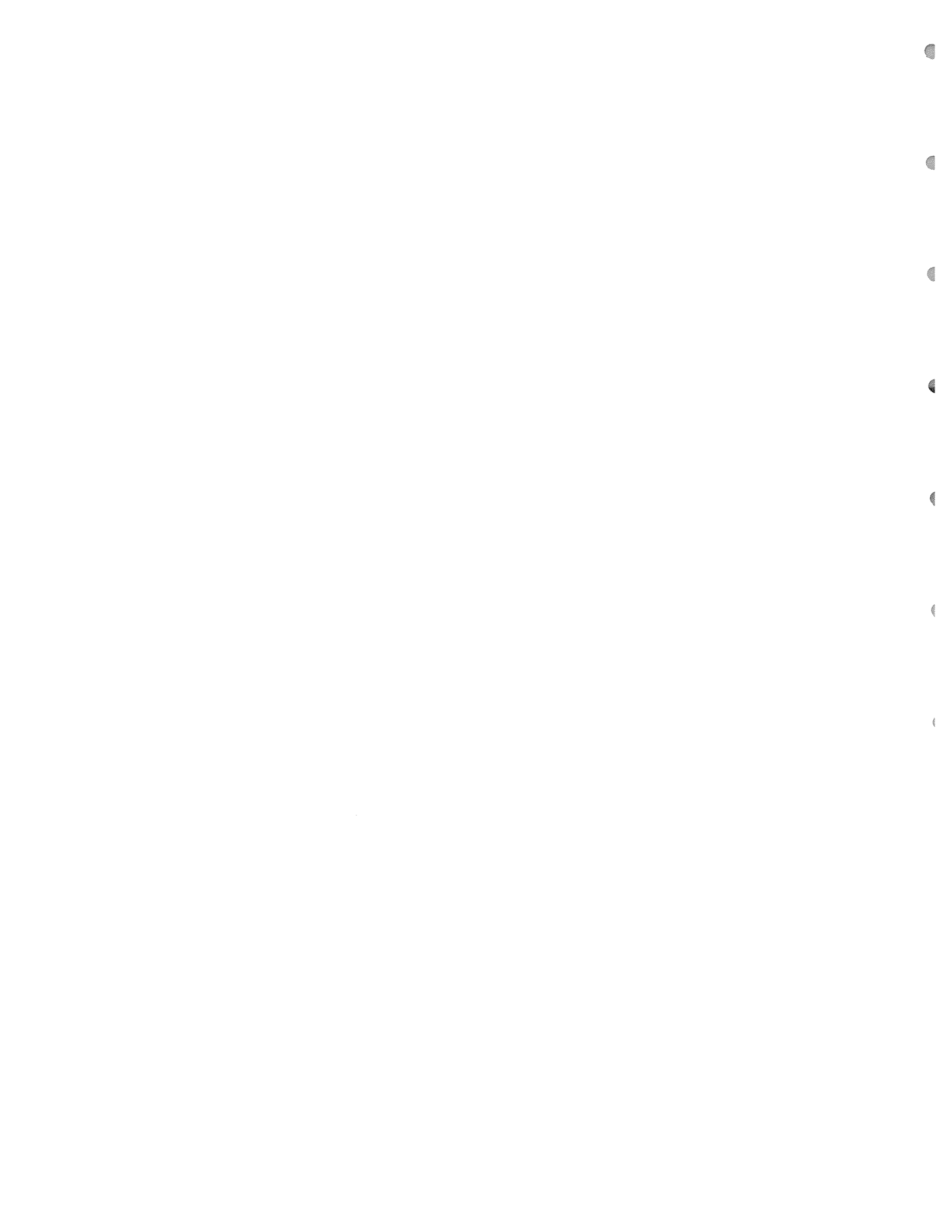
7. List any sanctions, threatened sanctions, past court litigations, threatened litigations and pending litigations against the aforementioned cities and counties.

Answer

Although some complaint investigations are in progress, no litigation or sanction actions have been taken against any of these cities and none are presently contemplated. There have been some individual handicap complaint settlements. Handicapped complaints are our major activity relative to these cities and counties.



WRITTEN TESTIMONY
SUBMITTED BY
CITIES & COUNTIES



AFFIRMATIVE ACTION IN THE PUBLIC SECTOR

Testimony of

JOHN J. DRISCOLL
General Manager
Personnel Department
City of Los Angeles

Good afternoon! My name is John Driscoll. I'm the General Manager of the Personnel Department of the City of Los Angeles. I appreciate the opportunity to testify before this Committee regarding affirmative action in the public sector, and I hope that my comments will be useful.

The City of Los Angeles has been in the affirmative action business for several years now since we adopted our original Affirmative Action Program in 1971. Our Program has been organized around the belief that affirmative action represents a logical extension of the merit principles of personnel administration. We believe that affirmative action should occupy a significant place in the City's overall personnel management program, and thus, the thrust of our efforts has been to integrate affirmative action into our existing merit system and to modify and use the civil service structure to accomplish affirmative action objectives.

We believe that we can see some progress as a result of our efforts. Since June 1973, the percentage of minorities in management positions has more than doubled from 5.2% to 12.3%; the percentage of minorities in professional positions has increased from 18.5% to 29.9% and the overall percentage of women in our work force has increased from 16.0% to more than 19.5% -- all of these increases despite the fact that our full-time work force has been steadily declining from a high of 44,000 to its present level of approximately 37,000.

Upward Mobility

The Committee has specifically asked for testimony regarding the effectiveness of our upward mobility efforts. We believe that our approach of working to accomplish affirmative action objectives within the merit system has been particularly effective in providing upward mobility. Within our system, women and minorities have been successful in competitive examinations for promotion, and we have enhanced that success through several techniques including career ladder guides which help people prepare for promotions, recognition of volunteer experience, and most significantly, through the use of bridge class and trainee positions.

Most public agencies have historically extended equal employment opportunity to women and minorities. The problem has been that larger discriminatory patterns within society as a whole have denied these groups the opportunity to enhance their education and work experience. The result is that they have been concentrated in lower level occupational categories. Bridge and trainee classifications provide them with an opportunity to gain the on-the-job training and experience necessary to qualify for promotion to professional, administrative, and non-traditional jobs. Many women and minorities have used these classifications as a vehicle for advancement, and this partially accounts for the increases cited earlier.

Monitoring

I have also been asked to describe the means by which our program is monitored. Our affirmative action efforts are the subject of close

and ongoing scrutiny from a variety of sources. The City's Personnel Department has a continuing program to monitor our own results and the efforts of the City's various operating departments. We prepare semi-annual analyses of various aspects of the composition of our work force, and we require each operating department to submit semi-annual reports describing their affirmative action plans and problems. Our staff constantly reviews our practices and procedures to identify artificial barriers to the employment of women, minorities, and the handicapped. We also use the City's Discrimination Complaint Procedure to identify personnel practices which have an adverse effect on these groups, and to take corrective action regarding such personnel practices to eliminate causes for future complaints.

Our Affirmative Action Program provides, too, for internal monitoring outside the immediate jurisdiction of the City's Personnel Department. In 1975, the Mayor established an Affirmative Action Task Force composed of high level representatives of various key agencies within the City. This Task Force meets regularly to review the City's affirmative action efforts and the efforts of the various operating departments. It periodically makes recommendations to the Mayor for short- and long-term efforts to enhance affirmative action. Using its access to the top elected official of the City, the Task Force attempts to bring the crucial issues to his attention and has been able to initiate some significant breakthroughs in affirmative action.

Like most other large employers, the City of Los Angeles is under constant review by both State and Federal compliance agencies. This

review comes in the form of individual discrimination complaint investigations and through major compliance reviews. It appears to me that such review has had little positive effect on our affirmative action efforts, because such enforcement agencies have placed much greater emphasis on their role as representatives of complainants than they have on offering constructive advice on accomplishing affirmative action objectives. The effect of their complainant orientation is to tie up our resources in responding to complaints and exhaustive compliance reviews -- resources which could be better spent in accomplishing affirmative action efforts. A change in the orientation of these agencies could have a significant effect on our affirmative action efforts.

Program Input

Finally, I have been asked to describe the input which public employee representatives and community groups have made to the planning of our affirmative action programs.

The City's Affirmative Action Program established an Advisory Affirmative Action Committee composed of representatives of the various minority, women, and handicapped employees' associations. This group reviews our affirmative action efforts and programs, and advises us of shortcomings in our approach. The Committee also frequently suggests innovative approaches to improving our representation and our personnel practices in general. This Committee represents virtually the sole input from City employees; traditional labor relations organizations have had a negligible interest in or input on affirmative

action issues. Although our relationship with the Committee has been highly charged at times, the overall impact of this group has been significant, and I enthusiastically encourage adoption of similar groups within other public agencies.

We have solicited community input through a variety of means. We periodically send affirmative action bulletins to a wide variety of community groups, and we maintain liaison with these groups through the offices of the City's various elected officials. For the most part, however, the input of community organizations has been extremely limited, and their most helpful role has been as a recruitment source for persons from disadvantaged groups.

Civil Service Reform

I have responded to the three questions with respect to which the Committee has solicited my testimony, but while I have the opportunity, there are some additional points which I would like to make.

Earlier, I pointed to some of the successes of our affirmative action efforts. I believe, however, that these represent only modest improvements, and I am concerned that there have not been more dramatic changes. There are certainly a number of factors which contribute to the lack of dramatic improvements, but I believe that the most significant barriers to the accomplishment of public sector affirmative action objectives are the civil service systems on which public personnel programs are based.

The civil service rules, policies, and procedures under which most of us operate were designed to eliminate spoils and to encourage merit selection, and they have created systems which are largely job-related and which provide a measure of equal employment opportunity. These systems, however, are rigidly competitive systems which can disadvantage those groups which have been discriminated against within this society.

Historical discrimination against women, minorities, and the handicapped both in the opportunities afforded them and the roles to which they have been assigned places them at a serious disadvantage in competing in civil service selection procedures which score people to the hundredths of a point. That does not mean that civil service examinations are inherently discriminatory. Our examinations have always been designed to measure the skills, knowledges, and abilities required for job performance, and the job-relatedness of our selection tools has improved over the past several years as we have come to use more sophisticated validation techniques and as we have come to explore techniques which have less adverse effect on the disadvantaged. The point is that in order to be successful in civil service, members of disadvantaged groups must win in competition with persons who have not been disadvantaged -- not only must they pass examinations, but they must also score high enough to be reachable under certification rules such the "Rule of Three". Moreover, the burden of disadvantage is increased by such features of civil service systems as promotion from within, seniority credit, veterans credit, and the "Rule of Three".

Thus, I believe that it is not reasonable to expect the public sector to accomplish ambitious affirmative action objectives through rigid civil service personnel systems. Public sector personnel systems need to be overhauled -- not to eliminate merit, but to provide public managers with the flexibility necessary to improve productivity and to accomplish key personnel management objectives, including affirmative action.

In Los Angeles, we have taken a step to provide this flexibility by developing a Management Service Program which will largely be exempt from civil service provisions. We hope that this Program, which will be submitted for the approval of the voters in the forthcoming election, will provide greater flexibility in selecting and assigning managers and that it will provide a means to hold our managers accountable for their efforts to accomplish public objectives, including affirmative action. We have also requested funding for a major review of the City's entire civil service system. We intend that this study will help us identify the aspects of the system which need to be reformed and that the study will provide us with alternative approaches which will make our personnel system more effective and more responsive to public objectives.

Obviously, these efforts represent merely the first steps. In order to accomplish them and the necessary succeeding steps, we are going to need the support of the electorate and this Legislature. Any assistance which you can provide in promoting civil service reform and in increasing the flexibility which public managers have in personnel matters will have a significant effect on our ability to accomplish affirmative action objectives.





OFFICE OF THE
COUNTY ADMINISTRATOR

September 25, 1980

Mr. Elihu Harris
Chairman, Assembly
California Legislature
Select Committee on Fair Employment Practices
1116 Ninth Street Room 31
Sacramento, CA 95814

Dear Chairman Harris:

This is in response to your request for a written testimony for the State Assembly Select Committee on Fair Employment Practices hearing. Due to the delay in receiving your request, the County of Alameda is providing a brief outline of its testimony below. The County's Affirmative Action Officer will be present at the hearing to make a more detailed presentation.

1. How effective is your program in providing upward mobility?

The County has had an Affirmative Action Program since 1972. From 1972 to the present, the participation of minorities and women has increased respectively from 32% and 59% in a workforce of 8,701 employees to 41.9% and 61.3% of 9,057 employees. It is the expressed and written policy of the County to promote qualified minorities and women in the County's workforce. The policy also calls for the creation of career ladders and lattices, job restructuring and enrichment to facilitate promotions. Prior to the passage of Proposition 13 in 1978, many of the County's agencies and departments developed training positions to qualify minorities and women for positions in areas such as library science, health and social services, public works, auditing, probation work, and public administration. This effort is adversely affected with the increased financial constraints. In spite of this, the County's current classification system continues to provide classification series through which minorities and women can promote from entry level positions to journeymen, senior and management level positions. Two separate, recent surveys show that in the aggregate, minorities represent one-half and women represent three-fourths of 748 employees promoted within the County. We recognize the need for more training positions, bridge positions, as well as apprenticeship programs to broaden employment opportunities and upper mobility for minorities and women.

Chairman Elihu Harris
September 25, 1980
Page 2

2. How is the Affirmative Action Program monitored?

The County's Affirmative Action Officer, located in the County Administrator's Office, is responsible for monitoring the County's Affirmative Action Program for the County Administrator and the Board of Supervisors. This responsibility is also shared by Affirmative Action Coordinators in each County agency and department. Every County department has a written Affirmative Action Plan containing goals and timetables for the employment and promotion of minorities and women. Recognizing the need for accountability, the written plans are closely monitored through means which include an ongoing analysis and review of automated and manually prepared reports concerning ethnic and sexual composition in major personnel activities, holding periodic meetings and workshops to discuss progress or lack thereof in the programs, and recommending changes to department officials and the County Board of Supervisors.

3. How do public employee representatives and community groups contribute to the planning of the program?

Public employee representatives and community groups are actively engaged in the planning of County programs through their participation in the County Board of Supervisors' meetings, Human Relations Commission, Commission on the Status of Women, meet and confer sessions, employee advisory committees, task forces, and community advisory committees.

I look forward to seeing you at the hearing on October 1, 1980. I will be prepared to address the issues listed in your letter of September 18, 1980.

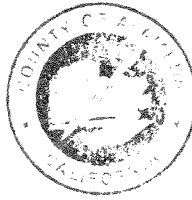
Very truly yours,



REBECCA CHOU-JOHNSTON
AFFIRMATIVE ACTION OFFICER

RCJ:hs

cc Mel Hing, County Administrator
Al Nardi, Director of Personnel



OFFICE OF THE
COUNTY ADMINISTRATOR
Elihu Harris, Chairman
Assembly California Legislature
Select Committee on Fair Employment Practices
1116 9th Street Room 31
Sacramento, CA 95814

October 24, 1980

Dear Chairman Harris & Committee Members:


In addition to the written and personal testimony furnished by the County of Alameda at your October 1st Select Committee on Fair Employment Practices hearing, the County has the following to offer concerning affirmative action for the disabled and Vietnam Era veterans.

In 1978, the County of Alameda completed a self-evaluation of accessibility to the handicapped as required by the U.S. Department of Health, Education & Welfare Handicap Regulations. A Facility Modification Plan was subsequently developed in an effort to increase handicap accessibility to buildings where health, welfare and other services are offered. With respect to employment for the disabled, the County adopted an Affirmative Action Program for Disabled Persons, Disabled Veterans and Vietnam Era Veterans in 1979. Although this program does not contain goals and timetables, one of its provisions for systemic review and changes is an aggressive step toward removal of artificial barriers to the employment of disabled persons. Another important provision is the making of reasonable accommodations for an otherwise qualified disabled applicant for employment or employee.

The County is currently in the process of surveying buildings which have not previously been inspected. When these survey results are compiled, it will involve disabled persons in the evaluation and planning of any program or facility changes.

In order to make its program more effective, the County is in need of meaningful and reliable statistics concerning disabled persons' population and labor force representation. The State Employment Development Department may be the agency which should take action to produce such statistical information in order to facilitate the establishment of goals and timetables by local governments in their affirmative action programs for the disabled.

Very truly yours,

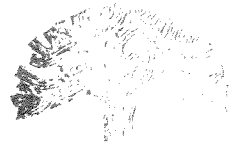

REBECCA CHOU-JOHNSTON
AFFIRMATIVE ACTION OFFICER

RCJ:hs

cc: Members, Board of Supervisors
Mel Hing, County Administrator
Naomi Burns, Employee Relations Coordinator
Charles Cruttenden, Leg. Representative
Allan P. Burdick, CSAC



CITY OF OAKLAND



CITY HALL • 14TH AND WASHINGTON STREETS • OAKLAND, CALIFORNIA 94612

Office of the City Manager
David A. Self
City Manager

October 15, 1980

Elihu M. Harris, Chairman
Select Committee on Fair Employment Practices
1116 Ninth Street, Room 31
Sacramento, CA 95814

Dear Assemblyman Harris:

In response to the referenced Committee's request, we are happy to share information related to our affirmative action efforts. The City's Affirmative Action Policy dates back to 1969. A number of programs have been developed to increase the City's ability to implement this policy. The attached overview of the City's various Affirmative Action Programs for employment and contract services will illustrate our successes as well as goals that are yet to be accomplished.

We feel that Oakland is unique in two respects in the area of affirmative action. First, under our Affirmative Action Program for the purchase of supplies and commodities, we give bid preference for local and minority vendors. Local vendors are awarded 3 percent and minority vendors 5 percent above the actual amount of their bids. This program has been very effective in assisting local businesses to provide the goods needed by the City. The rippling effect of this program are many, i.e., more jobs for Oakland residents; reduces our unemployment rate; stimulates the economy; encourages those firms seeking to do business with the City to remain in Oakland and new firms to relocate here; expands the City's tax base; etc. The details of the program are provided on page 6 of attachment. Secondly, Oakland is unique in the fact that a minority female placed number 1 on the last firefighters eligible list. Twenty-one additional females made the list and three have been hired by the Fire Department.

Oakland, with its high concentration of minorities is fortunate to have a City administration that is very responsive to and supportive of affirmative action. City staff aggressively implements the Council's policy to provide equity in all aspects of City services, employment and contracts. We feel that Oakland is clearly establishing a leadership role in the area of Affirmative Action.

Should you have questions regarding the information provided, please contact the City's Affirmative Action Officer, Ms. Floydean Greenlow, at (415) 273-3500.

Sincerely,

A handwritten signature in cursive script that reads "David A. Self".
David A. Self

FG:vmd
Attachment

SECTION I

Employment

A. Affirmative Action Policy

On April 17, 1969 the City of Oakland adopted its Affirmative Action Policy regarding employment. On July 20, 1976 the Council adopted relevant labor market as the yardstick for measuring equal representation in City jobs. This policy was changed in October 1977 to require:

"That for City of Oakland employees as a whole, as well as for each City Department, the racial and ethnic makeup of personnel in all job categories will bear a "reasonable ratio balance" to the racial and ethnic composition of the City's general population".

The California State Employment Development Department reports that Oakland's general population for 1979 reflected 67.5 percent minority. The breakdown by racial/ethnic groups follows:

Black	47%
Hispanic	12%
Asian	7.5%
Native American	1%
White	32.5%

B. Race/Ethnic/Sex Profile of City's Administration

Mayor - Black Male (Elected 1977)

City Council - Total Members-8 Minorities-4 Females-2
Black-2 Males
Asian-2 Males
White-2 Males, 2 Females

Directors/ Department Heads - Total positions-17 Minorities-7 Females-4
Black-4 Males, 2 Females
Asian-0 Male, 1 Female
White-9 Males, 1 Female

Comparative Data on City of Oakland's Workforce
(Full-time Positions) 1977 and 1980

	<u>Total</u>	<u>Minority</u>	<u>Women</u>
July 1977	3,764	1,067 (42.7)	914 (24.3)
April 1980	3,172	1,514 (47.7)	866 (27.3)

*(592 fewer positions filled in 1980)

Full Time Positions

<u>1977</u>	<u>Management</u>	<u>Professionals</u>
In Category	87	457
Minority	22 (25.3)	194 (42.4)
Women	12 (13.8)	177 (38.7)
<u>1980</u>		
In Category	87	467
Minority	29 (33.3)	252 (54.0)
Women	18 (20.7)	205 (43.9)

New Hires and Promotions

Between October 1977 and March 1980 the City hired 866 employees. Minorities represented 74 percent (639) and women represented 38 percent (333) of the total new hires during this period.

