NEW YORK CITY COMMISSION ON HUMAN RIGHTS

Hiring Practices for Broadway Musical Orchestras:

The Exclusionary Effect on Minority Musicians.

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THE CHAIRPERSON: On behalf of the New York City Commission on Human Rights, I am pleased to open these hearings into Hiring Practices for Broadway Musical Orchestras: The Exclusionary Effect on Minority Musicians.

The Commission, besides its full time paid chairpeople, also have the services of fourteen unpaid commissioners who, traditionally, have served the City of New York witthout pay, I might say, before there was any such thing as a fiscal crisis. This has been a tradition in the Commission.

Sitting with me to hear testimony today, on my far left are Commissioner Norman Kee; next to him, the executive director of the Commission, Preston David.

On my right, Commissioner Eleanor Clark French, and on her right, Commissioner Frank Mangino.

Witnesses will be sworn by Commissioner Kee.

I should like to open with a brief statement explaining the reason for these hear-

These trends go well beyond this season's tunes or styles or art forms.

Broadway often tells us how we act and how to act. If the theatre is exclusive, what can we expect of industry?

Sooner or later the musical pits of Broadway were bound to stir public concern. For although the minority population of the City is nearly half the total and the pool of minority musicians is large, the pits of the average show are as white as they were decades ago. The bulk of the black musicians have had to depend upon the black shows to find work.

Of the sixteen snows with orchestras on Broadway, five are in a black motif: "The Wiz," "Bubbling Brown Sugar," "Guys and Dolls," "Me and Bessie," and "Porgy and Bess." And 'Porgy and Bess" managed to employ as few black musicians as the typical white show.

What will happen if trends change next season or tomorrow and on Broadway change is a part of the business? What will happen if Broadway reverts exclusively to its usual pattern of shows featuring only whites? Will

the minority musicians also fade off of Broadway? Is it fair when blacks must line up to get as many jobs as possible in the black shows because such traditional shows limit their opportunity? Does equality on Broadway come down to jobs for minority musicians in black shows and for whites in the larger number of musicals?

It is as if black journalists and writers in New York should consider that they have equal opportunity because The Amsterdam News is open to them. An industry that must measure equal opportunity by the number of blacks in a few all black shows still have a lot to learn.

Broadway supposedly began learning in 1970 when Judge Robert Mangum, then Commissioner of the State Division of Human Rights, called in theatre owners, producers, musical contractors, and minority musicians, to urge the need for affirmative action to improve hiring practices in the pits.

It now appears that except for the chance appearance of a few black shows, the composition of Broadway orchestras remains as it did when Broadway got its first warning in

1970.

Six years later, after warnings to the industry have gone unheeded, a public hearing and more formal action were the only recourse.

The Commission does not seek to determine the composition of Broadway orchestras. Our mission is to open the processes so that selections are made from the complete school of available musicians instead of from an in-group that may be known to those who hire.

In American, in-group employment systems, whether in the construction trades, law firms or the arts, have always favored whites. For almost by definition, minorities have been excluded from all of America's in-groups.

Anyone serious about remedying racial exclusion in his business must abandon the informal hiring systems that have as their inevitable by-product the exclusion of the nation's minorities.

The Commission has proved that reform of employment selection processes can be done fairly, without interference with the normal processes of an employer and with benefit to

his overall employment system.

The Broadway pits do not present a notable challenge. We do not have before us the sensitive situation we encountered in the Philharmonic Orchestra case, where selection of musicians for the premier orchestra in a country depended upon the most refined artistic judgment and auditions.

Union contracts forbid auditioning for Broadway shows.

The judgment of the music contractor prevails. We believe we can find a way to inform his judgment so that capable black and Hispanic musicians are known to him, even as white musicians are familiar to him today.

We are willing to work with the system as it is. But we are not willing to leave it as it is.

The Commission knows from experience what can be done when careful affirmative action technology is applied to a given occupation. Even in those where the pool has been much smaller than for Broadway orchestras, we have helped New York business make dramatic strides.

This has been true in the turndown economy that has characterized New York since 1970, and that we recognize characterizes Broadway today.

Between 1970 and 1973, the total work force of companies in compliance with Commission drawn affirmative action plans actually decreased 14.5%. But minority employment in these same companies rose by 20.8%.

The quality of this improvement is indicated by the fact that 61% of the total increase in minority employees was in the top four occupational categories, the ones where companies had said minority talent was too scarce to find.

With the help of a carefully designed affirmative action program with special emphasis on sources of talent, the companies made the greatest percentage increases not in bottom rung jobs but at the top in officials and in managers, professionals, technicians and salesworkers.

Can anyone doubt that the pool of minority talent for Broadway musicals is even greater than for those rarefied job categories where opportunities for training and preparation

have opened up only recently?

Finally, we charge no venality here. We see no conspiracies on Broadway. What is at work in the pits is reliance on a way of doing business that comes from another time. We mean to make it another world. The great lesson in equality for our time is that discrimination is no more tolerable because it relies upon a system that breeds exclusion rather than on the decisions of prejudiced individuals.

Blacks gave America its need of music. American has given it to the rest of the world. Blacks have a special right to believe some significant number among them qualify for the Broadway pits.

For from their ranks have come diverse matters of the musical arts from Paul Robeson, Andrew Watts, Leontyne Price, Duke Ellington and Dean Dixon to Scott Joplin, Count Basie, Billie Holiday, Charlie Parker, John Coltrane and Stevie Wonder.

We believe that when the workings of the system are understood, Broadway will want to work with us to build a more inclusive hiring

system.

"Porgy and Bess" opened last month with the same number of black musicians in its orchestra and is the last Broadway production twenty years ago. This very issue, exclusion of black musicians, stirred controversy then as the pages of the daily papers of that day verified.

What was unacceptable in America where blacks still languished on the outside totally unequal, overlooked, despised, can find no rationale today. But, a generation of pain, conflict, reckoning and reconciliation have produced greater change in America than in the pits.

It should be the opposite. Broadway must set the tone for New York and America. We mean to help it do so.

It is the tradition of the Commission to open its hearings of public interest by inviting a witness whose prominence in the field is unchallenged. When these hearings appeared inevitable and we considered who might be the appropriate witness, I must tell you that only

one name occurred to us, for the person to open these hearings had to have not only artistic talent but social vision.

We believe we found the renaissance man of the theatre and we believe we found a man whose social vision and whose struggle for equality is virtually unequal in America today.

I am pleased to call upon Ossie Davis to open these hearings and I ask Commissioner Kee to swear him in.

O S S I E D A V I S, called as a witness, having been first duly sworn by Commissioner Kee, thereafter testified as follows:

MR. DAVIS: To the Commission, to the Chairperson and the other Commissioners:

First, a brief expression of appreciation that you saw fit to invite me to come and make an expression as part of these proceedings.

I did not come prepared with a written document stating my feelings and thoughts, but I don't think, I don't feel disqualified since I remember vividly having testified at other meetings aimed at resolving just these

same problems, and there has not been that much change to make the things I saw and felt then and said then totally irrelevant today.

Parenthetically, I must thank the Chairperson for the magnificent introduction she gave me. I will try and live up to it.

If "Porgy and Bess" had been playing in New York a hundred years ago or so, not only would all the pit musicians have been white, but all the actors would have been white. Porgy would have been white, a white actor with a black face. Bess would have been white, a white actress playing in blackface. And I mention that fact because it sets the historical overview which we must thoroughly become acquainted with if we are to deal constructively with the problems presented by the absence of blacks and other minority musicians in the pits of our theatres.

I mention that because it was our efforts to find against that kind of misrepresentation that form the center of the strategy of the struggle of the black performers aided and abetted by civil rights organizations and others

who cared.

Because we saw that as evidence that there were whites and strong thoughts in the white community andfelt that whites could better portray blackness than blacks could, and this kind of presumption and arrogance, though changed and muted over the years, is not totally absent from the present scene. There are still whites who feel that they know better than we know who we are and how we should express who we are, what we think and what we feel.

I believe that this attitude is a part of the problem that brings us to this hearing today. Racism in our country, as has been pointed out by the Chairperson, is basically institutional. It differs from bigotry in that bigotry is personal based on prejudice and individuals warped reaction to difference in another group.

Racism, on the other hand, is a system that can work whether or not the people involved in it have any feelings one way or the other.

I am a black man and I am very sensi-

tive about my friends and yet some of my best friends are racists, not because they are prejudiced against me, but because we jointly participate in a system that automatically tends to exclude my full participation.

My only hope is that I can influence that system, that I can change it, that I can help my fellow artists, fellow minority artists, in some plan of action that will ultimately eliminate racism as an institutional aspect of American life.

The presence on the American stage of whites who blacken their faces to act as blacks gave the whites two kinds of advantages. They were in full control of what they felt everybody should know about black people in terms of content and life style and they, at the same time, by excluding blacks from any opportunity to practice and learn our craft, kept us on the outside and on the periphery and we looked with horror at gentlemen such as Amos 'n Andy, who could put shoe polish on their faces and make millions of dollars pretending to be black folks while there were other

gentlemen equally talented and generally black by nature who are starved because they lacked the opportunity to practice their craft in the American theatre.

What we seem to have currently in the case of "Porgy and Bess" is one more instance where from the heights are presumption and self-congratulation, a group of people representing what they themselves think is the best of American culture, have to make decisions relative to employment opportunities for blacks. They seem to feel that Mr. Gershwin's score is sacred, it is pure, it is lily white to the extent that for a black man to even touch the music might constitute a form of cultural rapes.

I speak, of course, from a certain bias when I describe or when I relate to "Porgy and Bess" at all. It is foremost in its sense a classic example of what we had to struggle against artisitically in this country.

I am not unaware of the significance of a hero who spends the whole evening on his knees and I can understand how whites might find some comfort in that that which is supposed to

express the essence of blackness is always on its knees. And I am sorry Mr. Gershwin didn't get around to writing an equally vivid opera about some of the other black heroes who did not get on their knees, especially when not there by circumstances.

The other heroes, Toussaint l'Overture for one, and Nat Turner for the other, who are equally vivid heroes, out of whose lives and struggles great operas could be written.

I am also aware that one of the great numbers, one of the most sentimentally regarded musical operas, of "Porgy and Bess," which often brings the house to tears, is that great classic sung by a black man, "I've Got Plenty of Nothing."

Then to compound the cultural felony, he says, "And nothing's plenty for me."

Ain't no black man could ever write that kind of nonsense in all the world.

Now, I do not think Mr. Gershwin in writing was a man who was prejudiced. I think he was involved in a system which was racist and that the audience to which he wrote

his opera, the white ticket buyers, feel comfortable on seeing that representation on the stage, very comfortable. The hero on his knees singing that he has plenty of nothing, that he wants nothing. No protest, no argument, no petitions to any Commission of Human Rights. Plenty of nothing and nothing is plenty for me.

I had to take that discourse to explain what my prejudices were in opera at all. But given the fact it exists, given the fact it has become over the years a sort of American classic and given the fact it does provide the opportunity for some magnificent black singers and actors to have jobs and given the fact that much of it is quite beautiful and quite moving, how are we to account for the circumstance which brings this company from Houston all the way to Broadway and listen to their promise, first of all that they would this time, having committed this same aggrievous crime in the case of premonition, this time they want to go all out to make sure in the pit there would be a sufficient representation of black musicians.

Yet, such as they could, according

to them, they were unable to find qualified black musicians.

Once again we find that the black man somehow is incapable of that which represents the best heights of American culture.

I think we were familiar with this attitude when the Yankees were playing baseball and though Jackie Robinson and a lot of other blacks had broken into the game and increased the attendance and had given excitement to the games, the Yankees couldn't bring themselves to sully their own image of their lily white purity by hiring a black player.

As a matter of fact, they slowly sank into inconsequence bravely bearing the flag of "No blacks need apply."

There is something about being white the black cannot thoroughly command. The quintessence of the game somehow is beyond your grasp and reach.

This is the same kind of arrogant nonsense we find expressed in the claim the music of Gershwin is so fantastic, so marvelous, so demanding, the blacks cannot play it.

Of course, our friends don't accuse us of lacking musical ability. Certainly the basis we have had to live with is that every black man is a musician, he is born that way.

They had to explain it to themselves and ot us by the fact black musicians don't get a chance to practice their craft, don't get a chance to measure up because they haven't got the opportunities.

That's the truth, but what should have been the response of the Houston Opera Company? Suppose it really could not come up with a black man who could play all that high fangled as a white musician. It was incumbent upon them, in my view, to find the best black musician possible and try and help him measure up and live with him until he got a chance.

I cannot imagine that the viewers or listeners would have suffered that much by the fact that some black musician wasn't quite as up to par as his white counterpart.

Why do I ask this? Am I calling for special treatment for minotirites? Yes, I am, because in my opinion that wall of segre-

gation and discrimination which has been over the years so patiently erected brick by brick has to be as deliberately taken down.

Hopefully, it could have and should have been removed all at once. But I am convinced with my years and my experience that the fight against segregation and discrimination in American will proceed beyond the span of my own lifetime. And that we, those of us who are black and those of us who are concerned, and those of us who are members of other minorities, must take it down brick by brick each time we meet its opposition staring us in the face.

Here is another barrier, here is another obstacle placed in the way of those of us who want to make a fuller and more meaningful contribution to American cultural society on the one hand, and on the other, to derive the economic employment benefits which are due us as our rights as American citizens.

We must, therefore, congratulate the Commission in that it gives us a chance to appeal to the law to redress our grievances.

It is our hope that the law will

take cognizance of our rights as citizens.

Of course, there are some who claim that rights are purely mechanical, and that they are quantitative and that everybody's rights should have an equal weight.

By this I mean that the right of the Houston Opera Company to hire whom they please or to maintain their own concept of the musical standards cannot be infringed upon by any other rights.

But I believe that the rights under which we live and from which we derive our liberties of certain priorities, and that some rights may take precedent over other rights. And the right of blacks and minorities to equal opportunity for the employment available in an opera like "Porgy and Bess," which purports to be about the black life style, must take precedence over the right of the Houston Opera Company to hire whomever it pleases, though we would fully respect that right.

The capacity of artists to grow and develop depends upon their being given full opportunity to work along with other artists in

their chosen field.

Now, there was a time since we agree that he who pays the piper calls the tunes, there was a time in the American theatre when by the roughest kind of justice you might have said, "Well, blacks have no claim for the employment opportunities provided in the business of Broadway, because black folks do not come to Broadway anyway."

There was a time when basically this was true. First, it grew out of the fact we were not permitted to come to Broadway for a long time. Then when we were finally allowed to come as audience, there was nothing that we saw that related to our life style. Most of it was stuff that denegrated us and made us ashamed of ourselves.

Therefore, it is true for a long time blacks did not make up the majority or even a significant number of those who pay the piper. Therefore, we didn't have that street right to call the tune.

But I submit, ladies and gentlemen, that here in an article printed, of all places,

in the New York Times, second only to the Bible in authenticity and veracity, you will find an article titled, "Black Talen Boom," in which is described by Mr. Mel Gusso the fact there was and still is a black talent boom on Broadway.

And you have heard the Commissioner mention the six black smash hits on Broadway.

But also in the article it is pointed out, and I would just like to quote this, "Concurrent with the expanded opportunities for black talent is the rise of a black theatre-going audience."

Aha, so that those who are paying the piper have changed their coloration. Blacks are now paying the piper. We are contributing to the box office.

Let me make another parenthetical excursion by what I consider to be some very good news in Variety, Wednesday, November 17, on the front page.

"U. S. legits record week."

Legit means legitimate field as against the illegal theatre, being film and television.

I would like to read this.

"Last week was the biggest in history for the American legit box office with Broadway bearing the two million mark for only the second time on record. On the road continuing its break pace, the combined total was $3,,828,315."

This is what came in across the box offices of legitimate theatres across the nation.

Now, a lot of that money, a lot of that loot came from black folks. Therefore, because we have made significant input at the box office, we can even in the street terminology, demand significant representation even in the bottom of the pits, and that is what we are doing now.

I submit that blacks both on Broadway and off, and also people who care, people who give a damn, because there are people in this hearing room who have fought against this kind of nonsense as producers on an individual basis. So there is no question that it can be done.

I do not mind pointing out a friend

who is going to follow, because he is an example of what I am talking about. Phillip Rose did "A Raisin in the Sun," and there was no qualified black director around. He had every legitimate reason not to use a black director.

He went and got a guy who had no track record because he was black and Lloyd ~~Bridges~~ Lovell directed "A Raisin in the Sun," and it was a smash hit.

~~Still~~ didn't listen to the conventional wisdom.

There are others who have taken steps to change the situation whenever it felt good to them. And the people of the Houston Opera Company could have done as much, taken a pioneering step to rid this, not only cultural institution, but this great big business of rampant racism.

I would like to close by reiterating a point. I think that in order to recreate social justice in our country, we must sometimes be creative in our application of the law. Judgment is required. Priorities must be assigned.

Now, the history of how the civil rights struggle has been developing in our country has already shown us the kind of opposition we are bound to face. There is always, even in the white liberal community, a strong feeling that it is fine to integrate the schools, except the one where my daughter or my son happens to be going. It is all right, I commend you to move into the neighborhood, except where I own property and you will devaluate that property. You will devalue the property by your presence.

These same friends of ours who do not hesitate to become our spokesmen to help us decide what is authentically black, to help us, even they who say to us that the music given to you by Gershwin is so perfect that even you cannot play it, who makes these decisions in our name, they have themselves, acting as our friends. thrown up many of the barriers that we face.

We, therefore, must insist, as in our schools where the rights of the teachers for employment is paramount regardless of how many in New York City, how many teachers are black in

relationship to the classroom side. It is of no consequence in classes where the majority are black and the minority are white, if the majority of the faculty is white and other than the students.

It would be of no consequence in a society where the question of race had already been settled. That question is by no means settled in our society. Therefore, institutional racism is rampant in our school system.

It does not matter whether the teachers individually are the best and the most angelic, as I am sure most of them are, or that the teachers love their students, which I am sure most of them do.

I have gone into the schools and met the teachers. I found no latent racism among the white teachers.

Yet, as a black child myself, I know what it means to sit in a classroom and see the authority figures always white and the black figures from my group always in a subserviant position.

I make a value judgment that af-

fects my character and personality for the rest of my life. I cannot help you make that value judgment. Therefore, the remedy has to be arbitrarily, if necessary, to impose some kind of balance employmentwise in our school systems.

If it is true in our school system, it must be even more true on Broadway where we create images and where we hold up the flag, "This is the best of America."

I think that the pit of "Porgy and Bess," Bess should be integrated. I do not care how. If some of the parts have to be assigned to a brother playing a kazoo, it does not matter. It might increase the quality of the opera anyway. Certainly, it will make it more true to the life style.

I don't hesitate to say whatever is required by an arbitrary judgment to impose employment patterns of the producers should forthwith be done.

I have personally been involved in many struggles, as I am sure most of you have, and I know that I will as long as I am alive be continued to be involved in struggles. I am

proud of Broadway for many of the positive things it has done.

I remember very well when our union, Actors' Equity, passed a rule enabling us not to appear in a segregated theatre in Washington, D. C. This was a very forward-thinking step and it was most reassuring to black performers that the union would take that kind of a stand over the opposition of the managers.

And there was during the great heyday of the McCarthy period when rampant punishment was being inflicted on people for their political beliefs, there was always an opportunity on Broadway for even the most redlisted or blacklisted performer to get up and do his thing.

I am proud that Broadway has been in the forefront of the struggle for the equal rights and equal liberties.

But Broadway itself is of a mixed record and a mixed opinion about what it can and what it must do. Its respect for the almighty dollar is as great as that of any other corporate institution in our country and it will hide behind the profit margin and evade sometimes

the hard decisions which it must and should make.

I think Broadway needs help. I think the Houston Opera Company needs help.

Certainly, a favorable ruling by this august Commission would help remind those institutions that money is not always the deciding factor in human relationships. That morality must account for something, and that certainly equality delayed is equality denied.

How long the disenfranchised people submit to the indignities, implied by the fact that a so-called black opera comes into this equal opportunity employment town and cannot find a qualified black musician.

It may be true that we have plenty of nothing, but it is by no means true that nothing is plenty for us.

Thank you.

(Applause)

(Whereupon, the witness was excused.)

THE CHAIRPERSON: I want to thank Ossie Davis for opening these hearings in a way they could not have been opened by any other human being. I appreciate his taking

his time from a most wondrous schedule to come here and perform that service, which is a public service.

I next want to call the producer, Phillip Rose.

P H I L L I P R O S E, called as a witness, having been first duly sworn by Commissioner Kee, thereafter testified as follows:

THE CHAIRPERSON: I just want to say for the record, that the Commission is pleased that it was able to get the cooperation of the industry without using its subpoena power in these hearings.

I say to Mr. Rose who must follow Mr. Davis that the Commission, I think you will find means not to put any producer or other professional from Broadway on the defensive, but to conduct these hearings so that between us, Broadway and the Commission, we can find a way toward what our preliminary investigation has indicated is a way that Broadway wishes to pursue as much as we.

Mr. Rose, do you have a statement?

MR. ROSE: I did not come prepared

with any statement. However, having listened to Mr. Davis -- and if I were producing the show I would not put me on following him -- I would like to say I associate myself with this Commission's point of view and Mr. Davis in pretty much all of the areas that he has covered.

I would like to try to be of any help that I can be. I am not sure that that is going to be very impressive.

I function in the theatre as a producer and director. And because it might be of some value to have this information, the last two shows I have been associated with were "Shenandoah," currently still running, and previous to that, a musical version of "Pearlie," which, incidentally, was based on the play "Pearlie Victorious," which Ossie Davis wrote, which I originally produced in 1961.

I share some of Ossie's views toward the specific nature of "Porgy and Bess," and perhaps I also might feel that -- I wish that the thrust of some of the investigation perhaps should go toward the white shows on Broadway because if we are speaking about orchestras in the pit, then I

do not necessarily think that the important example is "Porgy and Bess." Because if we accept the view that musicians can play any kind of music, there is no reason why we should be just fighting for them to be in the pit of a quote "black" show.

I do not know how thoroughly, I assume there have been -- forgive me if this is presumptuous -- I do not know how thoroughly there have been investigations on how an orchestra gets hired. And if I may, I would like to speak to that for a moment.

As a producer and director, I am speaking now for myself. I believe I have enough to do to try to raise the money for a show, get it on, cast it, direct it, do all the things that are involved. What I do, and this is a union regulation, is hire a contractor. The contractor then, in association with the composer, the orchestrator, makes the decisions as to which musicians to hire.

Now, one of the reasons for my mentioning that about "Porgy and Bess, " obviously, the composer was not involved in this production,

in those decisions, he is no longer alive, but I think that perhaps might also be considered as well as pressure on the producers is to consider the overall hiring practices in terms of the union, and as was pointed out earlier, the question of hiring people, what a producer can do and what I have done,-incidentally, I think you are going to have Mr. Earl Shendell here later -- and the producer can say to him, "Look, I don't have the time and I am not going to get involved in your area, but I do not want an all white orchestra in my pit."

That does not mean he will win necessarily, but it does mean that he doesn't have to hire that contractor the next time. That much influence we certainly can exert, so that we therefore exert an influence in that sense, and Mr. Shendell and I have had that discussion in the past.

I would say in a specific, that there might be a value of your looking into, and I don't know where I will stand with the Musicians' Union after this, but there is a practice you cannot fire a musician once he has been hired,

except for overt things like drunkenness or that sort of thing.

You cannot fire a musician for incompetence. Therefore, an excuse that had been given through the years, and I think possibly had been used against the hiring of a black musician, is that well, we cannot find a competent musician.

When I hire an actor, if I am not secure about that actor, I will put him on a specific kind of contract. I will know that actor very, very well. I will know his work, I will know his performance, and if I make a mistake, there are certain recourses that I have.

In the case of "Shenandoah," we had a problem with a particular chair, which was the piano chair, where we did hire a musician who was white to play a very complicated score in terms of the piano because "Shenandoah" demanded a very precise classic background as well as being able to play country music. It is that kind of civerse score.

We found that man was not able to fulfill both those obligations, artistic obliga-

tions. It was very difficult to finally replace that man and I will not go into the details of how it finally got done.

I am saying that I think it might be conceivable in this area if the union might be asked to be an ally and to perhaps bend those rules a bit so that nobody can then claim we couldn't find musicians to play the Gershwin score, if that was thepoint of view, and we would be stuck with somebody who could not play it.

When you deal with a live composer and I will leave Ossie for one moment in terms of his point of view about the kazoo, while Gershwin would be turning in his grave if he heard a kazoo, a live composer would do even worse than that if he hears that in his orchestra or his music is being played wrong, he is going to raise a great deal of fuss and he is not going to sit still for anything played beyond that which he actually heard when he wrote that score down.

So, I think that you have to employ the weight of the composer, the contractor and

producer, and, of course, another influence is if we had more black conductors in the pits of our orchestras.

Again, it is not accidental that in this show "Pearlie," where we had a black woman as a conductor, we had at one point as many, I think, I know we had nine regulars and with substitutes, possible fourteen or fifteen in an orchestra of twenty-six.

Of course, there was input from the conductor, who also knew the musicians.

The minute these musicians are hired, since you cannot audition them, once they are allowed into the union you cannot audition them as we do actors, they are considered to be a competent musician. It is awell known fact that they are not all equally competent.

So, that it is something that the people involved in the artistic decisions try to be very careful about. This is not in any way to negate the thrust of what we have been talking about, but I do think that if we had that, then one argument would disappear about being stuck with musicians, that they cannot play a score,

because you would find out very quickly and he could then be replaced by another black musician who perhaps could.

Other than that, I would like to offer my good wishes and services, if I can be of any additional help. I don't have that much to say about the orchestra.

THE CHAIRPERSON: What you have to say has been particularly informative to us, Mr. Rose.

Just for our record, would you say more about your own years as a producer and director; how long have you been in the business, how did you get into the business, what other shows have you been involved with, musicals and perhaps other shows as well?

MR. ROSE: Well, I remember more easily the ones that didn't close the first week, so those are the ones --

THE CHAIRPERSON: You may limit yourself to those, if you desire.

MR. ROSE: I started with "Raisin in the Sun," in 1959, which was written by a black woman.

I did "Pearlie Victorious"; following that, a play called "Semi-Detached," which I remember only because Frank Silvara played the part of a French-Canadian.

I did "The Owl and the Pussycat," a play called, "Wear a Necktie," which dealt with dope addiction, and a musical of "Pearlie," and most recently, "Shenandoah."