There were 372 promotions during the same period. Minorities received 63 percent (233) and women 36 percent (135) of all promotions.

C. Responsibility

The City Manager has overall responsibility for implementing the Affirmative Action Policy of the City. The duties and responsibilities necessary for implementing and monitoring the City's program have been delegated to the Affirmative Action Officer, who reports to the City Manager. The Director of Personnel, City Attorney, City Physician, Department Heads, Management Staff and Supervisors have been assigned duties and responsibilities in their respective roles relative to implementing the City's affirmative action policy.

Each City department with 25 or more employees has designated a departmental Affirmative Action Coordinator. The Affirmative Action Coordinator serves as a liaison between the City's Affirmative Action Officer and the operating departments. All Affirmative Action Coordinators participate in an extensive Equal Employment Opportunity/Affirmative Action (EEO/AA) training program. The training provides knowledge in the pertinent EEO/AA laws, regulations and general requirements. The Coordinators responsibilities include training supervisions and managers, assisting in the implementation of the departmental Affirmative Action Plan, monitoring affirmative action activities, providing affirmative action data to Affirmative Action Officer, counseling employees regarding affirmative action concerns, investigating and resolving complaints of discrimination at the informal stage and serving as a resource person at the departmental level.

D. Monitoring

The Affirmative Action Officer, in conjunction with the Data Processing Department, maintains sex and race/ethnic and resident data on the City's workforce by City Department, job category, classification, hire date and salary. This information is displayed in a quarterly report which is shared with departmental managers. A summary report detailing various personnel activity i.e., new hire, promotions, terminations, number of Oakland residents, is submitted to the City Council quarterly. This report also summarizes the City's contract activity during the quarter. Problems are noted and recommended actions are cited in the report. The Affirmative Action Coordinators play a vital role in monitoring the Affirmative Action activities of their departments.

Construction contracts are monitored by the Public Works Department through the use of payroll records and on site visits by Contract Compliance Officers. Contract data relative to goods and commodities and professional services are monitored by the Affirmative Action Officer.

E. Upward Mobility

There are several ongoing activities focused on upward mobility. The City has adopted a tuition reimbursement plan to encourage employees to continue their education, training and skills development. Minorities and women with management aspiration and potential are encouraged to enroll in the Public Administration's Masters Program. This program is offered by Golden Gate University and classes are held at Oakland City Hall during the workday. Release time is provided for participants. In house skills training workshops are provided in addition to specialized conferences and seminars.

The City has designated approximately 100 positions "Management Exempt" (unclassified). These positions include departmental managers, their assistants and administrative support staff, i.e., City Manager, Assistant City Manager, Administrative Assistants to the City Manager and Administrative Secretaries. Appointments to the exempt positions permit more rapid placement of minorities and women because they are not subject to the formal examination and certification procedure of the Civil Service classification system. These appointments are closely scrutinized by the Affirmative Action Officer. During the last two years minority representation in management exempt positions has increased from 22 to 41 percent. During the same period, women representation went from 29 to 34 percent. The majority of these individuals were promoted from within the City to the Management Exempt group.

The City is currently reviewing its classification structure to determine where bridge classes can be established to facilitate more flexibility in promotional progression. The major focus of the review will be to eliminate dead end jobs.

SECTION II

Contractors' Affirmative Action Requirements

The City's Affirmative Action program for contractors covers contracts let by Public Works, Purchasing, and all City departments using professional services contractors. A brief overview of each program follows.

A. Public Works

On March 6, 1979 the City Council adopted the Minority Business Enterprise Program and the Affirmative Action Employment Program as part of the affirmative action provisions for Public Works contracts. This Program became effective on April 6, 1979.

The major provisions of the Minority Business Enterprise Program are:

1. The establishment of a goal of 26% for the participation of minority business enterprises in public works contracts.
2. A requirement for bidders to notify minority contractor associations, minority business development centers, minority supplier associations and/or clearinghouses of their intention to solicit minority business enterprise participation at least two weeks prior to the bid opening. Such notification shall be by registered or certified mail.
3. Within two (2) working days after notification of being the apparent low bidder, the low bidder will be required to list the names of all subcontractors, the work they will perform, the amount of their bid, and whether they are a minority business enterprise.
4. If the goal of 26% has not been achieved, the low bidder will be required to document their Good Faith Efforts.

The major provisions of Affirmative Action Employment Program are:

1. Requires the low bidder on contracts over \$10,000.00 to submit an Affirmative Action Employment Plan.
2. Establishes a construction work force goal of 50% minority employees on a craft-by-craft basis.
3. Establishes goal of 7% for the utilization of women in the construction work force.
4. Requires contractors to document their Good Faith Efforts if the minority and women employment goals are not achieved.
5. Prescribes procedures and penalties which may be invoked for failure on the part of the contractor to abide by the Affirmative Action Employment Program.
6. Requires a pre-award conference between the contractor and the City to review the contractor's Affirmative Action Plan.

Public Works (continued)

The Public Works Department reports the following breakdown of Construction and Physical Improvement contracts awarded to minority and local business since July 1, 1977:

<u>FISCAL YEAR</u>	<u>TOTAL</u> (MILLION)	<u>MINORITY</u> (MILLION)	<u>LOCAL</u> (MILLION)
1977-78	\$8.68	\$.46 (5.2)	\$2.20 (25.3)
1978-79	\$7.44	\$1.24 (16.6)	\$2.79 (37.5)
1979-80	\$6.69	\$1.48 (22.1)	2.89 (43.2)

The data shows that the City has made significant gains in increasing its contract with minority and local businesses on Construction and Physical Improvement contracts. During F/Y 1977-78 minority businesses only received 5.2 percent of the total dollar amount awarded for this period and local businesses received 25.3 percent. In F/Y 1979-80, minority businesses received 22.1 percent of the total dollar amount awarded and local businesses received 43.2 percent. The adoption of the Minority Business Enterprise Affirmative Action Program has had significant impact in increasing the minority business participation.

B. Professional Services Contracts

The Professional Services Contract Program is the most recent Affirmative Action Plan adopted by the City. The program became effective in February 1980. The objective of the program is to establish goals for awarding contracts by the City of Oakland to firms owned by minorities and women and to establish a procedure for the achievement of the program's goals. In its attempt to ensure that minority and women owned firms are given an equal opportunity to compete for the available contract dollars, the City established a goal of 40% for minority owned firms and 15% for women owned firms of the total Professional Services Contract dollar amount available each fiscal year.

The records show that during the period January 1, 1980 through June 30, 1980 Professional Services Contract awarded by the City amounted to \$519,650. Women owned firms received 12% or \$60,999 and minority owned firms received 45% or \$231,150 of the total contract dollars.

This data reveals that the City is exceeding the current goal of 40% for minorities and is quickly approaching the 15% goal for women owned firms. The Professional Services Contract Program is scheduled for review after one year. At the time of review, it is anticipated that staff will recommend that the goals be increased.

C. Purchasing

The revised Affirmative Action Program for purchasing supplies and commodities was adopted by Council on March 15, 1979. Major components of the program are:

1. Requiring vendors for contracts exceeding \$5,000 to submit Affirmative Action Plan to the City.
2. Establishes a bid preference on 3% for local and 5% for local minority vendors in evaluating awards on sealed bids.
3. Establishes a short term (annual) goal of 10 percent and a long range goal of 26 percent for dollars awarded to minority suppliers. The goal for local vendors was set at 55 percent.
4. Establishes a minority supplier development program. The goal of this program is to search out and assist minority suppliers in participating in the bidding process. A unique position of Minority Vendor Coordinator was established to assist the Purchasing Manager in the implementation of the program.

The Purchasing Department reports the following breakdown of contracts awarded to minorities and local vendors since July 1, 1977:

<u>Fiscal Year</u>	<u>Total</u> (million)	<u>Minority</u> (million)	<u>Local</u> (million)
1977-78	\$5.60	\$.26 (4.7)	2.74 (48.9)
1978-79	6.07	.36 (6.0)	3.24 (53.3)
*1979-80	4.91	.42 (8.5)	2.85 (58.1)

*Covers 9 months (July 1, 1979 - March 31, 1980)

The foregoing data shows that the City has made significant gains in increasing its purchasing dollars for minority and local suppliers. During F/Y 1977-78 minority suppliers received 4.7 percent of the City's total dollars for supplies. For a nine month period in F/Y 1979-80, minority suppliers have received 8.5 percent of the City's purchasing dollars. Local vendors have also done well under the City's preference program. In F/Y 1977-78 local supplier received 48.9 percent of the total City dollars for suppliers. The contract activity for the first nine months of F/Y 1979-80 indicate that local suppliers have received 58.1 percent of all purchasing dollars.

SECTION III

Community Groups Participation

Oakland has a long and rich history of active citizen participation in the development of the City's Affirmative Action programs. Prior to the adoption of the City's Affirmative Action Policy - 1969, there were at least four (4) Work sessions held by the City Council for the express purpose of allowing Oakland citizens the opportunity to share their ideas, concerns, etc., before the final adoption of the Policy (Resolution #50137).

The Oakland Citizen's Committee for Urban Renewal (OCCUR) has been especially helpful in working with City staff in this area. The League of Womens Voters and National Association for the Advancement of Colored People (NAACP) have also provided input in the development of the City's various Affirmative Action Programs.

The Professional Services Contract Program, adopted February 1980 had the largest variety of professional and community organizations participating in the program plan and development. There were approximately 15 organizations invited to work with City staff to develop the program. These organizations include:

- Pacific Economic Resources League, Inc
- Oakland Chamber of Commerce
- American Society of Landscape Architects
- American Society of Mechanical Engineers
- Fair Share Coalition
- Oakland Citizens' Committee For Urban Renewal
- Organization of Women Architects
- East Bay Chapter, American Institute of Architects
- Chinese For Affirmative Action
- Asian, Inc.
- American Society of Civil Engineers
- Institute of Electronic and Electrical Engineers
- New Oakland Committee
- National Organization of Minority Architects
- Minority Contractor's Association

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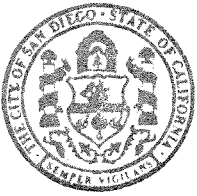
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THE CITY OF

SAN DIEGO

CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CALIF. 92101
TELEPHONE (714) 236-6400

OFFICE OF
THE CIVIL SERVICE
COMMISSION

September 30, 1980

JIM McFARLAND
President

JEROME NIEDERMAN
Vice President

LaDONNA HATCH
Commissioner

VIRA WILLIAMS
Commissioner



Elihu M. Harris
Chairman
Select Committee on Fair Employment Practices
California Assembly
1116 Ninth Street
Room 31
Sacramento, CA 95814

Dear Mr. Harris:

We have prepared the following report in response to your request for information concerning the City of San Diego's Affirmative Action Program. The City has had an active and formalized Affirmative Action Program since March of 1972 when it was initiated by the City Council.

One of our primary focuses in this Program has been to eliminate artificial barriers to the employment of women, minorities, and the handicapped. During the past eight years, the Civil Service Commission and the Personnel Department have closely reviewed and scrutinized the City's employment process to ensure that our selection devices are job-related. As a result, we have eliminated artificial education requirements such as a high school diploma for all City jobs except Police Officer. Over 70% of City jobs now have no specific education requirement. We have also reduced the use of written tests which traditionally have had an adverse impact on minorities. While written tests were used in 44% of our exams in Fiscal Year 1979, they were used in only 24% of our exams in Fiscal Year 1980. At the same time we have significantly increased our use of performance tests and other job simulation exercises.

As an integral part of the Affirmative Action Program, the City has established a Discrimination Complaint Procedure which is contained in our Civil Service Rules and Municipal Ordinances. Under this Procedure, City employees or applicants for City employment who feel that they have been discriminated against may file a discrimination complaint with the City's Personnel Department which is an independent department reporting to the Civil Service Commission. The Commission then conducts hearings regarding these complaints and can order any remedy which it deems appropriate. Since this procedure was established, over 150 complaints have been investigated and resolved. Only three of these complainants subsequently filed complaints with outside State or Federal agencies.

You have also requested information on three specific areas which are addressed below.

1. Upward Mobility:

The City of San Diego is currently spending approximately \$750,000 annually on formal training programs designed to increase the representation of women and minorities in non-traditional job areas. These programs cover such job areas as skilled trades apprentices, building inspector apprentices, equipment repair, equipment operation, plant operation, and lifeguard. Significant numbers of women and minorities have been hired into these training programs.

In addition, we have provided extensive promotional opportunities for women to be promoted into non-traditional jobs. Approximately 20% of all employees hired or promoted into jobs as laborers have been female. Another aspect of our upward mobility program is the use of bridge classifications which allow clerical and blue collar employees opportunity to acquire subprofessional administrative experience and eventually promote into professional jobs.

As a result of these programs and aggressive affirmative action recruitment efforts, we made substantial progress in increasing the representation of women and minorities in several key job areas as shown below. Much of the progress in these categories is due to our efforts in providing upward mobility.

	<u>1972</u>	<u>1976</u>	<u>1980</u>
<u>Professional/Technical</u>			
Females	18.2%	23.1%	30.8%
	(189)	(254)	(359)
Total Minorities	14.6%	16.5%	20.2%
	(152)	(182)	(235)
<u>Crafts</u>			
Females	0.7%	1.4%	2.2%
	(2)	(4)	(9)
Total Minorities	14.6%	16.9%	26.1%
	(41)	(49)	(105)
<u>Laborers</u>			
Females	0.2%	1.6%	8.0%
	(2)	(15)	(73)
Total Minorities	37.0%	39.7%	41.9%
	(413)	(365)	(383)
<u>Police</u>			
Females	0%	3.5%	11.5%
	(0)	(29)	(131)
Total Minorities	8.6%	11.1%	19.1%
	(68)	(91)	(218)

Overall since 1972, the representation of women in the City's work force has increased from 18.7% to 27.5% and the representation of minorities has increased from 19.5% to 27.0%.

2. Monitoring the Affirmative Action Program:

The Affirmative Action Program is developed and monitored by the Equal Opportunity Office in the City's Personnel Department. This Section acts as staff to an Equal Opportunity Coordinating Council. This Council is chaired by the City Manager and consists of a Deputy City Manager, three Department Heads, the Personnel Director, the President of the Civil Service Commission and the Chairperson of the Citizen's Advisory Committee on Affirmative Action. The Council meets monthly and has been assigned responsibility by the City Council for monitoring and overseeing the City's Affirmative Action Program.

The City's Equal Opportunity Office staff prepares a quarterly report on the progress and status of the Affirmative Action Program. This report is presented in public hearing to the Civil Service Commission, the Equal Opportunity Coordinating Council, the Citizen's Advisory Committee on Affirmative Action, and the City Council.

Operating departments are also provided with quarterly reports by the Equal Opportunity Section on the status of their affirmative action hiring goals and the representation of women and minorities in their departments. Each department has an Equal Opportunity Liaison assigned to monitor the Program and hiring goals. Additionally, all department heads and supervisors are evaluated on their compliance with the Program.

3. Community Group Involvement:

There are four different citizen's groups which provide input in the City's Affirmative Action Program.

The Civil Service Commission is a five member citizen's board appointed by the Mayor which oversees the City's employment process and directs the activities of the Personnel Department. Under the Affirmative Action Program, the Commission hears discrimination complaints, oversees the City's affirmative action recruitment program, and ensures that the City's employment process is job related.

The Citizen's Advisory Committee on Affirmative Action is appointed by the Mayor and meets regularly with the City's Equal Opportunity staff to discuss this program. The Committee provides input in the planning and implementation of affirmative action hiring goals, upward mobility training programs and equal opportunity training programs for supervisors. This committee regularly advises the Mayor and City Council on the status of this program.

The Mayor's Committee for the Handicapped is a citizen's group also appointed by the Mayor and oversees the development and implementation of the City's Affirmative Action Program for the Handicapped. This Plan was approved by the City Council in 1978 and establishes aggressive hiring goals for the seriously disabled. This Committee meets monthly and receives updated reports on the status of this Plan from the City's Equal Opportunity staff. The Committee also regularly advises the Mayor on the status of this Plan.


The Mayor's Advisory Board on Women is also appointed by the Mayor and has a general interest in affirmative action for women within the City. The Board sponsors a yearly Women's Opportunity Week which emphasizes the role of women in City employment. This Board also works closely with the City's Equal Opportunity staff in monitoring the Affirmative Action Program.

In addition, the Personnel Director and the Equal Opportunity staff meet with public employee representatives as needed to discuss affirmative action matters which affect their employees. The employee groups from time to time have assisted us in affirmative action recruiting and training.

In addition to this information, you should be aware that the City is presently involved in two hiring agreements with the Federal Government. In 1976, the City signed a Voluntary Compliance Agreement with the Law Enforcement Assistance Administration which sets hiring goals for women and minorities in police officer jobs. In 1977, the City signed a Consent Decree with the Department of Justice which sets hiring goals for women and Hispanics in six of fifteen job areas.

I will be glad to provide you with any additional information.

Sincerely,



Rich Snapper
Personnel Director

RS:JMG:lg

Enclosures: 1. Affirmative Action Program
2. Quarterly Affirmative Action Report to City Council
3. Report to Councilman Stirling on Artificial Barriers
4. Civil Service Rule XVI, "Discrimination Complaints"



SAN DIEGO COUNTY • PERSONNEL DEPARTMENT

1375 PACIFIC HIGHWAY • SAN DIEGO, CALIFORNIA 92101 • 236 2191 •

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September 30, 1980

Elihu M. Harris, Chairman
Select Committee on Fair
Employment Practices
Assembly California Legislature
1116 Ninth Street, Room 31
Sacramento, CA 95814

Mr. Chairman and Members:

Attached is the testimony which is to be given to the Committee on Fair Employment Practices regarding the affirmative action program of the County of San Diego.

Thank you for the opportunity of providing you with this information. If there is further information desired or if there are any questions you need answered, I will be happy to meet with your committee consultant, Mr. LaMar Lyons.

Very truly yours,

Archie C. Garcia
Director of Personnel

ACG:et

Attach: Report to the Committee
Attachment A - Copy of Consent Decree
Attachment B - Comparative Analysis of County's Workforce, May 1977 and May 1980
Attachment C - Consent Decree Training Report Dealing with Upward Mobility, 11-1-79/5-1-80
Attachment D - Intergovernmental Personnel Act Grant Application
Attachment E - Copy of Section from Administrative Manual

Mr. Chairman and Members:

As the Director of Personnel for the County of San Diego, I've come before your distinguished body to share with you some affirmative action experiences we've had in the County of San Diego.

In May of 1977, in addition to an established affirmative action program, our County entered into a five-year Consent Decree with the U. S. Department of Justice and joined by the Chicano Federation, the Union of Pan Asian Communities and the Council of Pilipino American Organizations. The contents of the Consent Decree were disseminated to County employees through their respective departments. A separate Consent Decree indoctrination was conducted by the Chief Administrative Officer for all appointing authorities, strengthening the commitment of the County of San Diego and its administration.

The Consent Decree identifies classifications which were underutilized with respect to minorities and women. It also specifies hiring goals which are to be achieved throughout the five year period.

The methods of reporting and the monitoring of the Consent Decree are also outlined in the Decree (which I have attached) and were developed jointly with all concerned parties.

Overall, our County's equal opportunity achievement is commendable. The exception is with respect to the employment of Mexican American/Latinos where parity has not been fully achieved. Women also continue to be underutilized in administrative and non-traditional jobs.