THE CHAIRPERSON: I note that you have been involved with a number of musicals and plays where blacks have been prominently featured, and you state that 1959 was the year of the production of "Raisin in the Sun." Is that a fair point from which to date the beginning of profitability for shows of black motif on Broadway?

MR. ROSE: Well, I think it might be a fair point if we consider shows that have dealt seriously with black people and were written and directed in both cases by people who were black.

There certainly have been other shows on Broadway in the years before the days of the black shows, such as "Porgy and Bess," which were

written by whites and largely produced and directed by whites.

I think to that degree that might be considered the turning point. It took me two years to get that show on just for that reason, because there wasn't too much faith that a show dealing seriously with black life would get the audience.

THE CHAIRPERSON: In musicals which you have been involved in particular, what specific input does the producer-director have in the hiring of the musical contractor?

MR. ROSE: In the hiring of the musical contractor, I will reiterate that that is done in conjunction with the composer, but the producer's influence is very, very great in the hiring of the contractor.

THE CHAIRPERSON: What considerations typically, not only in your own personal experience but in your experience as a professional in the field, what considerations, typically, are most important to the two featured actors here, the writer and the producer, in choosing the musical contractor?

MR. ROSE: Well, again, unfortunately, this is an area that tends to preserve itself because the man who had the most shows, who gets hired to do the most shows, therefore has at his beck and call the most musicians, knows most of them. They have worked for him before, so that there could tend to be a perpetuating degree of influence if you had a period of time when most of the contractors, let us say, not have been too concerned with black musicians.

Obviously, contractors are human beings in our society and are also subject to the changes that take place in our society. They may have to be pushed a little bit sometimes, but I think there are probably more contractors -- I don't tend to know them all, I haven't done that many musicals, but I would assume that more and more we are getting contractors in the business that would be more and more aware of this problem, I would hope.

THE CHAIRPERSON: But I take it at this time the awareness of a contractor of this problem is pretty much left to chance,

people come into the business as a business and without any specific opportunity to be alerted to the problem by any of the existing institutions in the field?

MR. ROSE: Yes. I think that you have to consider it comparably to what you consider all the other areas of the stage, except for the people on the stage. There is a self-perpetuating influence on the stagehands people tend to hire, and in the stagehand situation you hire an overall overseer who then hires a stagehand, and neither the producer nor the director really knows what stagehands are available, how good their work might be, and you might get to know a certain specific one after a while, but we are not really involved with them on a daily basis.

So the same influence would prevail and again, as I say, hopefully they are subject to the changes that are taking place in our society.

But there are only so much influences that you can assert.

THE CHAIRPERSON: If, of course,

Broadway were a typical corporation, it would be much easier to structure something. The Commission is sensitive to the fact that Broadway is not a corporation, it is a vague artistic entity, and when one deals with that kind of entity, one has to design an appropriate structure.

Would it be fair to say, though, that the very vagueness of the entity has helped to prevent the systematic introduction of equal opportunity techniques into selection choices?

MR. ROSE: I agree with that.

THE CHAIRPERSON: I understand that there are often two kinds of contractors; the house contractor and an outside contractor, and I would appreciate your spelling out in your experience the difference between the two, especially in influence on selection of musical personnel.

MR. ROSE: If I may say, at the risk of being ignorant of the fact, I think in the last negotiation there are two or three people I see in this room who would know more about that than I do because they are general managers as well as producers. But I think the house contractor thing has been eliminated in the last

negotiation.

Can I ask Ms. McCann a question?

MS. McCANN: Yes, I think I might comment on that historically.

The house contractor was selected by the theatre owner because frequently producers felt that the house contractor was loading himself down with relatives. The concept grew up of a show contractor who they felt would better protect their interest, so we ended up frequently on Broadway with two contractors, a house and a show; technically, we only needed one.

THE CHAIRPERSON: There will be testimony. We will be taking your testimony later.

I would like to say for your benefit that this is being recorded on WNYC, so comments that are shouted from the audience simply aren't possible to be received on the radio. So I would like to conduct these hearings.

MR. ROSE: I think that has pretty much eliminated in the last contract the additional contractor.

THE CHAIRPERSON: What entity, in your judgment, presently existing in Broadway, entity or persons, would be in the best position to absorb equal opportunity techniques?

MR. ROSE: I think unequivocally, I would feel that if all the current working contractors and representatives of the union and the producers were brought together, which I don't think will ever happen historically, and this point of view was made clear and everybody accepted a positive attitude towards it, I think it might exert a great deal of influence.

THE CHAIRPERSON: So you think that on Broadway one might get systematically improved results by raising the consciousness of those who do the direct hiring?

MR. ROSE: Absolutely.

THE CHAIRPERSON: Do you think that would last more than one show or one season or one year or one month? How could one institutionalize the reverse of what has been institutionalized?

MR. ROSE: Well, I think that again, once things tend to change, they tend to change

even more.

Ossie Davis used the example of Jackie Robinson. I think that once it was recognized that so much has to be made, and a little more attention paid, even though it might be a little more difficult for a period of time.

Can I say, parenthetically, that I do feel it is a mistake to make the assumption that any musician can play any music? I gave one specific example of a piano player in the show "Shenandoah," who was white, and we have always had difficulty filling that particular chair, whether or not somebody has left the show, so I think it is a mistake, because among the composers that would create a great deal of resistance.

They are artists and they tend to know how their music should be played. I am not discussing whether they are necessarily completely right or wrong, but I don't think the composers of the group want to exclude the musicians yet; they do want the best possible musicians available.

What they don't know very often is the good musicians that are available in the City of New York. They stay at home and they write their scores and they are not necessarily out in the field finding out the new up and coming musicians, whether black or white. They depend on the contractors for that.

But I think if the pressure were exerted and the point of view put forward without saying or promulgating the idea, well, the music can be played just as well by half a dozen other people, because by and large composers will not accept that.

As a director, obviously I will not necessarily accept that from an actor. I will try to get one particular actor for each role. I think the composer tends to feel that I know that in our orchestra of "Shenandoah" we have a French horn player who is black. This man happens to be a brilliant musician and there he is and it is not a problem. But I think that we cannot do it by denegrating the artistic integrity. It can be kept up by employing black musicians. I think there are enough.

THE CHAIRPERSON: You make an excellent point to which the Commission is sensitive, about artistic integrity. I must say for the record that of the really hundreds of diverse businesses with which the Commission has dealt, this is one of the few which, at least, in the pits seems to denegrate quality itself by allowing a system where people can't be fired on merit.

MR. ROSE: I agree.

THE CHAIRPERSON: By allowing a system where people are hired based on very subjective judgment.

When we go into the work places of most employers and the merit question is raised, they may have, in place, faulty merit systems, but they are arguably merit systems. It is hard to characterize a system without auditions as a system by word of mouth, a system where incompetent players get hired and can't be fired.

One begins to wonder if it is a system indeed.

MR. ROSE: I agree with that.

THE CHAIRPERSON: Incidentally, how

are conductors chosen?

MR. ROSE: I am glad you asked because I was going to get into that.

They are chosen generally, generally--and again I speak for myself now--in meetings between the composers and myself. It is as simple as that.

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THE CHAIRPERSON: On that basis?

MR. ROSE: On what their previous history is, on what shows they have done.

If it is somebody new, as it was in the case of Joyce Brown, who was the conductor of "Pearlie," there, I guess, you would have to state there was a specific choice made for a specific reason, that I heard about this woman and her talents, and I interviewed her and I decided I wanted her.

The composer was very positive about it also to make that choice, but that is the way the conductors are hired generally. The composer had a great deal of say about it and so can a producer if he takes an active interest.

Half the producers do not take an active interest. The producer's function is

to raise the money and hire somebody.

THE CHAIRPERSON: Would this aspect of the business profit from having more direct involvement with producers, the selection of personnel so as to include equal opportunity considerations; would that help or hurt or is it a new federal factor?

MR. ROSE: I think it is very diverse and there is no one after that. There are producers who function. Basically, there are real estate owners who function as producers because they haven't the money to put a show on. Some take an active interest and some don't. I don't think you can set up that kind of a guide.

THE CHAIRPERSON: For the record, I suppose I should say that if a producer, of course, has such overarching responsibility for the show but if he defaults in most ways, he loses his shirt and not much less, but if he defaults on equal opportunity, he may be legally liable, so his failure to assert his prerogative, it might put him in a position of being responsible without having direct lines to control what he is responsible for.

MR. ROSE: That is true if you again assume the prerogative.

Again, in a very specific sense, we do not, we do not hire musicians by contract as we hire an actor. I directly negotiate with an actor or his agent, and therefore, specific things are spelled out in his contract. There is no such thing with a musician.

We have an overall understanding with the theatre, which represents the producer and the theatre owner, and the AF of M. There is nobody to say how much he has to get paid if he plays more than one instrument, what are his hours. All of these things, there is no one. But we do not have that direct relationship with musicians as we do with actors.

THE CHAIRPERSON: The same way that the president of Macy's does not have a direct relationship with the salesgirl in the Toy Department and the president of Macy's has a direct relationship with the vice president.

MR. ROSE: That is true, but I don't think that is a fair analogy because the actor is in the same kind of artistic position

as a musician is. They are both performing for the creative benefit of the show.

My stage manager, for instance, it is again important to point out that most of the time we don't even know who is in our orchestra by name unless we go out of the way to find out.

THE CHAIRPERSON: That is the way the system is now?

MR. ROSE: Exactly the point.

THE CHAIRPERSON: What is the form of relationship? What form does the relationship between a producer and a contractor take? Is it a written contract? Is it an oral agreement?

MR. ROSE: It is a written contract.

THE CHAIRPERSON: So that, conceivably, that contract forms the basis of a written understanding with respect to equal opportunity laws, that a good faith effort, for example, to take that language that is enforceable for other employers, that a good faith effort to use techniques that recruit from the available pools should be used by X contractors who is on contract to hire a musician.

MR. ROSE: I am sure that could be

produced into the contract, yes.

THE CHAIRPERSON: Would it be fair to say that typically today there is no pattern or system of reporting back to the producer on the composition of the orchestra in any way, that the contract or agent gets his orchestra together and presents it asa package?

MR. ROSE: Yes.

THE CHAIRPERSON: So that if the producer were to undergird his legal responsibility with insurance that what is required of him is carried out by his agency, he would have to have some way of knowing whether or not the orchestra is beginning to meet standards under the law?

MR. ROSE: I am sure that is so; that could be instituted, yes.

THE CHAIRPERSON: When you produced "Pearlie," it was virtually the first modern black musical.

How were the minority musicians recruited for "Pearlie" in particular? Were they already working in Broadway?

MR. ROSE: Some of them had, some of

them had not.

Again, it is the composer. In this case, it is a gentleman named Gary Gelb, who, having come out of the field of popular music, having been once a record producer, knew many of the black musicians. I am sure you know that in the field of recording, we don't quite have the same situation as we have in the pit of the Broadway orchestra, so he knew many of the musicians.

Joyce Brown, who was hired, as I said before, certainly knew many of the black musicians.

And Mr. Shendell, who will be here later, having been a contractor for a number of years, also, I suspect, did.

I don't quite remember the specifics of those conversations, but I know that he was.

I would say that we ended up on a regular basis with, I think, nine in the orchestra, and, of course, when you include substitutes which -- I have just said a word --

You know that we have no right as producers to insist that the men we hire play in

our orchestra. I am giving you this --

THE CHAIRPERSON: Elaborate.

MR. ROSE: Okay.

The peripheral remark, just to show you the degree of influence that comes from other areas -- any night that the player who has been hired wants to, he can go off and do a recording session or play a wedding, and all he needs to do is send somebody in to fill his chair, who might have absolutely no knowledge of what this music is about and there is nothing that we can do about it.

MR. DAVID: And the musician makes that selection?

MR. ROSE: Absolutely.

Now, that should, perhaps, maybe I should have said that at the beginning of the conversation, but it should give you some idea of the problem if you are going to really investigate this area. We have nothing to say about it.

THE CHAIRPERSON: Is that by union contract or by practice?

MR. ROSE: By both, so that we may

spend a lot of time hiring somebody who you think would be perfect for one time and discover that person isn't there more than two or three times a week.

THE CHAIRPERSON: Has that tended to have any particular affect on the quality of music played on Broadway?

MR. ROSE: I would tell you it has torn the hair out of many composers who happen to drop in one night, and there is no limit as to the number. We sometimes would have an orchestra where there is suddenly eight substitutes in one evening.

Again, the contractor exerts some influence. He says, "Look, if you send in a sub, let him learn the score. Have a regular sub."

In other words, the sub himself would be somebody who plays the show regularly. But we have no influence there and no rights.

THE CHAIRPERSON: Commissioners?

MR. DAVID: Mr. Rose, you stated before that the contractor cannot audition a musician. The assumption is that if the musician

is a member of the union he is qualified; is that correct?

MR. ROSE: Now, if I said that -- let me -- I think that is not entirely correct. I want to rethink that a moment.

I think that the tradition is that the union give, can get a list of all the people that they qualified. I think that in specific cases the contractor will sometimes, or the composer may insist on auditioning a musician for a particular chair that he considers absolutely --

MR. DAVID: And the union agreement allows that?

MR. ROSE: I think it does.

MR. DAVID: But it is not a common practice?

MR. ROSE: It is not.

MR. DAVID: Can I ask, going beyond that, is there an audition to go into the union?

MR. ROSE: Yes, that exists. I will not make any comment on how that audition is.

MR. DAVID: The question of who evaluates the judgment on the audition, is that something performed by union personnel?

MR. ROSE: Exclusively.

MR. DAVID: Can I ask on the question of the relationships by the contractors, I am making the assumption -- do musicians, for the record, must be union members, but that the union is not a referral union in the sense that longshoremen shape up and are referred to jobs by the union?

MR. ROSE: I am not quite sure I understand.

MR. DAVID: I just want to establish for the record the union does not refer musicians. They are selected by the contractor and must be union members.

MR. ROSE: They must be members.

I assume the contractor can ask certain questions.

MR. DAVID: We discussed before, and you were not entirely clear, on what the new union contract has. I am trying to establish the hiring practice in the relationship between the outside contractor and the house contractor.

You are saying, and later witnesses can substantiate this, what the new contract calls

for. Presumably, authority will rest with the outside contractor.

MR. ROSE: That's correct.

MR. DAVID: As of now, can you distinguish between the authority in the roles of the house contractor and the outside contractor?

MR. ROSE: There is no question the outside contractor is the person in control.

Even when both contractors existed, the house contractor was able to exist and a couple of musicians who were counsidered house musicians, perhaps. But, by and large, it is the outside contractor who did the hiring.

MR. DAVID: They did the formal hiring?

MR. ROSE: Yes, I think they did the formal hiring.

MR. DAVID: In terms of the possibility of discrimination creeping in, what you are saying is, basically he was hired by the outside contractor?

MR. ROSE: Yes.

MR. DAVID: And the outside contractor would have said this, but again I want to make

it clear because of later discussion. The outside contractor is hired by the producer, and to the extent he pays attention to equal opportunity, really, the weight rests with the social consciousness of the producer.

MR. ROSE: I would say that is a fair statement, yes.

THE CHAIRPERSON: I would like to ask you, Mr. Rose, giving your own special involvement with shows that often had some black feature, it is clear that those shows have profited from consciousness somewhere about hiring.

If one looks at, for example, the fact "Pearlie" had a well integrated orchestra, what really accounts for the different between the composition of the "Pearlie" orchestra and the composition of the orchestra of "Shenandoah," which you also produced, which has perhaps two blacks?

MR. ROSE: Again, I think it is perhaps fair to investigate the specific kind of music involved.

"Pearlie" was conceived as a black show, and even though it was written by a black

composer and lyricist in that particular case--I mean a white composer-lyricist--the music was oriented under the direction of black musicians and there was a contribution not only desired but required on the part of black musicians.

Dealing with a show of that kind, you do not have to -- in dealing with a show of gospel orientation, at times you do not have to stay entirely within the realm of the notes the composer put down. He may put down a guideline as a chart and you may have three or four musicians whose own talent will allow them to enhance what the composer has put down.

So you will seek out musicians who are equipped to do that.

THE CHAIRPERSON: They will tend to be white?

MR. ROSE: No, they will tend to be black.

THE CHAIRPERSON: They will tend to be black?

MR. ROSE: Yes.

In the case of the "Pearlie" score, that is why it -- it was not, in any case, a

great sacrifice on the part of the composer to say, "Yes, I want as many black musicians as we can find," because we knew without question we would be getting a better performance.

THE CHAIRPERSON: I wonder if one necessarily gets a better performance that way.

Blacks, for example, may have created the modern jazz medium, but no one would say that the Beatles do badly at what probably has a black derivation.

Does not some of this lay in our preconceptions of who might best play what kind of music?

I ask this question, Mr. Rose, because there is not only a long history of blacks playing from their own experience, there is a long history of blacks studying music very seriously, very often very tragically developed talent which never had any outlet except at concerts and Sunday concerts in the black community, other black classical medium.

But, in a real sense, there is a real tradition in the black community of teaching to play and have blacks even in the harshest

periods of segregation, somehow believing in their natural talent enough so that they continued to pursue music very seriously.

It may come from the cultural sense of music was important and thus you do have a fairly large swing of blacks involved in music from those who have been classically trained althoguh, very often, not employed in such medium, to those who trained themselves and invented their own music.

MR. ROSE: Well, if I answer, two questions are raised.

First, there are those who do not agree that music like the Beatles and other groups of this kind really are black. We know what they have stolen or taken.

THE CHAIRPERSON: They copy blacks, taking their music and making it into the music of the world.

MR. ROSE: It becomes kind of a combination of a number of things.

Certainly, it is true that there are whitemusicians who can play jazz. We all know --

THE CHAIRPERSON: Some of the great

musicians are white, right?

MR. ROSE: There are those, on the other hand, whether we are right or wrong, who think we can tell the difference.

THE CHAIRPERSON: You think generally the reverse would be true; you can tell the difference if a white or black is playing a classical score or traditional score that has come from western society?

MR. ROSE: No. A classical score, presumably, is supposed to be played exactly as the composer has set it down, which is a very important difference, where presumably a jazz score or gospel score or whatever other words you want to use, we would expect the musician to make his own creative -- almost composing contribution.

So, there is a difference involved, and I feel, when we had a lady playing in the pit of "Pearlie," who played the piano part and she was a black woman, I tell you what she played had very little resemblance to what was put down on paper by the original contractor. It was a lot better.

THE CHAIRPERSON: You and I would agree a trained black and a trained white in a Broadway pit playing a more traditional score like "Shenandoah," who reads music, particularly given the present low standards, artistic standards in musical pits on Broadway, would probably not play much differently.

MR. ROSE: I think that is true.

THE CHAIRPERSON: Thank you very much, Mr. Rose, for appearing here today. Your testimony has been most helpful to us.

(Whereupon, the witness was excused.)

THE CHAIRPERSON: I would like to call Norman Kean, the producer.

I would like to say for the record we will speed our questioning. As Mr. Rose was the first witness, we wanted to lay the foundation so we would not have to go through that with every witness.

N O R M A N K E A N, called as a witness, having been first duly sworn by Commissioner Kee, thereafter testified as follows:

THE CHAIRPERSON: Mr. Kean, you may make some statement of your own if you should care

to.

MR. KEAN: Thank you. I have no prepared statement, as neither did my colleague, Phillip Rose.

I would like to address myself to what I think the hiring practices of musicians should be from a producer's standpoint and also from a general manager's standpoint.

I was invited here to testify about the exclusionary effects on the minority musicians.

We all know that the Broadway theatre is exclusionary in its lack of audiences many times and lack of shows that stay open.

My point and my thrust will be to tell you how I approach the practice of hiring anybody, because I believe that producing is producing and I will take exception to Phil when he says we all get dizzy in raising money. That is our problem and we do get dizzy in doing that.

For my purposes in producing, I include the hiring and the supervision and the replacing of virtually everyone.

I think to delegate to a contractor

is wrong. However, I do not believe that the contractors' situation on Broadway is wrong and I am not here to criticize, and perhaps I will praise in a couple of moments some union practices with producers.

I know only of contractors on musicals that I produce and I am producing my biggest one coming up who play in that pit.

I will not have a contractor who is able to not -- who is able to sit home or will not be with the musicians that he is responsible for. Indeed, that I am responsible to.

In other words, the buck starts and the buck stops somewhere, and I think it necessary when a producer emnloys a contractor, if he is going to do so, that he employ a person that will be with him, as his stage manager is with him, as his general manager is with him, as his leading or supporting players are with him, as his press agent is with him.

It is a key position. I am the producer of "Me and Bessie," starring Linda Hopkins, which has run over a year on Broadway. And I am producer of "Oh, Calcutta," which is the re-

vival which is being shown on the same stage and playing tandem in a unique booking arrangement.

There are two bands. I do not refer to them as orchestras because they are bands, each having five members.

With "Me and Bessie," which is a black oriented show, principally because it deals with the life of Bessie Smith and principally because Linda Hopkins is one of our leading American artists and happens to be black.

We had an orchestra or bank composed of five people, of which there are four black musicians and one white one. It just happened that way. I did not do that hiring, Earl Shendell did, and the previous producer whom I took the show from, were involved in that.

But I can tell you, the musicians that came to me, those five were superbly hired. In my opinion, whoever hired them, whether it be Earl Shendel or whoever, selected those people for the material and for their compatability with Linda Hopkins and the show, which is really the important thing.

Because I find in Broadway musicals

that I have observed and Broadway musicals I have been connected with, there is an exclusionary practice between companies and musicians. Musicians, by nature, are isolated physically from the stage.

Stagehands are not isolated. Stagehands must operate the stage for us to perform.

Box office pressures are not isolated from managers, because they cash the actors' checks or employees' checks, loan us money, and so on.

So, therefore, the musician, by the nature of his placement to the product that he services, is excluded, and I think that is more than a physical exclusion. It sometimes becomes a mental exclusion.

I have not enjoyed too many after dinner drinks with musicians that I employ. I have enjoyed a lot of dinners and breaks with musicians and members of the union that I know and that I am friendly with.

I think that in the producing of my new musical, which is called "A Broadway Musical," that is the title of it, and it deals with two

white producers putting together a black musical, if you can figure that out. It is written by Charles Strauss and Lee Adalls, who wrote "Golden Boy," Bye Bye Birdie," and "Applause," and directed by George Trayson, who is the choreographer of the Tony award winning, "Wiz."

We have had discussions, even at this point when we are writing the script and the music, about hiring practice. Not whether it is black or white or pink or yellow or black and blue, but we are trying to form a unit in organization that will service the text and service the material.

I tell you under oath, or not under oath, that the hiring in that musical will be done directly by and with the composer and the producer and probably the lyricist, whatever he may know about music, and the director. Because we feel very strongly that in order to present a show which we hope to have written both musically and literally, that we are going to need the help and the comradeship of everybody that falls under my employment, and that will be my hiring practice.

We have replaced two musicians early in "Me and Bessie" since I selected them. Those musicians were replaced -- I must preface it by saying there are certain friends of mine from Local 802 here that I sometimes do not read the rules at, but when I replace musicians, I have an understanding verbally with each musician that he is on a trial basis. Trial, not because of competence of musicianship, trial because of compatability with his fellow musicians as well as other members of the company.

I have been doing this for years. Nobody has ever objected, and only once in the replacement of or a substituting of a musician has there been a fallout at the end of a week or two trial period. And that was the musician's option because there were personality problems.

I will take a breath.

THE CHAIRPERSON: You say, Mr. Kean, that wherever you employ a contractor he must play?

MR. KEAN: I beg your pardon, Commissioner. I said in the musical which I am now producing, "A Broadway Musical," the contractor

will be there.

THE CHAIRPERSON: Is that the system you prefer?

MR. KEAN: That is the system I am going to do.

I have a contractor now with "Me and Bessie," who is playing, he is the single white musician in that band.

"Oh, Calcutta" does not have a contractor.

THE CHAIRPERSON: I take it that contractors who play are not necessarily typical?

MR. KEAN: I don't know the answer to that. I know there are a lot of contractors that know how to play and play very well. But contracting is also, and I am sure you will explore this later on, has become a business. The salaries of contractors get multiplied by the number of shows. That is only right.

The salaries of general managers and producers get multiplied by the number of shows.

We have to do that because a lot of us don't have a lot of shows all the time.

My reference and my wishes and my

will is that there will be a working contractor there, because if there are eighteen or twenty or whatever number of musicians that must play in a particular show, "A Broadway Musical," if there is to be a contractor and he is to be the spokesman or my surrogate to the musicians, unless separated from me in my office or wherever I might be, I prefer to have him there to do that.

THE CHAIRPERSON: You testified you have two shows going on in the same theatre; "Me and Bessie" and "Oh, Calcutta."

MR. KEAN: Yes, on the same stage, in the same theatre, different audiences.

THE CHAIRPERSON: What accounts for the fact that one of those shows, the black show, has a high complement of black players and the other has a low complement of black players?

MR. KEAN: Whataccounts for that is, I think I have explained the "Me and Bessie" selection earlier.

"Oh, Calcutta," although ten members of the cast, has one oriental in the cast because she happened to be great for the part and we don't

see the color.

THE CHAIRPERSON: This is on the stage?

MR. KEAN: On the stage.

"Oh, Calcutta" has on stage five musicians. That show started in Florida and we merely put that show together for Miami for six weeks, and it ran twenty-three weeks.

The Florida local contributed two of those musicians, and I believe also two members of 802 went to Florida and became members of a Florida local. Then the show moved up here.

You may say yes, if it moved into New York and had two or three Florida musicians, you could have hired some New York musicians who happened to be black or white.

Well, we had such a twenty-three week rapport going, which I mentioned earlier, which is very important, we went to Local 802 and asked their permission that the Florida musicians be able to join 802 to keep that togetherness which played for twenty-three weeks down there.

That is not an excuse, Commissioner, that is just the way that band was composed.

Stanley Walden, who is one of the composers, and Michael King, who is the keyboard conductor, to the best of my knowledge, called friends of theirs and auditioned musicians.

No one ever saw color. "Oh, Calcutta," is a show where you see right through everything and no one sees color, whether black or white.

THE CHAIRPERSON: One is tempted to say one sees flesh, if not color.

MR. KEAN: That is right. It is a reality.

THE CHAIRPERSON: I am interested in the fact that when shows, as it were, accept someone who is black and someone who is white and the fact they are going on simultaneously with the same producer, the same theatre, you testified that "Me and Bessie" just happened to turn out to have this high complement of black musicians.