While parity has not yet been fully achieved, I will point out the sizable gains that have been made toward that effort. To do so, I present a brief comparative analysis of our County's workforce composition in May of 1977 and what it was in May of 1980. The comparative analysis indicates a significant overall increase in the

employment of minorities and women at all levels. Many of these accomplishments were achieved through extensive recruiting efforts involving the assistance of community groups as well as employees of the County providing the outreach through their peers and/or organizations. An effort is also made to encourage employees to participate in the training programs provided in-house as well as those provided in the Community College District. Many of the gains made at the technical and skilled levels were accomplished through upward mobility.

In order to address the specific questions in your letter, I am offering the following information:

(1) How effective is your program in providing upward mobility?

The work force analysis shows significant increases of minorities and women in the technical, professional, and skilled occupational groupings. This increase has, in part, been achieved through the establishment of bridge classes in order for employees in clerical and non-professional classes to make the transition to technical, professional and skilled occupations. I have attached excerpts from communications which describe the participation in selected upward mobility programs. Also, I have attached a copy of an Intergovernmental Personnel Act Grant application which describes the program we intend to utilize to further our affirmative action gains in non-traditional jobs. This type of training program is required and described in Part V of the Consent Decree.

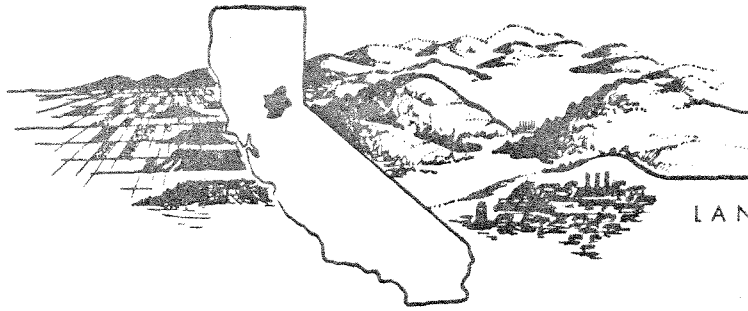
(2) How is it monitored?

Part VI of the attached Consent Decree sets forth the maintenance of required records which are to be provided to the attorneys of record on a semi-annual basis of all parties of the Consent Decree. The County has also utilized a Consent Decree Task Force which is comprised of two members of the Board of Supervisors, two members of the Civil Service Commission, the Chief Administrative Officer, the Director of Equal

Opportunity Management Office and the Director of Personnel to review these reports and to recommend any corrective action that may be necessary in order to accomplish the interim goals. I have also attached a copy of the Administrative Manual which sets forth the monitoring of appointments which takes place each time an appointment is made and is subject to the review of the Equal Opportunity Management Office. As you can see, with the monitoring which is taking place both internally and externally with the County, the progress that is being made on the Consent Decree has full disclosure.

(3) How do public employee representatives and community groups contribute to the planning of your program:

The program input has been obtained through the parties of the Consent Decree which are representative of community groups. We have also utilized community groups during the recruitment stages of each examination which is conducted by the County. As you can see, we do have an interest in involving the community groups in assisting the County in promoting its affirmative action program as well as having them share in the efforts to obtain our Consent Decree goals. The public employee representatives have an opportunity through the Civil Service Commission and the Personnel Department to offer any suggestions or to handle any appeals with respect to equal employment opportunities and in many cases have availed themselves of this appeal process through the Civil Service Commission.



Butte County

LAND OF NATURAL WEALTH AND BEAUTY

PERSONNEL DEPARTMENT

County Administration Building
25 County Center Drive
Oroville, California 95965

September 30, 1980

Elihu Harris, Chairman
Assembly, California Legislature
Select Committee on Fair Employment Practices

Dear Mr. Harris:

In response to your committee's request, I am pleased to present to you in behalf of the County of Butte a brief overview of the County's Affirmative Action Program, and to respond to the specific questions set forth in your letter of September 18, 1980.

By way of background, I believe it is important that your committee have an understanding of the geographic, economic, sociological and political structure of the county. I understand that Butte County is among the smallest counties to report to your committee. Therefore, it appears significant when considering the testimony of the larger counties that you have an understanding of the specific circumstances small rural counties face in dealing with effective non-discriminatory employment.

Butte County is an emerging county in terms of economics and population growth. It is now the largest county north of Sacramento, with an estimated population of 145,000.

The basic economy for the county is still agriculture; however, light industry and retail sales are assuming an important role in serving the increased county population.

The workforce of the county is relatively diverse, ranging in jobs from the migrant farmworker to the university president. Large industries are not common; however, individual small farmers, merchants and businessmen provide the majority of jobs in the county's 59,000-member labor force. Statistically, the county has a high number of governmental workers. One out of every four workers is employed in government. The Cal-State University, Chico is the largest governmental employer in the county. County government, five incorporated cities, a variety of school and special districts, and other state and federal regional offices provide the basis for public employment within the county.

The county, by past voting records, is conservative. This viewpoint in practice is moderated by the college community. Butte County is unique to other counties within the state by having a female majority on the Board of Supervisors, which from the standpoint of hiring and advancing female employees through the county workforce has a distinct advantage.

The population of the county is predominantly White. 1980-81 projection figures compiled by the State Employment Development Department show Whites to represent 90.7% of the population, Blacks 1.6%, Hispanics 5.4%, Asians 0.6%, and Native

Americans 1.6%. This projection shows approximately a 2% decrease in the White population in the county since the 1970 census, indicating a slight trend in the increase in minorities in the county over the past ten years.

The factors mentioned in this brief overview all measure in the planning and the overall effectiveness of the local Affirmative Action Plan which I will outline in the remainder of my time.

Each year the County Board of Supervisors adopts an Affirmative Action Plan setting goals and timetables for female and minority hiring. The plan is administered by the County Personnel Department and close liaison is maintained with Community Based Organizations, organized labor, and others in carrying out the annual plan. Monitoring of the plan is accomplished through several processes. Annually, a thorough analysis of the county's workforce, identified by age, sex, ethnicity, new hires, promotions and income, is made by the Personnel Department. Any disparity in numbers from the annual plan is identified and specific recommendations made to the Board of Supervisors where deficiencies occur. In addition to the annual planning review, the Personnel Department maintains a cumulative record on hiring practices in each of the various job class categories within the county. Through routine reviews, determinations can be made regarding the need for specialized efforts to attract minority and women candidates in the recruitment for specific job classes which show low parity in minority or women employment.

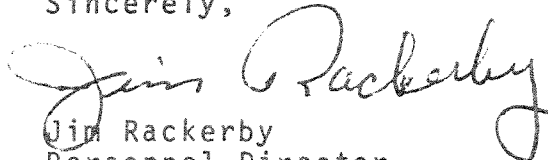
There are approximately 1,000 positions within the County Personnel System. The average turnover rate is approximately 15% per year, of which the majority are entry-level positions. Upward mobility, therefore, is a problem which cannot be resolved in the short run. However, the county has through the removal of arbitrary barriers within its classification system, specialized career advancement, encouragement within the county workforce and task analysis studies advanced women and minorities through various career ladders. During this past year, 9.8% of all minorities were promoted and 63.5% of all promotions were female. The latter statistic was received enthusiastically this year by the three women who comprise the majority of the Board of Supervisors.

During the planning process each year, the Personnel Department is charged with the responsibility of analyzing the county workforce in preparing for the Board of Supervisors an Affirmative Action Plan with goals and timetables for the following year. The Board, through its various member representation on community action agencies, community development committees, employment and training programs and other locally based groups acquires a broad understanding of community need which assists in their judgment in determining the annual Affirmative Action Plan. In addition, the county has through labor negotiation contracts with employee representatives, encouraged participation and cooperation by the union in carrying out the spirit and intent of the Affirmative Action Plan.

In summary, I believe that the experience in Butte County can be identified with that of other small rural counties

in Northern California, the populations being predominantly White, and the county workforce relatively stable. Opportunities for minorities and females to enter the county workforce and to be provided career advancements are occurring more frequently than in the past due to an awareness by local legislators and public administrators of the specific needs and problems of these groups. The problem in reaching workforce parity in many instances cannot be perceived in short-term goals. A long-term approach with clear goals and objectives that are reasonably set and diligently pursued will result in a significant change in workforce patterns in the future.

Sincerely,


Jim Rackerby
Personnel Director

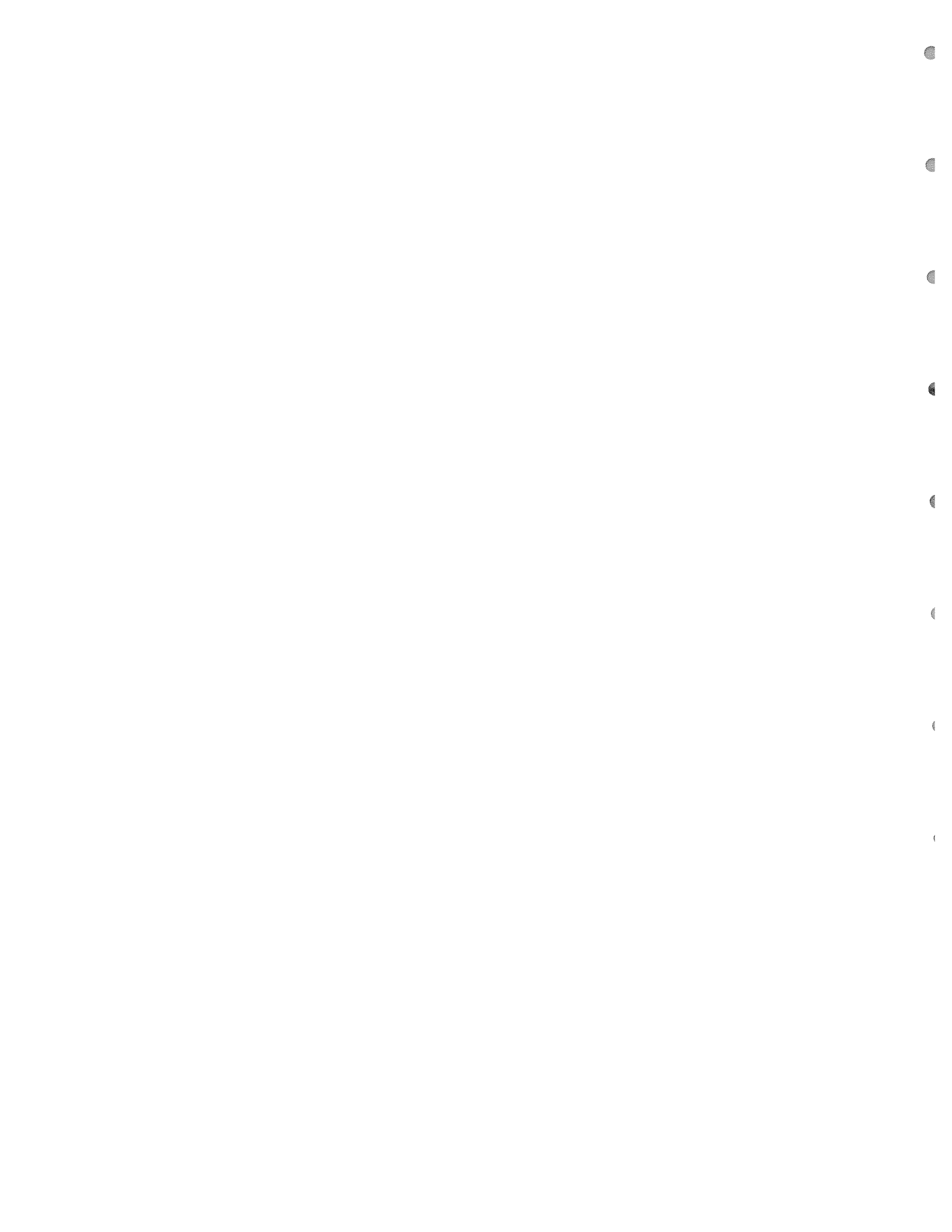
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TESTIMONY PRESENTED TO THE
SELECT COMMITTEE ON
FAIR EMPLOYMENT PRACTICES

October 2, 1980

DONNA L. GILES
DIRECTOR OF PERSONNEL
CITY OF SACRAMENTO



In 1971, the Sacramento City Council adopted an Affirmative Action Policy Statement which outlined eight action steps for the City.

1. City employment opportunities are to be made known effectively to minority group citizens. Advertising, publications, and other forms of communication and contact shall be utilized in ensuring that minority persons are informed of City employment opportunities.
2. Selection procedures of the City of Sacramento shall be valid. Selection standards and procedures shall comply with the doctrine of the U. S. Supreme Court decision of Griggs vs. Duke Power and with the U. S. Equal Employment Opportunity Commission Guidelines.
3. When minority group eligibles are on civil service eligible registers, a particular effort shall be made to find appropriate positions for such eligibles.
4. Minority group employees of the City shall be encouraged to take advantage of City training programs and the City tuition reimbursement program.
5. Minority group employees shall be encouraged to seek advancement in City employment, and those who seek it shall be counseled on how to prepare themselves for promotional opportunities.
6. Comprehensive statistics shall be maintained regarding minority employment in the Sacramento City government.
7. City employees, particularly those in supervisory and management positions shall be made aware of the cultural backgrounds and

common attitudes of persons from various minority groups.

8. Appropriate changes will be sought in the City Charter to enable the carrying out of the Affirmative Action Program. Appropriate changes to City ordinances and resolutions, civil service rules and regulations, and departmental rules and procedures will be considered or encouraged where appropriate to carry out the City's Affirmative Action Program.

Since the Policy Statement was enacted, we have continued to evaluate and revise our Affirmative Action Program. For example, in 1973, we established goals and timetables for the employment of minorities City-wide; in 1975, we developed goals for the employment of women; in 1978, we began the development of specific department goals; and today we are in the process of developing an entirely new up-to-date Affirmative Action Plan. Although we feel the City has made great progress, there are still difficult areas to be addressed and we are embarking upon a more clearly definable and accountable program which will address all levels of the organization. The City has recently committed added resources by the hiring of a full-time Affirmative Action Officer to help monitor and implement our Affirmative Action Plan.

Although the City's workforce overall is comprised of 31% minorities, the majority of the minorities are in lower paid unskilled jobs. We therefore

find the need for a renewed emphasis on upward mobility and intensified recruitment at all levels in order to have our workforce vertically represented by minorities and women. It is our position that upward mobility is a positive and necessary means by which to accomplish some affirmative action goals. We have made limited progress in this area and still have a long ways to go. Some of the major efforts we have embarked upon to enhance upward mobility are a broad classification study of selected City classification with a concentration on the indentification of career ladders and the creation of bridging classes where possible. This is a very time consuming process and one which will be ongoing, but an essential start to ensure upward mobility.

Currently the City of Sacramento has proposed charter amendments before its voters in November to modernize the personnel sections of the City Charter. These proposed changes are very important in elminating systemic discrimination and bringing our procedures into modern times.

The monitoring of our Affirmative Action Plan will be very important in keeping department managers aware of where they stand in relation to their goals by reports and statistical analyses and by offering supportive services such as counseling and recruiting. The Affirmative Action Officer will play a key role in this area. The Affirmative Action Officer is placed organizationally so that he is a integral part of the personnel operations and has

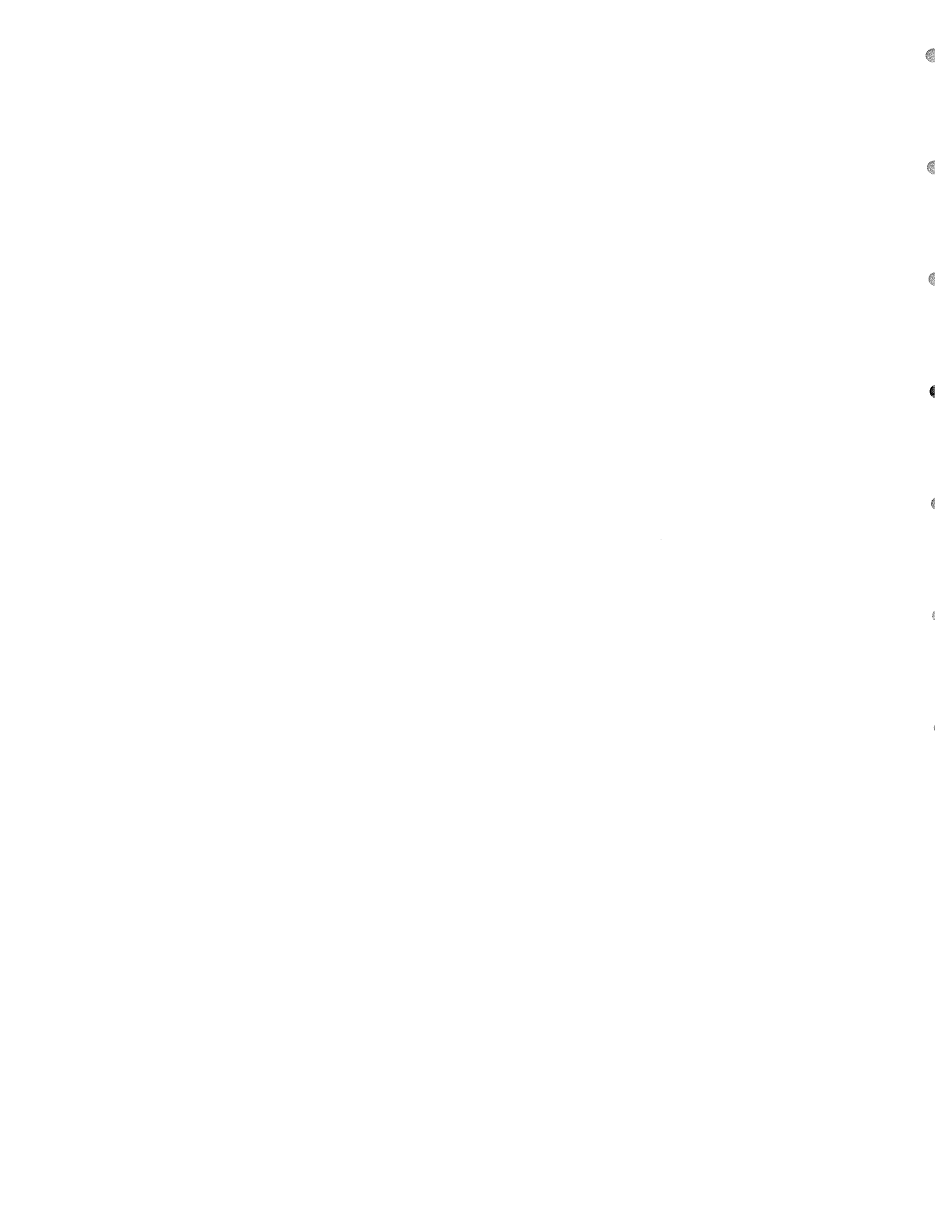
direct access to information.

In developing our revised Affirmative Action Plan, input was sought from the public by the creation of a community based advisory group to work with the Affirmative Action Officer in developing goals and timetables for the Plan, as well as the internal advice of department heads. Before the Plan is completed employee groups will also have an opportunity for input. We feel this kind of involvement has been very important in gaining an understanding of all of the tasks ahead and the resources and commitments necessary to get the job done for all involved.

One of the action areas we are strongly emphasizing in our Affirmative Action Plan is the discrimination complaint process. We are currently operating under an interim discrimination complaint process which take discrimination complaints out of the normal grievance process. This action has allowed discrimination complaints to be addressed by the Affirmative Action Officer. The move also allowed the complaint to be addressed in accordance with EEO guidelines. This gives the complainant a degree of protection which the normal grievance procedure could not offer. For example, an EEO based complaint resolution procedure gives the complainant the right to have his or her complaint investigated to determine whether an illegal discrimination act has occurred, and gives witnesses the opportunity to comment within the protection of confidentiality. Normal grievance procedures generally don't

give such protections or rights.

In conclusion, our Affirmative Action Program has accomplished the goals established in the past and will attempt to meet the challenges facing us today. We are proposing realistic goals and effective administration. Our Affirmative Action Program is not a one person show. The City Council, City Manager, Department Heads, and Supervisors are all responsible for adhering to the Affirmative Action Policy, and meeting our affirmative action goals.