Mr. Kean, if we acknowledge there are different ways to raise consciousness on issues of equal opportunity, is itnot fair to

say that when a contractor begins to hire for something like "Me and Bessie," the fact that that is a black show may serve to make him more vigilant in reaching for black players than when he has no such consciousness-raising device at hand when hiring for a white show?

MR. KEAN: The answer to that is not easily yes or no.

I have to explain the original makeup of "Me and Bessie" was three black musicians and two white musicians, Ray Moscow and Lilly Hamburg being white, and also, if you say, Commissioner, "Me and Bessie" band is on stage, what you say were true, yes, because the audience is seeing the band on stage it should be all black, which would be prejudicial, which would be a reverse sort of prejudice.

THE CHAIRPERSON: "Bessie" never played with white musicians?

MR. KEAN: I don't know the answer to that.

Probably yes, but in the selection, if you say the consciousness would do that, well, it's a black show, black oriented show, that would

make it easier to reach.

THE CHAIRPERSON: Easier to remind someone to reach for black musicians.

MR. KEAN: In this situation there is a mixture as of black and white, because, as I understand from Linda's point of view, those werethe best musicians to play that very complicated music for a very complicated voice.

THE CHAIRPERSON: Am I to assume there were no further number of "best" musicians to be found who could have similarly played "Oh, Calcutta"?

Is quality really the all-embracing criterion upon which nothing else intrudes?

MR. KEAN: I only speak for myself. That, I think, is the only thing, is the quality.

Producing plays, which all of us do, members of the union and press agents and contractors are as much producers sometimes as we who call ourselves producer. There is a certain wonderful insanity about it, but we all realize one thing, that there is a tremendous economic pressure, the pressure being to deliver a run or hit and to keep ourselves employed.

I do not practice the hiring of color. I do not practice the hiring of sex. If the script indicates that the part is a woman, the part is a woman. If the script indicates the musicians are twelve, orwhatever, and, by the way, I think there are black French horn players, too.

THE CHAIRPERSON: At least there are now.

MR. KEAN: I say, hire the best people to do the job, and I say to the producers as I say to myself, we must do that hiring. We are responsible to those audiences.

THE CHAIRPERSON: Using that standard of hiring, the best musician to do the job, do you believe Broadway could find more black musicians than it has to date found?

MR. KEAN: Well, you said earlier when Phil Rose was here, that considering the present low standards of the Broadway pits or Broadway pit -- I disagree with that unless you meant it in a different manner.

Broadway is a very highly skilled place made up of a wonderful cross-section of

personalities that put together musicals and straight plays.

I think there might be a present low standard of the sound, Commissioner, that we hear coming from the pits, and I think that is a mechanical problem.

I must say that there is some action that the League of New York Theatres and Producers is presently starting to take to help the audiences to hear lyrics as well as good or bad musicians.

Our sound systems are so archaic, we are back in 1922. We should be in 1922. We are really in 1958, and that is an enormous problem.

I am sorry if I avoided your prior

4-A question.

For me to say to find the best musicians available, I am sure and I submit to you that probably we don't even know who those best musicians are most of the time, because we, as an audience can't hear their artistry because of the amplification systems.

THE CHAIRPERSON: Let us factor in the low standard of the environment in which the players play.

I use low standards, coming not out of any preconceived notion, but out of the testimony of a producer of long experience on Broadway who, unlike you, apparently has found that he and others often find themselves in a position of having unqualified players and not being able to fire them; of having to abide substitutes over whom they have no control and apparently who often do not know the score.

I would take that to indicate very poor quality control.

MR. KEAN: I recall that testimony.

I have to say something. I am talking about my practice. Now, true, I am employing ten musicians here and I am not employing twenty-six or fifty-two, as may be the case with some of the people that you have here.

I am a contractor for eight or ten workers, but I have an understanding, a verbal understanding, with musicians that work in the shows that I am connected with as a general manager or producer, that there are no substitutions unless it is an emergency.

If there must be an emergency, Lenny

Hanlon is having a Bar Mitzvah of his only son. He came to me seven months before they made that date to clear that Saturday night with me.

That is a rapport very much needed between management and musicians. The rest of the musicians, I find, welcome that kind of rapport.

I wouldn't stand for one out of five musicians being absent without us knowing about it, us being the rest of the musicians, the stage manager, the actors.

I understand there is a substitution phone open and I say that is bad producing.

I say if the union several years ago or tens of years ago, Commissioner, said there can be substitutions, then the producer should go to the union or the producer should go to the people he hired and say, "Look, fellows, we have a unique situation. No substitutions except under certain conditions."

I tell you right now the musicians said, when there is a substitution, there must be only one. Never must a producer allow in a five-person band more than one person missing,

because the quality will go down accordingly.

You may say there should be no proper ration, three men out of twenty-six, or whatever form you want. I am not bucking the union in this testimony. I never asked permission to do that, but I am sure if I called the union and I said I have a verbal agreement with no substitutes, they are not going to put a picket line in front of me. They will say, "Work out your own arrangements."

You can only do that, Commissioner, speaking from a personal viewpoint, if you have a first-name, first-hand, first-knowledge relationship with the people working for you.

If you have a contractor or intermediary in the middle who is acting as a buffer, not a buffer but really a wall, then you can't know those problems.

I mean, I just handled it differently.

THE CHAIRPERSON: So your testimony really is, if rules do not necessarily lead to poor quality control, they need not necessarily lead either to low representation of minorities in the orchestra based on the same quality control

reasons, would you say?

MR. KEAN: Yes.

THE CHAIRPERSON: In your experience, have you or do you know of any other producers who have ever admonished a contractor for equal opportunity employment?

MR. KEAN: No.

THE CHAIRPERSON: Given the present representation in the so-called white shows, don't you think that that would be appropriate to do, consistent with maintaining quality, high quality standards?

MR. KEAN: I don't understand that question.

THE CHAIRPERSON: If after this hearing, with the knowledge, for example, that "Porgy and Bess" has the same number of blacks it had twenty years ago, which I don't think anybody is very proud of, twenty years ago this country was so much more deeply racist than it is today, that it makes today look good, to say that, of course, to blacks living in the city today, is to say perhaps not only how far we have come but how much farther we have to go,

that that, in fact, is the case, that this perhaps most celebrated of American operas shows the same, evokes the same kind of controversy with respect to black musicians than it evoked a generation ago when I was a child?

Now, if that is the case --

MR. KEAN: There are none of them.

THE CHAIRPERSON: There are a token number in the show.

MR. KEAN: Right.

THE CHAIRPERSON: If that is the case and one has to find or one feels that one should find a way to improve a situation rather than let it remain as it was twenty years ago, would not some direct communication from producer to contractor or to musicians or producer's own efforts be appropriate to try to bring a better modicum of equal opportunity to the pits?

MR. KEAN: Sure. The answer can only be yes to that.

I think that this is really a panel which is trying to zero in on many ways, Commissioner, on a problem that occurs now on Broadway with a production called "Porgy and Bess."

I think more interesting to me as a bystander is why or how that happened.

I have read the reviews of "Porgy and Bess," my class at N.Y.U. is seeing it next Wednesday. I know the people involved and the management of it and I know them all to be highly professional and I doubt if any one of these colleagues of mine have said to anybody, "Let's not hire a certain color."

I think from hearing what I heard today and knowing why you formed this or why this came about, I would say that somebody kind of fouled up, because you have the classic and the only credible, classic American opera with x number of black musicians in the pit seems somehow not wrong, but it seems somehow improper to me that there was a mistake made, and I doubt if there was any consideration given. But I am only guessing.

I think the people went out to hire musicians and no one thought of color.

THE CHAIRPERSON: That is precisely the problem, Mr. Kean.

MR. KEAN: I understand.

THE CHAIRPERSON: If no one thinks of the number of blacks in every important phase of American society, it will remain as it was when my father was a boy. This racism, exclusion, systemic practices, can only be overcome with the greatest of efforts.

MR. KEAN: I said there was some lack of thinking done, okay, and it was in that particular production.

THE CHAIRPERSON: In that production, Mr. Kean? We would never have called this hearing if "Porgy and Bess" had been -- we would then have called in "Porgy and Bess" as we called them before the production to try and get them before there was any publicity to change a process that we saw a pattern of what it's been in the previous productions.

What caused this hearing was our closer investigation of shows on Broadway where there seemed to be developing a pattern where if you are black, you better find a way to bring all the pressure you can to squeeze all of you into the black shows because you are not going to rate any more in the white pits than you had in the

white pits twenty years ago. It is the systemic nature of the problem that causes this hearing and that is why I am questioning you about systemic remedies.

I think that given Broadway, the liberalism of which I think it should be justly produced, that there is a little racial venality there as anywhere in the American society, yet we see patterns there comparable to patterns produced by a racial venality.

We must confront the result and try to go backwards. My opening remarks made it clear I did not seek to be biased here. In confronting the result, in looking for a way to get a handle on it, I am trying to ascertain whether you believe the producer is one way to get a handle on it.

MR. KEAN: Sure. I think the producer is the only way to get a handle on a production. I think that is why we are producers; we are crazy enough to do that.

I am telling you what my position is and how I hire and how I will hire --

THE CHAIRPERSON: Your position is

that since the producer ought to be in control of the entire production, to control, to insure that it lives up to its standards, that he also ought to have responsibility with respect to equal opportunity?

MR. KEAN: Yes, that among everything else, that he must have responsibility of this. This is in every way as important as many fiduciary responsibilities that a producer has.

THE CHAIRPERSON: Fair enough.

Commissioners?

MR. DAVID: I just have one or two questions of you.

Mr. Kean, you differ from Mr. Rose in that he indicated that--

MR. KEAN: In a lot of ways.

MR. DAVID: -- on this specific question, that he would delegate the responsibility to the contractor, and you believe the producer should be more responsible.

We need to understand nuances and well in the hiring processes. There are one or two minor questions.

You indicated that the contractor

should also be a musician.

MR. KEAN: I indicated that to you that in my next musical, which is a large musical, that the person who is responsible for the men, the contractor, will be a player. It is the only way that a musical will work.

MR. DAVID: My question is, how would that be more effective towards equal employment, to the point of this hearing? Would that aid in equalizing employment opportunities?

MR. KEAN: I don't know that it would.

MR. DAVID: You also drew a distinction along the way between the band or orchestra. I don't know whether you meant more than five, but again, going to the question of this hearing, is the distinction you draw, whatever it is, affected in any way with our concern over equal employment opportunity?

MR. KEAN: Well, I think that in my jargon, my definition, a band is smaller than an orchestra. I think when you see "Me and Bessie," you know there is a band on stage, and when you see "The Wiz," you know there is an orchestra in

the pit.

I happen to deal with five, but I think a band could very well be seven or eight. I have had in other cities in night clubs, I have had an eleven-person band.

THE CHAIRPERSON: It means what in the quality of hiring?

MR. KEAN: There is no difference at all.

MR. DAVID: Let me again, for purposes of trying to hammer out where we stand, to see if you agree with what's been said so far.

The union plays little role in the hiring practice.

MR. KEAN: In my experience, they play no role.

MR. DAVID: The house contractor played little part, and is, in any event, probably on his way out.

MR. KEAN: Played little? I don't understand.

MR. DAVID: Played little role in the past.

MR. KEAN: Yes, you are right.

MR. DAVID: The outside contractor can or should be under the direct control of the producer.

MR. KEAN: Absolutely.

MR. DAVID: Again, I think I am simply trying to reaffirm Commissioner Norton's question. It would be fair to say then that legal considerations, aside from city, state and federal law, the composition of a musical orchestra, whether it is integrated, all white, all black, or whatever, basically rests with the mind set of the producer?

MR. KEAN: It should; the producer and the people --

MR. DAVID: If we are to accept remedy in any way, does the remedy focus on the producer or are there other important elements?

MR. KEAN: It is the important element, as I said at first; it is the product. The producer services the production, the text and with the producer, in this framework, you have the composer and a lyricist and a book writer, and that is why I believe that musicians should be hired, selected, looked at by composers

as well as producers, people who are creating that which the musical will play.

MR. DAVID: Okay, thank you.

THE CHAIRPERSON: Commissioners?

I want to thank you very much, Mr. Kean -- I know what your life must be like -- for willingly cooperating with this hearing.

MR. KEAN: Thank you for asking me.

THE CHAIRPERSON: Next witness.

The next will be two witnesses from the executive -- from Local 802 of the American Federation of Musicians.

I would like to call Mr. Clifton Glover and Lou Russ.

Mr. Glover is a member of the executive board and Mr. Russ is the secretary of the union, and I will ask Mr. David to swear them since Commissioner Kee appears to have stepped out for a moment.

C L I F T O N G L O V E R, L O U R U S S, M R. L E V I N, called as witnesses, having been first duly sworn by Commissioner David, thereafter testified as follows:

THE CHAIRPERSON: If you desire,

you may make a statement before the Commission asks any questions.

MR. RUSS: My statement would be, the previous witnesses that were up here trying to give the life of the Broadway theatre and its talents, it has been fully stated and truly stated.

It is a very complex situation that the producer himself, to create any race, creed or color, is a problem. That first big problem is to get a show that is going to be a hit, and if they find the product on the road or not have this product, the second problem is to get the money to put this show and to make money.

Now, with all this time they have taken out to find a show, to finance a show, they select a company contractor who is fully qualified, like any other talent, in, whether it be sports, or let's say it is sports, on their honor system, on their scout system. It is no different than in the music field.

The scouts in sports and contractors for companies would have equal talent to evaluate talent, whether race, creed or color, and that

is basically his duties, to put in that pit a competent orchestra to fulfill that score and to fulfill every performance in high quality.

Now, we are the union. We certainly like and do welcome and we see a great improvement in hiring of different ethnic people. I, as one, as head of the Theatre Department, are very much encouraged. I see a great step forward. There was no barrier and there was no wall that we had to take down brick by brick. It never existed, never existed, as Mr. Davis stated.

Certainly, as union, we insist that all of our members be treated equally, and it is most important that we do. But, unfortunately, under federal laws that exist today, any labor organization, not only Local 802, are restrained by the restrictions of various laws.

We cannot tell a contractor, we cannot tell a producer who to hire. It is their business they are running. We are restricted not to interfere with their business.

You heard house contractor. The house contractor is a liaison office of the

union and it is not true that he never plays. He plays. He is there to see and take payroll records, maintain good performances, maintain that the orchestra appears on time.

Now, the outside contractor, which is a union man, liaison officer, has very, very little to do in selecting the personnel of any orchestra, and all the statements made here were by the producers, the men who give us our daily bread and butter, they spoke the truth.

They want a good orchestra as fast as possible without excluding any color or including any color.

This is how they want it and if they can do six rehearsals and have the show ready for previews, fine. We all are going to enjoy mileage in employment because the production cost of any show is the most expensive, and if we can cut down the production cost, every musician regardless of race, creed or color, will enjoy maybe three, four, five, six extra weeks to take home money.

Now, in a Broadway theatre, since Mr. Shendell left, and he is an excellent admin-

istrator of this department, left, and let me correct that, since he left our local--he was an excellent administrator in our local and a hard fighter for the musicians to achieve their standards they are enjoying today.

I came in after he left Local 802, and even while he was there and ever labor contract we negotiated, we are very, very strong, and we include a non-discriminatory clause for employment to everyone.

Now, let me tell you about the house contractor. When the orchestra is being selected, we have no right again to interfere with management because they now have a conductor who they have chosen, they have a contractor who they have chosen and they have a stage manager, and the composer plays the big part.

They meet, they just don't call one another, they meet and they evaluate and they want a certain type orchestra. Certainly at the union, where we can see we would like to change that, but under existing laws we don't have any power, and we hope your administration could influence some of those federal laws to be a little

more flexible, because if we can fit in with them when they make a policy for their companies, maybe we would be a help to them. But, under the existing laws, we are compelled to just select who they select and present to us, and the only time made known to us is when we received the payroll are we identified with the personnel of any orchestra.

Now, there seems to be a question of fairness in "Porgy and Bess." Certainly it was never directed that way. You have fine producers, fine company managements that have always been fair. Any requests where we feel there was an infraction against a musician, it was immediately corrected.

Yes, it is true, there are not enough, there are not enough jobs for everybody. Nobody pointed out here that we have on our books 26,000 paid members in good standing. My records of employment in the New York theatre, Off-Broadway theatre, a total of 790 people employed, regardless of race, creed or color, and we like to see that grow.

But, unfortunately, now we have ap-

proximately nineteen other thousand musicians who feel how come, why not me? This is the nature of the beast of the musicians' union.

We are not like an industry where we come in on a Monday and we go out on a Friday and there is one employer and the company is running for years. This is not us.

In Broadway we hope and pray that not too many turkeys come to Broadway, and turkeys are flop shows. We hope there are long-running shows because the paramount we enjoy out of that is employment for all of our members.

The system that exists now is strictly, and we accept it because we negotiated a legal contract which Mr. Rose stated, he stated it very well.

When he feels he can get a qualified man to get an orchestra together immediately, who has the talents and the scouts to put this together, fine. But we also agree with the Commissioner that more blacks should be hired and more people of any other race, creed or color should be hired. But, unfortunately, this being the biggest union in the American Federation of

Musicians, we have no power in the hiring. We enjoy a good relationship with the New York League of Theatres, and if there is any way possible that this Commission can change the federal standards and local and state standards of employing labor, I think we would be the very first to accept it.

THE CHAIRPERSON: What do you mean federal and state and local standards?

MR. RUSS: Well, by going back under the law, if you are unemployed, I cannot tell you who to hire. I cannot even sit down and say, Jack, Jim or Joe.

THE CHAIRPERSON: You mean the union can't tell the employer that?

MR. RUSS: That is right. The union cannot and we would welcome that kind of a change in the law, and I think it would be an advantage to everybody who was putting a show together, and we could find long life.

I see a lot of my black friends here and I am happy they are here because we are fighting for a good cause, because regardless of what this Commission does, everybody in this room, and

including the Commissioner, we are confounded and restricted by the existing federal laws, and we would like to do everything possible to sit w-th management to make policy, if we can be given that opportunity to make policy with them because the union has a lot of black musicians and we have a lot of other musicians of ethnic type, and I think we would want to see them all working because then, let me tell you something, we would look stronger than a strong union.

THE CHAIRPERSON: For the record, is this Mr. Glover or Mr. Russ?

MR. RUSS: This is Mr. Glover and I am Mr. Russ.

THE CHAIRPERSON: I think Mr. Russ is referring to labor laws, and I would say that we believe there are legal ways for the union to have input and that there should be such ways because if someone were to sue a producer under equal opportunity laws, he would automatically join the union. It would be unfair. It is unfair for the union to be in a position where it could be joined through a suit without having any

root to influence the hiring practices that it might be held responsible for under federal, state and local equal opportunity laws, because that is something the Commission might be able to be helpful to the union on.

We recognize that there are differences and they are very major differences between the employer and the union when it comes to hiring practices; that unions differ as to their input, and we want you to know we are sensitive to that.

First of all, I should ask if there is --

MR. LEVIN: The union does not have a contract with the contractor. The union is only in privity with the theatres and the producers who are members of the theatre.

The union has a contract with the New York League of Theatres and Producers. This governs the number of musicians employed and the terms and conditions of their employment in that theatre, unless there is an accepted change, because, for example, in the show "Candide," they wanted to have a lesser number of musicians be-

cause they wanted to modify the theatre.

THE CHAIRPERSON: What are you correcting?

MR. LEVIN: The union has, actually, no contractual rights to govern who is hired, except as to the wages and terms and conditions of employment.

THE CHAIRPERSON: I acknowledge that, counsel.

Counselor, my statement was that a competent lawyer bringing a suit under federal, state or city law against a producer who joins the union --

MR. LEVIN: That is correct, and I, as counsel for the union, would move to dismiss it, so that is why I am correcting your statement. You are wrong.

THE CHAIRPERSON: Whether or not you would be successful in a properly drawn suit is a matter which you and I might have a technical discussion about outside of this hearing.

Would Mr. Glover wish to make an opening statement?

MR. GLOVER: I would like to address

myself to the situation here, that we have to recognize the fact that there is a problem here. And if we can come to an agreement between every party concerned from producers down to musicians, then we have something to work with.

You know what the effect is; you've got to get to the cause. There is a sore here, you might as well admit it. But the musicians are very unhappy with the hiring practices that have existed over the years. It is a sorry thing to be turned away or denied employment.

You might say the loose definition of denial by not being hired. These musicians from minority groups are going to conservatories and have had the finest discipline over the years. They fit mostly in the category of potential -- Gayle Dixon's family and mine happen to be very close. My mother and his mother are very dear friends. He had to leave the country to conduct and when he came back here, he was begged to conduct. Because he was so flabbergasted by the effects of this, he had to go back to Europe. He couldn't stand the conditions here.

We have young musicians appearing to

play in different shows, spend a lot of time, require a tremendous amount of knowledge. They have degrees in music, and some of them went on to get Master's. Some go on to get Ph. D.'s equivalent to other ethnic groups.

When they are faced with the proposition they are not being considered, we have a problem.

We have to try to resolve this. If we have people who really want to set down in good faith, from producers to contractors, how do you fix responsibility on this? How do you fix responsibility? Which one of those people in there is responsible for the lack of consideration for a group of people that sorely need employment and should enjoy this right?

Now, fair employment practice rules, what do they state? They look at it and say, maybe if we turn our heads the other way, maybe it will go away. These people are still there. We are dealing with human beings, talking about musicians who are qualified. We are not talking about you are going to hire x musicians because someone said to hire them. We are talking about

people who are qualified and competent and should be given an opportunity. They should be given the consideration.

Maybe the system is wrong inherently. Maybe it has deteriorated. We will hire these musicians. Maybe it is a period thing. You find everybody up on the stage and you find a musician down on the bottom, and that's the way he is treated, down in the bottom of the pit, and nobody sees him.

This goes for every individual show. There is no accommodations made. This is the most uncomfortable job for musicians to perform. They perform under the most intolerant conditions.

All of this along the line, it seems as though the majority of musicians can't even enjoy the bad conditions. He is left out by omission.

When is anybody going to take the time out and focus in on this? Can we at this meeting -- I would like to see something fruitful -- if I may suggest this -- I would like to see something come out of this hearing.

If you do not mind me saying this,

that would nail this thing down once and for all; some sort of policy that we can sit down with people of good faith, somebody who wants to constructively contribute to this resolution of this problem and do something meaningful, not just a whole lot of rhetoric that we go through with the producer of this show, the contractor, if you want to take him, if you please; he may receive orders from a producer.

This man says he is going to run the show from the top to the bottom. Very noble of him to say, to take this stand on this type of thing. But, however, does he go into this? Does he permit the house contractor, outside contractor, to bring in this individual or that individual?

What actually goes on in this setup? What actually happens? How do you touch on it?

Being called names, the producer, he wants certain things. The orchestrator, he wants this. Everybody gets what they want but the poor minority musician; where does he fit in? How do we resolve that? That is the question predominant here.

I think we are here to find some sort of guideline to sort of set up where possibly peonle, of their own volition, voluntarily would subject themselves to the education and I mean in a broad sense, of resolving this problem where you consider all the ethnic groups, not one; not to the detriment of one group against the other. And this is what we frankly object to with the union.

I will say this. The president called for a casual engagement of officers in hiring people for them to come to a meeting in the board room to try to resolve the problem of hiring some of our minority musicians.

It is sad to say not one of them responded. We don't have any teeth in the laws and regulations to make them respond. Every one of them ignored this.

Where do we go from there? Possibly a suit would be the answer to force this thing out, make it public and let everybody know what is going on.

I will say here the union, and I believe Local 802 and the Federation, we want to

see this erased. We have a problem here that becomes administration's problem.

We are dealing with human beings in this organization and we want something done and want it on the record we want something done. We want something to come out of this meeting and something meaningful to come out of this meeting that would be constructive and correct some of the practices that have been adverse up until now.

THE CHAIRPERSON: I want to say for the record, the attitude Mr. Levin demonstrates on behalf of the union is precisely the way to get somewhere here. The Commission believes it is a problem-solving attitude and acknowledgment there is a problem, a problem which we have been careful not to point a finger of accusation at any specific person or entity, that it is a systemic problem that you work with a system and change it and you get results. You work your way through it.

If that is the attitude of the union, I think this problem can be solved much faster than the problems we find in the business world.

MR. GLOVER: That is the attitude of the union. That is the reason I am here representing the president of Local 802. That is our attitude.

He wants to honestly correct the situation.

THE CHAIRPERSON: Let me quickly just try, because we are running so late, let me try to establish just a few facts for the record.

How does a person get into the musicians' union? How does a person become a member of Local 802?

MR. GLOVER: There are quite a number of ways a musician comes into the union.

He comes in sometimes because a friend of his advises him.

THE CHAIRPERSON: How does he gain admission?

MR. GLOVER: He applies for an application to join the union.

THE CHAIRPERSON: How do you establish he is a bona fide musician?

MR. GLOVER: In the instance where

disciplined musician, one who has a career in music and has received -- there is not too great a problem.

In the instances where you come into a rock musician, it is a lack of concert discipline music. But the discipline lies within groups. There is no way to really assess the value of a musician in that character.

Now, in the instance of a blind man, you cannot give him a reading test, because one of the greatest pianists of all time was blind. You could not give him a test, but his music knowledge would qualify him.

Conditions vary on these things.

You have another blind man, Ray Charles. You have another blind man in Wonder. So where does the test fit in?

They act individually, they perform individually, and their artisanship stands on their own merit.

THE CHAIRPERSON: People perform for the union?

MR. GLOVER: Right.

THE CHAIRPERSON: What roles does

the union have in the selection of the house contractor?

MR. RUSS: The house contractor is to be designated at the beginning of each year, three-year contract, by the producer.

On the last negotiations, the house contractor became so flexible. Years ago, until this last contract was negotiated in 1975,-we now permit the producers and the League of New York Theatres to designate a house contractor.

Johnnie Jones on December 13, 1976, a show comes in that cannot utilize his instruments. Johnnie Jones will relinquish his right for the run of that play, and maybe if it is a hit he relinquishes his right to that theatre for the run of that theatre.

If it is a turkey or flop, he is immediately redesignated as the house contractor.

This is a brand new system. We have some problems with it and we think we can work it out.

THE CHAIRPERSON: Traditionally, have you been called upon to approve the selection of the producer of the house contractor?

MR. RUSS: In the old contract we used to enjoy the rights to sit down with the company contractor or conductor and house contractor and mutually agree on selections.

THE CHAIRPERSON: That was changed in this new contract?

MR. RUSS: It is changed because -- let me tell you why it's changed.

The membership of this union wanted a change.

THE CHAIRPERSON: Why did they want a change?

MR. RUSS: Because they accepted and ratified this contract and those materials and conditions.

THE CHAIRPERSON: Why did they desire this specific change?

MR. RUSS: That's in their minds, not in mine.

All we did was associated their proposal, presented it to our executive board and renegotiated with the New York League of Theatres.

THE CHAIRPERSON: You did not negotiate for changes blindly? There must have been

some concern either on the part of the producers or musicians that brought everyone into agreement before some change could come about.

What was the reason you were able to get that agreement?

MR. RUSS: Because either we take this, some of our committee wanted to eliminate it, and then they were instructed to fight for house contracts, and they did.

But the final analysis of the house contractor, management didn't want him any longer.

THE CHAIRPERSON: The role was omitted?

MR. RUSS: Because he was a union man and they felt they wanted their supervisory personnel under their own control.

THE CHAIRPERSON: The outside contractor?

MR. RUSS: Let me finish, because this is a very touchy and sensitive thing we endured for years.

When we were restricted to this, we had what we call a tandem house contractor, who may never be, even though he is designated. If the composer does not write a part for the instru-

ment, and if the composer does write a part for the instrument and the conductor or company manager or company contractor does not want to utilize this instrument, he simply has to resign.

By the way, let me point out we are very happy and we know it is going in the right direction because we are here in the Broadway theatre. We see much, much more employment, although there are three black shows I am going to mention. "The Wiz" was the first one that Mr. Shendell put the personnel together.

"Porgy and Bess" is a problem that was picked up in Texas, and whatever happened there, I say was not done purposely to discriminate against any race, creed or color.

"Bubbling Brown Sugar" had a complete brown, or rather black orchestra.

"Guys and Dolls" we have two white musicians.

We don't complain because this is what we live with and we are happy to see it and we hope it grows.

That's it. That is the business with the musicians' union. We like to play a

greater role.

Of course, if you were in my place as an official and strictly our livelihood is political, you have to do the thing to try to satisfy the majority of your members, and, unfortunately, I say that with much regret, under the present system we cannot do that.

THE CHAIRPERSON: The outside contractor, whether or not he is playing, will typically be a musician in the union as well?

MR. RUSS: Yes, he has to be.

THE CHAIRPERSON: So that there is a union connection at least to the contractors?

MR. RUSS: Yes. And so is the contractor a union musician.

THE CHAIRPERSON: Does the union ever get the opportunity to play a role, however small, in recruitment, for example, by being asked for referrals of specific musicians; is someone called the union and asked for a referral or otherwise asked for its advice?

MR. RUSS: Never in my experience.

THE CHAIRPERSON: Does the union let its members know of upcoming opportunities in em-

ployment?

MR. RUSS: Our members know before us, and that's the gospel truth. They know before us what plays are coming in and what contractor they should reach and what is their friendship with these contractors.

Let's face it, it is only a human thing. If you know I'm a contractor and you would say, "I hear you're going to put on a show. You're a contractor. Keep me in mind."

We union officials don't have that privilege. We don't practice that.

MR. LEVIN: I would like to point out, to reemphasize one thing.

In most cases, the union has no knowledge who is in a particular show until usually a month or so after the show is open, when we first get the welfare, pension and various work due reports from the producers. So that we do know, even if there is a replacement, we are not consulted and will only know about it by reading the reports the following month.

So that our role in who is actually playing is extremely limited.

THE CHAIRPERSON: So that if the union had any role, if a contractor wanted to get advice from someone at the union because he wanted to, because a person has knowledge of musicians, that person who gave advice would be giving so as an individual and not in any union capacity?

MR. RUSS: Yes.

THE CHAIRPERSON: You testified there are 26,000 paid-up members in the union.

What are the rough estimate breakdowns in terms of black and white?

MR. RUSS: That would be impossible for me to give you a correct answer. I say this is one union that has been most democratic since its inception because--

THE CHAIRPERSON: Don't you file an EEO-4 form with the federal government?

MR. RUSS: Let me finish.

THE CHAIRPERSON: Is it only on your staff, not of the makeup of your union?

MR. RUSS: That would have to be answered by a higher up.

MR. GLOVER: Let me explain this

facet. Maybe I can throw a little light on this. It is kind of a gray area.

For a number of various reasons, we do not like to catlog our members as being of an ethnic group.

Then we go down to all the ethnicticity of who is this particular racial group, who is in that particular racial group, and I wouldn't be a part of it to label this as black musicians or a minority group.

I consider them as musicians; period. That has been the policy as long as I have been in the union as an official for twenty-five years, and I am quite sure it existed before then.

THE CHAIRPERSON: There was such a time when such things were indicative of a discriminatory image. I am sure today you are aware this is not the case.

MR. LEVIN: The union application does not have on it any racial designation whatsoever, and I -- one of the things I think you should be aware of about this union, for many years, until recently, New York was the prime recording area as well as for theatres, and it

was a very great honor to be a member of this local.

Today, however, the situation is changed. You have recording all over the country, particularly in Nashville, and the West Coast.

A number of shows and/or musicians are playing also on the West Coast. So if you were to take a look at the resident addresses of the members of this local in good standing, you would find them living all over the country, because even the Beatles when they came here joined the union during the time of their performance here in New York. So we may have 26, 28,000 members, but they are all over the country.

And that is why there are, in fact, elections being conducted right now for officers and various other positions of the union.

We have to do it by mail referendum because physical people are not necessarily in the New York area.

The AFM does comply with the federal reporting requirements, but it is based on estimates. We are the largest local of the American Federation of Musicians, but we are just included

within totals given by the American Federation of Musicians.

MR. DAVID: Would you give us your estimate?

MR. LEVIN: I could not really because it varies so much by who is working.

We could tell you in a particular show today from personal knowledge perhaps what the racial breakdown might be, but there is no way for us to know unless we personally would see each of the individuals, since on the reporting form which we have, there is no racial designation.

MR. GLOVER: I would like to go one step further on this because sometimes I get the feeling we are going far afield.

One time in California, and other places that may be recording -- I would like if possible to confine ourselves to this area here and the sentiments of some of the minority musicians. I am going to take advantage of this opportunity to verbalize them.

Inasmuch as we do enjoy somewhat of a millenium of employment now because of the

accident, coincidental, or however you want to label it, the shows having a quantity of minority musicians in there, the question does arise; the musicians do happen to enjoy this work at this time.

After these shows close, where does he go? Will there be three or four shows, predominantly black, to embrace them, or are they going back to the same positions they were in before?

The musicians that are employed in the theatre would like to enjoy some of the substitute work. Substitute work has a very attractive feature to it. If you want to touch on that lightly, a man can go out and play and then can go out and play for a recording. He can go out and play a one night engagement.

He has a variety of ways in which he can express himself. He does not lose his contacts, He has many avenues.

All of these musicians seem to feel the value of working now. If we can only hammer out some sort of program here where we can educate the people involved in the hiring and get

them to participate. They want to do something.

To repeat, the union wants to do something.

THE CHAIRPERSON: Mr. Glover, I am aware of that and I have in the record the good faith of the union in this respect.

The Commission believes the problem is not going to be a difficult one with respect to this occupation.

I note, by the way, for the record, Mr. Glover is black and an executive board member of the union.

Can you tell us what the composition of the board and executive board of the union is and what the composition of the staff is of the union?

MR. GLOVER: The executive board is comprised of four top officers and nine executive board members, and I happen to be the union minority group member of the thirteen board members.

THE CHAIRPERSON: How about the staff of the union?

MR. RUSS: Are you talking about the working staff?

THE CHAIRPERSON: Yes.

MR. RUSS: The employees there are-- it is hard to say. There are about 102 employees. About fifty percent are black.

THE CHAIRPERSON: Finally --

MR. RUSS: I would like to add that also along with Clif being black, we have Henry Walton, assistant to the treasurer.

THE CHAIRPERSON: Who is also black?

MR. RUSS: Bobby Rivera, Puerto Rican, and we have a whole international official family.

I am Italian. We have Jews, we have Irish. We are an honorable and very proud union we are speaking about.

THE CHAIRPERSON: Finally, let me ask you gentlemen if the union would be willing to join without force of legal process, to join with others who might have more substantial responsibility in trying to effect the kind of hiring system which would automatically filter in people of all backgrounds?

MR. RUSS: We would cooperate one hundred percent with that.

THE CHAIRPERSON: I want to thank

you three gentlemen for appearing here.

MR. GLOVER: Thank you for the opportunity.

THE CHAIRPERSON: I want to next call Ms. Liz McCann, the general manager of "Porgy and Bess."

L I Z M c C A N N, called as a witness, having been first duly sworn by Commissioner Kee, thereafter testified as follows:

THE CHAIRPERSON: You might wish to make a statement in advance of any questions.

MS. MC CANN: My name is Elizabeth McCann. I am a member of the board of governors of the New York theatres.

I have my own firm and I am hired by various producers to handle, basically, their business and financial affairs.

I would like to make a general remark about Broadway, if I may, Commissioner.

THE CHAIRPERSON: Yes.

MS. MC CANN: Broadway gets its creative energy historically from ethnic groups who are trying to get their place in society.

I believe at the turn of the century

in this country, it was the Germans, then it came along, Harrigan & Hart, and Victor Herbert and George M. Cohan, and then the Jews came along, and now Broadway is getting its creative energy from the black community.

I believe that it is, that eventually what happens, as I am fond of saying, that Clifford Odets, who wrote "Waiting for Lefty," is the spiritual godfather of Neil Simon, who writes a play that is purely entertainment. That, I believe, the creative energy of the black community will strengthen; indeed, is strengthening, and is part of the whole economic revival which Broadway is having.

It is because I believe that in a strange way Broadway has grown almost ethnically, not ethnically, that you have always seen strange pockets of sort of ethnic jobs. Most stagehands are Irish; most of the business managers are Jewish, and male. I happen to be a strange exception.

Most box office treasurers are either Irish or Jewish. They seem to have split that job. This is a sort of holdover from these patterns where as creative talents grew up in an

industry, they began to reach out for their own people to start handling their affairs.

Ironically, I hope at some point we address ourselves in these hearings to the fact that there is one black producer on Broadway, Ken Harper, I believe, and I am doing this off the top of my head, there is one black manager, Ashton Stringer, there are two black press agents, a few black stage managers.

To the best of my knowledge, there are no black treasurers; to the best of my knowledge, very few black stagehands, or at least I don't know of very many.

These are jobs which are much more possible of exact definition. I can look at stagehands, I can examine a business manager, I can talk to a stage manager and I can assess their capabilities. When we get into the area of creative talents, such as musicians, we get into a rarefied emotional world in which people think there are special qualifications.

I was rather surprised to hear someone say that you can tell the difference between a black and a white person playing a piece of

jazz. I am not musically oriented, so I found that a rather amusing statement.

I, also, strangely believe that if we are going to grow creatively we must be very careful to make sure that the black creative artist is not limited in his experience to only that which he knows.

Michael Skulls (phonetic), the director of "Car Wash," remarked to me, he is a black director who left New York and went to Hollywood, he said, "How come no one ever asked me to direct a white play?"

I am hopeful that eventually you will see much more of a crossover, that the black energy will come to work in plays by white authors, in work by white musicians.

I have in my office now a young black woman who came to me who wanted to be a business manager, who left Channel 5 where she had a much more profitable position than she has with my firm since it is much smaller than Channel 5, because she was anxious to learn about becoming a producer on Broadway rather than a producer in television.

She was much more attracted to the live arts.

I started her experience in working, believe it or not, working with Harold Pinter, on a play called "Otherwise Engaged." This was for a number of very practical reasons. This way she could sort of start at the very beginning of production and follow it right through from its first contractual moment, where we sign a contract with an author, whereas our firm, with "Porgy and Bess," was not involved in it until it came into the New York engagement.

Also, because I wanted her to feel that once she was trained as a manager, her experience would be so broad that she could work in any situation. She would be capable of handling anybody's affairs. She would have dealt with highly temperamental English actors as well as black actors with whom she might have had some rapport.

I would also say to the Commission this morning that I have heard a lot of facts thrown around, but I am not quite sure if there has been any checking of them.

For instance, I believe, and I say I believe because I didn't do my own homework, that the Drama Guild contract that a producer signs with the composer gives the composer a great deal of control over certain areas of production.

I believe he has approval of the musical director, the contractor and the conductor, and any producer who says to you that he has as much control over the music of his show as he does, I think is a little bit wrong and I would check that contract, if you don't mind, Commissioner.

Now, to get to "Porgy and Bess," which I think is what most of you really are interested in --

MR. DAVID: I don't want to interrupt your testimony, but Mr. Kean was testifying under oath today. He stated he absolutely has control as a producer.

THE CHAIRPERSON: I think the point is that he may have control that may not be --

MS. MC CANN: He may have control, but I was laughing when Mr. Kean said, and I think

he believes it, that he won't allow anybody, any substitute to go into his orchestra without his permission.

I imagine Ms. Linda Hopkins has something to say about that. Any star, particularly when she is appearing with a five-piece band on stage, I think you would hear from her very fast if substitutions weren't to go into play.

THE CHAIRPERSON: He is saying that the musician band would have no control over who the substitute would be, not like the star or the producer.

Again, I think the point you are making, points up that there are clearly a diversity of styles on Broadway, and his style may not be the typical one.

MS. MC CANN: His style may not be.

Again, with a smaller production where he has more time and energy to devote to running the affairs of a show, which is relatively a one-woman show with five men, and Mr. Kean also happens, I believe, to manage the theatre in which the show is appearing, he probably has much more time and energy to devote, say, than the producer

of "Pippin," for instance.

THE CHAIRPERSON: You are going to go on to "Porgy and Bess."

MS. MC CANN: "Porgy and Bess."

"Porgy and Bess" was produced in Houston sometime last August by the Houston Grand Opera Association.

Sherwin and Goldman were responsible for a major part of the financing, if not, indeed, all of the financing of that production.

In late August, when it became evident that the show was going to come to Broadway, they engaged our firm to handle, basically, his business and legal affairs on Broadway since he was not very familiar with the various union problems and other difficulties he might get into.

Ironically, at that point, Mr. Goldman had a contract with Houston, basically, whereby Houston played a package, as it were, so many musicians, so many -- so many actors, et cetera, and Johnny Dumane, who was the conductor, was under contract to Houston.

One of the things I discovered in late August was that nobody had hired a con-

tractor, to my absolute stupefication. I gathered that Mr. Dumane and Houston were rather like the contractor who contracted the orchestra in Philadelphia and he wasn't available, and to my absolute stupefication I went to Mr. Goldman and I said, "Look, you are responsible for this project financially. They may be responsible for it aesthetically, but unless someone gets going, there is not going to be an orchestra in the pit."

I haven't checked my records, but I believe Mel Rodnon was hired as the contractor in very late August, approximately three weeks before the show appeared on Broadway.

As I say, this was partly because they were very undecisive about coming to Broadway and also because there seemed to be this back and forth business with Mr. Dumane in Houston about who the contractor would be.

I know Mel was informed by Mr. Goldman that he wished every effort to be made to hire black musicians.

THE CHAIRPERSON: How did that come about, that consciousness?

MS. MC CANN: That consciousness came about partly because Mr. Goldman asked us to relay that information to Mr. Rodnon. Mr. Rodnon again, as I said, I think they were fortunate to find a contractor of his competency having let the matter drift to the last moment in time.

You will frind frequently in commerical productions or in any stage production, things seem to be allowed to drift to the last moment.

THE CHAIRPERSON: Just can I interrupt for a second?

Had not Mr. Goldman received a correspondence from the Commission prior to hiring the musical contractor --

MS. MC CANN: I could not -- I believe Ms. Hymes gave me her file this morning and I noted that I believe there is a letter here, I believe in late August, from the Commission. Yes, August 30, from Ms. Frank to Ms. Hymes, confirming a telephone conversation.

I know from what I can tell, at the earliest he must have been hired was possibly,

I would say, the first week in September. Monday was August 30th.

I don't really think he was hired much before then, but I cannot be very specific about that, I am sorry.

If he was hired before receiving your letter, it was only a day or so before he received your letter. No hiring had been done before he received your letter. It certainly had not progressed in any sense before getting Mr. Rodnon.

THE CHAIRPERSON: I am sorry. The letter was to Mr. Gottlieb. It was signed by me. There had also been correspondence, the correspondence you have is also, of course, on the same subject. We had written directly to Mr. Gottlieb.

Are you aware that we had written to him because of complaints we'd had in "Tremonisha," theprior production, the production immediately before this? They had the same problem.

MS. MC CANN: Yes, I was aware of that problem because I was involved, ironically

enough, with "Tremonisha." It played the Uris Theatre, and I was working for Mr. Needlehander and Mr. Needlehander owned the Uris Theatre and we arranged for the financing of "Tremonisha" to move from Houston to Broadway, and, ironically, I must say to you, that although I was involved with that production, and I don't know how this happened, I did not know of that complaint until it surfaced this year and you got in touch with Houston because of the problem with "Tremonisha." I was not aware of the problem at the time. I don't know how that happened.

Perhaps you got in touch with Mr. Gottlieb --

THE CHAIRPERSON: We are aware of "Tremonisha" after it had come, played and left.

MS. MC CANN: That is why I would not know of your problem with that production.

THE CHAIRPERSON: That means when "Tremonisha" came, there was no particular consciousness about the possibility of trying to recruit minority musicians for the orchestra, there was no particular consciousness on the subject at the time?

MS. MC CANN: The production in that case, the conductor of that was a man named Gunther Schubert, who had been very instrumental and who was also the orchestrator of that piece. I cannot recall who the contractor was, but I know this was an instance in which Gunther almost, in a sense, stood in the shoes of Scott Joplin, and I know he had a very strong influence there on the composition of the orchestra.

To be frank with you, ironically, although I was the manager of that show, I cannot tell you how many black men were in it of that orchestra.

THE CHAIRPERSON: For the record, I think there were three.

MS. MC CANN: I just want to comment on the way our system works.

There are thirty men in the pit and the contractor hires so many and as business manager I am very rarely aware of what the composition is unless I happen to walk around under the stage and see musicians playing pinochle before the show; then I get a pretty good idea of the composition of the orchestra.

THE CHAIRPERSON: It would, I take it, be possible for this factor to be part of your input even as other factors are in terms of raising the consciousness, in terms of trying to otherwise encourage equal opportunity in the hiring of musicians?

MS. MC CANN: I think, Commissioner, that whatever the given situation is in terms of what one person's job is or not a job, whatever rights a composer has or a conductor has, it is, I think, incumbent on all of us to input a situation where we feel there is regress or some wrong.

Whatever our position may be in a given situation, we find ways if we are concerned enough.

THE CHAIRPERSON: Fine.

Do you want to continue about the hiring process of "Porgy and Bess"?

MS. MC CANN: Basically, Mel Rodnon, who is appearing later this afternoon, I think, can be more specific. He was working with John Dumane, the conductor.

THE CHAIRPERSON: And we will have

questions for him.

MS. MC CANN: I think he can be very specific with you.

THE CHAIRPERSON: We understand from the letter to us from Mr. Goldman that in selecting the contractor by the factor of sympathy with a firm called "Minority of Musicians," was a factor.

How did you select Mr. Rodnon in particular?

MS. MC CANN: Well, as I say, what happened is that for some reason they had let the whole factor of time get away from them and we were in touch, we got into it almost as a sort of friend at that point, urging them that they had to do something very quickly, they were three weeks away and they had to get on with it. And, as I recall, finally -- wait a minute, something comes back in my mind.

It was still unsolved when the production was in Washington because I remember tracking Johnny Dumane, saying, "You have to give approval to a contract, otherwise this production isn't going to move off center."

I think it logistically probably came down to that short period of time, who was qualified..

THE CHAIRPERSON: Qualified in the sense of being able to gather musicians?

MS. MC CANN: I believe being able to gather many, a good musician himself.

THE CHAIRPERSON: What instructions did you give him regarding hiring and recruitment inasmuch as we were told he was hired, that he was hired based in part on his sympathy with affirmative action. We would like to know what particular communication to him designed to bring that into the show took place.

MS. MC CANN: I cannot testify as to what communication existed between Mr. Goldman or Mr. Gottlieb or Mr. Dumane. I know that we informed Mr. Rodnon of a letter from the Commission and informed him that the Commission was anxious to make sure that hiring practices were used on "Porgy and Bess" that would give glack musicians the maximum opportunity to play in that pit.

THE CHAIRPERSON: Did you monitor

Mr. Rodnon's efforts in any way? Did he report back to you in any way?

MS. MC CANN: See, he really, in the normal course of events, would not report back to the business manager for production. He would report back to the conductor, the composer, the producer.

THE CHAIRPERSON: Do you know if he did so?

MS. MC CANN: I believe he did send some letters to Mr. Goldman giving names of people that he had seen, because in looking over this letter that I believe you had asked for, to Mr. Goldman, weekly records, I believe, and so I would imagine that Mr. Rodnon must have given those weekly records on August 30th, I think.

THE CHAIRPERSON: Yes. The point of the Commission's letter was to prevent remedial action on the theory that "Porgy and Bess" didn't want any more to be involved in remediation where prevention was possible.

Mr. Goldman in his letter to us states that even before our inquiry to him, the production had solicited names of minority musicians

from qualified sources, and he conducted interviews and invited black musicians to remain available for "Porgy and Bess."

Did your solicitation of qualified musicians include a list of which we are aware of over twenty minority musicians prepared by Mr. Howard Roberts, a black contractor?

MS. MC CANN: That I can't answer. I don't know of anything like that.

Did he go to Mr. Goldman?

THE CHAIRPERSON: Is it your understanding? We will have testimony later.

What I want to establish here, though, is the list to the extent that it was known within the "Porgy and Bess" company, was not known to the business manager. There is not a system whereby everybody was alerted to this need and therefore was in touch with the obligation.

MS. MC CANN: I'm sorry, Commissioner, I don't quite -- could you rephrase that for me?

THE CHAIRPERSON: You asked me a question about the list, and I asked you a question about it. I take it to mean, therefore, that the existence of this list was not known

universally throughout the external parts of this production because you did not know about it?

MS. MC CANN: I did not know about it, but again, as I say, it would not normally come within the framework of a business manager to get involved in any kind of aesthetic or judgment past informing Mr. Rodnon of what he knew of the Commission's interest in this problem.

THE CHAIRPERSON: Ms. McCann, when they had not hired musicians three weeks before the production, you, as business manager, thought you should assert yourself so these people would know they were not performing a function expected of them at this time.

Was this function any different from that function in the sense of your responsibility?

MS. MC CANN: We exert ourselves because as I said, when I was retained late in August, I was appalled to find that a contractor was one of the positions that had not been hired yet for the New York engagement.

At that point I went to Mr. Goldman and said, "You don't have a contractor. Where

are we going?"

THE CHAIRPERSON: I am just trying to establish that is not normally your duty.

MS. MC CANN: No.

Hopefully, someone has already done it.

THE CHAIRPERSON: Do you know whether or not any information was passed on to Mr. Rodnon from the business side, any information about available black musicians, was passed on to Mr. Rodnon?

MS. MC CANN: I do know, only because I know him personally, Earl Baker, who is--it's a position not frequently with the Broadway theatre, borrowed from the opera, and he worked as a chorus contractor.

It was his function to hire the chorus singers for "Porgy and Bess."

I believe he passed on some names to Mr. Rodnon, who mentioned that to me, as a matter of fact.

THE CHAIRPERSON: In your judgment would names, in addition to names prepared by black contractors or musicians, qualified to

play the specific score, in addition to the names passed on by the Commission from sources such as the Dance Theatre of Harlem, The Symphony of the New World, the union.

In your judgment, are these the kind of sources one might expect to produce a fair number of minority members?

MS. MC CANN: I would say particularly, Mr. Roberts. I believe he was one of the conductors for Alvin Ailey. He would seem to me to have a background in both pop music and more serious music.

THE CHAIRPERSON: Were you aware Mr. Rodnon had failed to pursue the course of hiring minority musicians suggested to him by the Commission?

MS. MC CANN: No, I was not.

THE CHAIRPERSON: If you had been aware of that, if the system of hiring had included the understanding that all of the principal actors in a production, artistic or not, were to have responsibility, and you had therefore been aware of this, would you have felt that it was appropriate for you to make this known, even as

you made known the failure to recruit musicians altogether when that duty had been foregone?

MS. MC CANN: Well, again, as far as I understand it, any producer could be liable for discriminatory practices.

My function is always to alert the producer to a potential liability in a great many areas.

If I felt or I was aware of something I have heard that this is a liability and I do not believe these men have been contacted and there is a possible liability in your area --

THE CHAIRPERSON: Would the system be improved if people at the various decision-making levels, at whatever part, but at the various decision-making levels, at least knew of this obligation? Would the system be more responsive to minority hiring if people throughout the production knew of this obligation?

MS. MC CANN: I think if producers, theatre owners, were made and very specifically, I might add, composers and playwrites, made aware of their responsibilities under the law, it would be extremely helpful.

I think, as I said earlier, that when we get involved in this area of musicianship, we do get involved in what I qualify as an emotional area. This pianist sounds better to this contractor than that pianist. This composer believes only Joyce Brown can conduct his music.

It reaches an emotional state.

I believe there are other areas of theatre and I am not minimizing the problems in this area because to me a piano player is a piano player, particularly in a Broadway pit, and particularly where the show has been running awhile.

But I am sure most composers would say I was crazy.

But I think there are areas in which there can be very objective standards, and I think that as the black creative energy moves forth in the theatre and makes the theatre in New York a more viable thing, there are other areas which must be looked at and, strangely enough, I think as those areas improve as there are proper black producers, more black business managers, more black press agents, you will find

strangely enough, the problems in the orchestra, I think, will begin to move forward, too.

THE CHAIRPERSON: Let me read part of a letter from Mr. Goldman to the Commission in responding to, in September, to the failure to recruit black musicians.

"First of all, we have insisted that every musician in our orchestra be of highest quality and professionally qualified to play an extremely difficult classical opera score. Frankly, there are few black musicians trained for this task, which is an issue for which we must all assume some responsibility. There is no dearth of talent, but a Duke Ellington, a Count Basie, or a Louis Armstrong, could not qualify for this orchestra."

Given the fact, the Commission submitted to Mr. Rodnon a list of classical sources for black players which was not even sought out, and how do you account for the presumption on the part of the producer that pitifully few players were available for "Porgy and Bess."

MS. MC CANN: I really can't comment on that. I think you are again maybe dealing in

the strange world in which there is perhaps an assumption -- I do not know -- that black musicians and black jazz musicians are quote "different animals."