CITY TOTALS BY ETHNIC GROUP

MALE EMPLOYEES.....		FEMALE EMPLOYEES.....		CITY TOTALS.....		.NON-CAREER EMPLOYEES.	
<u>Ethnic Breakdown</u>	<u>Total Number</u>	<u>% of Males</u>	<u>Average Salary</u>	<u>Total Number</u>	<u>% of Females</u>	<u>Average Salary</u>	<u>Employee Total</u>	<u>Ethnic Percentage</u>	<u>Number of Males</u>	<u>Number of Females</u>
White	1523	67.300	\$1,991.58	299	68.735	\$1,341.81	1822	67.531	245	222
Black	296	13.079	1,365.92	56	12.873	1,288.04	352	13.046	210	101
Hispanic	313	13.431	1,613.28	45	10.344	1,119.52	358	13.269	158	63
Asian	91	4.021	1,764.87	24	5.517	1,319.32	115	4.262	17	20
Native American	26	1.146	2,017.62	2	0.459	1,598.99	28	1.037	8	1
Filipino	12	0.538	1,764.65	7	1.609	1,372.15	19	0.704	4	7
Polynesian	2	0.088	1,430.59	2	0.459	1,376.78	4	0.148	0	1
Other	0	0.000	0.00	0	0.000	0.00	0	0.000	2	0
	<u>2263</u>	<u>83.876</u>	<u>\$1,873.06</u>	<u>435</u>	<u>16.123</u>	<u>\$1,312.48</u>	<u>2698</u>		<u>644</u>	<u>415</u>

1) Management/Supervisory

<u>City Wide/Current Work Force</u>		
<u>Total</u>	<u>Minority</u>	<u>Female</u>

220	47(21.46%)	12(5.48%)
-----	------------	-----------

2) Police

<u>City Wide/Current Work Force</u>		
<u>Total</u>	<u>Minority</u>	<u>Female</u>

502	123(24.50%)	12(2.395%)
-----	-------------	------------

3) Fire

<u>City Wide/Current Work Force</u>		
<u>Total</u>	<u>Minority</u>	<u>Female</u>

435	79(18.16%)	2(.46%)
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4) Professionals

<u>City Wide/Current Work Force</u>		
<u>Total</u>	<u>Minority</u>	<u>Female</u>

150	33(22.00%)	44(29.33%)
-----	------------	------------

5) Skilled Crafts

<u>City Wide/Current Work Force</u>		
<u>Total</u>	<u>Minority</u>	<u>Female</u>

105	22(20.95%)	0(0.00%)
-----	------------	----------

6) Service Maintenance

<u>City Wide/Current Work Force</u>		
<u>Total</u>	<u>Minority</u>	<u>Female</u>

758	412(54.35%)	22(2.90%)
-----	-------------	-----------

7) Technicians

<u>City Wide/Current Work Force</u>		
<u>Total</u>	<u>Minority</u>	<u>Female</u>

145	31(21.38%)	31(21.38%)
-----	------------	------------

8) Clerical

<u>City Wide/Current Work Force</u>		
<u>Total</u>	<u>Minority</u>	<u>Female</u>

358	115(32.12%)	297(82.96%)
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OFFICE OF THE CITY MANAGER
CITY HALL, P.O. BOX 1678, SANTA ROSA, CALIF. 95403

(707) 528-5361

100 SANTA ROSA AVE.

KENNETH R. BLACKMAN
CITY MANAGER

September 22, 1980

Elihu M. Harris, Chairman
Select Committee on Fair Employment Practices
1116 Ninth Street, Room 31
Sacramento, CA 95814

Attention: LaMar Lyons, Consultant

Dear Chairman Harris:

Thank you for your letter of September 18, 1980, regarding the meetings of the Select Committee on Fair Employment Practices. Unfortunately I will be attending the national meeting of the International City Managers' Association in New York and will be unable to be in attendance on either October 1 or 2, 1980. As per my telephone discussion with your staff, I will forward written material and my own personal comments to the questions raised in your September 18, 1980, letter.

I have attached a copy of the Upward Mobility Statement for the City of Santa Rosa for the 1979-80 fiscal year. I have also included a copy of the Equal Employment Opportunity Statement which is adopted by resolution of the Personnel Board and the City Council. As additional background information, I have enclosed a statement of our Sex and Ethnic Work Force Statistics which is intended as background information. To answer the questions raised in your letter more specifically:

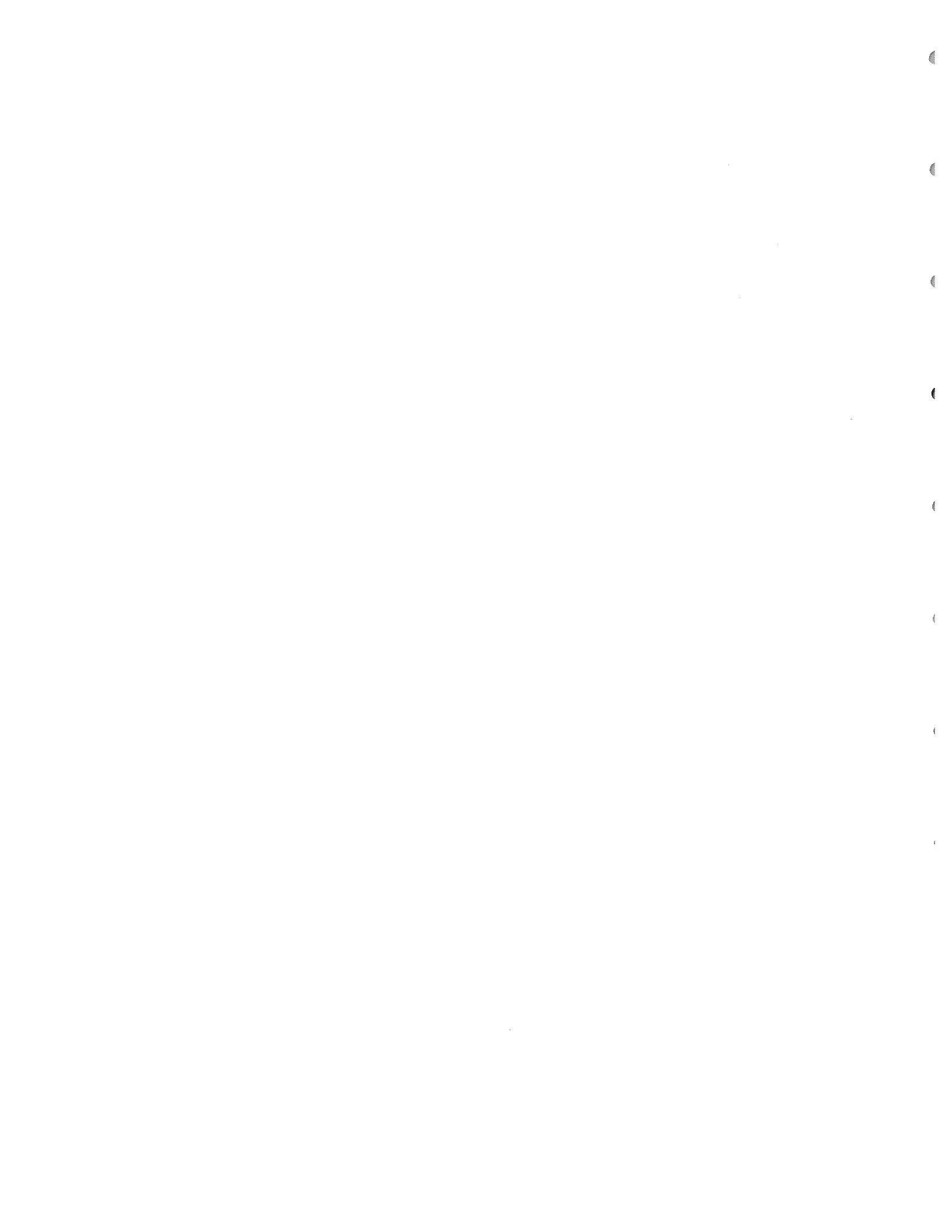
I believe the upward mobility program to be quite effective in that it has met the short-term goal of 20% as established by the Personnel Board for each of the past three years. The program is monitored by the staff of the Personnel Department, the City Manager's Office, the Personnel Board and ultimately the Santa Rosa City Council. Both short and long-range goals are reviewed annually in terms of their attainment and/or any specific problems which have arisen to preclude their attainment.

The composition of the Personnel Board includes two representatives selected by employee organizations and appointed by the City Council. This composition of the Personnel Board assures representation by employee organizations. The remaining three members of the Personnel Board are appointed by the City Council from interested parties applying for the position. This open public process assures community participation in the planning of the personnel program.

If after your review of this information you have additional questions, please feel free to contact me directly.

Sincerely,


KENNETH R. BLACKMAN
City Manager



County of Santa Clara

Human Relations Commission
County Government Center, East Wing
70 West Hedding Street
San Jose, California 95110
299-2206 Area Code 408

California

C O R R E C T E D C O P Y

September 30, 1980

Select Committee on Fair
Employment Practices
1116 Ninth Street, Room 31
Sacramento, CA 95814

ATTENTION: Elihu M. Harris

Dear Mr. Harris,

It is our understanding that the Assembly Select Committee on Fair Employment Practices will hold interim hearings on October 1st and 2nd in Sacramento.

The topics for the hearing are:

1. Effectiveness of affirmative action programs in providing hiring and promotional opportunities in State, County and local governments and;
2. Fair employment practices and employee rights.

In light of the Human Relations Commission's interest and deep concerns as to the development and implementation of creative, aggressive and meaningful affirmative action standards, we feel it important to address the Committee as to the Commission's concerns regarding the aforementioned topics.

Clearly, in the County of Santa Clara, affirmative action at the lower e.e.o. employment categories, has made significant progress. Available data indicates that the employment staffing at the lower e.e.o. categories encompass mostly all protected groups and classes; in most instances beyond minimum representation. This, however, is limited success, since traditionally minorities and women have been visible in the lower, less paying and less responsible positions. This is particularly true of Hispanics in our locale. We, therefore, do not attach great significance to this achievement, nor do we conclude that effective affirmative action is being attained in relationship to the intent of affirmative action. That is, equal representation of protected classes (minorities, women) in all e.e.o. categories as to relevant labor force availability.

To amplify our opinion, consider that the available data indicates that within the e.e.o. categories of (1) officials/administrators; (2) professionals; (3) technicians, and (4) skilled craft workers, Hispanics in Santa Clara County are significantly underrepresented in relationship to their availability in the relevant labor force. Hispanics are being recruited and placed in the lower employment categories.

It is the opinion of the Commission that lack of emphasis as to functional, creative, upward mobility training programs for minorities, women and the handicapped is strongly contributing to the underrepresentation in the following categories:

1. Official/Administrator
2. Professional
3. Technician

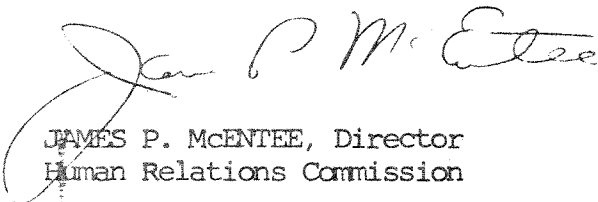
Equally, concepts and methods of recruitment stray significantly from theory to practice. In many instances, recruitment efforts end up consisting of notices of employment vacancies distributed to various community based agencies which serve minority, women and handicapped persons. In aiming for effective affirmative action, recruitment must expand beyond that which is easiest and most comfortable.

In conclusion, it is the opinion of the Commission that effective monitoring of affirmative action programs is essential to ensure consistency between the theory of affirmative action programs, (submitted and approved) practice, and actual employment gains for the minority, women and handicapped persons. Further, the Commission believes that such an ongoing monitoring effort must be conducted by an external and not an internal mechanism. In accord, failure to achieve measurable gains as outlined by approved reasonable timetables would carry consequences which could be determined and imposed by the State of California or its designee. The monitoring mechanism could function similar to the Office of Federal Contract Compliance and would only be responsible for affirmative action monitoring, and the imposition of sanction and penalties as required.

The monitoring mechanism would be impartial and concern itself with on-site affirmative action review only.

The Commission extends its thanks for the opportunity to express itself. It is the hope of the Commission that your Committee will consider our concerns and comments in your assessment of present affirmative action effectiveness.

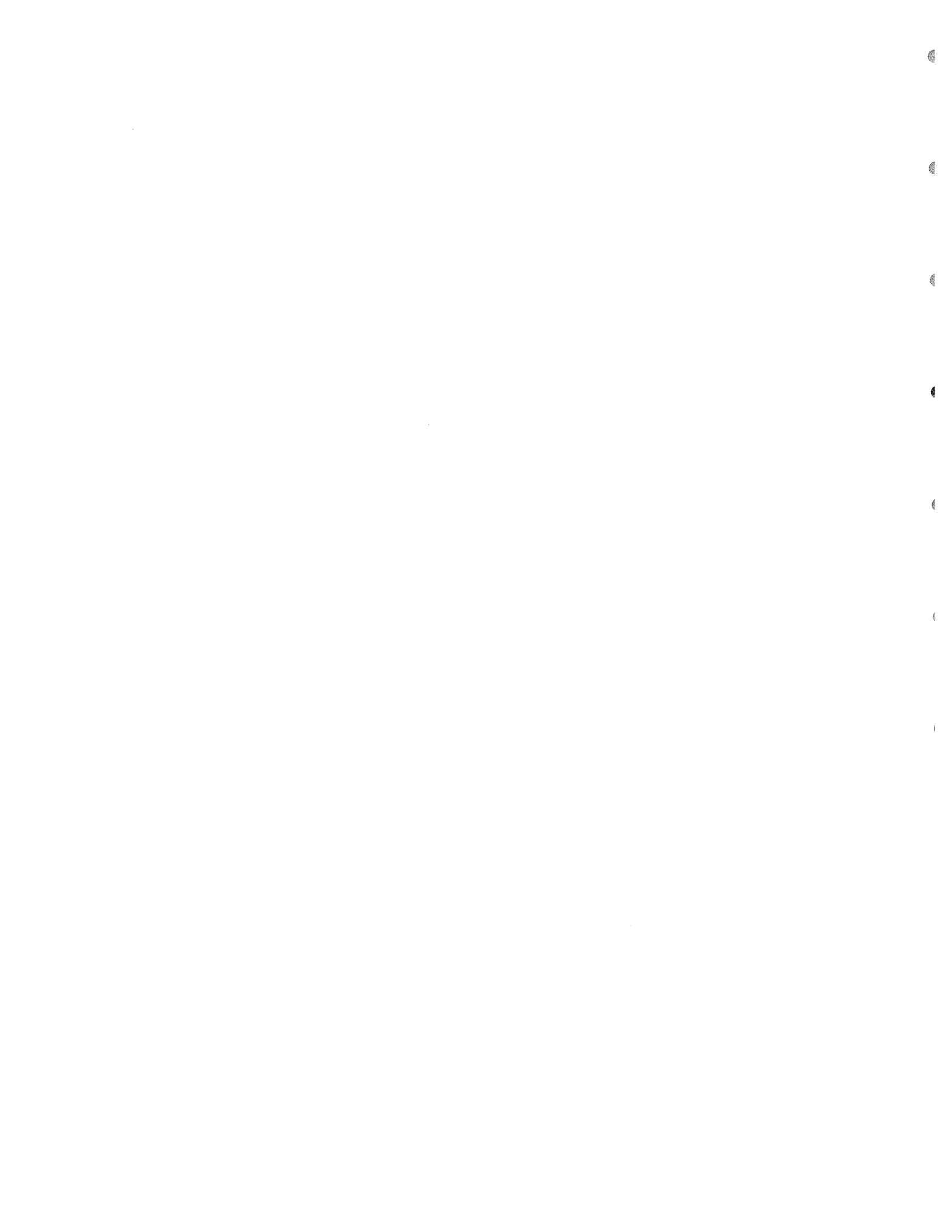
Very sincerely,

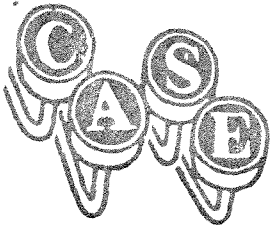


JAMES P. McENTEE, Director
Human Relations Commission

JPM:JP:cr

WRITTEN TESTIMONY
SUBMITTED BY
SPECIAL INTEREST AND
EMPLOYEE ADVOCACY GROUPS





Clerical & Allied Services Employees

Local 909 • American Federation of State, County and Municipal Employees • AFL-CIO

926 J STREET, No. 902, SACRAMENTO, CALIFORNIA 95814 • (916) 446-0151

28

My name is Joyce Harlan and I am representing CASE, Clerical and Allied Services Employees, Local 909 of the American Federation of State, County and Municipal Employees, AFL-CIO. CASE/AFSCME 909 is a statewide organization which represents several thousand clerical and allied personnel in the state civil service system and the state university and college system. Our comments today will be restricted to these two systems.

Our experience with affirmative action and upward mobility in both systems leaves much to be desired. In the case of the state civil service, while affirmative action plans are required of all departments, in far too many instances these plans, including parity figures, have not been revised in years. Our research shows, for example, that the Board of Equalization has not revised either its affirmative action plan or parity figures since 1976. In the state colleges and universities, while there is a policy statement on affirmative action and hiring goals have been established, little, in a meaningful way, has been done to actively recruit women and minorities to positions traditionally filled by men.

In the area of upward mobility or career development the record once again proves dismal. Here training programs and career ladders are essential. In the state civil service system, while some training funds are available, our experience has been in some departments that these funds are only used to train professionals or managers. A number of years ago the class of accounting technician was established supposedly as a bridge class between the account clerk and accountant series. However, that class is now a deadend class in the clerical series and is a class predominantly filled by women. This is not the only example of a process that failed.

In the state colleges and universities we had originally thought that the career development and fee waiver programs would enable women and minorities to advance. Again, our research indicates that this has not happened. Clerical employees all too often find themselves in a position where they are overly qualified for advanced clerical positions but, in the words of management, "lacking the managerial experience necessary for entry level management positions."

What we have is a system which on paper complies with and meets federal guidelines. The reality of the situation is that there is little in the way of action and hence little advancement for women and minorities. In order for affirmative action programs to succeed we believe that management must re-evaluate their programs and re-examine their commitment to the goals of affirmative action and upward mobility.

We were asked by staff to address a number of topics on this issue and we will do so briefly and then we would like to outline some proposals for making affirmative action and upward mobility more vital, meaningful programs.