There seems to be the emphasis always in the word quote, "opera-classical composition."

I think that is when you get into an aesthetic argument again and again and again.

THE CHAIRPERSON: Thank you very much, Ms. McCann. I appreciate your testimony. It has been very helpful to us.

(Whereupon, the witness was excused.)

THE CHAIRPERSON: I would like to call next Howard Roberts, musical contractor.

I would like to apologize for the fact we are running behind and to assure you we will be speeding up.

Mr. Roberts is the contractor for "Guys and Dolls."

H O W A R D R O B E R T S, called as a witness, having been first duly sworn by Commissioner Kee, thereafter testified as follows:

MR. ROBERTS: One correction. Actu-

ally, I am not the contractor. I am the conductor for "Guys and Dolls."

I would like to start by making a little statement on a kind of personal level, but I think it is necessary.

I know Ms. McCann. I had an artistic disagreement with Gunther Schubert, who is the musical director, and I must say on behalf of Ms. McCann and her colleagues, they were extremely nice to me and from a managerial standpoint, and I am saying that because in reacting to "Porgy and Bess," someone might construe I have an axe to grind -- but I just want to go on record by saying that from that standpoint, my disagreement with Gunther Schubert, I could not have been treated in a fairer manner by Ms. McCann.

MS. MC CANN: Again, that is the problem we deal with.

Mr. Roberts is hired by me. He works for me. He had an aesthetic difference with Mr. Schubert. Mr. Schubert sends him a wire firing him. I am left with the problem.

How do I argue with the composer? I cannot argue.

Howard, again, we have another one due us with a more happy memory.

THE CHAIRPERSON: It is pleasing to note for the record that these personal relationships are good.

Mr. Roberts, would you like to make an opening statement?

MR. ROBERTS: A very short one.

There obviously is something wrong. I will not go through all that we have had a lot of talk about this morning, about what has been happening. I think we should as much as possible address ourselves to correcting the problems that have happened and making positive statements.

I think there are certain educational things that can be put directly to contractors and composers and management, producers, everyone as far as the necessity for investigating and hiring minority musicians.

It is not that difficult and that is one of the galling things to me personally.

For just a little personal background, I was a conductor and musical director

for the Broadway show, "Raisin." I was conductor for "Guys and Dolls."

I was associated with the Alvin Ailey Dance Theatre.

I have done a number of things. During the course of that time I have run into many, many qualified minority musicians, so it is not difficult for someone to find out thequalified people, it is just not.

If the contractor says he does not know them, he is, no matter what the -- no matter how well he is thought of on Broadway, he is not doing his job to the fullest extent if he has not investigated everybody and found that everybody who can do the job.

The letter that was referred to and Ms. McCann was correct when she used the name Earl Baker. Earl Baker is the choral contractor for "Porgy and Bess," a very personal friend of mine, also a colleague. We have been working together many, many times. He was my choral contractor for many, many years with the Alvin Ailey Company.

On about August 15, Mr. Baker called

me from Philadelphia and at that time informed me that the contractor for the show "Porgy and Bess" was going to be a gentleman -- I cannot think of his name -- but from Philadelphia, which I thought highly unusual.

But he said this contractor is interested in hiring as many black, qualified musicians as possible because of the makeup of the show.

He said, "Would you prepare for me a list?"

I did so and I sent it to Mr. Baker to pass on to the contractor. I did so.

In the meantime, the contractor from Philadelphia would not be coming into New York. That list that I prepared was then sent to Mr. Baker to the Goldman office.

Now, Mr. Baker told me this himself.

Mr. Baker did then proceed to talk with the orchestral contractor for the Geoffrey Ballet named Gerald Tarak, a very qualified, one of the finest violinists, and he is also a personal friend. And he asked Mr. Tarak to contact the Goldman office and see to it -- give him some names of qualified black musicians that he had

hired.

Mr. Tarak not only called the office, but just this morning he told me that he found Mr. Goldman in the country and spoke to him about it. And Mr. Goldman said, "I will talk to you as soon as I get back to New York."

And Mr. Tarak has never heard from the Goldman office.

Anyway, the list was sent that I prepared and it has over twenty names and some extremely qualified people, people who have performed with the symphony, who have performed with all kinds of chamber groups and done repertory, which embraces all of the masters, all the music of today. And they are qualified to sit in the orchestra on Broadway.

As far as I know, only two or three of these people were contacted, and two of them were asked to audition.

Now, they were asked to audition not only after myself, but some other people said they were qualified. You get into that emotional area Ms. McCann spoke about. It is kind of a slap in the face.

Here is a qualified conductor who has recommended me and you ask me to audition. It is kind of a slap in the face.

THE CHAIRPERSON: Is that unusual?

MR. ROBERTS: It's unusual, and I can't be quoted on this, but I do not know. I think it is rather illegal from the union's standpoint.

THE CHAIRPERSON: The contract bars auditions?

MR. ROBERTS: Yes.

I would prefer to have a union official corroborate that statement, but I believe it is true.

Anyway, I won't talk any longer, but I think we should talk about remedies. I do think there are things that can be done. I think there is a very strong educational process. It is a matter of the union and producers getting together, and sitting the contractors and the conductors and the people in our production office down and saying, "We want to expose you to who is available and what their background is," and things like that.

THE CHAIRPERSON: Because Mr. Roberts, of your own extensive experience in the music world, I would like you to lay out what your bakcground as a musician is.

MR. ROBERTS: I hold a Master's Degree from the Cleveland Institute of Music.

I studied conducting with Marcell Dick and GeorgePonar.

I also happened to have studied voice.

I have done a lot of background, very varied.

I was a musical director for Harry Belafonte for three years.

I still taught my own group. We do a very varied program.

I was also the conductor for Don McCabe's Dance Theatre, also in the educational field.

I was associate professor at Morgan State. I was also at North Carolina Central University and some others.

I have done a lot of composing for TV and record producer for CBS records, and some other things, too.

THE CHAIRPERSON: In the course of a very varied musical career, have you had occasion to meet any significant number of other blacks who were also studying music seriously?

MR. ROBERTS: Many, many.

There are just so many. I look around this room and I see a bunch of very serious, young, fine musicians who are black who are qualified. Some are with the "Guys and Dolls" orchestra. They are very qualified to play.

THE CHAIRPERSON: People who have studied music and can read music?

MR. ROBERTS: Oh, yes.

That, of course, is the problem. I think one or two persons touched upon it slightly.

It is that assumed attitude -- Mr. Rose's statement was so unfortunate, I find.

I won't elaborate on that, but that understood thing, if you have a show that has a gospel tune in it, et cetera, hire some black musicians to do that.

You know, we could put together an entire black orchestra and play "My Fair Lady," and have it done just as well as any white orchestra on Broadway. And it is particularly

galling to me at this particular time that a shows employs say twenty-six musicians and I say this with a little clause on the side, because the orchestra of "Guys and Dolls" is a predominantly black orchestra. But it seems incredible to me in this day and age, 1976, that a show, I think for instance -- I don't want to say this as gospel, but I believe this is true, could come in with an all white orchestra of twenty-six white musicians in this day and age.

I would just be willing to bet, and this is a supposition in my mind, that somewhere in that orchestra there were five people who could go out and grab five blacks who would be better than those five.

I just picked five out of twenty-six as a rather kind of round number. It is kind of impossible to understand except that it is kind of naturally a racist thing to decide, well, those guys can't play this complicated "Porgy and Bess" score or something like that and ask them to come in and audition and things like that. It is a very emotional thing.

Ms. McCann was absolutely right. But it is really -- there are people just coming out of conservatories every day who can do things-- well, I can go even farther, much more difficult things than "Porgy and Bess." "Porgy and Bess" has its amount of difficulty, but it certainly would not rank with Krenek, something like that, Alban Berg, when talking about difficulty of performance.

THE CHAIRPERSON: As a person who has both taught music in colleges and had intensive contacts with blacks coming out of conservatories, would it be fair to say that music, if anything, is a field for which blacks, perhaps, overprepare themselves, shunning other fields?

MR. ROBERTS: I think that's a pretty fair statement.

The thing is that I have come through several decades of music. I have been at it a long time and there is no doubt about the fact that thirty years ago the number of people who -- the number of blacks who would have been able to play Krenek or something like that were in a minority. But nowadays there are so many quali-

fied black musicians who can do the job.

This whole racist thinking that says, "Well, let's save them for a special little gospel number," and the fact of the matter is there are some great white gospel players.

The racism goes all kind of ways.

THE CHAIRPERSON: It is, I take it, that the black colleges tend to have classical music departments which train people in music, and those departments tend to attract large numbers of students.

MR. ROBERTS: Yes.

THE CHAIRPERSON: Would it also be the case that New York City would have, if anything, a disproportionate share of the trained black musicians in the country?

MR. ROBERTS: Absolutely, because everybody wants to come to New York to quote "to make it," unquote.

So if you grow up and go to Eastman Conservatory of Music, the first place you head for is New York and try to make it. That would be absolutely true.

THE CHAIRPERSON: "Guys and Dolls"

may be a black production, but of course it is based on music that was written with whites in mind some years ago.

MR. ROBERTS: Yes.

THE CHAIRPERSON: Is the orchestration for the music for the present production of "Guys and Dolls" much different in difficulty than that of the other shows on Broadway at this time?

MR. ROBERTS: No, it's about the same.

In fact, 75% of the score we are playing at this particular time is the actual score that was done twenty-five years ago. So that the music is comparable, completely.

I would like to just make a comment about the makeup of the orchestra to "Guys and Dolls."

As I have said, I have been accused of being a racist. The makeup of the orchestra actually is four white, not two, as Mr. Rose has his facts incorrect.

There is one Panamanian and one Japanese.

What we have in the orchestra is ac-

tually six out of twenty-six, which is roughly 20% of the orchestra is not black.

My first concern in putting together that orchestra was the musicality, as anybody would be, and I worked very hand in glove. In fact, I wore a double hat because I'm the outside contractor. As such, as a conductor and outside contractor, I worked very closely with Rock Giadono, who is the house contractor, in making out the makeup of the orchestra. And I am very happy to say the orchestra is extremely capable, and that was the No. 1 consideration.

I was very happy that I was able to find a predominantly black orchestra that was musically strong enough to do that and anything that they were asked for, and I must say, very happily, that I would not hesitate to take that orchestra and change it with the one playing in "Chorus Line" right now, and I think it would be even better.

THE CHAIRPERSON: Is it your testimony you did not have difficulty recruiting blacks in the orchestra who would amount to the traditional whites for "Guys and Dolls"?

MR. ROBERTS: Absolutely.

As a matter of fact, there are almost too many. I couldn't hire them all.

THE CHAIRPERSON: What sources did you use?

MR. ROBERTS: A lot of it, naturally, was personal reference, but I also talked with the personnel person for the Symphony of the New World. I talked with several other conductors who had knowledge and wanted to ask about various people, and I literally went and listened to some people to hear how they played.

THE CHAIRPERSON: In drawing up your list for "Porgy and Bess," did you limit yourself to musicians who had been trained and whom you thought could play a difficult score?

MR. ROBERTS: Yes, I did.

THE CHAIRPERSON: Do you know whatever happened to the list?

MR. ROBERTS: The last I know, Mr. Baker told me he saw to it. In fact, I questioned him very specifically. I said, "What happened to the list?"

He said, "I saw it went into Mr.

Goldman's office."

I don't have a copy of the list with me, by the way. I just thought if anybody ever asked about it --

THE CHAIRPERSON: You say you do not have a copy?

MR. ROBERTS: We do have a copy.

THE CHAIRPERSON: We would appreciate your leaving that, if you would.

MR. ROBERTS: A xerox. I want to keep my copy.

THE CHAIRPERSON: If you forgive me, this should not be considered a blacklist.

I do apologize for that.

Finally, Mr. Roberts, you have, I think, quite correctly pointed to the need to set forth remedies and I think indicated sensitivity to the need for remedy that works in this particular environment.

Do you believe that a more formal or less formal remedy or requirement would be appropriate given the history that we are dealing with here?

MR. ROBERTS: Unequivocally, formal,

as far as I am concerned.

I think it has to be attacked frontally, and I think it is a tremendous -- every one of us has to know something has to be done, the pressures have been brought. Because I think until it is attacked frontally, nothing will happen.

THE CHAIRPERSON: Are you saying that a remedy that would be analogous to one which other employers have come to regard as routine to bring them into compliance with equal opportunity laws, should also apply to Broadway?

MR. ROBERTS: Absolutely.

THE CHAIRPERSON: Commissioners?

I want to thank you, Mr. Roberts. Your experience is very important forus.

(Applause)

(Whereupon, the witness was excused.)

THE CHAIRPERSON: I would like to call Earl Shendell, contractor.

E A R L S H E N D E L L, called as a witness, having been first duly sworn by Commissioner Kee, thereafter testified as follows:

THE CHAIRPERSON: If you desire, Mr.

Shendell, you can make a statement before we ask you any questions.

MR. SHENDELL: My preference is you to commence with questions.

THE CHAIRPERSON: What is your occupation?

MR. SHENDELL: Music coordinator, music department for "A Broadway Musical."

THE CHAIRPERSON: With what musicals are you currently associated?

MR. SHENDELL: "The Wiz," "Shenandoah," "Magic Show," "Godspell," a recent special attraction, which are different from the different theatres.

I was a coordinator with Diana Ross, also Liza Minnelli, Bette Midler, people of that kind.

I am also the manager of the music department of the Dance Theatre of Harlem.

THE CHAIRPERSON: In contracting for musicians, what input from others do you seek, or is it based entirely upon your own discretion?

MR. SHENDELL: Where I feel the need

for additional information, I will make inquiries of the proper people, people who are considered to be authorities in the area, and whose knowledge and experience I welcome.

THE CHAIRPERSON: These might include what kinds of people?

MR. SHENDELL: Harry Smyles, for example, is a very old friend with whom I performed.

Through my experience of the Dance Theatre of Harlem of six years old, who could be called black, essentially Latin-American, all kind of musicians, we have put together very successfully and heard artistic judgments of treatment value, plus my own personal experience in the music world of approximately forty-five years.

I have played both as a jazz and concert musician and approximately around the period of 1956 as an officer of the musicians' union.

I was an executive board member.

I initiated a program with the New York City Youth Board in which I supplied the

orchestras functioning along with the New York City Youth Board that they would promote in different areas in the City.

The very first year alone I put together approximately 150 orchestras, completely integrated, all of them.

I also played as a musician in the Apollo on 125th Street. And my experience with black musicians, I would say, is rather broad, personal, intimate, and I know many and I do not think of them really as blacks. They are close personal friends, including those at a time when my mother needed blood transfusions, a whole host of black musicians appeared at Kings County Hospital ti give my mother blood.

THE CHAIRPERSON: When you hire musicians unknown to you, how do you go about doing so? How do you go about getting new people, if you get new people?

MR. SHENDELL: I'm constantly interested in new people and new faces. In this room there are many new people and new faces I placed on Broadway.

If necessary, I will go to shows

where they are performing, attend those functions and see and hear for myself. If I am not sure, I will talk to the conductors or whomever employed them and double check.

THE CHAIRPERSON: Does that imply that you listen to people before you hire them?

MR. SHENDELL: I make up my judgments as I go along.

THE CHAIRPERSON: You are the contractor for two quite successful shows, one whose orchestra is well known to be integrated, well integrated, "The Wiz," the other which has a few blacks indeed.

What accounts for the difference in the ethnic breakdown of these two orchestras in particular?

MR. SHENDELL: They are two distinct, different types of shows.

I have the feeling you are making reference to "Shenandoah."

THE CHAIRPERSON: Yes.

MR. SHENDELL: "Shenandoah," the nature of the music there is very extreme, high quality, and the manner in which it was orches-

trated, placed a great deal of exposure upon each member of the orchestra. Each member of the orchestra is exposed in many instances.

For example, much of the string section, of which there are only five, six, I believe, it is almost like a string quintet, like a trio; many of them have solos, and the rest of the orchestra in its individual chairs had very highly specialized situations.

For example, the clarinet chair is a B-flat clarinet, and E-flat clarinet, and a flute. The man playing that chair has to be very, very good. The bassoon chair has bass clarinet and flute again. There are very specialized situations completely different from "The Wiz," insofar as "The Wiz" has four doubles in the woodwind section, there are four doubles with the exception of the first reed clarinet where there are five doubles.

But the music, in a sense, is stylized in a manner wherein the players essentially should have the feel of anything that goes from gospel through rock, hard rock, jazz, soft jazz, to acid rock at times. But all these things are essentially

in time signatures, or in time meters that don't really represent any great difficulties.

"Shenandoah" is different in that regard, and finding the people who would probably be able to function in "Shenandoah" was a problem.

THE CHAIRPERSON: Was an effort made to find a minority people, in particular, who might function in "Shenandoah"?

MR. SHENDELL: Oh, yes, I always make that effort.

THE CHAIRPERSON: And it was unsuccessful?

MR. SHENDELL: It was unsuccessful to the extent that I originally had four who canceled. Two were playing the show. At this point, or over the past year, I have six black substitutes, breaking them in, studying the parts and so forth.

How Roberts, who was here a moment ago, was one of my substitutes, and I attempted in that manner to break in people and to help them get into critical situations where they are not embarrassed.

May I make a comment on this embarrassment thing for a moment? It is all particularly important and is somethingI thought about quite a bit.

It is easy enough to say, "Go and play that job." You may be doing some black musician the greatest disservice in the world by placing them in the position where they bomb out and only their laundryman will know how frightened they were, and in that process allow them to create an impression of poor performance that they may never be able to overcome. So I don't think it is always doing a black friend a favor by sending them into a situation where they are not psychologically and really prepared to deal with it, even though professionally they may be, even though professionally they may be, but sometimes that little shade of being nervous or whatever, can create a problem for them.

Therefore, what I do is, I break them in on a substitute basis because I know that professionally they can qualify and will succeed once given the opportunity, and it works very well.

Is it not -- I really don't know about the laughter. Are there among you here in the audience those that think what I said is not so?

THE CHAIRPERSON: Mr. Shendell, just a second, just a moment.

For you in the hearing and to Mr. Shendell, I am conducting this hearing and I will conduct it with decorum. If some people laugh, it is a free country, as long as it is not completely out of order. Snickers are allowed, but if you are going out of order, they are going to get out of order and you are not going to conduct this hearing, I am.

Sure there is some sensitivity here. But there is very good rapport established here. Your own reputation in the field, I think, is appreciated by many minority musicians. In fact, I would like to ask you about the use of substitutes.

The use of substitutes for people, black or white, new faces, young people, may indeed be a more systematic way to bring new faces, including black and brown faces, into

tne field; maybe a better way to do it than is being done now.

I would like to ask your expert opinion on that.

Do you believe that if more contractors adonted the procedure of encouraging substitutes, that included greater number of minority people, that that might contribute to the growth of minority players in Broadway pits?

MR. SHENDELL: There is no question in my mind that I believe at this point that that is a very important approach, particularly for those who, for those contractors who, for whatever their personal affairs may be in that regard, would give them an opportunity and provide an opportunity for blacks to prove, if that is what is necessary for those who aren't too sure, who would give certain blacks an oportunity to prove how well they can play and function under all situations.

Certainly it will improve their employment possibilities as well for future shows.

THE CHAIRPERSON: Would it not be an aid to the contractor if there were made avail-

able to him sources of black musicians that go beyond his own personal knowledge?

MR. SHENDELL: Absolutely. I believe everybody would benefit from it.

THE CHAIRPERSON: Commissioners?

Thank you very much, Mr. Shendell. We appreciated this testimony. It is very helpful to the Commission.

MR. SHENDELL: Thank you.

THE CHAIRPERSON: I would like to call next, and I may be pronouncing her name in correctly -- his name, Fima Fidelman, who is also a contractor.

MR. FIDELMAN: It is a question of contractor or house contractor.

You all spoke about house contractor, but I am the only one here who is a house contractor.

F I M A F I D E L M A N, called as a witness, having been first duly sworn by Commissioner Kee, thereafter testified as follows:

MR. FIDELMAN: See, I have been a house contractor since 1958 in the St. James Theatre, and I went through many company con-

tractors who are retired, and I also have Mr. Shendell. I have Mr. Herbie Harris. Who else? Quite a few of them.

A house contractor has a different responsibility than a company contractor. A house contractor gets a list, men that are hired or spoken to to do the show, and the list is given to me a few days before the show opens and I have to call the man to hire the man; actual hiring is done by the house contractor when selected by the company contractor and the conductor.

I have many shows. I have "Two Gentlemen of Verona." I have twelve blacks and six or seven people in the stage that are white, and there are seven walkers that are getting salary and are not performing.

Then I had "Good News," Mr. Shendell, when I had about four or five blacks there. Now I am having "My Fair Lady," the only show that I have been asked to bring the show together. The conductor asked me to do it. He already had quite a few names that played with him years ago before, different shows, and he wanted to have them back.

I was not having much experience in hiring the company contractors do. I grabbed the desk man and I succeeded to have a good orchestra. Yet I had in my mind blacks. Mr. Shendell had this "Good News" with a wonderful man, who I had in mind to put in the orchestra, but, unfortunately, Jeffery, Joe Wilder, and there was a girl that I played once a substitute for Mr. Shendell in a play, I was sitting next to her and she did a wonderful job, and I said I am going to get her. And all of them were already busy in "Shenandoah."

There are many fine musicians there.

My knowledge of blacks was very small. The people that played "Two Gentlemen" was in a different field of music, the "Two Gentlemen of Verona."

That is my story. You can ask me.

THE CHAIRPERSON: You testified that "My Fair Lady" was the only show for which you had total responsibility for.

MR. FIDELMAN: Yes. There are some that the conductor wanted because they played with him years ago. They are good musicians.

THE CHAIRPERSON: How do you account for the fact that "My Fair Lady" has a n all white orchestra?

MR. FIDELMAN: Because I couldn't get--the score.

THE CHAIRPERSON: The score can only be played by whites?

MR. FIDELMAN: No, it couldn't. It could have a certain feeling. There is no such a thing as white and black. It is the feel of music.

THE CHAIRPERSON: Isn't "My Fair Lady" rather typical ballad music?

MR. FIDELMAN: It is very classical music.

THE CHAIRPERSON: You regard it as an extremely difficult score?

MR. FIDELMAN: It is not music like "Two Gentlemen of Verona." We cannot specialize or play what the blacks can do, and the blacks that I knew, more or less I didn't figure out that they can equalize with the score of "My Fair Lady." That is from "Two Gentlemen of Verona."

I did want the blacks that were playing

with me in "Good News."

I called up Gayle Dixon to do "My Fair Lady." She was busy.

I have a black girl playing substitute there.

THE CHAIRPERSON: So part of the difficulty, inasmuch as you made attempts to contact black musicians, qualified black musicians, who are otherwise busy, the indication would appear to be that your own sources may be too limited because these people --

MR. FIDELMAN: My knowledge of black people.

THE CHAIRPERSON: So if you had greater sources--

MR. FIDELMAN: Although I have a gook here, my directory, you know, whom I can call -- I can show it to you. There is a whole page of blacks, and as I was thinking about the score and how I know, I decided to have whom I engaged as suitable for the score.

THE CHAIRPERSON: It is not unusual that in the first years of integration of any kind that the same names become known to people

and the technical task is to learn ways to branch out to other names and sources. We understand that.

You emphasized that you have been a house contractor.

MR. FIDELMAN: Yes, since 1958.

THE CHAIRPERSON: And that, therefore, you had limited input.

MR. FIDELMAN: No responsibility at all for the orchestra; only a telephone boy. House contractor is only done what he is told to do by the company contractor, and even the conductor. Even substitutes, I wasn't allowed to choose my friends whom I know.

THE CHAIRPERSON: But as house contractor, you never had occasion to do more than carry a message between one person and the other?

MR. FIDELMAN: I had "Hello, Dolly," for seven years. I was the concert master there. I played a solo fourteen times a night, and I played 38,000 times solely from "Hello, Dolly," yet the substitutes were given to me whom I should call.

THE CHAIRPERSON: What considerations

do you use in hiring? I asked this question on the theory that because outside house contractors appear to be becoming obsolete that your major work is going to be as an houtside contract?

MR. FIDELMAN: I doubt it, because I think I have only a chance on "My Fair Lady." I don't think I can get another outside contractor.

THE CHAIRPERSON: How do you intend to make a living as a contractor then?

MR. FIDELMAN: My living is made already, let's put it truthfully, and right now "My Fair Lady" is moving from St. James Theatre to Fontaine, and complications with me -- I am not hired any more in St. James because the show comes in, the music has no strings. I am a violinist and I am told there is no strings, so a contractor has to be a playing contractor. I don't know whom they are going to select.

THE CHAIRPERSON: Are you testifying then that you don't think you will be in the business of recruiting musicians in the future?

MR. FIDELMAN: In about four weeks I am going to Fontaine as a contractor, maybe a house contractor, and continue what I am doing

now.

THE CHAIRPERSON: Yes.

In your long experience, albeit not as direct contractor, have you seen minority musicians become more available than in the past?

MR. FIDELMAN: Well, you are asking me a question of my knowledge. Whatever I saw, I admired the work that the blacks were doing. We cannot do their work; definitely not. If we do what they do, we are imitating them. There is some music --

THE CHAIRPERSON: Are you testifying that you can't play the same music?

MR. FIDELMAN: You can't. It will be false for me to play rock and roll or jazz.

THE CHAIRPERSON: Suppose you were, however, born and bred into the world of rock and roll as a young white man, don't you think --

MR. FIDELMAN: You still wouldn't do it.

THE CHAIRPERSON: What is it, in the genes?

MR. FIDELMAN: It is in the blood.

THE CHAIRPERSON: Do you want the record to be left that way?

MR. FIDELMAN: Because what the blacks can do in jazz, the character, the ability, we just imitate.

THE CHAIRPERSON: You mean, it is in the culture?

MR. FIDELMAN: Right.

THE CHAIRPERSON: If that culture becomes nationalized --

MR. FIDELMAN: But there are also some very good blacks who can play soloist. We have conductors, we have pianists, if they have the opportunity to study.

THE CHAIRPERSON: So while you think black music is culturally bound, do you think white music can be learned by blacks? It can be learned?

MR. FIDELMAN: Yes.

THE CHAIRPERSON: You don't think it goes the other way?

MR. FIDELMAN: I went to the conservatory in Czechoslovakia, in Russia, and I have never seen blacks studying music.

THE CHAIRPERSON: How about the United States? How about in black insitutions?