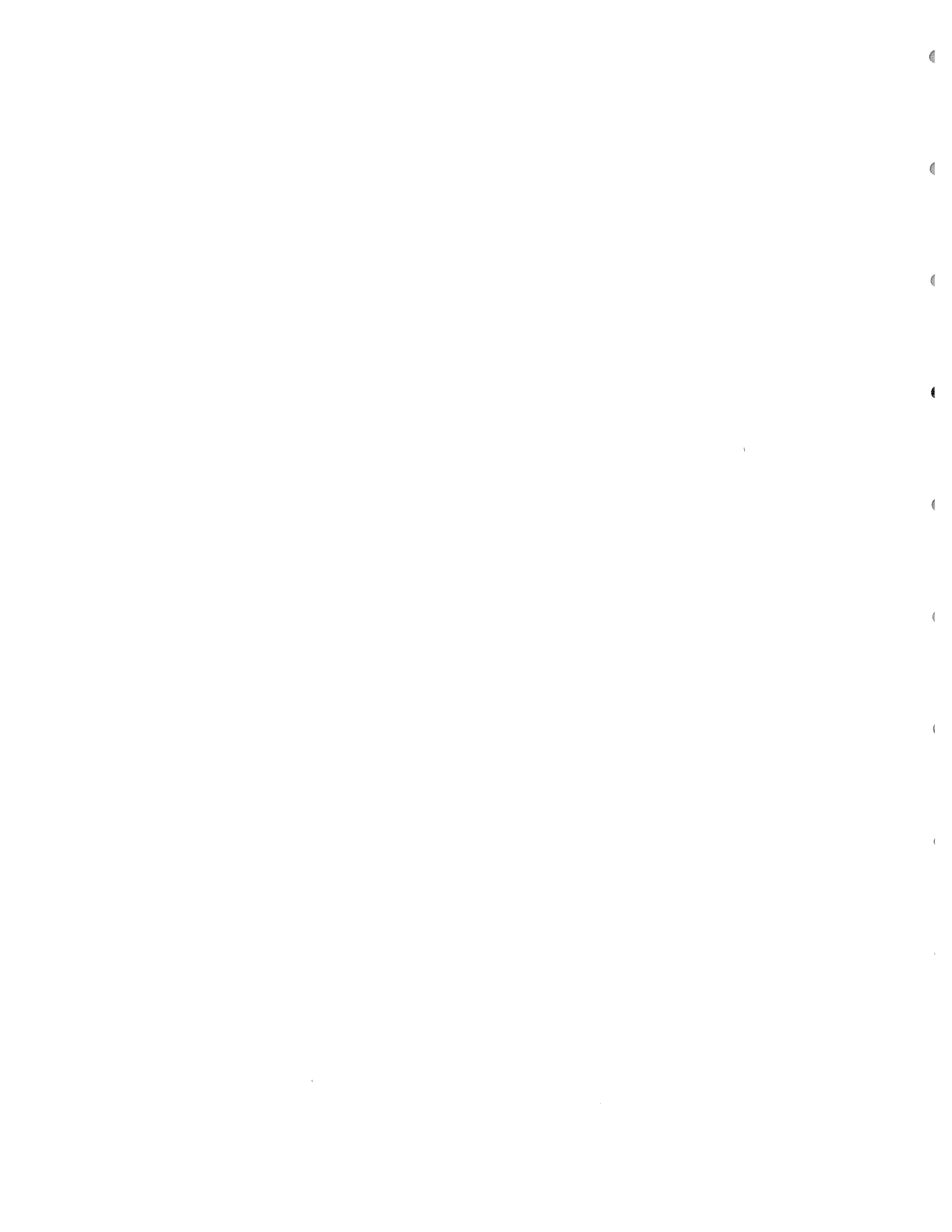
1. Regarding affirmative action statistics, we believe that it is essential that one individual not be counted as filling two or more goals even though that person may, for example, be a black woman.
2. Use of grievance procedures raises a number of problems. All too often the appeal process is so long that the grievant believes that the process will take forever and therefore does not file. Difficulties arise particularly in the area of hirings. What happens if an employee believes that he/she has been discriminated against and files a grievance and wins? Does he/she get the job for which they originally applied? If they do, what happens to the displaced employee? How well will the grievant be treated in the new department? If they file a grievance, what effect will it have on their future employment? While prospective employees can only use the EEOC and the Fair Employment and Housing Commission, state civil service employees cannot file with the FEHC. Because of the backlog of cases these agencies are of limited value to us when dealing with discrimination complaints. Our experience has been that employees are very reluctant to file grievances or complaints in discrimination cases.
3. We would like to see a better system of monitoring affirmative action statistics. Self-monitoring is open to abuse. Our research also shows that departments define parity in a number of ways: statewide, client population, or surrounding geographical area. Thus parity can vary.
4. Regarding civil service exams, we would like to expand this issue somewhat. Obviously it is essential that the questions in the exam pertain to the job duties/responsibilities of the position. One of the ironies of the current system is that too often exams are given on an open rather than promotional basis. Thus women and minorities who are on career ladders must compete with persons from outside the system. We also believe that the physical requirements and educational requirements should be carefully scrutinized. We must remember that even with testing, hiring itself can be very subjective. There are a number of ways that the system can be circumvented or manipulated, for example, the solicitation of waivers. In the state university and college system where there is no merit civil service system, the person doing the hiring has even greater leeway and the system is definitely open to abuse. Yet, this system could be effectively used to promote affirmative action.

RECOMMENDATIONS:

1. We recommend that accurate statistical information on women and minorities be maintained.

2. We recommend that the role of affirmative action officers be strengthened.
3. We recommend that the enforcement powers of the State Personnel Board, the Trustees or affirmative action officers be strengthened and that a better appeals process be developed.
4. We recommend the development of an affirmative action program involving the following:
 - a. survey of job classifications to eliminate sex biased jobs requirements and to determine if women and minorities are present in proportion to the number of women and minorities in the workforce.
 - b. establishment of employment goals for women and minorities within each job classification where they are under-represented.
 - c. development of a specific plan to incorporate goals and time-tables to achieve results.
 - d. recruitment of women and minorities for job openings within each job classification.
 - e. development of training and career ladder programs for women and minorities already employed to allow them to move into formerly under-represented areas.
 - f. evaluation of progress on a regular basis with new goals set on basis of updated information.
5. We would recommend the development of a career development program along the following lines:
 - a. jobs restructured into "families" rather than dead classifications.
 - b. permits employees to move up the career ladder within the job family or allows them to move laterally into another job family and begin the progression upward there.
 - c. provides training experiences along with on-the-job training to assist employees move up the ladder.

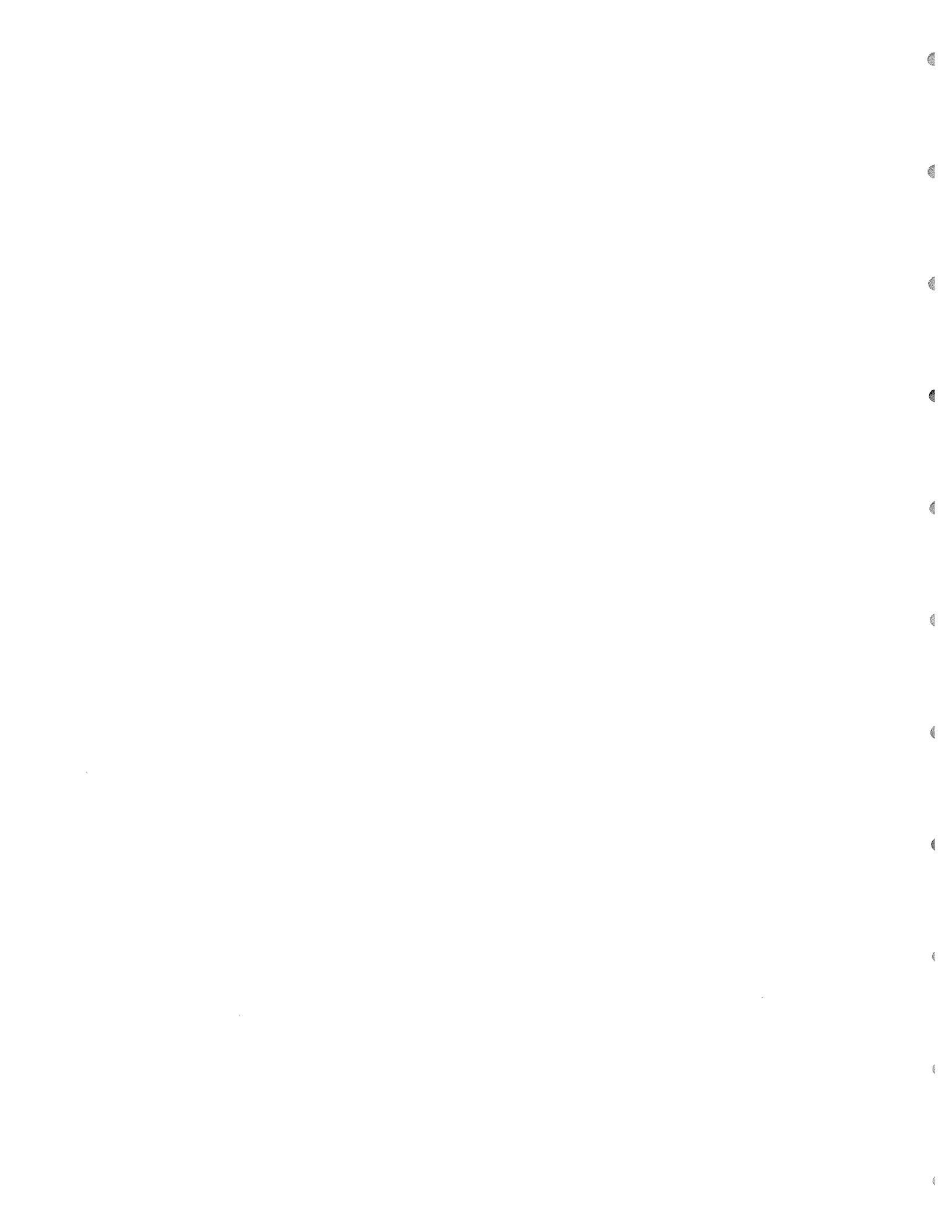
d. see record
In conclusion, we do not see affirmative action and upward mobility as being the sole solution to ending discriminatory employment practices. We believe that it is necessary for this Committee to take up the issue of pay equity/comparable worth in the very near future.

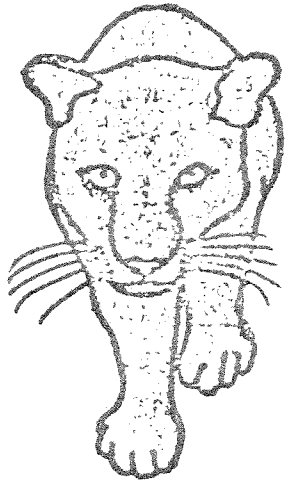


WRITTEN TESTIMONY SUBMITTED BY:

Special Interest Groups

Employee Advocacy Groups





Sacramento

Gray Panthers

NEWS

for release October 1, 1980
for more information call 489-1791

AGE AND YOUTH IN ACTION

My name is Mildred Becker. I represent the Gray Panthers of Sacramento. I want to thank Chairman Elihu M. Harris for the opportunity to speak before the Assembly Select Committee on Fair Employment Practices. I want to document the general proposition that the State Department of Aging is failing in the legally called for Affirmative Action Hiring Among State Employees.

The record will bear out that contrary to the many laws on the subject, the State Department of Aging and the State Personnel Board have been consistently derelict in carrying out any and all aspects of the legally mandated Affirmative Action Employment Policies for older Californians. By this dereliction all the elderly of California are being victimized.

This employment failure has resulted in a Department of Aging staff without even an appropriate token leadership core of the over 60 years of age people of whom its very business it is to serve. This deprives the staff of that special requisite sensitivity and the special sense of mission that is called for. This staff without sensitivity and without a sense of mission has had an annual turnover rate of over 30 percent a year. Not only is such a personnel policy illegal, but it has resulted in a staff lacking in expertise and extremely wasteful of personnel dollars in excess hiring and training costs. Such an illegal personnel policy resulting in so weak and inexpert a staff also is endangering millions of the state's Federal Older American dollars.

These policy failures brought on by this inappropriate managerial staff screened behind a token 66 year old director has provoked outcries from many quarters. Typically, just this past month there was an article in the authoritative California Journal raising the question of: How Well is California Providing Services For The Aged?* The article reported on the various failures of the Department of Aging. It spelled out delayed reporting procedures,

inadequate management decisions, huge unspent allocations, inadequate programs, various scandals and abuses, and a basic lack of mission and advocacy. The article noted, to quote:

"Despite years of problems and charges of mismanagement, the department and its senior-citizen director, Janet J. Levy, age 66, seem almost immune from significant efforts at reform either by state officials or Washington purse-string holders."*

* California Journal, September, 1980, page 361.

The legal umbrella under which much of the State and local aging activities are carried out is the Federal Older Americans Act. The present governing comprehensive Older Americans Act Amendments of 1978 continues the mandate, first established in 1973, that each state in order to be eligible for allotments under this Act shall - to quote verbatim:

"19792. The State Personnel Board shall:

- (a) Provide statewide leadership designed to achieve positive and continuing affirmative action programs in the state civil service.
- (b) Develop, implement, and maintain affirmative action and equal employment opportunity guidelines.
- (c) Provide technical assistance to state departments in the development and implementation of their affirmative action programs.
- (d) Review and evaluate departmental affirmative action Programs to insure that they comply with federal statutes and regulations." (emphasis added)

It can be seen from the above quote that Section (d) (underlined for emphasis) makes the State Personnel Board responsible for insuring the compliance of the State Department of Aging with the previously quoted (Section 307, paragraph 11) federal requirements under the Older Americans Act. It is the State Personnel Board that is charged with overseeing the compliance of preferential hiring of individuals aged 60 or over.

With that role thus firmly established, it follows that all the other provisions of Chapter 943 bearing on affirmative action for preferential hiring of the over-aged-60 individual by the State Department of Aging would have to be insured in their compliance by the State Personnel Board. This would include, to quote from Chapter 943 that "Statistical information system designed to yield the data and the analysis necessary for the evaluation of progress in affirmative action and equal employment opportunity within the state civil service."

There is no evidence that either the State Department of Aging or the State Personnel Board have carried out these provisions as far as the over-60 are concerned. In regard to annual goals and timetables, and other statistical information, according to all

available material, this has never been collected or even recognized as necessary to be attempted as far as the over-60 years of age category is concerned. This seems to be in apparent clear disregard of the above-quoted provisions of federal and state law.

The annual census of state employees published by the SPB makes no particular provisions for over age 60 staffing and hiring. The special SPB Affirmative Action Goals table has no over-60 column. The whole category of over 60 years of age preferential hiring is absent, although curiously attached to the SPB Department of Aging Affirmative Action Goal tables is a lip-service statement signed by the Director of the Department of Aging giving verbal recognition to the federal over-60 hiring mandate. Beyond that statement, there is absolutely no other recognition of the over-60 preferential hiring issue.

Further, it should be observed that the State Department of Aging under the Older Americans Act is responsible for monitoring, evaluating and enforcing all provisions of the Older Americans Act as they apply to all local Area Agencies on Aging, and other activities and projects funded under the Older Americans Act in the State. This means the State Department of Aging must insure compliance of all local agencies in their hiring and staffing patterns under the provisions of the preferential over-age-60 hiring clause. This also means that ultimately the State Personnel Board is responsible through the State Department of Aging in overseeing their responsibility for this. In the Affirmative Action Plan of the California Department of Aging submitted to the State Personnel Board, apparently submitted in compliance with Chapter 943, there is absolutely no statistical information on over-60 hiring.

Another State Law, AB 284, Fazio, Chapter 716 (Chaptered 8/12/77) declared the Legislative intent to aid the implementation of Affirmative Action Programs in State agencies and Departments by creating an effective upward mobility program for State employees in low-paying occupations. This act gives the State Department of Aging and the State Personnel Board a vehicle for bringing greater numbers of over-age-60-years of age individuals into the State system. Individuals could come in at low level entry jobs and then be upgraded through state training to more appropriate level positions capitalizing on the individual's past life experiences. This act requires goals and timetables on Affirmative Action upward mobility programs. In the Department of Aging this would mean in particular training goals and timetables for the over 60.

If for some reason, the Department of Aging could not meet such goals and timetables, the Act makes provision, to quote (Section 19402):

"Any department or agency of state government which determines that it will be unable to achieve such goals and timetables may request the State Personnel Board for a reduction in goals. If the State Personnel Board determines that the department or agency has not made a good faith effort to achieve such goals and timetables, the Board shall hold public hearings to deter-

mine the reason for such deficiency and to establish a program to overcome these deficiencies."

There is no evidence that the Department of Aging has set up any training program for conscious upgrading quantities of over-60 individuals. There is no evidence that the State Personnel Board has done so, or has consulted with the State Department of Aging on why they have not done so. A look at the Upward Mobility Activities by Classification as prepared by the Department of Aging in response to Chapter 716, and it is readily apparent that no special upward mobility activities were scheduled for the over 60.

This entire lack of activity on behalf of older job applicants and employees calls up the interpretations under the Federal Age Discrimination in Employment Act made by the United States Equal Employment Opportunity Commission. The EEOC addresses itself, among other aspects, to age discriminatory effects of hiring through testing. The Department of Aging with the concurrence of the State Personnel Board has used tests for entry into departmental positions, and this acts as a barrier to the hiring of older individuals.

As the EEOC-ADEA interpretations note (paragraph 1625.7/d/) (From the Federal Register).

"A vital factor in employee testing as it relates to the 40-70 age group protected by the statute is the 'test-sophistication' or 'test-wiseness' of the individual. Younger persons, due to the tremendous increase in the use of tests in primary and secondary schools in recent years, may generally have had more experience in test-taking than older individuals and consequently, where an employee test is used as the sole tool or the controlling factor in the employee selection procedure such younger persons may have an advantage over older applicants who may have had considerable on-the-job experience but who, due to age, are further removed from their schooling."

This testing interpretation by EEOC of ADEA calls into question many of the hiring practices of the Department of Aging specifically and the states hiring practices under civil service in general -- more especially since it has been demonstrated that other rules and regulations both federal and state are not being applied to aid older individuals in overcoming employment barriers.

In order to lower the illegal barriers to hiring and upgrading older individuals, and to give preferential hiring to over-age-60 individuals as called for by the Older Americans Act, the oversight authority of this committee should be utilized. The committee should direct a series of questions jointly to both the Department of Aging and the State Personnel Board. These questions can be based upon the previously cited documents. To recapitulate, these documents are:

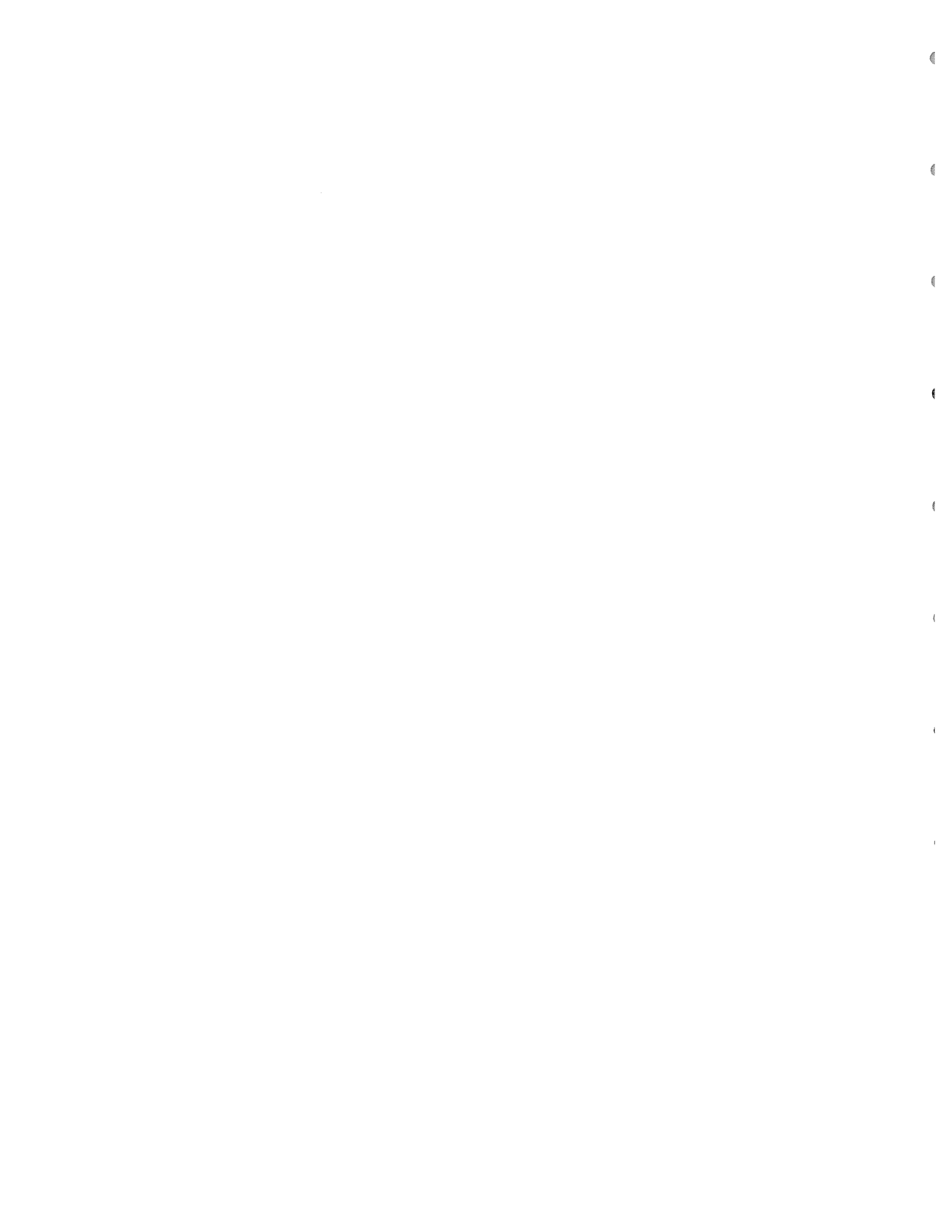
1. Legislative Analyst 1980 Report on Department of Aging (see page 659)

2. Older Americans Act - Section 307, paragraph (11)
3. AB 1350, Alatorre, Chapter 943
4. California Department of Aging Affirmative Action Goals and Timetables
5. AB 284, Fazio, Chapter 716
6. Department of Aging Upward Mobility Activities by classification
7. U. S. Equal Employment Opportunity Commission - Proposed Interpretations: Age Discrimination in Employment Act - Federal Register, 11-30-1979
8. Article in Sept. 1980 California Journal - How Well is California Providing Services For The Aged?