MR. FIDELMAN: That I don't know. But I went to the conservatory and I have never seen or -- I have seen some singers studying. They have tremendous talents because my brother was teaching a pianist for many years. She is a black. She had an accident and she died. But she was a marvelous talent and we knew what talent she was.

THE CHAIRPERSON: In the age of media, Mr. Fidelman, in the age of media with the nationalization of culture of all kinds, do you think we are coming to a point where black folks can play white folks' music and vice versa?

MR. FIDELMAN: If blacks go to school and learn to play white music, if they go to school and become cultured enough, but the whites, they will never do it.

THE CHAIRPERSON: No hope for them?

MR. FIDELMAN: No.

I have been to the radio business, I have been to Columbia Broadcasting, and I seen what the whites can do and the blacks can do.

It is specialized. It is a field--

THE CHAIRPERSON: Have you had an opportunity to look at the top forty on the Record Parade or to go to the rock and roll concert halls and see who plays?

MR. FIDELMAN: No. I wasn't involved in that.

THE CHAIRPERSON: All right.

MR. FIDELMAN: I couldn't tell you. I don't know even who the names of the rock and roll people are.

THE CHAIRPERSON: Not in the names--

MR. FIDELMAN: I listen once in a while, the radio comes on.

THE CHAIRPERSON: Can you tell the difference between who is black and who is white in playing rock and roll?

MR. FIDELMAN: Very hard to say that. You ask me, but it is a difference. When you see them, it is different.

THE CHAIRPERSON: When you see them?

MR. FIDELMAN: Because imitation on a record or thorugh a microphone is very hard to identify.

THE CHAIRPERSON: In an age where young people of every culture are being fed rock and roll, almost exclusively, do you believe that when these young people --

MR. FIDELMAN: I don't think that is it. I personally don't think that, because you couldn't teach me to do that.

THE CHAIRPERSON: That is not my question.

In an age where a young child in America will have almost as his first conscious experience with music the hearing of rock and roll on radio, is it not possible that race will shortly no longer be a major component in musical style?

MR. FIDELMAN: Well, I hope not, because we shouldn't lose the classical music at all. We should educate youngsters a little bit more with classical music.

THE CHAIRPERSON: If the great masters had taught classical music--

MR. FIDELMAN: We should continue that.

THE CHAIRPERSON: If the music of

the great masters had been --

MR. FIDELMAN: We kept the great master and we still have fox trots and waltzes and we can go on, but classical music has always stayed.

THE CHAIRPERSON: If that music has been absorbed by the people who did not come from western culture, is it possible that the music of non-western people will be absorbed by white people?

MR. FIDELMAN: That question I don't understand.

THE CHAIRPERSON: You seem to believe that race and musical style are closely tied together.

MR. FIDELMAN: I wouldn't call it race. You talk Russians, they play Russian music and they have a feel of that.

You take Japanese --

THE CHAIRPERSON: What about blacks born in the United States?

MR. FIDELMAN: They have their own music and they have a feel of that which you can't imitate. You cannot imitate gypsies, national

born gypsies, the way they play.

THE CHAIRPERSON: Commissioners?

MR. DAVID: I just want to ask and we can debate whether it is possible for blacks to learn what you play and whites to learn black music--

MR. FIDELMAN: Yes, of course we do play it.

MR. DAVID: You say they don't do well, but I do say the blacks can learn what you call "white music."

MR. FIDELMAN: Absolutely.

MR. DAVID: If you accept that without debating it, why would you say that the very point of this hearing is to find out why already not more blacks are represented in orchestras, in musical --

MR. FIDELMAN: If you know them, we will put more in. If we can find them, if they can be auditioned. They don't come around.

MR. DAVID: There is no pool? The union delegate, Mr. Roberts, indicated there was.

MR. FIDELMAN: At one time, I understand, it was not allowed for a conductor to

audition. Once he presents Local 802, he has to be accepted.

MR. DAVID: But there are blacks within Local 802?

MR. FIDELMAN: People that know them, it is wonderful. I have not known very many because I was a company -- not a company contractor, I was a house contractor.

MR. DAVID: No obligation on the part of the contractor if they don't know them to try and reach out?

MR. FIDELMAN: No. My obligation to fulfill what I get from the company contractor and the conductor. They have to be comfortable.

THE CHAIRPERSON: Well, Mr. Fidelman, you are not going to be recruiting musicians in the future. If you were, I just want to say for the record, because I don't believe that what you have expressed shows any malice at all. I think it does indicate, though, that there is a need for contractors to get outside help in how to recruit black musicians.

I think that difficulty may be inexperience in finding people and over-reliance on

the same sources.

MR. FIDELMAN: Yes.

THE CHAIRPERSON: Thank you very much. Your testimony was quite helpful to us.

I would like to next call Gayle Dixon, musician with "The String Reunion."

G A Y L E D I X O N, called as a witness, having been first duly sworn by Commissioner Kee, thereafter testified as follows:

MS. DIXON: I am a violinist. At present I am engaged in "Guys and Dolls." I am the concert master. I've worked for all except one of the contractors who were on your agenda to appear today, and I will speak about him later.

Mr. Fidelman mentioned that he called me to sub at "My Fair Lady." This is true. I had subbed earlier this year at "A Musical Jubilee," which ran for a short time at the St. James Theatre on Broadway, and there was not one black person in that orchestra. I was called because there were three violinists there who were classmates of mine at the Manhattan School of Music and they called me to sub.

I have had extensive experience on

Broadway. Mr. Fidelman did not know who I was and I found that interesting, because I had been on the Theatre Committee, I had worked in any number of theatres, and I really feel if at any time he had made an effort to find anyone, he would have certainly found me because I have been on Broadway.

I really think that my first show was a result of the affirmative action. My first show was "No, No, Nanette," that opened in 1971, I believe, or '70, with five black musicians, and it was said it was because of efforts that had been made in that direction.

I want to talk about the contractors to a degree. We've seen a few. There are going to be a few more to appear a little later. The ones who haven't appeared yet are the ones that I really consider to be close personal friends of mine.

Some of the others, however, have a good number of ways in which they discriminate against musicians, not just black musicians but female musicians also.

A contractor that spoke here today

has asked any number of women of my acquaintance, musicians, professionals, for sexual favors in return for jobs.

There is no way that I know of that these things can be controlled.

In my own case, I have worked at the Metropolitan Opera. I have been at the Board of Directors for the Symphony of the New World. I have appeared at the Dance Theatre of Harlem, and I notice that Ms. Leon just came in--and the Dance Theatre makes efforts to find black musicians.

As to "Porgy and Bess," the contractor of that show has been my friend for a number of years. He is the first contractor who ever engaged me on Broadway. And I am referring to Mel Rodnon. He referred me to any number of people for jobs. He called me himself for several shows, for the Westbury Music Fair, for cash albums, for tours, and my relationship with him has always been very good.

On a number of occasions he's asked me for names of black musicians who would be qualified to work with him.

When the whole uproar about "Porgy

and Bess" started, I had been asked if I was called for the show, and I haven't.

However, I really believed that he knew that I was working at "Guys and Dolls," or else I probably would have been called.

He hired me four months before that.

I am really upset that it is him who isinvolved in this uproar because he has been one of the best employers I have ever had and has always treated everyone who worked for him with dignity.

However, I also know that two violinists who were asked to audition. They are both students at the Manhattan School of Music. They are studying with the teacher I studied with and when I first started working, the way I got a number of jobs is that I was recommended by a musician and also by my teacher.

So, I feel that in the case of these violinists, if the teacher has been consulted, it would have been learned that they are quite competent musicians.

I don't really have a prepared statement --

THE CHAIRPERSON: Ms. Dixon, I would like to ask you one or two questions.

Would you elaborate on how you got to Broadway? When you prepared yourself as a musician, did you have in mind to play with a Broadway orchestra?

MS. DIXON: I took objection to a few things that some people have said. I started playing the violin when I was eight. I never had any lesson that was not classically oriented. I never played any jazz music or black music.

I sang in a gospel choir in my church but I didn't play the violin there.

I didn't play any music of that nature until after I became a professional and found out that people feel we are not qualified to play classical music. So I was shunted off to commercial music and jazz.

People felt, of course, she can play that. But I started working because musicians who were able to employ me saw me perform at concerts with classical string quartets.

THE CHAIRPERSON: Are you from New York City?

MS. DIXON: I am a native New Yorker, yes.

THE CHAIRPERSON: Did you grow up in a black community?

MS. DIXON: Well, the neighborhood I grew up in in the Bronx is a housing project that was put up in the middle of a lower middle income white neighborhood of Irish, Jews and Italians. I was the only black student in my class all the way through elementary and junior high school.

When I came to Performing Arts High School there were a few other black students there, but there were no violinists.

THE CHAIRPERSON: Does that mean that there are a shortage of violinists who might play in Broadway plays?

MS. DIXON: Not by any sense. At present I am the president of a new ensemble that has performed, a string ensemble, of about which string players are sitting in this audience. We have twenty-four black string players in our ensemble, and many more that we just don't have room for at the present time.

THE CHAIRPERSON: Are any of the members of your ensemble employed on Broadway?

MS. DIXON: Yes, six of us are employed at "Guys and Dolls."

I want to say something about that also. Until I did "Raisin," of which Howard Roberts was the conductor, every other show I did was a white oriented show and for some reason I was found acceptable and was able to work steadily in that environment.

My colleagues have not had the same fortune and there are more black stringers now. When I started working, I was the only one I knew, really, at my age, but now I know dozens.

THE CHAIRPERSON: How do you account for the fact that there are just so few minority musicians on Broadway who are affiliated with other than black shows?

MS. DIXON: Well, I must say that the competition for jobs is very stiff. There are lots of very fine musicians in this city and very few permanent jobs or long-term jobs.

Most people do short engagements, but a job like a show which might run two years is

very rare. Either you can work on Broadway or you can work with the Philharmonic or the City Opera.

There are very few jobs of that nature and contractors do call people they are familiar with. If they don't know you, they don't want to talk to you.

I have given friends of mine the numbers of contractors that I knew and then had the contractor call me back and say, "Don't give my number to anyone." And they don't even want to talk to that person. They have plenty of people that they have already been hiring, and, of course, black people get excluded more than others because we don't have as many people in a position to recommend us or we don't have as many people in a position to give us a job.

THE CHAIRPERSON: Do you believe that the contractors lack adequate, lack an adequate number of names to give them the wherewithall to recruit blacks for Broadway?

MS. DIXON: I think at this point, if anything, they have to lack motivation, because if they want to know, it is very easy for them to

find out because they have all said there are five black shows running on Broadway.

All those shows have professional black musicians working in the pit who know them. Many other professional black musicians, and as you have seen, a number of black musicians will come here and speak today, and we all know, I know hundreds of qualified black musicians.

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THE CHAIRPERSON: So the pool then of black musicians needs to be more readily made available to the contractors?

MS. DIXON: I really think that if they wanted to, they can get the information. There is really no problem in getting the information.

THE CHAIRPERSON: Then you think that they haven't had sufficient prodding to go after the information?

MS. DIXON: Yes, that, and also there are many white musicians who they hire.

THE CHAIRPERSON: Out of habit?

MS. DIXON: Out of habit, yes.

THE CHAIRPERSON: As a musician, what is your assessment of the reason that has

so often been given in these hearings, that minority musicians are hired, fired, namely, that there are few qualified to play difficult scores on Broadway?

MS. DIXON: That really enrages me, it really does. As a matter of fact, most of the eminent jazz musicians, who I am personally familiar with, are Juilliard graduates or who graduated from some other conservatory of music.

But, really, there are many qualified, and then, too, a jazz musician has something that very often an instrumentalist wouldn't have. He has the full knowledge of the theoretical aspect involved in the musical process, and I found that many performers don't have that knowledge.

THE CHAIRPERSON: Are you -- not you -- I'm sorry -- you clearly know some contractors. You have become known to them. Is it unusual for a black musician to have a personal contact or personal relationship with the contractor?

MS. DIXON: There are some of us

who do, but I think that we are certainly in the minority. Some of us have been fortunate enough to come through the proper channels to be hired on enough jobs, that are now fairly well known.

I think that all the contractors that would come here today know me and know several other people who have testified or who will testify.

THE CHAIRPERSON: Thank you very much, Ms. Dixon. That is very important testimony for us to receive.

Jack Jeffers, musician.

J A C K J E F F E R S, called as a witness, having been first duly sworn by Commissioner Kee, thereafter testified as follows:

MR. JEFFERS: I have no prepared statement, but I have a comment.

I have some comments on previous testimony.

He said that there had been one previous program, the aim of which was to get more black musicians hired on Broadway. There have been two. There was one in the middle,

in 1970, by the New York Commission on Human Rights. There was one in mid-sixties by the Urban League. That had the same aim.

Now, if I may, the results of both of those programs was that for a year or two after the programs, the number of minority musicians hired in Broadway orchestras increased dramatically. Prior to the Urban League program, it was normal for a play to come on to Broadway with no black musicians, or one.

After the Urban League program, as I say, four or five black musicians was not unusual, and then, as I say, a year or two after that the numbers decreased again.

In 1970, The Commission of Human Rights -- is that the correct title?

THE CHAIRPERSON: Yes, State Division.

MR. JEFFERS: State Division of Human Rights had a similar program. After that program once again the number of black musicians on Broadway increased, and a year or two after that, the number decreased again.

THE CHAIRPERSON: Neither of these programs had any enforcement components, I take

it?

MR. JEFFERS: That is correct.

THE CHAIRPERSON: You may continue.

MR. JEFFERS: Now, Mr. Davis, Ossie Davis, the first speaker, spoke about the effect of being a black student in a school that had an all white faculty. A similar situation exists on Broadway right now.

There are many musicals that are based on black themes. There are many black musicians playing on Broadway. There is one black house contractor. As far as I know, in the entire history of the Broadway theatre, there have been a total of four. There has never been more than one at a time.

He made the point of being a student, of being a black student facing an all white faculty had an affect on him, having to do with authority figures.

The situation is the same here. Something has not been said here. It has not been alluded to.

Ever since the American Musical Theatre had its own identity, it has been based

on the music of black people. Perhaps when Vincent Youmans was writing music, there was no black influence on music, but since then, and I think everyone will agree, that any music that has been played on Broadway, has had its base in black music.

Black musicians have never enjoyed the financial rewards that they should considering that fact.

So, even though five, ten years ago Broadway audiences were primarily white, there was still no excuse for black musicians not to be playing.

(Continued on next page)

MR. JEFFERS: Just a couple of technical things.

Phillip Rose said that substitutes are a right of musicians.

It has never been my knowledge that was so. Every show that I have played in I have had to get permission when I wanted to take off and do something else. And in most instances who I hired for a substitute was dictated by either the contractor or the conductor.

Also, as far as I know, once again commenting on what Mr. Russ said, auditions are not allowed by the union for Broadway musicals. And to comment on something that Mr. Rose said. He said that the orchestra in "Bubbling Brown Sugar" was all black. It is not all black, there are two white players in it.

The contractor for "Bubbling Brown Sugar" is not here. I believe he will say the musicians for that show were chosen from musicians who played regularly at the Apollo and it so happens the two white musicians were regular performers at the Apollo.

THE CHAIRPERSON: That was the

criterion used to get those musicians?

MR. JEFFERS: All of them.

THE CHAIRPERSON: Would you state for the record your own background, training and experience as a musician.

MR. JEFFERS: I played bass trombone, tuba and tenor trombone.

I studied bass with John Clark of the Metropolitan and John Carfia of the Boston Symphony.

I studied composition with Hall Overton and studied conducting with Coleridge Taylor Perkinson. I have performed with the Symphony of the New World since its inception. I played with the New York City Ballet. I have played with the bands of Lionel Hampton, Ray Charles, Buddy Johnson and I have been working on Broadway almost steadily since 1964.

I am presently playing as the assistant conductor in "The Wiz."

THE CHAIRPERSON: As a person who has played both jazz and classical music, do you feel more at home with one than the other?

MR. JEFFERS: Not anymore.

THE CHAIRPERSON: Would you elaborate?

MR. JEFFERS: When I first started out in Boston all of the playing there I did was jazz oriented. When I came to New York and saw what a musician here had to do to make a living, I started studying classical music seriously. I played with the National Orchestral Association which is a training organization.

I am told that students of Juilliard at Manhattan when they graduate normally spend some time playing in the National Orchestrational Association to gain familiarity with the classical repertoire. That is what I did. I played a number of amateur symphony orchestras and I feel equally at home now in both idioms.

THE CHAIRPERSON: In your experience are there a dearth of blacks that feel comfortable in both idioms or are there a significant pool of blacks that now play traditionally -- since I do not accept there is white music and black music. If you take "My Fair Lady," if you try to derive it, it would probably go back to jazz in some form.

Do you believe there is a pool of

blacks that is significant in size that feels comfortable with traditional music and that plays traditional music well?

MR. JEFFERS: Yes, the Symphony of the New World plays eighty to a hundred, approximately fifty percent of it is black. The Dance Theater of Harlem has a large orchestra.

I do not know the numbers, but I know a good percentage of them are black. Forty, fifty, sixty percent.

So, yes, there is a large number of black musicians capable of playing classical music.

THE CHAIRPERSON: How about blacks studying classical music in New York Today. Do you have any knowledge of the significance of their numbers?

MR. JEFFERS: No, I don't.

THE CHAIRPERSON: How did you get your break to go on Broadway?

MR. JEFFERS: It's been so long ago.

THE CHAIRPERSON: You forget how you got on Broadway?

MR. JEFFERS: I'm trying to remember the first one.

If it wasn't the first, it was close to the first.

"Little Me" was the name of the show. There was a black trombone player playing in the orchestra and he arranged for me to come in as a substitute.

The orchestra was satisfied with my playing. I became a regular substitute there. Then I gather that my name got around because after that I was called by other people.

THE CHAIRPERSON: Mr. Shendell testified he had used substitutes and that might be a way to help break people into Broadway to which they were previously unknown.

Do you believe the use of substitutes might help minority musicians to become known and therefore more quickly accepted than pounding on the doors otherwise?

MR. JEFFERS: Yes, substituting in Broadway orchestras has become the classical way of becoming an accepted Broadway player.

THE CHAIRPERSON: In your experience have other minority musicians found a break in the same way you did or in similar ways through

a contract with another black?

MR. JEFFERS: I'm sorry, say that again, please?

THE CHAIRPERSON: Another black recommended you as a substitute for a show?

MR. JEFFERS: Right.

THE CHAIRPERSON: Many of the players on Broadway now have been recruited by a black contractor known to them?

MR. JEFFERS: Yes.

THE CHAIRPERSON: Have blacks generally depended upon contacts with other blacks for their entry into Broadway?

MR. JEFFERS: I would say yes.

If not through subbing for another black musician, then having a black musician recommend them to a contractor or conductor.

THE CHAIRPERSON: Is it the perception of black musicians generally they can get a break more easily through a black contractor than a white contractor?

MR. JEFFERS: Definitely, yes.

THE CHAIRPERSON: How have you seen the receptivity of the Broadway pits change over

the years, the receptivity to blacks of the Broadway pits?

MR. JEFFERS: To my knowledge there has never been any problem of black musicians being accepted by other musicians.

THE CHAIRPERSON: So the problem is not with their peers.

MR. JEFFERS: No, I would say definitely not with the peers. I think the problem is one as Gayle Dixon said of motivation, because after the two previous programs that had similar times to this one, the number of black musicians did increase dramatically, then it fell off again after the motivation of the program had waned.

THE CHAIRPERSON: Finally, I would like your expert opinion on the nature of the Broadway musical and the difficulty.

Is the current Broadway musical, the traditional musical not speaking of the black musical, beyond the scope and ability of most black musicians known to you?

MR. JEFFERS: I would say no, because my training was not as rigorous as most of the other black musicians that I know. I have been

working on Broadway as I said since 1964. "The Wiz" is the first black show that I have played and I believe that I was an accepted player on Broadway before, I am certain of it.

If I could do it, then there must be, as I say, others with better training than mine. Certainly they could do it, too.

MR. DAVID: I have one question.

You said the black musicians have no problems with their peers, the other musicians. Yet the contractors are ordinarily musicians as well.

Would you say that the problem in hiring is their responsiveness primarily to the producers?

MR. JEFFERS: No, because I don't think the producers have traditionally taken a role here except for a year or two after the previous programs, as I said. I don't think the producers have given instructions to their contractors in this area.

MR. DAVID: We have spent the whole day trying to fix a responsibility. It is shifting and fingers are being pointed among

union house contractors, outside contractors, producers and so on. Most of the testimony seemed to indicate that the outside contractors had the authority operating under the direction of the producers.

MR. JEFFERS: I agree with that.

MR. DAVID: If that is true, well, it answers my question. I was trying to relate it to your statement that the contractors who are musicians have no problem with black musicians as players. But obviously they seem to, with whatever instructions come to them from the producers to the ultimate authority on hiring.

MR. JEFFERS: The point has been made that contractors tend to hire people that they know, people that they are friendly with. And in general, I would say that white contractors are more friendly with white musicians than they are with black musicians. And without contrary instructions they will hire the people that they are friendly with.

THE CHAIRPERSON: You think then the informality and word-of-mouth quality of the present system works against the inclusion of

minorities.

MR. JEFFERS: To a great degree I do.

Just one more thing.

As you said, the previous programs had no enforcement powers. History has proved that a policeman is necessary and hopefully some enforcement program will come out of this hearing.

THE CHAIRPERSON: Thank you very much, Mr. Jeffers.

(Whereupon, the witness was excused.)

THE CHAIRPERSON: Rudy Stevenson, please.

I apologize again for the time and recognize I am causing people some difficulty.

R U D Y S T E V E N S O N, called as a witness, having been first duly sworn by Commissioner Kee, thereafter testified as follows:

THE CHAIRPERSON: Mr. Stevenson, you are a contractor?

MR. STEVENSON: Yes.

THE CHAIRPERSON: For what shows?

MR. STEVENSON: "Bubbling Brown Sugar."

THE CHAIRPERSON: How did you become

a contractor?

MR. STEVENSON: I was selected by the music director, Danny Holgate.

THE CHAIRPERSON: How did you recruit for "Bubbling Brown Sugar"?

MR. STEVENSON: From their experience. The show -- we are using music from a certain period and we are using music of Duke Ellington, Earl Hines and people like that.

THE CHAIRPERSON: Are the players all black?

MR. STEVENSON: No.

THE CHAIRPERSON: What is the composition of the show?

MR. STEVENSON: You mean how many blacks and how many whites?

THE CHAIRPERSON: I am sorry, yes.

MR. STEVENSON: I have thirteen black musicians, two white musicians.

THE CHAIRPERSON: Is the composition, the racial composition of the show attributable to the fact the music is considered to be in the black idiom?

MR. STEVENSON: No.

Well, partly. We are on stage. The musicians are on stage. We are in a nightclub in Harlem and the music is music of Duke Ellington, Count Basie.

Most of the musicians, fifty or sixty percent of the musicians have played with Duke Ellington, Count Basie and bands of that period.

But they, the musicians of that time and we are in Harlem and the bands were black and it is a period, music period in music.

THE CHAIRPERSON: They are almost a part of the show?

MR. STEVENSON: We are a part of the show, yes.

THE CHAIRPERSON: Have you contracted before?

MR. STEVENSON: No. Shows, no.

THE CHAIRPERSON: What experience made it possible. What have your prior experiences been that made it possible for you to contract for this show?

MR. STEVENSON: Well, I contract, I played in shows before, played in about three shows.

THE CHAIRPERSON: Have you contacts with other contractors? Are other people in the field of contracting known to you?

MR. STEVENSON: What do you mean?

THE CHAIRPERSON: Other contractors who are also in the business.

MR. STEVENSON: Do I know other contractors?

THE CHAIRPERSON: Yes. Have you had conversations and contacts?

MR. STEVENSON: Not really, no.

THE CHAIRPERSON: How many other black contractors do you know?

MR. STEVENSON: I don't know. I think I'm the only one.

THE CHAIRPERSON: So you are virtually isolated from others in this field. You do not have normal contacts with your peers in the field?

MR. STEVENSON: Right.

THE CHAIRPERSON: Has any contractor ever asked you for your advice on how they might locate minority players?

MR. STEVENSON: No.

THE CHAIRPERSON: Thank you very much,

Mr. Stevenson. We very much appreciate your testimony.

(Whereupon, the witness was excused.)

THE CHAIRPERSON: I would like to call Mr. Gerald Schoenfeld, member of the Executive Board, League of New York Theaters and Producers.

G E R A L D S C H O E N F E L D, called as a witness, having been first duly sworn by Commissioner Kee, thereafter testified as follows:

THE CHAIRPERSON: Do you have a statement you would like to make for us?

MR. SCHOENFELD: I really have no prepared statement to make.

I must say that I did not hear all of the witnesses. I find myself in substantial agreement with everything that Jack Jeffers has said here today.

I am here hopefully to answer any inquiries that you may have and explain to you what I know of my own personal knowledge. And to the extent that we are involved in the business of operating theaters, I am speaking now in terms of the Schubert Organization, what experience I

have in that regard.

THE CHAIRPERSON: I understand the League has undertaken a survey of the racial make-up of Broadway orchestras.

Can you give us the results of that survey?

MR. SCHOENFELD: Yes, I would be glad to.

I think this is substantially correct. These are all of the shows that I know that are employing musicians.

The total number of musicians employed as of the date of this survey which I think is probably within the past several weeks is 366 musicians employed.

Pardon me, 302. 302 musicians of which sixty-two were black musicians. Two were Latin musicians, the rest I assume would be white musicians.

And if you wish a breakdown by shows.

THE CHAIRPERSON: Yes.

MR. SCHOENFELD: You want me to read that into the record?

THE CHAIRPERSON: Yes.

MR. SCHOENFELD: "Chorus Line" at the Schubert and these are the number of musicians on the payroll, twenty-six including conductors, by the way.

Four are black, no Latin.

"Bubbling Brown Sugar," this number apparently differs from Mr. Stevenson's.

As I say, it should be verified.

There are fifteen on the payroll of which nine are black, no Latin.

"Chicago" there are twenty-five on the payroll and none that are black, although there is a notation two in the original contract were black. There are no Latin.

"Godspell" at the Plymouth, nine on the payroll, no black, no Latin.

"Going Up," that is closed. While this survey was made it apparently was open.

Twelve on the payroll, no black and no Latin.

MR. DAVID: What show?

MR. SCHOENFELD: "Going Up."

"Grease," the number is ten. No black and no Latin.

"Guys and Dolls" at the Broadway, twenty-six. Twenty-one are black, one Latin.

"I Had a Dream" at the Ambassador, two. Two black, no Latin.

"The Magic Show" at the Court, there are eight, no black, no Latin.

"Me & Bessie," five on the payroll, four are black, no Latin.

"My Fair Lady" at the St. James, twenty-six.

THE CHAIRPERSON: What did you say for "Me & Bessie"?

MR. SCHOENFELD: Four black, no Latin. The total is five.

"My Fair Lady" I have the number as twenty-six.

I don't understand the notation here of one black. I would think that there would be none from what I have heard here and no Latin.

"Oh Calcutta," ten total, six are black, no Latin.

"Pippin" at the Imperial, twenty-five on the payroll, one black and there is a notation here in the original stock there were two, no

Latin.

"Porgy & Bess" at the Uris, forty-one, four are black, no Latin.

"Robber Bridegroom" at the Biltmore, six, no black, no Latin.

"Shenendoah," nineteen on the payroll, two black, no Latin.

"The Wiz," twenty-six on the payroll, eleven black, one Latin.

"The Three Penny Opera," eleven on the payroll, no black, no Latin.

Total musicians, as I said before, 302. Blacks, sixty-two, Latin, two.

THE CHAIRPERSON: To what do you attribute the rather close correlation between the nature of the show and the number of black players?

By that I mean if it is a traditional show it tends to have few, if it is a black oriented show it tends to have more.

MR. SCHOENFELD: I really don't think it has anything to do with the nature of the show. I think it has to do with the nature of people who are hiring.

I do not believe and I am not a

musician by profession, but I do not believe from my own personal point of view that certain musicians, skilled musicians can only play one kind of music. If a person is a skilled musician, I would think he could play all kinds of music.

I think that the hiring or the numbers of hiring is reflective of the preferences of the person who is empowered to do the hiring.

THE CHAIRPERSON: So that if the person who does the hiring were to be better versed in equal opportunity techniques, that would then have an affect, you think, on the composition of these shows, whether they are traditional or whether they are black oriented?

MR. SCHOENFELD: I think that's partly the answer.

I think the other answer, as you said before, is awareness of the pool, if you will, or reservoir of competent musicians.

Now I may be speaking editorially. I can see both sides of the coin would be the same.

If you have a white show, if you want to call it that just to appear for purposes of

examples we are making here and you have a white orchestra as distinguished from a black show where you may have a predominantly black orchestra, although that is -- I don't think either from any of our prospectives here the way we wish to perpetuate this inbalance of hiring. In this period I think perhaps nevertheless even though it is not the desired end result it serves a purpose of certainly providing larger numbers of employment for minority musicians and certainly should serve to make their presence known in much larger quantity than heretofore and the date, I would say, anybody who may see there is not an available reservoir of people to select from.

I can say, by the way, I do not believe and I say this as an observer, I do not think what is being discussed here is indigenous necessarily to the Broadway theater. I think if you look into the Philharmonic Orchestra --

THE CHAIRPERSON: We have.

MR. SCHOENFELD: -- and if you look in the Metropolitan Orchestra and certainly ballet orchestras, you will find a much similar pattern, I would say offhand with a much lesser

percentage of minority people working.

THE CHAIRPERSON: That would certainly seem to be the case. It certainly was the case in the Philharmonic when this Commission investigated

Traditionally the theater owner has appointed a house contractor. How are house contractors appointed?

MR. SCHOENFELD: Some house contractors go back before my appearance in the theater and some of them are still being hired.

We, and I can only speak in terms of the Schubert Organization. Although I am speaking generally in terms of the theater on behalf of the League, some contractors have been working for thirty, thirty-five years or more. Others have not, but of the five musical theaters now we do not have any black contractors.

At one time we had two out of the five who were black contractors. One voluntarily left the employment. One I think -- I think the theater closed and she left our employment.

The house contractor used to fill a different role then he now fulfills. The house contractor used to be at one time -- and I think

I am going back now somewhere in excess of fifteen to twenty years. He used to be the active hirer in the sense he made the selection.

That situation has changed and there has evolved within the union or I should say perhaps without the union although the person is a member of the union, another person known as the company contractor or the show contractor.

He has no official status within the union who only recognizes the house contractor. But it is that person who is the one who makes the selection of the musicians who should be hired. He will do it sometimes in conjunction with the conductor of the show and also or in conjunction with the composer of the show.

The people that he selects either independtly or in conjunction with one or two of the others he then gives to the house contractor and the house contractor administratively communicates with them and hires them. But really it does not participate in the selection process.

The matter of substitution which Jack Jeffers alluded to may be the case in his instance. I do not believe it is necessarily

the case. I believe in many cases the substitute is selected by the person who is absent. He has his own substitute and his own arrangement regarding not only his being substituted, but in many instances and I would like to think it is other than the case, but I think in many instances he arranges his own financial compensation for the substitute which is contrary to both union policy and theater policy.

But substitutions are, although not expressly permitted by the terms of the collective bargaining agreement, there is a tacit agreement between the union and the employer that a reasonable number of substitutions are permitted in order to enable the working musician in the Broadway pit to augment his income by playing record dates and other engagements.

In many instances although it may not be true in Jack Jeffers or Jack Jeffers' orchestras, the substitution is selected by the man who is going to be absent and I would say too, because it happens in certain orchestras more than others, the latitude with respect to substitutions is greater or less, depending on

the particular show, the particular contractor, the particular conductor. And the house contractor in that situation is responsible for the payroll and responsible for seeing the substitutes are on the payroll.

The theater in that sense is sometimes put in the position of complaining to the show contractor about the number of excessive substitutions, because the theater does know, since it processes the payroll, the number of people that do appear on the payroll.

So tying it back into here, there is a large additional reservoir of employment in the form of substitutes which during the course of a week may amount to a third of the orchestra.

One man on one performance -- I don't mean to say if you multiply twenty-five people in the orchestra times eight you will have 400 people playing that week. I would say it is not unusual to have twenty-five, thirty-five sometimes different substitutions.

I am being excessive. I will scale that down.

Let's say maybe even ten to fifteen

subbing and in many instances there are substitutes that do not appear on the payroll. It's as if the man who is away is there, so there is no control on certain situations of people who are substitutes.

THE CHAIRPERSON: This detail is --

MR. SCHOENFELD: I don't know if it's helpful.

THE CHAIRPERSON: -- it is quite astounding, particularly when taken in conjunction with prior testimony we have heard today that if one were truly seeking to encourage the hiring of qualified musicians, minority musicians, one might want to get a handle on the process by which substitutes are chosen, because playing as a substitute gives an unknown musician and many minority musicians will fall into this category, an opportunity to demonstrate his talent to those who might thereafter proceed to call him.

MR. SCHOENFELD: I think you should ask each individual show contractor and conductor what the practice is in their orchestras with respect to substitutions. I think you may find it varies from show to show.

THE CHAIRPERSON: Assuming though that the player has wide latitude over choosing his own substitute.

MR. SCHOENFELD: He makes his own arrangements.

THE CHAIRPERSON: Might not one way to design a technique for improving minority representation be to allow less free rein from individuals for whom equal opportunity is not a primary factor and who are not liable under the law if the orchestras continue a pattern of exclusive employment?

MR. SCHOENFELD: I would think that is a matter of feasibility and to accomplish what we are seeking to accomplish there should be a roster really of substitutes, because you are also concerned with the quality of music. And this sort of delegation, if you will, has the power of selecting substitutes which exist, I take it to a greater or lesser degree depending on the orchestra in many instances, on the affect on the quality of music. So you want to really see that there is not, number one, rampant substitution because after all, somebody is

familiar with the score and plays it regularly, you have a consistency, even within the same people playing every day, there may be variation.

THE CHAIRPERSON: There are shows now where there is rampant substitution?

MR. SCHOENFELD: There are shows that have much greater substitution than other shows.

We try to reduce it to the extent we are able to. It is not really within our control. All we can try to do is be persuasive.

Just as you have the name of the players playing in that orchestra, if you had a reservoir of the substitutes which of course has to be within some degree of flexibilty, too, I think then you would be able to oversee, if you will, who it is that is being substituted.

THE CHAIRPERSON: What role does the producer have in hiring?

MR. SCHOENFELD: I would say the producer has a role -- I would probably say has ultimate responsibility for the acts of the show contractor and the conductor, both of whom are his employees.

But I find and I say this with some

real regret, that most producers do really not know the subject of music and it is because of that ignorance on their part that the practice of engaging a show contractor has evolved.

If the producers for instance were all like Sy Fuer who is a skilled musician who is knowledgeable about the business of music, who knows musicians, if they all had his qualifications then I think that you would not have this delegation of the selection process to others.

THE CHAIRPERSON: Once a producer has used an outside contractor, does he tend to go back and use that same contractor the next time?

MR. SCHOENFELD: Yes, and that contractor I think rather regularly -- I am speaking in generalities now -- that contractor generally provides employment for the same people that are within his hiring hall, if you want to speak generally. And, he may occasionally go out beyond it, but I do think that unless motivated to do so, that you stick to the ones you have done business with before.

THE CHAIRPERSON: In businesses more formal than show business today, is it typical

for there to be someone responsible for making sure there is compliance with federal, state and local anti-discrimination laws? Is there anyone either on the producer's level or anywhere else you know in a typical production who has anything approaching that kind of responsibility?

MR. SCHOENFELD: If you have to fix responsibility, I would say that the responsibility should start with the person who does the initial hiring which would be the producer and see to it it is delegated on down.

As I say though, you have the process as is demonstrated by the numbers that I have read off here today, the process has to be broken down in the black show and in the white show in order to really obtain a proper mix, which I think is the ultimate goal that I would like personally to see within all of the orchestras.

And using the totality of the reservoir of skilled musicians of which I think there are a considerable number.

I negotiate contracts in many different cities and there is this issue about competency of musicians, even within one city as against

another city. That they have better musicians or better trumpeters or they can't get a first trumpet to play a show in another city or get a drummer in another city. So you have to travel with somebody, things of that nature.

My general experience is and I hear of shows in many, many different cities, that the orchestras are very fine in different cities and although this is a highly skilled business, playing in Broadway pits, I think that we have, as I say, many, many skilled musicians and these shows now, especially the black shows, are serving as a very good base for giving a reservoir of musicians when there might not be that many black shows on Broadway.

THE CHAIRPERSON: Finally, Mr. Schoenfeld, several years ago the State Division of Human Rights became involved on this very problem of hiring in the Broadway pits at a time when there were extremely few minority musicians and indeed there were no black shows which may account for that.

The legislation at that time, we understand, took to make clear to its membership

their responsibilities in this matter and some progress was made, at least temporarily. I wish you would discuss that process and tell us why you think that the initial progress was not sustained.

MR. SCHOENFELD: First of all, the League did comply and it did make the efforts. I think the effort was sustained in certain instances and perhaps not sustained in others.

There was a main thrust, of course, at that time in the area of employment in minority actors and performers so as to give a visibility of minorities on stage as distinguished from backstage and in the orchestra pits where they might not otherwise be seen. I think there has been more meaningful progress in that area than there has been perhaps in the areas that you are considering here today, so I don't think that the initial purpose of these hearings has not been fully served, I think it's been partially served and I think, as a consequence of it being served, you do have a spill-over into other areas of employment and I think that the, to the degree that an exclusionary process exists, it is a, it

does need continuous, I should say, reminder and re-emphasis because it should not be whether even, let us assume all musicians were of one color, there would be a -- there would have to be hearings to prevent an exclusion of those who were not within the existing relationships that now result in some of these inbalances in the different orchestras.

It is the nature of the hiring process and I go back to say that if there were more militant vigilant procedures conveying his wishes, reviewing the compositions of the orchestras, whether they be black orchestras, black shows, white orchestras or white shows and his own more direct involvement in the hiring practices instead of advocating the hiring practices would, I think, achieve a good amount of the results that you are looking for here.

THE CHAIRPERSON: I note that it appears that in most cases it is considered unfair to put on a professional organization when civil rights agencies find a problem similar to this in other industries, it does not go to the Chamber of Commerce or to the Bar Association

or whatever and say, you make sure that people over whom you have no control abide by the law and come up with a program to increase minority representation, rather, a direct link between the agency, government agency and the employer is designed in the case of this Commission, that relationship may begin with some form of enforcement action but almost always is a relationship of technical assistance because direct malicious bias is not the major problem in employment processes today.

Do you think a better showing would be had if a civil rights agency established a direct relationship with the industry rather than relying upon, as apparently has been done in the past, or putting too much responsibility as I am framing it, on a professional organization which does not have a legal liability for the practices involved?

MR. SCHOENFELD: I think that your presence, whether it be in the form of a direct relationship with the producer as distinguished from the League has a great therapeutic value and I think that it should exist. I think that

when you are dealing today, as I think the theater is more than a goodly number of other entertainment media in seeking to bring into the audience of the theater, a new audience, whether it be minorities or whether it be youth, certainly should be mindful of the composition of the people that are working within the profession and I think, as I say to a degree, although it leaves a lot to be still met, there is some recognition.

I think, again, that that has to pervade and I realize here we are dealing only with theater but I think it has to pervade the entire spectrum of the performing arts. All of the other disciplines as well as the theaters but when you are also dealing with a matter of talent, some subjective, I guess, evaluation to that is involved where you and I may reasonably differ as to whether to select a particular musician on the question of his competency.

You get into subtleties that don't lend themselves to any really objective criteria unless you want to deal with numbers in the absolute sense and I think in certain situations

you have to resort to numbers in the absolute sense because they themselves are conclusive but where the numbers are as they are here, where the desired kind of integration does not exist although you might say that twenty percent or twenty some-odd percent of the total employment is minority, I would like to see that twenty or twenty-five percent integrated rather than on either side of the line.

So, I think to answer your question, direct involvement, I really -- there should be involvement. How the analogy that Jack Jeffers gave about policemen with a stick, I really don't think is to my mind the way I would do it because you do have, you do have a twenty percent or whatever the number is.

I think there has to be a lot more orientation, a lot more recognition of the names and the identity of the people who are available, who are competent and skilled and certainly the people who are now playing this twenty or twenty some-odd percent of people, they themselves are a unique list and through them you can certainly enlarge that unique list to a much larger degree.

I think that the breakdown would be helpful to hold business because many people complain to me whether they are black or white, that they are excluded because they are not friendly with a particular contractor or that particular contractor has gone out of business. I can give you the names of some particular contractors because they retired from old age and the people who were in their employment pool suddenly found themselves bereft of an employer and came and asked me could I recommend or refer them to somebody else and I find that in and of itself is a delicate process because all you can really say is that you should give somebody an audition and let them play for you but try to impose somebody who has talent, whether he be an author, a musician or an actor, it is something that is resisted and rightfully so.

So, as I say, I think the presence, a meaningful orientation, I think that may sound somewhat unusual to do it and I think you are coming to a meeting of the producers, you are meeting with the contractors, show contractors, you are meeting also with theater owners and

monitoring what happens, what eventuates after those meetings. You are being kept advised of the statistics and seeing what is really done in the marketplace.

In my judgment it would be an effective way of getting compliance. I think it would be forthcoming.

THE CHAIRPERSON: I think you have laid out much in your last statements, much of what affirmative action consists of today and when Mr. Jeffers referred to the stick, I think he must have understood that by that punishment is not so much needed as oversight. These are practices which do not occur deliberately. These are practices that are systemic. These are practices that employers in our experience of all kinds needs some assistance in finding a way out of availability, pools, monitoring. This is what successful affirmative action has meant in this City.

We have, and in my opening remarks I referred to employing in quite rarified job categories, who, without changing anything about the way they do business or qualifications of

the job, have found through the technical assistance that the Commission gives them what is to significantly improve their employment picture, this without punishment as it were to the employer, but, of course, with the understanding that they are under the jurisdiction of an enforcement agency.

MR. SCHOENFELD: That is why in a sense, even though I don't like the inbalance here, I certainly agree with the need for the number of black musicians that are being engaged in the shows so that if, for anything else, it will go along way towards disabusing anybody because some of the shows, the music is sufficiently varied as to reflect the talents of the people who are playing them.

MR. DAVID: I have one question.

Mr. Schoenfeld, you enumerated eighteen musicals on Broadway. I assume that is not eighteen separate producers?

MR. SCHOENFELD: No, eighteen separate producers, I would say pretty much is not eighteen, probably fifteen.

MR. DAVID: So you have a dozen,

fifteen individuals?

MR. SCHOENFELD: Yes. By the way, the number of musical contractors, though, who are doing the hiring would be sharply less than that dozen.

MR. DAVID: My question goes to really what's been happening all day, trying to narrow responsibility and what would produce a remedy. If those twelve to fifteen producers in advance had sent down very strong directions to the contractors, given a pool of musicians, would these eighteen musical orchestras have not been integrated?

MR. SCHOENFELD: I would say it is more likely that they would be than they ended up being.

THE CHAIRPERSON: I would just like to say that your testimony, Mr. Schoenfeld, has been of considerable assistance to the Commission and I appreciate the spirit in which it's been offered. I thank you very much.

MR. SCHOENFELD: Thank you.

(Whereupon, the witness was excused.)

THE CHAIRPERSON: Felix Giglio,

contractor.

Mr. David will swear Mr. Giglio.

F E L I X G I G L I O, called as a witness, having been first duly sworn by Commissioner David, thereafter testified as follows:

MR. DAVID: Mr. Giglio, do you have a statement to offer?

MR. GIGLIO: Well, my preliminary statement is that I have been sitting here since 1:30 and I have heard an awful lot, much of which I did know and much of which I did not know. I think that --

I am sorry that Ms. Norton isn't here.

THE CHAIRPERSON: I will be right back but my bladder isn't as strong as it looks.

MR. GIGLIO: I am going to be frankly honest and blunt and mainly honest.

I have two books, two little ledgers before me. One is commercial and one is theater. I make most of my living from commercials and films.

My contractual activity in the theater

has only been recently. When I became a contractor for the show, for Broadway shows, I found myself confining my selections to the very, very best men and women that I knew of.

Now, I can look around here and I just know Gayle and maybe I did know Jack and Mr. Smyles, of course, but I found myself hiring people that I had been working with as a sub in the theaters and I spent much time as a houseman at NBC and when NBC closed down those men became available and I was in the NBC Symphony for five years and that shut down and those men were available and I do maybe one or two commercials a week and if I was to enumerate the men in here and the women, I think the blacks would probably outscore the whites.

I won't take up the time but if anybody challenges that I will read them off.

THE CHAIRPERSON: That won't be necessary.

MR. GIGLIO: As a result, when I got my first show years ago, most of the men and women I hired were white and I must say in all honesty, that many of the blacks that I called

were not available because they are busy people. They are busy people, really. It is true. I mean the people that I knew, at any rate, and I am very thin-skinned.

I am telling you the truth and I want them to listen to it. For instance, just the other day I was doing a show and after the show one of my dearest friends called me. Had he called one day before he had been in the orchestra, he is very dear to me and he is one of the best fiddlers around but he called me too late.

Now, the contractor, the outside contractors such as I am, our first responsibility is to provide the finest orchestra available. I think that all the contractors are honest and they will agree on that.

As far as I am concerned, I have been colorblind. I have never had an ounce of bigotry or prejudice in my body.

When I got married my best man is black, my best girl is Jewish, I married an Irish-Catholic and I am a Presbyterian. How about that? So, I don't have it in me.

I do have it in, I am prejudice against bad musicians and I do, and I cannot stand a gold bricker. Otherwise they are all equal as far as I am concerned.

I might say that in the last two years I fired one man and wanted to fire one girl and they were both white and that is for the record, also.

I don't know what to do about the situation. We, naturally, pick the people that we know and the best people for the job and if they happen to be Chinese, that is fine with me.

MR. DAVID: Have you contracted for any of the shows currently on Broadway?

MR. GIGLIO: Well, I had one close in Washington last week, the "Baker's Wives." I have one on the road called -- gee, what is it -- please help me, somebody.

THE CHAIRPERSON: He is trying to think of the show he has on the road. Where is it now?

MR. GIGLIO: It is now in Toronto.

THE CHAIRPERSON: Maybe you will think of it before you get off the stand.

MR. GIGLIO: I am very embarrassed.

THE CHAIRPERSON: I forget my kids' names sometimes and I only have two, so don't feel bad.

MR. GIGLIO: "Very Good Eddie."

This is a show that was a revival as of 1915. It so happens that everyone was white and it so happens that everyone in that show was sort of selected. They came with a certain group and I had nothing to do with it. In the "Baker's Wives" which I had just completed, there were two blacks and one Hispanic.

MR. DAVID: Out of how many musicians?

MR. GIGLIO: Twenty-four. In another show I had thirteen blacks and twelve whites and two, one black conductor and one white conductor and that is the way that happened. It wasn't by intent, it was just the way the cookie crumbled, but you must understand that we contractors could be fired if we don't produce good orchestras and we just sit down and have a group of names.

I would be glad to hear these people but we are forbidden by union law to audition them so what do we do? We have to ask Gayle

Dixon for whom I know, "Gayle, I need a good fiddler" and I will take her word for it. Once I asked a black drummer for a black drummer and the one he recommended was not first class and I suffered, so I like to know people, I like to know who this lady is and who this gentleman is and I have to know them because it is my responsibility. I cannot hire anyone who I don't know because I trust only myself and maybe three or four other people but, however, if my conductor tells me to hire so and so and so and so, I will do it and I have always been fair.

Now, ask questions.

THE CHAIRPERSON: What shows -- excuse me, you answered what shows. You said that you relied upon your own judgment and the people you know.

MR. GIGLIO: Exactly.

THE CHAIRPERSON: Would you be aided if there existed reliable sources that would add to your own reservoir of sources? Would you be aided in finding minority musicians for that matter?

MR. GIGLIO: Sure.

THE CHAIRPERSON: If the reliability of such a system would be aided to you, would you be willing to use such a system to bring more minority musicians into shows?

MR. GIGLIO: It would help. Someone mentioned about substitutions. I supervised every substitute but I made damn sure that that person could do the job and I have never questioned the nationality or the ethnic background.

Just as long as he or she could fulfill the bill and it is a good way to break-in new people.

THE CHAIRPERSON: You agree that might be one way to increase the numbers of minorities who get exposure to Broadway?

MR. GIGLIO: Exactly.

THE CHAIRPERSON: Commissioners?

Thank you very much, Mr. Giglio for this very helpful testimony.

MR. GIGLIO: If you don't mind, I will leave because I have been here since 1:30.

THE CHAIRPERSON: Mr. Mel Rodnan, contractor for "Progy & Bess."

Would Commissioner Kee swear in

Mr. Rodnan.

M E L R O D N A N, called as a witness, having been first duly sworn by Commissioner Kee, thereafter testified as follows:

THE CHAIRPERSON: Whatever is your pleasure, Mr. Rodnan, you might want to make a statement before we ask you questions.

MR. RODNAN: It suddenly occurred to me that I attained some notoriety at my inadvertent employment at "Porgy." I would rather you ask me.

THE CHAIRPERSON: I should say for the record, that while "Porgy & Bess" was the show that first came to our attention that you should feel no more on the spot than any other contractor that was called for the hearings.

MR. RODNAN: Thank you, I don't feel that way.

THE CHAIRPERSON: These hearings are because of the pattern we see in "Porgy & Bess," it is pretty much the pattern we have seen throughout Broadway and it's always been so you should know perhaps before you came your name was used but always in complimentary terms.

MR. RODNAN: I hope so.

THE CHAIRPERSON: You are the contractor for "Porgy & Bess"?

MR. RODNAN: Yes, I am.

THE CHAIRPERSON: Who contacted you to do that job?

MR. RODNAN: Well, maybe I should at this juncture give you a little background as to how all of this came about. I am the contractor for the Uris Theater. I was told that "Porgy & Bess" was coming in but at the same time I was also told that somebody from Philadelphia was coming in with the show that was engaged by the Houston Opera Company to be contractor for the show.

His name was Nick Casisi, if my memory serves me and I spoke with him on the phone back in August, sometime in August and he called me and wanted to know what the New York situation was, what scales are, et cetera, et cetera, and I never had any doubt that he was going to be the one that was going to do it.

Since I was at that time employed somewhere else, I couldn't physically be there.

In any event, I didn't play the show, not for an inability to play the show but because of a previous engagement. So, I figured at that time I had nothing further to do with it.

As it turns out, the dealings with Mr. Casisi and the Houston Opera Company fell apart for some reason, for whatever reason, and I think three weeks prior to the first rehearsal of the orchestra I was told by Elizabeth McCann and Mel Nugent who were managing for the Houston Opera Company that they are at that time without a contractor, they have nothing to go by or on and I should immediately contact the conductor John DeMaine from the Houston Opera and find out what I can do to help.

I told him I would do anything I could to help but I was in fact, not going to be involved with the show in any way, size, shape, or form. As it turned out, my involvement became much more than that because they simply had nobody else at that time. I spoke to John DeMaine and he absolutely insisted that we get musicians who are not the usual Broadway types as he put it but that were -- in other words, what he wanted really

was people of symphonic caliber or opera orchestra caliber. The stigma, unfortunately, settles on all of us as being Broadway pit musicians. It is a bit demeaning at times. Maybe it is just the nature of the business, who knows, but it is a fact.

Anyhow, he said I should go ahead and get people of this caliber and I said John, we have a forty-one piece orchestra to put together and we have less than two weeks to do it, actually only two weeks to do it in because he insisted that whoever was hired have a copy of the music in advance because the score for "Porgy & Bess" is unusually difficult, particularly for strings and also for the various solo chairs, the clarinets certainly and various other chairs.

I then started to make some calls, spoke to some people, ask around. I think I indicated in a letter of which I don't have a copy, of my initial letter something about trying to contact certain people. Other people I understand were, names that I have mentioned, I understand were contacted and as it turned out two of the people that I had mentioned were

available to do the show and were not contacted by me. Now, this is very easily explained because I then had to -- well, I am going ahead of myself.

I then realized since I couldn't be there I had to designate somebody to be in the theater, a house contractor. The person I thought at that time who was probably the most experienced with symphonic orchestras in the City of New York who was freelance and available was a Mr. Sam Levitan and I then asked Sam if he would act as the theater contractor. He said he would since he is the contractor for the Westchester Symphony and the Brooklyn Philharmonic and WNET Television but all these freelance things left him free to do this.

I then suggested certain names to him and he said well no, they are busy or unavailable and they possibly wouldn't do a steady engagement in the theater, all be it possibly for four weeks or seven at the outside which was the original contemplation of "Porgy & Bess." It was basically a four week engagement with a possible three week overlap if they could get the theater for the remaining three weeks.