In summary, it should be stated that, in the main, as a general proposition, that all programs and activities of and for the elderly should be staffed by a majority who are themselves elderly. Who else will have the requisite sensitivity? Who else will the elderly more readily identify with? Where else can the elderly who want to work be employed, if not among their own peers?

We of the Gray Panthers profoundly believe in our slogan: Age and Youth in Action Together. We welcome and seek out the company and help of younger people. But we view this as a partnership. We believe that we elderly should not be used and treated as children. We are more than competent to handle our own affairs - the California State Department of Aging and its personnel policies notwithstanding.

Preferential hiring of the elderly on programs for the elderly have been on the law books for seven years. In that time the California State Department of Aging has managed to have but a token 6% of their staff professionals 60+ years of age - 6 out of 104 staffers! This in a department that is mandated by Federal and State law to give preferential hiring to the 60 and older person! We call for a redress of this intolerable situation. We would welcome questions by the committee.





The San Jose South Bay Chapter of the National Organization for Women, their Affirmative Action Task Force, the Santa Clara County Womens Ad Hoc Committee and 170 petitioners (Appendix A) petition for a systematic investigation of the employment practices of the County of Santa Clara, as they relate to women.

We allege that the County, as an employer:

- (1) Has historically failed to promote women,
- (2) Has not hired women in non-traditional job classifications,
- (3) Has not provided women employees with the same working conditions provided to male employees,
- (4) Has denied women equivalent wages for comparable work,
- (5) Has reassigned clerical job classes to other job categories monitored by the Equal Employment Opportunity Commission in order to obfuscate failure to hire women in non-traditional jobs,
- (6) Has used the Merit System mandated by State law, illegally, to avoid appointing qualified women,
- (7) Has not monitored contracts involving federal funds for compliance with non-discrimination based on sex,
- (8) Has failed to provide the Equal Employment Opportunity Commission with accurate data on employment practices, as required by Federal law,
- (9) Has failed to meet the County's minimal Affirmative Action Plan goals (Appendix B) since the implementation of the plan,
- (10) Has institutionalized discrimination, in that, the affirmative action goal (parity), is to have women in thirty-four percent (34%) of all jobs, at all salary levels, whereas, fifty-eight percent (58%) of all County employees are women concentrated in traditional female jobs such as clerical workers, social

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workers, eligibility workers, librarians, and nurses. These positions have historically received less compensation than equivalent positions held by men, and the disparity is increasing.

If the County were to meet its affirmative action goals, which it has not, it would still be discriminating against twenty-four percent (24%) of its female employees who would be promoted if there were, in fact, equal employment opportunities for women, and finally,

- (11) Has not provided consistent support for the program to counter discrimination based on sex, namely, the Women's Coordinator position.

The County has shown no significant changes in policies, procedures, or actions, that will remedy, decrease or obviate the current discrimination against women. This has resulted in a major salary disparity between female and male employees throughout the County, to the detriment of women, despite the fact that:

- (1) There are and have been qualified women available for most all County positions,
- (2) Women employed by the County possess a high level of skills, i.e. the majority of County employees with degrees are women,
- (3) Women employees have more seniority and tenure than male employees,
- (4) The County has had numerous opportunities to rectify discrimination against women.

The following documentation is offered in support of the allegations:

ALLEGATION 1.

The most recent report submitted to the Board of Supervisors, dated December 26, 1979, (Appendix C), states that eighteen percent (18%) of all Officials and Administrators are women. This is a decline from prior reports.

In a report of May 17, 1978 to the Personnel Board (Appendix E) the Personnel Director states, "Within EEOC job categories it is apparent that a greater percentage of higher-paid job classes are generally occupied by men."

In the Office and Clerical Job Category, a traditionally female work area, approximately twelve percent (11.9%) of the males earn more than sixteen thousand dollars a year, while only two percent (1.9%) of the women earn that much. (Appendix D).

ALLEGATION 2.

The Director of Personnel, Phillip Batchelor, reported to the Board of Supervisors on September 23, 1977, in Affirmative Action Progress Report, "Women continue to be under-represented in the Officials and Administrators (18.6%), Protective Services (8.8%), Service and Maintenance (25.2%) job categories and have no representation in the skilled crafts." (Appendix B).

ALLEGATION 3. Fringe Benefit Examples:

- a. Over two hundred employees have access to County cars for personal use, or an allowance in lieu of a car, less than five percent (5%) of these employees are women.
- b. The County retirement benefits are accrued by tenure and established as a percentage of the salary during the three highest years earnings--women earn less than men, therefore they will have diminished retirement benefits, in addition,
- c. The County has provided optional improved retirement programs to job classes that are primarily male, while not providing equivalent upgrades in the retirement benefits for the job classes held by the preponderance of the women employees.

Working Condition Examples:

- a. The seventy-eight percent (78%) female Department of Social Services has restrictions on the use of breaks, not implemented in male agencies,
- b. The male dominated professional employees have flexible work hours, whereas female professional employees are not afforded the same respect.

ALLEGATION 4.

Jobs with the same general requirements, qualifications, etc., such as Social Workers and Probation Officers have different pay scales and benefits. In a salary analysis done by the County in April, 1978, (Appendix D) the salary disparities between men and women are evident. For example, while men make up forty-seven percent (47%) of the Professional Category,

16.9% of all men, compared to 2.2% of all women employed in this category, earn twenty-four thousand dollars (\$24,000) or more.

In the Technicians category, 50.3% of the men earn 16-24,000 dollars as compared to 10.8% of the women. No women make over twenty-five thousand dollars (Appendix D).

In the female dominated Office and Clerical category, 28.5% of the men as opposed to 12.4% of the women make over 13,000 dollars. (Appendix D).

ALLEGATION 5.

(Appendix B., Attachment V)., shows that five hundred and twenty employees, Eligibility Workers, were added to the Technicians category from the Clerical and Office category. Approximately 80% of all Eligibility Workers are women, employed in the welfare system. The salary level of Eligibility Workers continue to be related to clerical salaries, not technical salaries. It is reasonable to allege that this job class was assigned to the Technical category, to help Affirmative Action statistics, because the County has made no significant gains in female employment in non-traditional jobs.

ALLEGATION 6.

There have been numerous instances of abuse of process and clear violations of the Merit System rules, in order to promote men when women are more eligible or qualified for the jobs, or to deny women the opportunity to gain experience to qualify for the job. There are EEOC complaints regarding some of the occurrences.

One complaint concerns a situation where a male worked "provisionally" for over a year. He was not qualified to be appointed to the job, while qualified women were not given the opportunity to compete for the job.

Provisional appointments are frequently given to men, seldom to women. "Provisional" appointments are on-the-job training, and allow the person filling them to compete as an incumbent. They are frequently filled without notifying qualified women that they are available.

Additional job functions are often assigned, in order to promote men. Another complaint concerns a situation where a job was abolished, re-established at a higher level and the incumbent was permitted to fill it without having to compete, as required in the Merit System rules.

Both of these complaints concern Officials and Administrator category positions, and are examples of ways qualified women are denied promotions.

ALLEGATION 7.

Requests for information regarding contract compliance data have been denied with the statements that the data is unavailable.

ALLEGATION 8.

The Employment Opportunity Director, County agent for affirmative action, Ernie Perez, has stated publically, on numerous occasions, that the County's current affirmative action data and reports filed with the Equal Employment Opportunities Commission are not accurate.

ALLEGATION 9.

The Director of Personnel, Phillip Batchelor, stated to the Board of Supervisors, on September 23, 1977, "Women as a group have not made significant gains in County employment since the adoption of the Affirmative Action Plan." This statement was made in the Affirmative Action Progress Report, a review of the County's Affirmative Action Plan, implemented in 1972.

The Plan proposed to achieve parity for women in all job levels, at all salary levels by October 1977.

ALLEGATION 10.

Although the first Affirmative Action Plan (1972-77) was recognized as not being successful in promoting and recruiting women into non-traditional areas, a new plan was not adopted until August, 1979. The County had no Affirmative Action Plan for over a year, in violation of federal mandates.

The new plan, when first established, proposed that there should be limited expectations on promoting and recruiting women in non-traditional and management areas because the County had been unsuccessful in that endeavor in the past. The new plan has less specific expectations than its predecessor and there is no reason to believe it will be any more successful than the previous plan. The parity level of 36.4% established initially in 1972 is continued and there is no recognition of the increased availability of women in the work force or the fact that 58.6% of the County's employees are women.

ALLEGATION 11.

The history of Santa Clara County's affirmative action program as it relates to women has been one of neglect and oversight. The Affirmative Action Plan initially did not include representation by women's organizations on the Affirmative Action Council, which was established to monitor policies and the implementation of the affirmative action program.

The program designated to implement affirmative action for women has a similar history. Initially, there was no program at all. Then, the Women's Coordinator position was established, almost a year after the plan was mandated. Since then, the Women's Coordinator position has been frequently vacant. It was abolished once, then re-established at lower pay, as a temporary CETA position, due to public pressure from women's organizations. Again, due to the efforts of concerned women's groups, the position was upgraded to the original level and made a permanent county position, but has been left vacant again for almost a year. Recently, a woman was number one on the list to head the entire affirmative action section, but she was bypassed and a man was hired.

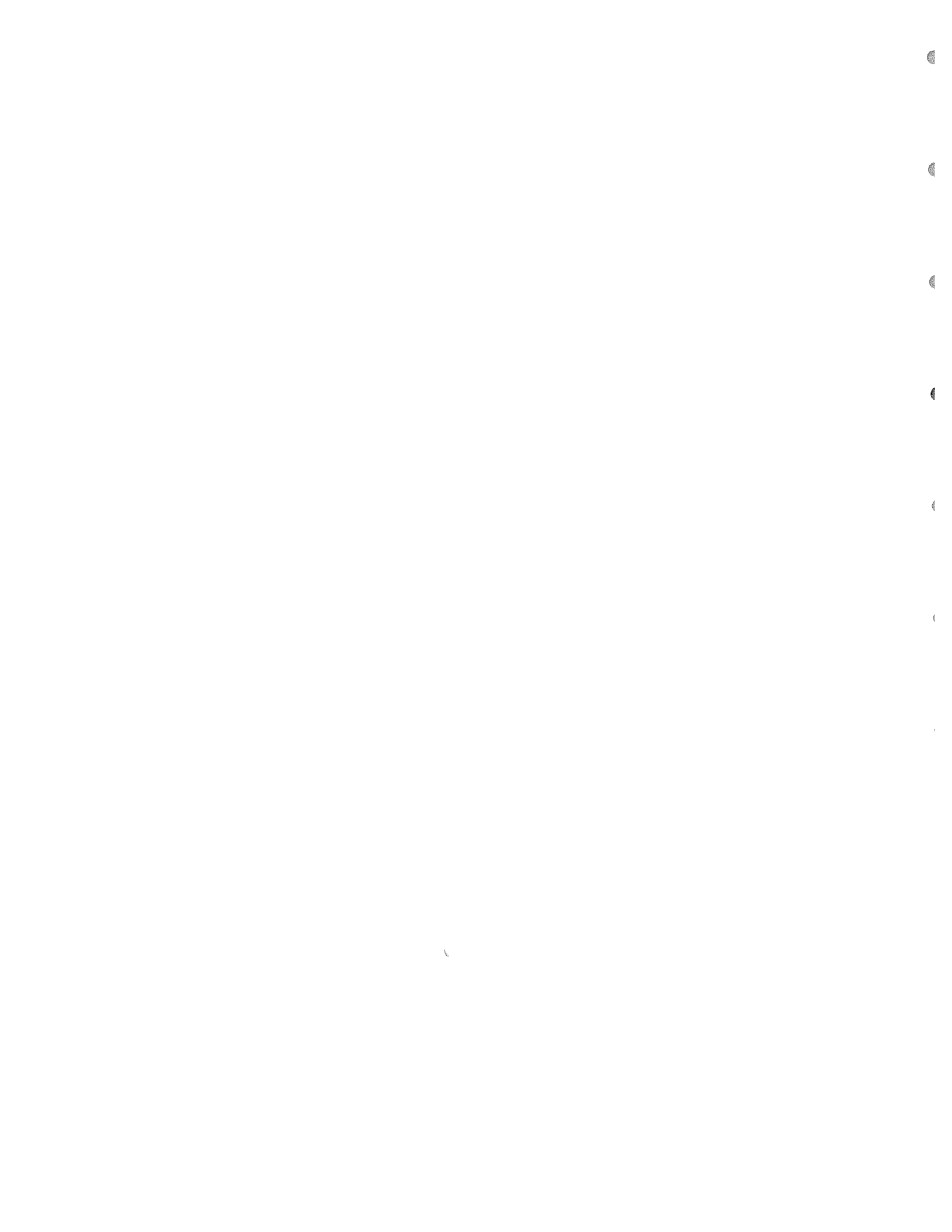
The prior incumbents to the Women's Coordinator job had to deal not only with discriminatory practices as they relate to women in general, but acts of discrimination and harassment against themselves. One was demoted illegally after a leave of absence and only received back pay as a result of the threat of litigation. The other was threatened with loss of her job.

Any positive actions to maintain the Women's Program have come from public outcry and pressure, not from goodwill by representatives of the County.

In order to resolve the complaints of discrimination against women in Santa Clara County, the following remedies are proposed:

- 1) An independent agent will be selected to review and monitor all terminations, promotions, demotions, reclassifications, hirings and "provisional" appointments for legality and whether women are receiving equal treatment.
- 2) Qualified women will be assigned all promotions until the salary level of women is equivalent to that of men.
- 3) All "provisional" (on-the-job training) openings in job classifications deficient in women, will be filled with women until there is no disparity between male and female salaries.

- 4) Current and former female employees will be paid damages, prorated by their length of service with the County, for loss of pay, fringe benefits and promotional opportunities since the implementation of the Affirmative Action Plan in 1972.
- 5) Where qualified women (on the list but a man was appointed) can prove they were denied promotions, they will be compensated by damages by being paid the salary and benefits at the higher level, until they receive the appropriate promotions.
- 6) Equivalent improvements in optional, improved, retirement benefits, assignments of county cars, use of leave, leave time and flex time policies, will be made available to female employees equivalent to those now being received by men.
- 7) Equal Employment Opportunity goals will be established based on actual women available and employed by the County, i.e., at least 58.6% and not on present, obsolete, lower workforce percentages. For example, the affirmative action goal for the Department of Social Services would be for 78% of all Officials and Administrators job classes to be filled by women because that is the percentage of women employed by the Department of Social Services.



CALIFORNIA COMMUNITY COLLEGES

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Testimony Presented to the
Assembly Select Committee on Fair Employment Practices
By Dr. Juana Barbarita, Chancellor's Office
October 1, 1980

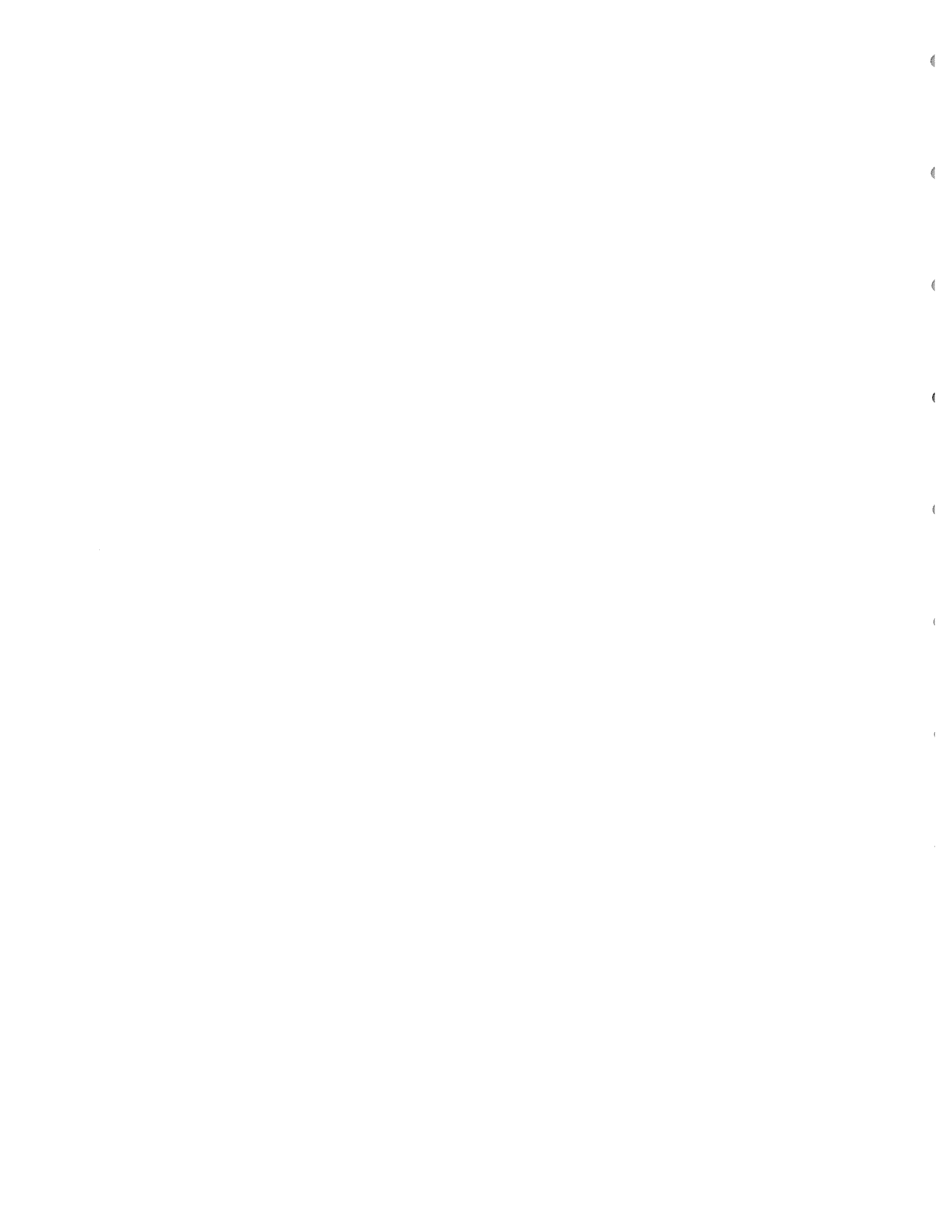
^{Evening}
Good ~~morning~~ ladies and gentlemen, I am here this morning to present my views as the affirmative action officer for the California Community Colleges. In this capacity, I am responsible for providing technical assistance in affirmative action to 107 community colleges which employ more than 60,000 employees and which enroll approximately 1.4 million students.

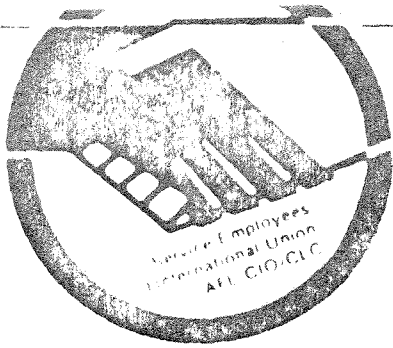
I would like to focus on two aspects of public employment that deter the full implementation of the affirmative action program in the California Community Colleges. The first is the level of support given to the affirmative action officer as determined by the State Personnel Board. The second is the absence of a realistic sanctions process that will move the state agencies toward affirmative action progress.

Regarding the first aspect, i.e., the level of support given the affirmative action officer, I would like to differentiate between the state agency affirmative action officer role and the system-wide affirmative action role. Since our agency is the head agency for 70 districts, the staffing in our agency is critical to the implementation of the programs and services offered throughout our system. Serving as agency affirmative action officer, I had found my role to be very limited until I requested the support of the State Personnel Board staff. Although the response has been very vague, and I am not exactly sure of their supportive activities, the actions resulting from my request have been positive in terms of affirmative action hires in the agency. Unless the affirmative action officer takes a matter outside the agency and to the State Personnel Board, very little support for the program may exist. Eventhough the interaction of the agency officer and the State Personnel Board is recommended, the consequences of such outside action for the officer include subtle pressure from other employees to stop going outside and mild harassment to make one's job more difficult. The role of the affirmative action officer has to be made more secure especially since the agencies that need the most affirmative action results often have the most employees opposed to an active or effective role for the affirmative action officer.

The second area which merits discussion is the sanctions process. Whatever steps or sanctions are available to move agencies needs to be better publicized. Unfortunately, many employees are not aware that the State Personnel Board plays a viable role in complaints. Employees with equal employment opportunity complaints share them with the affirmative action officer but will not follow through because of the poor record that the State Personnel Board has in alleviating situations that need correction. The procedure for handling a complaint is too long and there appears to be no follow-up by State Personnel Board to see that its recommendations are carried out. I'm still awaiting a reply to two memoranda I sent the State Personnel Board staff three months ago. Confidence in that agency's staff needs to be re-established or established so that affirmative action programs can be effective. Commitment to the implementation of our civil rights laws must be demonstrated.

Thank you for your attention.





SEIU

Service Employees International Union, Local 411
LARGEST AFL-CIO UNION IN CALIFORNIA
LARGEST PUBLIC EMPLOYEES UNION IN CALIFORNIA

AFL-CIO

October 1, 1980

Assembly Committee on Fair
Employment Practices
1116 - 9th St., Rm. 31
Sacramento, CA 95814

Assemblyman Richard Alatorre
Assemblyman Gerald Felando
Assemblyman J. Robert Hayes
Assemblywoman Gwen Moore
Assemblyman S. Floyd Mori
Assemblyman Stan Statham
Assemblywoman Sally Tanner
Assemblyman Frank Vicencia

REPORT ON AFFIRMATIVE ACTION

SEIU Local 411 represents janitors, food service workers, hospital workers and laundry workers in Unit 15, Custodial and Services Workers in State Service, the majority of which are in the State Hospitals. The majority of our members are:

- the most representative of the various ethnic groups comprising the State workforce;
- women;
- among the lowest paid workers in State Service;
- the least mobile in job transition;
- the most dependent on their jobs.

During the past months, SEIU Local 411 has demonstrated that discrimination on the basis of race and sex (including sexual harassment) is actively practiced in State Service. We also note that discrimination based on age comes to the fore particularly in promotional testing, regardless of sex or race.

The discrimination and unfair treatment problems can be measured in many ways. The best examples are:

- the turnover rate at each facility in these job classes;
- the high level of absenteeism;
- the accident rate and harassment for being injured.

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 Coastal Area - 1160 Marsh Street • San Luis Obispo, CA. 93401 • (805) 541-2313
 Los Angeles - So. Calif. - 2404 Wilshire Blvd., Suite 502 • Los Angeles, CA. 90057 • (213) 383-3148

As we see it, these problems are institutionalized to such an extent that it can be summed up generally as unfair treatment to low paid workers, particularly minorities and women. For example, if a janitor or food service worker at a State Hospital is injured, or has poor attendance, the response is to force them to resign or fire them and hire a new worker. In short, the easiest way to eliminate the problem is to eliminate the worker instead of recognizing the larger problem.

The various departments deal with problems in a very "typical, bureaucratic fashion." The recognized solution by a Hospital Administrator, Personnel Officer, Affirmative Action Officer, or first line supervisor is to follow the "bureaucratic rules game" and to systematically explain away the problem on paper. As a result, low paid workers, the majority of whom are women and minorities, receive more counselling memos, pay docks, punitive action, AWOL terminations, etc., than higher paid workers in State Service.

We have found that essential to maintaining this existing status quo are:

1. The total lack of upward mobility opportunities. As many as 1 Hospital Worker per Hospital is allowed access into the Psych Tech training program; others in our unit are not allowed entrance even when requested.
2. The Affirmative Action Officers provide no support - instead their function is to "white-wash" and cover-up existing discriminatory practices.
3. Departmental Officers only provide bureaucratic road blocks and cannot guarantee confidentiality particularly important in cases concerning sexual harassment.
4. The Fair Employment and Housing Commission takes too long a time to investigate and resolve discrimination complaints and as a result, we are filing more complaints with the Federal EEOC and asking the assistance of Mario Obledo's Office when dealing with the State bureaucracy.

In short, in describing a situation of no upward mobility combined with an ineffective middle-level and higher-level resolution process, State workers in the Custodial and Services unit are daily subjected to an organized tyranny, denying them of their basic human rights.

As a result, SEIU, Local 411 in an effort to bring justice and equal treatment has initiated the following activities realizing that race and sex discrimination interface with almost every complaint:

1. Unfair Labor Practice Charges against 6 State Hospitals and General Services:

Sonoma, Napa, Lanterman, Porterville, Atascadero and Metropolitan.

2. Discrimination Complaints against 3 State Hospitals:

Napa, Porterville and Atascadero

3. 504 Complaints filed with the Federal Government:

Napa State Hospital

4. Health and Safety Violations:

Napa and Lanterman State Hospitals

5. State Personnel Board Charges against Supervisors at:

Porterville, Napa and Sonoma State Hospitals, and

6. Meetings with the Governor's Office of Employee Relations to discuss harassment, discrimination of low-paid workers in:

March, 1980

April, 1980

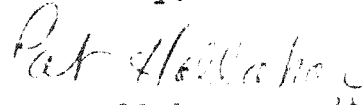
May, 1980

June, 1980

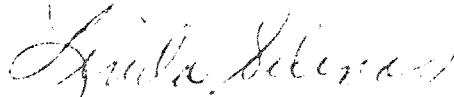
and July, 1980.

We appreciate the opportunity to identify and discuss with you the problems of discrimination in State Service. We hope this information will provide you with some tools to aid you in removing the series of road-blocks which presently prevent equal treatment of Custodial and Services Employees.

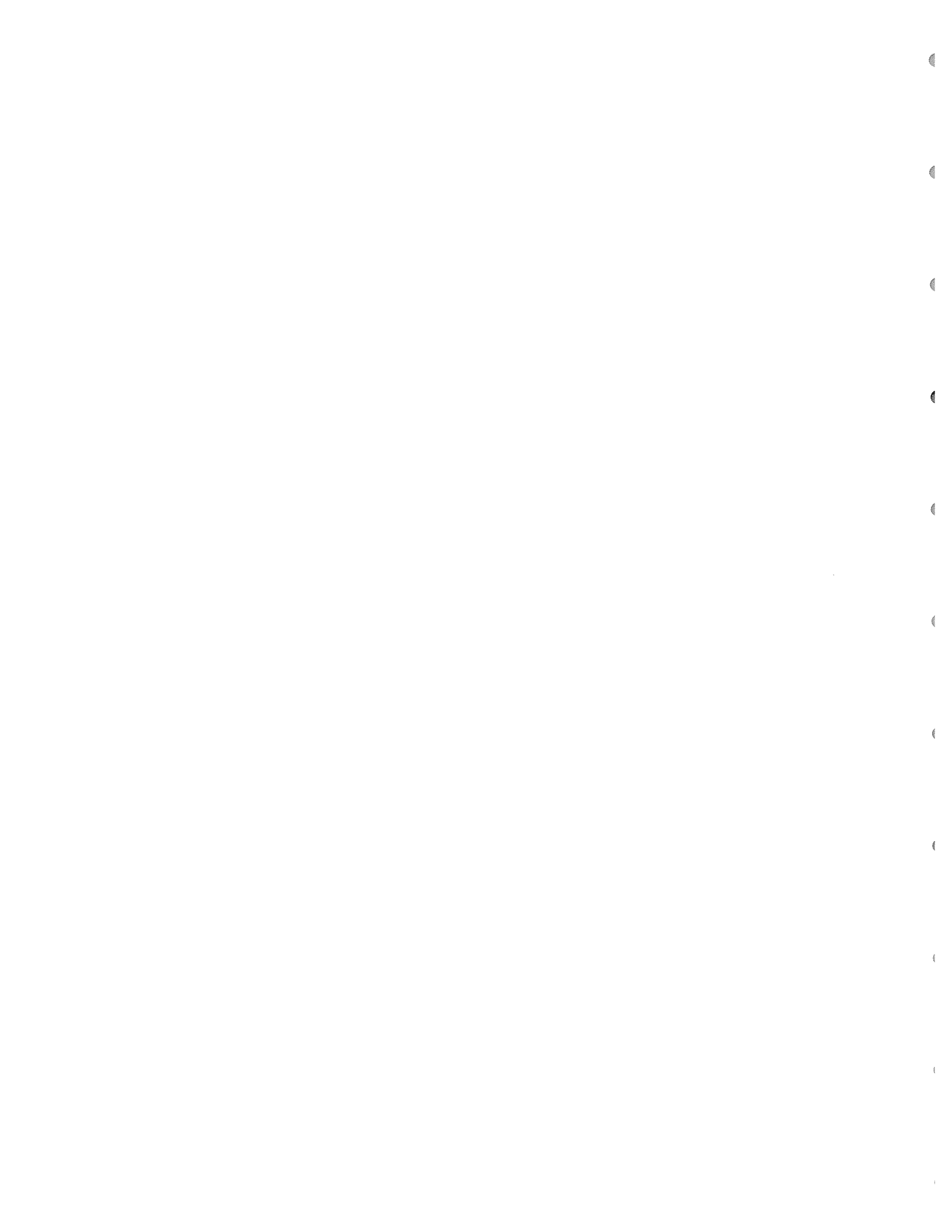
Sincerely,

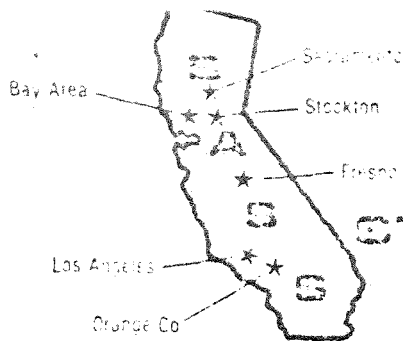


Pat Hallahan
Statewide Coordinator



Linda Salinas
Representative





**BLACK
ADVOCATES
IN
STATE SERVICE --
STATEWIDE COORDINATING COUNCIL**

October 2, 1980

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The Honorable Elihu Harris
Chairman of the Select Committee on
Affirmative Action
State Capitol
Sacramento, California 95814

Dear Chairman Harris:

As you are aware, BASS Black Advocates in State Service has been at the very forefront of the struggle advocating for better working environments, conditions and opportunities for Blacks and other State employees. It has been our experience that California can only meet its diverse and massive needs through a well trained and maximally integrated workforce. To this end, we are working and we exhort your Committee in the same vein. We commend your efforts as demonstrated by convening of this very important hearing. We are also pleased and grateful to be able to offer this testimony.

In the course of our work we have seen the recurrence of the following problems and issues:

1. Recruitment of Blacks

There is not in place a fully developed, coordinated, effective recruitment system that can bring the vast number of well-prepared and qualified but overlooked Blacks into the system.

2. The Examination Process and Adverse Impact

Although there is some effort being made to make sure that exams are job-related, some of them still are not. Additionally, ethnic people are screened out of the process through non-job related written tests and through the oral interview process.

CHAPTERS

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Suzette Kelly
President
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The pass-fail rate and the placement on the list need to be carefully scrutinized because these are indicators of adverse impacts and the system as currently structured is adversely impacting on Blacks and other ethnic peoples.

3. Training

When people are hired in State service, more often than not there is an informal training process known as the buddy system whereby people are brought along and told how to manipulate the system and how to extract and obtain information. Ethnic peoples are not privy for the most part to this buddy system. The solution is to formalize this process.

4. Retention Once Hired

Blacks have an involuntary separation rate (firing rate) twice the rate of whites.

5. Lack of Representation in Policy Posts

Blacks are severely under-represented in managerial and policy posts. These positions determine budgetary allocations, expenditure levels for program support, actual program composition of the workforce, the level and quality of service and who gets what contract--some very lucrative contracts. Some agencies such as the Resource Agency have no Blacks in technical or professional posts.

6. Labor Force Figure for Blacks

For the last ten years the Department of Labor has determined that in California Blacks were 6.3% of the labor force. This figure is not adjusted for racism and employment discrimination; if it were, the figure would be substantially higher. At minimum, the figure should only be used on a per agency or department basis and not taken as a composite figure. Again, this figure is artificially low.

7. Unequal Access to Promotional Opportunities

Blacks for the most part are not privy to choice assignments and acting as chief or director, or supervision assignments that coupled with special task forces or special projects or taken singularly would show us in improved light and amply qualified for promotions.

8. Grievances

Because of the high incidence of differential treatment, adverse working conditions and lack of promotions after demonstrated ability and experience, Blacks have to resort to using the grievance and discrimination complaint processes to obtain redress when fair treatment would preclude this. While it is great to have the right to file grievances and complaints, it is very time-consuming and of course, emotionally draining.

9. Cultural Awareness Training

This section should perhaps more accurately be called racism detoxification training. This should be given before the first paycheck is received by anyone.

The Honorable Elihu Harris
October 2, 1980
Page three

10. Affirmative Action as a Promotion Criteria

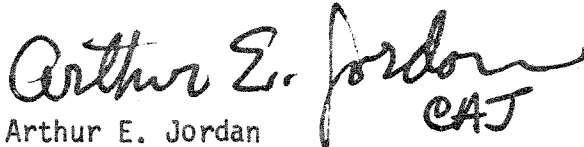
Affirmative action or the demonstrated adherence or practice of some should be a well documented category for rating promotional candidates and for successfully completing promotions.

These are but a few of the concerns that we have. We will be in contact with you to provide more and more in-depth coverage of these and other concerns.

Sincerely,



Chester A. Johnson
President, Sacramento Chapter, BASS



Arthur E. Jordan
President, Statewide Coordinating
Council of BASS





CAFE de California, inc.

P. O. BOX 161207, SACRAMENTO, CALIFORNIA 95816

TO CHAIRMAN, SENATE SELECT COMMITTEE

Dear Mr. Chairman:

On behalf of CAFE de California the largest Hispanic Employee Advocate Association in State government, I thank you for the opportunity to testify here today.

It has often been said that the 1980's could be the decade of the Hispanics. Some have even predicted that the Hispanic will become the dominate political and economic force of this decade. However, if the progress made by Hispanics in State government in the 1970's is any indication of how Hispanics will do in the 1980's, then it would appear that this decade will not yield the promise that some believe. The fact of the matter is that Hispanics have been and continue to be the only underrepresented ethnic group in State government. If current projections are accurate, it would take approximately 5,600 new Hispanic hires not including terminations and separations to reach parity (based on 1970 census data). This figure represents nearly 4% of the total State government workforce. Although much of the responsibility for insuring that Affirmative Action takes place in State government rests with the State Personnel Board (SPB), they are not responsible for the actions of Departments and Agencies who actually do the hiring, because, by statute, the

hiring power rests outside SPB. For example, when a Department or Agency makes a new hire it is not officially acknowledged as a statistical hire by the SPB until 3 months when their computer picks it up. As a result, it makes it very difficult for the SPB to reverse a Department or Agency non Affirmative Action hire made 3 months earlier.

CAFE de California believes that a tighter monitoring procedure that the SPB has the power to authorize, can be more effective than the current Affirmative Action contract process they have with each Department.

In taking the time to point out that the Affirmative Action contract process is relatively new to government, it does not do, in our estimation, what Departments or Agencies can to ensure that Hispanics and other minorities are hired.

We believe the following recommendations will go a long ways to ensure that Affirmative Action in State government becomes a reality for Hispanics in the decade to come.

- 1) Sign off authority for all hires by Affirmative Action Officers (AB 1350).
- 2) Direct reporting relationship between Agency Secretary's or Department Directors and Affirmative Action Officers.
- 3) Mandating SPB program resources and appropriate emphasis of recruiting Hispanics to achieve parity.
- 4) Need to allocate additional SPB resources to adequately monitor Affirmative Action.

- 5) Require submission of Affirmative Action goals and timetables reports by Department Directors prior to the Budget hearing process.
- 6) Hispanic departmental liaison to community i.e. community relations and SS/S recruitment.
- 7) Establish an Affirmative Action civil service class series to institutionalize Affirmative Action.
- 8) Creation of a Legislative Hispanic Task Force to look at the employment, educational and economic conditions of four million people and in the State of California. In conjunction with this concept a corresponding Task Force should be created in the Executive Branch.


Marcos Nieto
CAFE de California





Center for Independent Living, Inc.

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ADMINISTRATION & SERVICES (415) 841-4776 • TRANSPORTATION 848-5545

COMPUTER TRAINING 849-2911 • DLRC 548-4274 • DEAF SERVICES TTY 848-3101
VA PROJECT 848-3177 • KIDS PROJECT 548-4283

October 6, 1980

Elihu M. Harris, Chairman
Select Committee on Fair Employment
Practices
California State Legislature Assembly
1116 Ninth Street, Room 31
Sacramento, CA 95814

Dear Chairman and Committee Members:

On behalf of the Center for Independent Living, we are supplying you with written testimony to support the testimony furnished by us at the October 1 Select Committee on Fair Employment Practices hearings. As an activist consumer organization representing the disabled, we would like to make the following points:

1) At the local government level we have noted a lack of clarity regarding mandates governing affirmative action for disabled persons. This lack of clarity is evidenced by the absence of Affirmative Action goals, timetables, and data for this population. Furthermore, local governments repeatedly have failed to respond to requests for such specific information.

2) Government Code 19230 specifies that it is state policy that local governments exercise affirmative action in the hiring of disabled persons. In addition, according to your committee statement, "Existing state policy requires every state agency and department as well as any program receiving state funds by the state, to achieve an equitable representative work force of minority groups, women, the aged, and the disabled by occupational classification and salary level."

3) As you are well aware, Affirmative Action policy is meaningless unless it is supported by clear, written goals and timetables, with ongoing data collection to verify progress made by protected groups. In addition, level of staffing and upward mobility factors must be taken into account.

4) We request that your committee take steps to ensure that affirmative action plans are implemented in a meaningful

Elihu M. Harris, Chairman
October 6, 1980
Page 2

and effective way at local government levels. These steps should include:

- a) clarifying the legal mandates concerning local government's responsibility for implementing affirmative action for disabled persons; and
- b) enforcing sanctions against local governments that do not follow these mandates.

We know that your committee will give these matters the attention they deserve. Please keep us informed of your progress in this area, and do not hesitate to call us should you desire further information.

Sincerely,

Susan Schapiro

Susan Schapiro, Attorney
Disability Law Resource Center

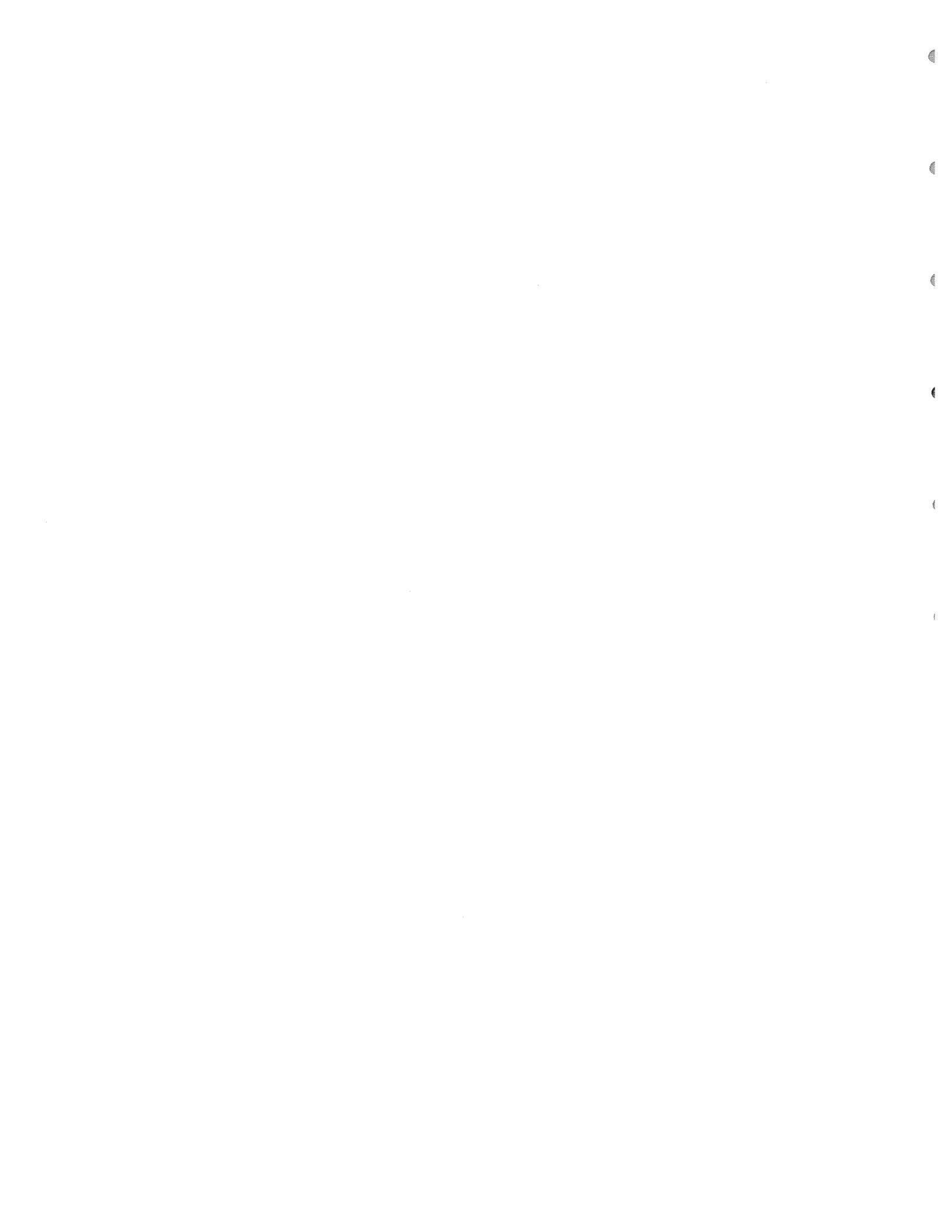
Angela Botelho

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Personnel Director

cc: Affirmative Action Officer, City of Oakland,
Affirmative Action Officer, City of Berkeley
Affirmative Action Officer, County of Alameda

SS/AB/ams

PRESENTED
BY
MARINA ESTRADA
TO THE
ASSEMBLY CALIFORNIA LEGISLATURE
SELECT COMMITTEE ON
FAIR EMPLOYMENT PRACTICES
ON BEHALF OF
CHICANAS IN STATE SERVICE
OCTOBER 1-2, 1980



ASSEMBLY CALIFORNIA LEGISLATURES
SELECT COMMITTEE ON
FAIR EMPLOYMENT PRACTICES

Public Hearing

October 1-2, 1980

SUBJECT:

Effectiveness of Affirmative Action Programs in providing hiring and promotional opportunities in State Government.

DISCUSSION:

The State Personnel Board has initiated a task force to address the severe problems of underrepresentation and underutilization of Chicanas within California State Government.

As of March 1980, Hispanic women comprise only 4.0 of the state work force. Further, she is the lowest paid civil servant receiving \$1,138 as compared to average state salaries of \$1,251 for all women and \$1,567 for all state employees.

We request that the committee consider the following concerns and recommendations as regards to the underrepresentation of Chicanas in state services.

CONCERN:

Present selection procedures for the major classification used by departments do not provide opportunity for the appointment of Chicanas.

RECOMMENDATION:

1. Selection procedures which have been demonstrated not to have an adverse impact should be used.
2. Written examinations or physical examinations should not be used when these examinations are not job related.
3. 100% QAP examinations administered with Chicana representation in each panel.
4. Focused recruitment efforts should include organizations associated with Chicanas for referral or applicants and community representatives on the panel.
5. Extend examination final filing date until a proportionate representation of Chicanas is attained.

6. Supplemental certification lists should assure representation of Chicanas.
7. The time between the final filing date and the establishment of the list should be minimized to avoid high drop out rates. Chicanas should be contacted prior to each part of the exam: i.e., written and interview parts. If it is identified that there are transportation, child or other difficulties, provisions should be made for their attendance.
8. Examination and recruitment plans for the major entry level classes should be reviewed by the Chicanas in State Service to ensure the selection process will not adversely affect Chicanas. The major classes we wish to review are:
 - a. Clerical
 - b. Professional
 - c. Law Enforcement
 - d. Field Representative

CONCERN:

The Department's Affirmative Action Programs are ineffective. According to the State Personnel Board's Annual Report on the State of California Affirmative Action Program,^① "for those departments below parity..., the number of years to achieve parity..., for the SS/S group is 2-37 years."

① for the fiscal year 1978 - 1979

RECOMMENDATION:

1. Ensure that Chicanas are adequately represented on all eligibility lists.
2. Require that the supplemental certification list take precedence over the regular list and used exclusively until Affirmative Action goals are met or parity is reached.
3. Such procedure should be extended and applied to all classes in which Chicanas are underrepresented.

CONCERN:

When the State Personnel Board refers to Minority, Female and Disabled

goals, no mention is made of establishing Ethnicity goals within the various components of an Affirmative Action Program. As a result, the serious deficiencies in Chicana representation are never addressed.

RECOMMENDATION:

1. Goals for Chicanas should be established for all components of Affirmative Action Programs including, Disabled and Women's Programs, as well as seasonal hires and WIN/COD programs. In addition, the Women's Program should be an integral part of the department's Affirmative Action Program. Historically, Chicanas have been omitted from the existing program which have concentrated on caucasian women.
2. That resources be redirected to the most critical areas of deficiencies, i.e., staffing, clerical back-up.

CONCERN:

In the past, it has been the practice of some departments not to submit data which reflected a functional Affirmative Action Program. It is therefore assumed that a uniform data collection system was not in effect.

This practice has created a negative impact on the numbers of Chicanas which departments could have hired.

RECOMMENDATION:

1. The development of a data collection system which reflects the following information:
 - a. Number of vacancies and listing of classifications;
 - b. Location of vacancies, e.g., department-geographic;
 - c. Number of hires by Ethnicity and Sex;
 - d. Number of T and D assignments by Ethnicity and Sex;
 - e. Exist interviews and results;
 - f. Good faith efforts demonstrated before selected employee hired;

- g. Any special training program, e.g., COD.
2. Departments will report this data (AAP results) to PEAD on a monthly basis until parity is reached in the under-represented classes.
3. That SPB evaluate monthly data submitted by Departments and provide feedback in a consistent and timely manner.
4. The SPB should conduct annual public hearings, at which time the departments must report progress relative to their Affirmative Action plan requirements.

CONCERN:

In reviewing the specification sheets for the major entry level classes identified as requiring remedial action the language was ambiguous and/or not job related. Examples of these are:

- a. Must have a high level of morals and speech for Fire Captain (Dept. of Forestry).
- b. Read and write english at a level required for successful job performance for Fire Fighter as well as Office Assistant-General (Dept. of Fores

RECOMMENDATION:

1. The minimum qualifications should be stated in a more understandable language.
2. The minimum qualifications should be revised to reflect job relatedness.

CONCERN:

The lack of training programs specifically for lower and entry level classifications in the department. Current statistics show that 43.7% of the Chicana workforce are at the clerical level.

RECOMMENDATION:

1. The departments should commit dollar resources to support job/classroom traditional training events which are typically available through PDC as well as private trainers and companies.

2. The department must commit the human resources of supervisory time which is necessary to provide concerted on-the-job training for new employees, those at the low-entry level who are new to the civil service system and the work world.
3. More significant to the department's training commitment is the need for development and implementation of intensive Mid and Top Management Level Training Programs.

This would facilitate the ability of department management to immediately appoint individuals shortly after the training period to pre-select mid- or top-management decision-making positions.

4. In addition to sensitivity training the departments should adopt a policy of enforcement of the manager/supervisor's role in the Affirmative Action Program. This should include taking appropriate punitive action whenever specific non-compliance is found.
5. That the personnel assigned to the Affirmative Action Offices have a past record of sensitivity awareness and experience in dealing with the underutilization and underemployment of Chicanas.

In summary, we feel that the recommendations outlined above could be strengthened by the addition or adoption of a formal enforcement plan compelling unresponsive departments to comply.

The best example we can give which illustrates our point is the departments track records on seasonal hires. These TAU hires can be made without examination and list clearance problems. Despite the lack of so called bureaucratic obstacles, and despite the SPB's monitoring, the departments have yet to achieve labor force parity for Chicanas.

For this reason, we strongly urge that the Legislature require annual status reports and public hearings on department's progress for both

the Legislature and public prior to the approval of department budgets. .

Maria Lemus Perrier, Chair
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October 2, 1980

Elihu M. Harris, Chairman
Assembly Select Committee on Fair
Employment Practices
1115 Ninth Street, Room 31
Sacramento, CA 95814

Dear Mr. Harris:

The Natural Resource Biologists Association was unable to make a presentation before your interim hearing on the effectiveness of Affirmative Action Programs but would like you to include our views in the hearing record.

By way of introduction, we are an Association whose membership is made up of professional biologists, employed by state and federal government and private industry. We formed our Association to deal with issues that affect California's natural resources and our profession. As a special interest group whose membership includes a cross-section of State Departments, Boards, and Commissions, we believe it will be of value to provide your committee with our views as to the effectiveness of the state's present Affirmative Action Program, to relay to you our concerns and frustrations, and to provide constructive proposals for resolving present concerns with this state program.

First, the requirements of the federal act governing affirmative action have never been fully described to us as employees of the state. As a result, we are uncertain as to what is actually required. Second, because many of the state's actions appear to run counter to perceived affirmative action goals and objectives, we are uncertain what the state actually expects to achieve in the way of long-term goals and objectives. Until now, we have had no opportunity to provide input into this important state program or to even comment on it. A program, as controversial as the Affirmative Action Program, should not simply be thrust upon people without first trying to enlist their support and giving them the chance to make a meaningful contribution to its success. A forced program creates hard feelings, polarizes attitudes, and essentially jeopardizes the programs chances for success before it gets started.

We are concerned that the present Affirmative Action Program is structured around a "quota" system. We have heard the arguments that the term "quota" is incorrect and that the program only deals with goals and objectives and parity. However, these arguments are only word games. This is a "quota" system and as such suffers from all of the inherent problems of such a system. Specifically, we are concerned with how percentages of various minorities are derived. We believe that basing

"hiring goals" on percentages represented in a potentially available state labor force in California as derived by the census is simply not realistic and is unachievable. Our concern with this system is then compounded because of a requirement that these percentages be applied uniformly across all State Departments, Boards, and Commissions. This to us demonstrates a lack of creativity. If we are to work within the confines of a "quota" system then we would prefer seeing parity applied on a broad job classification basis, e.g., Biologists, rather than across various state subunits. This would achieve the requirement of "equal opportunity" employment, eliminate the problem of double counting, and at the same time minimize the impacts of state actions that appear to be running counter to affirmative action goals and objectives. Actions such as Department, Board, and Commission local hiring freezes and the governor's policy of limiting new positions in an effort to maintain a no government growth image are having increasing adverse effect on the success of the present uniform parity system as the sub-units upon which it is applied become smaller and smaller.

We are also concerned that the present Affirmative Action Program appears only to treat symptoms and does not get to underlying causes. We recommend, therefore, that less emphasis be placed on trying to achieve parity under a system that threatens sanctions and that more consideration and funding be focused on positive approaches such as developing career incentives for various job classifications. This could include:

1. Expanding training programs to insure candidates meet high standards of professionalism,
2. Developing incentives that make it more attractive to sub-units of state government to hire minorities (private industry receives tax breaks and financial assistance to participate in minority hiring programs), and
3. Increasing salaries and benefits of problem classifications to make them more attractive. (Recent surveys conducted by the American Fisheries Society show that the reverse is occurring in California.)

Our Association would be pleased to help your committee seek ways to resolve this important issue and to develop a long-term equitable solution. Please contact us if we can be of further assistance.

Sincerely,



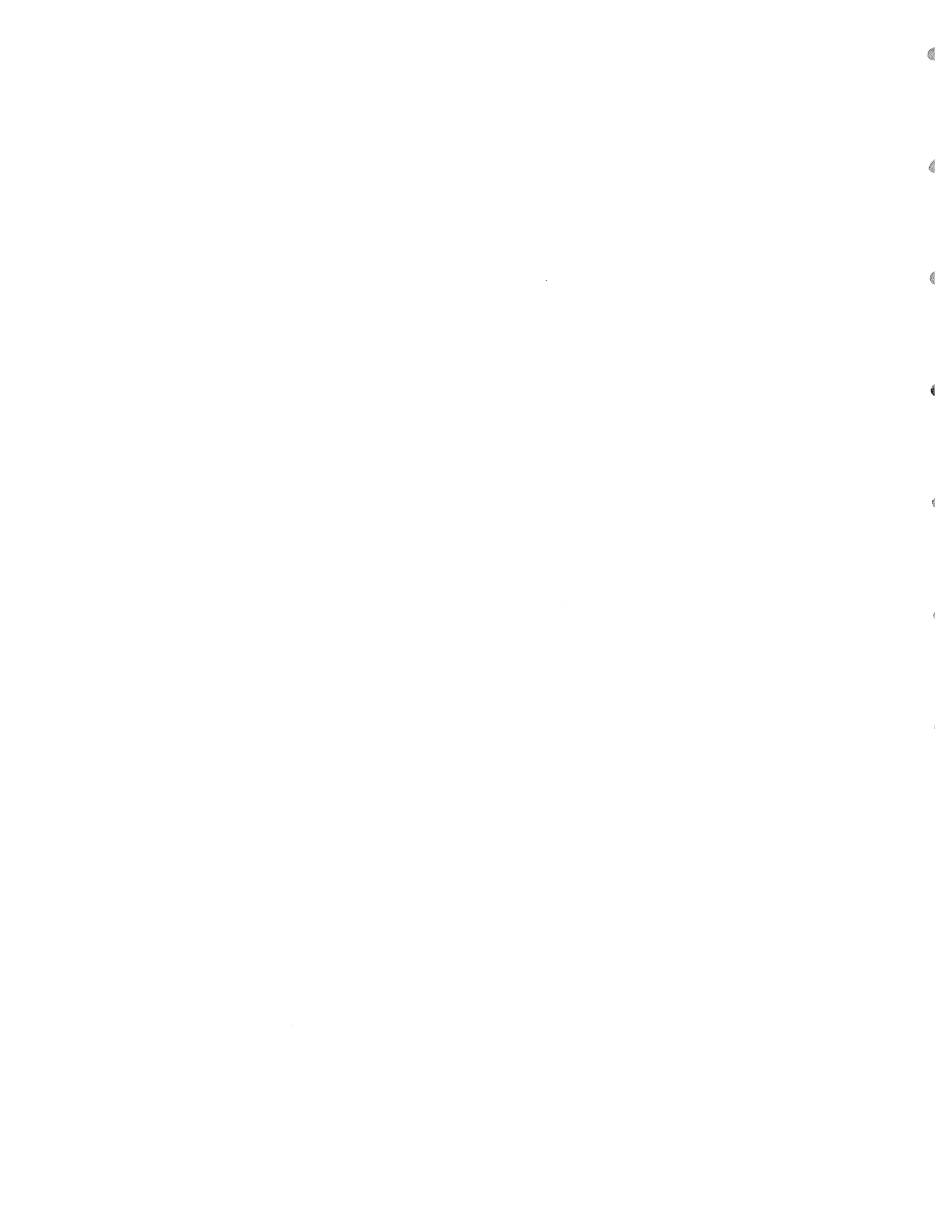
Larry Eng, President
Natural Resource Biologists Association

cc: Ronald Kurtz, Executive Officer
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Marty Morgenstern, Director
Governor's Office of Employee Relations
1230 'J' Street - Room 262
Sacramento, CA 95814

MISC. TESTIMONY

*This oral testimony given at the hearing is included as an appendix to the transcript. The subject matter of the testimony was not within the Committee's legislative mandate, but is being included as part of the record for informational purposes.



MR. HARRIS: Mr. Florez from Camara de Comercio Mexico.

MR. FLOREZ: (Translated from Spanish) Good afternoon, my name is Jose Florez, president of the Mexican American Chamber of Commerce here in Sacramento and I'm here to give my testimony to you relating to the problems of the spanish speaking people here in California.

We want to express our sincere thanks for letting us be here in front of this Committee to tell you about our problems. As the people before me have stated, like Mr. Sillas and just now Mr. Oliveira, we know that you are aware of most of the problems in our community.

We are here to express, on behalf of the spanish speaking people in California, those who do not speak English, those who do not understand more or less what you are saying, or the announcements that you have sent that were only in English and not in Spanish, that there is no personnel here for example, here in this committee. Unfortunately Mr. Alatorre is not here so that I could direct my words to him so that he can answer us in Spanish, so that he can give us more information regarding what we can do to help the state of California to change the problems of the Spanish speaking people.

For example, in our employments, as it has been expressed, there is many of us with lots of talent and capacity, that can't be expressed because of the examination, or are not received, that can fulfill the job but can't

accept it because they are told: "No, you don't speak English."

There is also a lot of people that you, the State, is looking for to be bilingual that if it could be possible for many of the programs where Spanish speaking people are needed, that something be presented to them or more Spanish speaking personnel be hired.

These are problems we see. For example take this Committee or any of the many committees that the State has all over the State, it is very necessary that you should have among your chosen personnel in this committees people that speak Spanish or that could answer in Spanish. And I don't know if there is somebody here that could respond or not. Maybe Mr. Harris can do it or not but I don't know. Or may be you Mr., or you Miss. I don't know who it might be who can answer me.

What we want to express is that there's a lot of spanish speaking people who cannot understand or explain themselves here or they feel left out of these committees.

MR. HARRIS: We do have bilingual services and that's why we're having it recorded and will be in fact taped, the taperecording will in fact be translated for purposes of transmission.

MR. HAYES: My question would be, I greatly understand the problems of bilingual and monolingual services and needs. Is it possible that the monolingual Spanish, Philipino, Vietnamese, does this present a special

barrier to affirmative action and can this barrier be erased without a bilingual program?

MR. FLOREZ: (Translated from Spanish) Surely, we have an example: If I was here looking for employment with you, and I couldn't express myself in English, like I'm not doing it now, I couldn't tell you or demonstrate to you my capacity, you won't recognize the knowledge I have or whether I know the work or not. There's also many jobs where you don't need to talk. The State of California has jobs that are manual and can be done. In any department, Spanish speaking people or speakers of other languages can be hired to do that work.

MR. HARRIS: I think it is an issue that is obviously very broad. It goes to education. It goes to job opportunity, goes to the services in various aspects of state government. So I understand that.

MR. HAYES: I'm very grateful for this gentleman's testimony because what you have done, you made up my mind whether or not to accept the position that was offered to me today by the Commission of the Californians. The answer is going to be yes.

MR. FLOREZ: (Translated from Spanish) I'm going to give him a suggestion if he accepts, it is very important that he speaks Spanish because if he is going to Baja or South Baja he is going to get lost over there and won't be able to express himself very well.

MR. HAYES: I travel and my Spanish is improving

rapidly. My teacher says I will be very good eventually but right now, and this is one of the reasons of my commitment to bilingual education is I am too embarrassed to speak Spanish in front of people at this point. My Spanish is so bad.

MR. FLOREZ: (Translated from Spanish) If you make a commitment to speak Spanish I will make a commitment to speak English.