At the same time John DeMaine, the conductor, handed me a list of names of people from Phil who had played the show who were members of Local 802.

I spent a great deal of time contacting them which was a total waste of time, because none of them were interested in coming to New York to play the show.

Although when they were in Philadelphia they showed great interest, we will come to New York, play the show, we all have Local 802. Of course, when it came down to doing it, things got busy in Philadelphia and time was wasted all over the place.

I wasted three weeks tracing Nick Casisi around trying to find out what his situation was.

Levitan gave me a number of names to call that he wanted particularly to work with and since that is his bag, I figure he knows what he is talking about. So, I allowed him a certain number of personnel that he would recommend and I hired as many people as I knew were available and free to do that job and were capable

of doing that job.

Unfortunately, there are only four. I am not used to dealing with numbers of people, but of the four musicians that I have, the four black musicians I have in "Porgy & Bess," I think they are absolutely extraordinary. And, I had --

Incidentally, this is I think very -- a very cogent point. I think this is really dealing with the problem. I don't know, somebody told me there was a list given to Nick Casisi. I never saw a list of black --

THE CHAIRPERSON: I think you are referring to the so-called Roberts list of twenty names of black musicians.

MR. RODNAN: I had a list from Mr. Earl Baker.

THE CHAIRPERSON: That was the same list.

MR. RODNAN: Now I know what that's all about. I am not going to refer to notes, but I think I have it pretty much in my head where everything is.

By September 6th I believe the orchestra was totally engaged with the exception

of the assistant conductor who is the pianist. We had, in other words, forty out of the forty-one people were engaged by September 6th.

On September 10th I received a letter dated September 8th from Elizabeth McCann saying that there is a list of black musicians that were recommended by Earl Baker, can you use them.

Well unfortunately, by that time it was a fait accompli. There was no way of dealing with the list.

THE CHAIRPERSON: Did you know the commitment of the producer of "Porgy & Bess" to recruit, make a special effort to recruit minority musicians?

MR. RODNAN: Yes, I did.

I was told that verbally, not by Mr. Goldman, but by Mel Nugent.

THE CHAIRPERSON: Did they tell you the circumstances?

MR. RODNAN: I don't remember specifically if they did or not, but they did tell me to try as best I could, given the amount of time we had to do it, to get as many competent, qualified, dynamite black musicians that I could.

THE CHAIRPERSON: Did anyone mention to you a formal communication had been received from the Commission of Human Rights of New York City?

MR. RODNAN: I believe they did.

THE CHAIRPERSON: Did they turn over to you the communication that detailed specific sources of dynamite black musicians in New York City?

MR. RODNAN: You don't have to paraphrase me.

No, I don't believe I ever saw that. I believe that went to Nick Casisi, incidentally.

THE CHAIRPERSON: Not to you?

MR. RODNAN: No, I have never seen it.

THE CHAIRPERSON: So you were unaware of sources such as Symphony of the New World, the Dance Theater of Harlem, Max Aarons, Earl Shendell.

MR. RODNAN: I am aware of all of those.

THE CHAIRPERSON: You are unaware that those sources were specifically transmitted to the producer of "Porgy & Bess" or was used in

recruiting for the orchestra?

MR. RODNAN: No, not specifically, no.

THE CHAIRPERSON: Did you go to those sources?

MR. RODNAN: No, I did not contact Mr. Smyles.

Actually, what I did do rather than start a negative, what I did do, I simply did what I generally do. I started making telephone calls and asking around.

In line with all of this something very interesting occurred, which I do not know, I will throw it out and you take it whichever way it is.

I was told by a lady violinist I know, a Janis Yokomatsuo.

I was not sure that she was engaged in doing anything. I called her and asked would you like to do "Porgy & Bess."

She said, "No, I can't. I am doing," I believe, "Guys & Dolls."

I said, oh, that's too bad.

Incidentally, I said, "Do you know, since you are doing "Guys & Dolls" and I know it"

"is predominantly a black orchestra, any violinists? Do you have any knowledge? Do you know any, I am really hurting. Do you know of any black violinists around capable of doing the show?"

I don't like to quote her directly. I will kind of paraphrase what she said.

She said yes, there are two young men who have been subbing at "Guys & Dolls." She said I don't know really how well they play. They seem to play well. They do "Guys & Dolls" well, but that doesn't necessarily mean they are of the caliber that John Dupres, conductor of the Houston Opera insisted upon.

He came on very, very strong about that.

THE CHAIRPERSON: It someone had their names, mightn't their teachers been contacted and provided you with better information on them then the person who had only seen them substituting?

MR. RODNAN: Interestingly enough, I called them. I think both of the young men lived together. They were both single and sharing a place and I spoke to them and told them what I had in mind.

I said "Porgy & Bess," would you like

to do it. It is running four weeks, possibly seven or whatever I said.

The only problem is we don't know each other. I don't know how well you play. Would you come down.

And every musician in this room will know that I am walking on thin ice by making this statement.

I said, "Would you meet with the concert master of the orchestra, Ms. Anne Barek and myself at her place in town?"

I figured it would be more convenient for them, possibly get to know each other and maybe get an idea of how you play.

We didn't discuss it at the time, but there is a way of bypassing this so-called non-auditioning thing which Local 802 has as far as Broadway shows. I think it is an abominable thing, because how else is anybody going to know anything about anybody else unless you know what they can do, really.

We didn't discuss it at the time. I would have been prepared to pay them for their rehearsal time.

THE CHAIRPERSON: Did you tell them that?

MR. RODNAN: No, we didn't discuss it. The first time I heard was they said yes.

I said, "Fine, Ms. Barek will be your contact since you are going to meet at her house at such and such a time for the following day."

It seems that overnight they had a change of heart.

I have both names in my briefcase. I spoke to one of them.

Overnight he had a change of heart. He said he had spoken to somebody in "Guys & Dolls" and -- let me see the best I can glean from it is they accused me of tokenism. They said they couldn't come down and audition under any circumstances and that was the end of it.

They told this to Ms. Barek. She then passed it back to me.

She was inconvenienced for a number of reasons. Not so much the fact they refused to do something that was possibly illegal as far as the union is concerned, this is not the point.

The point of it is from what I understand of these two men is they are young, very young, very inexperienced which may or may not be their fault. The fact they are inexperienced could be for any number of other reasons. The fact they were denied avenues of getting this sort of experience.

I would have loved to have used either or both of them at the time had we had some dialogue or some communication. Had somebody from the "Guys & Dolls" office come forth and contacted me and tried to possibly middleman the situation and let me know where these two guys are at. I would have liked that. I would have liked anything at that point.

I had no time to fiddle around. I did an entire forty-one piece orchestra in a period of five days. I was on the phone from 8:00 o'clock in the morning until midnight and it's -- it was just monumental. I simply did not have the time to mess with people saying, "Hey, you just want us there because you're looking for a couple of black faces in the orchestra." It was true I was looking for black faces in the orchestra, but it wasn't my idea. I'm

in a situation now I am damned if I do and damned if I don't. So I say the hell with it.

THE CHAIRPERSON: This may point up, Mr. Rodnan, the difficulty of working within the present rules. Of course, it is possible given the no audition rule in the union that your request for an audition however reasonable in artistic terms, it might have been misunderstood by the players.

MR. RODNAN: I am not denying that at all, it is possible. The situation here is so different as to -- I was ready to preclude any rule at that point in order to get an orchestra going. It really had come down to that. We simply had no time.

THE CHAIRPERSON: You indicated that if somebody had played the middleman between you and these two black musicians you might have been able to do business.

MR. RODNAN: Possibly.

THE CHAIRPERSON: Did it occur you might take that role on by example saying perhaps they might give you the names of their teachers which you might contact?

MR. RODNAN: If you follow the chronology of what I said, what I said was one afternoon I called these two men and I spoke to them, I spoke to one man actually or his friend and he said, "Yes, we will do that. We will meet the following day."

The following morning I get a call from Ms. Anne Barek who said that she had just gotten a call from one of the men and they said they are not coming, they don't want to meet with me. They have heard all about me and they said this is tokenism. I am using these people in a token capacity.

At that point we had no dialogue. The dialogue had ended at that point.

I wasn't about to pick up the cudgels again. I had had it, that's it.

THE CHAIRPERSON: Was it because of time or you felt insulted?

MR. RODNAN: No, time.

I was slightly insulted, but only slightly. Only slightly.

THE CHAIRPERSON: This is an interesting case that they probably felt insulted, too.

MR. RODNAN: I suppose.

But anyway, that is exactly what happened. That's the chronology of the events. Therefore, I did not go to somebody.

Generally over the years I have had a meaningful friendship and professional relationship with Gayle Dixon and I would generally in a case like that contact Gayle or any other number of people if I am looking for strings or whatever and speak meaningfully. That situation was just one of those things where the guys call up and said hey, we are not going to do it.

THE CHAIRPERSON: The black contact you might have otherwise used, you did not use even though the producers said look for blacks?

MR. RODNAN: Yes, all right.

Yes, in essence that is exactly correct.

Most of the reason being first of all I knew most of the people I had been using over the years and I think it numbers some sixty black musicians were really gainfully and meaningfully employed at the time. I couldn't bother with that.

THE CHAIRPERSON: So you then would have been helped by having an expanded list of

sources other than your own contacts which would have been working?

MR. RODNAN: I could have used more than that, actually. I could have used actually somebody to come forward and get me on the phone or whoever, because up to that point probably nobody knew it was me. But it wasn't me up until a few days prior to that moment.

THE CHAIRPERSON: So a contractor under the rush of time trying to produce a first class orchestra would have been aided if a system were more formal in the sense that he knew where he could reach for sources that are not known to him.

MR. RODNAN: Absolutely, there is no question about it. There is absolutely no question about it.

I just recently had a conversation with somebody. There are people coming out of Juilliard and Curtis and Eastern Rochester, violinists let's say and legitimate instrument players. There are black musicians coming out of groups, coming off bands, coming out of private instruction every day that I have no idea, I do

not know who they are. I don't know where, how, why and when. It would be very helpful.

Yes, it is true I could pick up a phone and call Harry and could pick up a phone and call Gayle. It has to be done a better way than that.

THE CHAIRPERSON: It has to be more systematic?

MR. RODNAN: I think so, I really do.

THE CHAIRPERSON: I would like your professional opinion of the one device that has been raised here during these hearings, that in many shows substitutes are so frequently used that employment of minority substitutes in greater numbers would offer these musicians a better chance to show their talent and thus to become known and thus to be employed in a greater number of Broadway pits.

MR. RODNAN: Yes, this could work very well.

One major drawback to that is a substitute generally has to walk in the pit unrehearsed and sight read the show. Usually that takes somebody who has a little feel for it,

though some musicians are marvelous sight readers and can do it.

It could become a little hairy.

THE CHAIRPERSON: Suppose a musician became a regular substitute. Instead of coming back once, he might be or she might be able to come more often.

MR. RODNAN: In theory it might work very well. In fact, it might not work at all.

If he does not do it the first time, he is not going to be called back, unfortunately.

Not in every case, but it is entirely possible that could happen.

THE CHAIRPERSON: I would like just to read a line to you.

You know that the Commission was disappointed not so much in the result but in the fact that we had taken steps to help "Porgy & Bess" recruit a larger number of minority musicians and failed. And while this hearing does not result from the composition of "Porgy & Bess," we never would have held it if "Porgy & Bess" were an exception to Broadway. "Porgy & Bess" nevertheless caused us to look more closely at this business.

In his correspondence with me to explain the failure of the results, Mr. Goldman said the following:

"First of all, we have insisted that ever musician in our orchestra be of the highest quality and professionally qualified to play an extremely difficult classical opera score. Frankly, there are few black musicians trained for this task, which is an issue for which we must all assume some responsibility. There is no dearth of talent, but a Duke Ellington, a Count Basie or a Louis Armstrong could not qualify for this orchestra."

Do you believe that?

MR. RODNAN: I don't believe that period.

THE CHAIRPERSON: I am trying to see your agreement or disagreement.

MR. RODNAN: I don't believe that at all. It is one of the silliest things I have heard.

By and large -- I don't know, I haven't been to Juilliard lately and I haven't been to Curtis at all. Eastern, once or twice

many, many years ago. I do not know what is coming out of those factories. I have an idea that I know for a fact for instance that there are numerous Japaneseand Korean string players. That I do know. I do know that there are some.

THE CHAIRPERSON: Is that reflected at all on Broadway?

MR. RODNAN: No, hardly at all, incidentally.

That is another question. It kind of strikes me as funny, if I may in front of this forum, this body, referring to "Porgy & Bess" as a black show. We are talking about a show that has a black cast. That is, in other words, the thinking of the Commission that makes it a black show.

What happens with "Pacific Overtures" which was quote, "a Japaneseshow." How do we get involved in that sort of situation. Then do the Japanese persons ask for equal time? When we do an Israeli show, do we have all Israelis in the pit?

I am not being flip. I am doing this for a purpose.

First of all, I felt that was something I wanted to clarify in my own head, exactly what it is we are talking about. My feeling is if we could --

THE CHAIRPERSON: What we are talking about is our concern is not with the so-called black shows, but with the white shows which do not use blacks. We would be concerned with blacks, Orientals and Puerto Ricans that could not get into white shows.

MR. RODNAN: Fine, now I have it.

I think all of that could work. There is a number of Japanese musicians I know and have used. There is unfortunately only one again in "Porgy & Bess."

I don't know if "Porgy & Bess" is a fair indication of Broadway, because it is not Broadway, unfortunately. I wish it were. I wish it were the type of thing we would be doing, because it is a monumental work. Unfortunately, it is not indicative of all the Broadway shows that are out.

To get a racial mix in a show like "Porgy" is in and of itself a rather difficult

thing to do because of all of the hands stirring the kettle.

We had a conductor who had a lot of people. We had a house contractor who knew a lot of people. We had an outside contractor who knew a lot of people and after putting a lot of people together we finally wound up with only four black musicians in the show.

THE CHAIRPERSON: Would it not help therefore for responsibility for equal opportunity to be fixed someplace so everybody knew whom to look for and whom to hire?

MR. RODNAN: Wouldn't that be nice. How would one go about it?

THE CHAIRPERSON: That is not so difficult.

I know one would have to learn your business and adapt the techniques to your business, but there are businesses in our judgment that are at least as complicated as this where it has been done.

MR. RODNAN: Does it follow through, in your thinking then, what about the rest of the crafts in the theater. Does that follow in

your thinking?

THE CHAIRPERSON: The rest of the crafts in the theater certainly would. Each craft of course is different from the stage, for example. Maybe it is more difficult on the stage where race of a character may indeed have real consequences in terms of the artistic production. In the pits we don't think so, although we have had testimony there is black music and black music should not be played by whites and white music shouldn't be played by blacks and vice versa.

MR. RODNAN: I don't subscribe to that at all.

THE CHAIRPERSON: But yes, if this were a hearing on the theater, it would be incumbent upon us to look at all that is poor for example off stage.

MR. RODNAN: In other words, your main thrust at this point is just towards music and the orchestra in the theater?

THE CHAIRPERSON: Yes.

In doing a hearing like this in order to be helpful to the employer one has to concentrate

on the category so one can look at the techniques that work for that category. The techniques that work for stagehands simply would not work for the pits.

Let me finally ask you what other shows you have been or are now the contractor for.

MR. RODNAN: Have been?

THE CHAIRPERSON: Or are now.

Let me ask you, are now.

MR. RODNAN: "Chicago" and "Pippin."

"Chicago" is a very special case, incidentally, because we only had thirteen playing musicians. Of the thirteen, two members of the original orchestra were black.

They have both subsequently left the show. The other musicians were stand-by or understudies for these people.

The names and reasons, why and where the understudies came from, it would take too much of the Commission's time to do that. Everybody had a hand in it, an uncle, a brother, sisters.

THE CHAIRPERSON: That is significant. Aunts, brothers, uncles are usually the same race as the people we identify.

MR. RODNAN: Again, there we are.

THE CHAIRPERSON: Is that one of the reasons why "Chicago" and "Pippin" have so few minorities?

MR. RODNAN: No, not "Pippin." "Pippin" was an orchestra that I did hire, yes. Many of the musicians were suggested to me by the conductor of the show to whom I am always beholden, incidentally.

I just want to make this very clear at this juncture, that a contractor is not a free agent. I can't simply go out on my own and do exactly as I please, it's not possible. I have to be, unfortunately, from my point of view, beholden to the particular musical director who is, after all, the musical director and I am not.

THE CHAIRPERSON: That depends on the extent to which he wishes to asserthimself in the hiring policies?

MR. RODNAN: Exactly.

In the case of "Pippin" the conductor of "Pippin" was rather assertive to the musicians he was interested in. And at that time I don't even remember, this is going back four years now,

the show is getting on.

We had specific reasons for hiring specific people. And, they were kind of laid down to me.

In other words, there were parameters within which I had to work in hiring people which had nothing to do with their color. It basically had to do with the way they played, they way the conductor thought he would be able to get along with them and so on.

THE CHAIRPERSON: But he knew them personally?

MR. RODNAN: Yes, in most instances he knew them personally.

MR. DAVID: "Porgy & Bess" had a staff of forty-one, "Pippin" twenty-five, "Chicago" twenty-five; a total of ninety-one.

MR. RODNAN: Yes.

MR. DAVID: In those three shows there were only five blacks?

MR. RODNAN: Yes.

MR. DAVID: Given as you indicate special --

MR. RODNAN: No.

MR. DAVID: Those are the figures Mr. Schoenfeld gave us.

MR. RODNAN: He is wrong.

There are three and seven. Seven is the correct figure. There are two black musicians who originally were in "Chicago" and successively left the show to do other jobs.

MR. DAVID: Giving, you indicate special circumstances, in each of the three. Again seeking remedy, how are we to go at something that would not always come to special circumstances that would indicate so low a representation of blacks?

MR. RODNAN: You have to get to the boss.

MR. DAVID: The boss is, say by and large, it is in the hand of the contractors.

THE CHAIRPERSON: The bosses do say you have very substantial discretion.

MR. RODNAN: Yes, I would say in some shows with certain people, yes. This goes without saying.

THE CHAIRPERSON: That is why the bosses hire the contractor, because he is relying

upon his judgment of the musicians.

MR. RODNAN: If it were that simple, I would say yes to that question. But, it is not that simple and not that direct.

We do not have the total freedom one would think one would have as a hiring arm of a production team. We don't have it. It comes from a lot of different directions.

There is pressure applied from many, many different directions.

THE CHAIRPERSON: That pressure can best be mediated if there is some standard that the various parties can look to.

I now of course have in mind the requirement that pits become integrated.

MR. RODNAN: Yes.

THE CHAIRPERSON: If for example pressure is coming from the conductor, pressure is coming from somebody else for a brother-in-law, would not that pressure be more easily accommodated if there were a standard to which the contractor or producer or whoever could refer that related to equal opportunity?

MR. RODNAN: By standard do you mean

a musical standard? Do you mean a numerical standard?

THE CHAIRPERSON: In the case of musicians the standard would probably be somewhat complex. The bottom line of course would be measured by whether or not minority musicians increased. Whether the standard in each occupation would be taken into account, all of the special qualifications of that occupation. Nevertheless, a standard related to equal opportunity at least in other occupations helps mediate some of the kind of pressure you are under.

MR. RODNAN: It would help. It would certainly ease the burden.

It's a monumental task. Absolutely monumental to get all of these people. Then the hardest part of that is you simply can't dictate to somebody in our business. You can't dictate to a director what it is he wants to direct. You can't dictate to a conductor who is supposed to conduct.

Everybody is going to get up on their artistic high horses, at least up to a point. So there has to be -- in fact we can set a standard.

It has to be a standard which I guess possibly looser guidelines you would want to establish, because you have to deal with a lot of creative people who think they are the last word.

THE CHAIRPERSON: Mr. Rodnan, with people in New York, large corporations where profit margin lines are at least cherished as in Broadway, the concern is equally greater that there be no one there who is going to put the corporation in any jeopardy and so to find managers and officials and technicians and professionals who know what they are doing is a cherished right as well but taking that into account and particularly expanding the sources of talent are often unkown to them, eliminating various things that employers no longer realize, are no longer legal, all of this has helped to make dramatic strides for very, very complicated judgment bound occupations.

MR. RODNAN: Yes.

THE CHAIRPERSON: Do you think contractors would be open to learning how that might apply to their own?

MR. RODNAN: I would. I can't speak

for anyone else but I am sure I would. There is no problem there.

It is a situation, I think as Mr. Giglio said before, we are, in fact, we do lose accounts, we do get fired, we do mess things up on occasion and as a result we suffer for it, so therefore, it has to be something which I am not looking for comfort and a shoulder to rest on in a situation like this. I do my own business my own way and I have been that way for a number of years but I do think that I could deal with that, yes, absolutely, no problem.

THE CHAIRPERSON: I want to thank you, Mr. Rodnan, for the openess of your testimony. It has been very helpful to us.

(Whereupon, the witness was excused.

THE CHAIRPERSON: Herb Harris, a contractor.

H E R B H A R R I S, called as a witness, having been first duly sworn by Commissioner Kee, thereafter testified as follows:

THE CHAIRPERSON: If you desire, Mr. Harris, you are free to make any statement you wish.

MR. HARRIS: I am a contractor or musical administrator for Joseph Papp and I have been working with Leonard Bernstein on a number of things when they have happened in the past five, six years, a few well known flops, but Mr. Papp also called me yesterday and asked me to represent the Festival as well as myself.

They are distant in a sense in that I go further than the Festival and yet particularly in the sense that I handle all the music for Mr. Papp and I have heard quite a lot in the past hour, some of which I respond to very positively and some of which concerns me.

I have heard your suggestions which I feel would be of great help but the creation of such an aide to us should be in connection with those who indeed do the hiring.

THE CHAIRPERSON: Rest assured that it would be.

MR. HARRIS: Because certainly, artistic standards are at once artistic and business standards as Mel pointed out, if we goof we goof so that is the business aspect and yet I am a contractor and now I will speak for myself who,

as is involved in perfection in putting together orchestras as I am in my own plane. I cannot do other than that. I will just go, instead of turning to a finer channel but having been around Joe Papp and the Festival for a good many years, I have been fortunate in having the need to counsel the fine new areas for musicians and thus new sources and new musical needs as well as being entirely aware of the minority need which was not created by my association with the Festival because I grew up as a jazz drummer and certainly that by definition, talking about association with black people in the music world.

My sources are, because Mr. Papp very often takes a production in that has started elsewhere for instance, Woody King's project, "Down On Henry Street."

I have had the good fortune to meet many music musicians and directors who were completely unknown to me. That happened this summer.

For instance, in a show which we put together and played, the neighborhood playgrounds It was not successful in the sense that there were

hopes to take it further. It is a case in point. It was, they called it a black-Spanish show. That is what it was about.

It was about the blacks and the Spanish people in the new world being separated by the white men and so everything was in terms of there was soul music, black soul and there was Spanish music and the needs as presented were in the nature of music.

We had about two-thirds of the band black. There was comparatively little time, somehow there is always little time, but when I started to look for "Spanish musicians" and I went tothe best sources I knew of, I found that either Spanish musicians themselves, and I had selected several Spanish musicians as arrangers, as orchestrators, they could not recommend people and I had to turn to other black musicians and several white musicians who did Spanish work.

Now, their existence in these Spanish orchestras indicated that the Spanish leaders themselves had to turn to white musicians. That was startling actually because we, Joe, has been doing lots of black shows but this was the first

time that I remember that we had done a show that was straight out Spanish, the term used or Latin or whatever.

So, all right, that is one aspect of experience. The use of black people in theater at the Festival has been going on for a long time and I think Joe is the first one to pay not attentic to the color of the skin when it came to a role, even so typecasting kind of went out the window.

I have again, not following his dictate because I work this way and believe this way, I have always attempted to operate that way as well, I have not always been successful. Let's say I have very often been unsuccessful in finding musicians that I would say satisfy the standards.

It is easy with rock shows, it is easy with like,"Hair," it was simple. It is easy with jazz shows.

I had done a show many years ago that Hugh Hammily did. It had a black band, jazz band, simple. When it comes to shows that require larger diversification, there are good black musicians around. Very often they have been busy. I have found the young people in

Philadelphia, in Washington, sometimes brought them up here but it is terribly, terribly difficult.

There has been a mention made of the union restriction. I pay no attention to that because I consider it silly and if I have to audition for a particular lead I do. There is another restriction which has gotten in the way and this becomes the business end that if you hire a musician for a show purportedly he is hired for the run. If you are gambling and you get that musician to be at the first rehearsal, he has a claim and if he calls up Mr. Russ at the union and this has happened, the producer and you are black and sometimes these are white musicians but certainly it can apply to those people who have not had the experience of playing the theater and because minorities have had so little experience they would be coming in from other realms.

You call special rehearsals, things like that. I have used whatever I can to try to find new people and it can be hairy, it can be difficult because you are leaving yourself open to union strictures and to the needs for the producer then to pay people for sometimes a run.

Speak to me.

THE CHAIRPERSON: There has been an increase in minorities on Broadway that's notable although, of course, they are concentrated in so-called black shows. How do you account for the increase? Is it because there is different music, is it because there is a new pool? Is it because there has been the discovery of a pool that was always there? To what should we attribute the increase in the use of minority musicians?

MR. HARRIS: The general society recognition and need as well as the specifics that your Commission in our City, that is all I know about really, has instituted.

There are many other factors though. Certainly, I won't go into the difference between those who can find a reality in preparing for a career and those who throw their hands up because there is no possibility and thus, certainly, I think the reason for the lack of black string players for a long time was because there was very little possibility of work and thus the black musicians might be talented in that area, would turn to other areas sometimes not in music because

of no expectation.

So, certainly there is the ever mounting propulsion to get into something which offers some reward for life, both economic and in terms of reality even. So, there are two factors.

Then, of course, they increase as more friends, morepeople within a community are in, the word has spread and okay, I think these are probably the pressures, however it happens and the fact that more black people, certainly as far as Japanese, there are so many Japanese violinists around New York now in comparison to a few years ago.

THE CHAIRPERSON: Where are they playing?

MR. HARRIS: In the Philharmonic. I am there a fair amount and I see the string players there. I have used them when we did the "Mass," I have a number of other Oriental musicians. I see them in pits here and there sometimes substituting and I see them in the studio. I do some recording work, I see them there.

Certainly, the numbers are not large compared to the ordinary complete compliment but one becomes aware of Japanese string players much

more in number, much more --

THE CHAIRPERSON: How about on Broadway?

MR. HARRIS: I don't know the general numbers.

THE CHAIRPERSON: Are you aware of more on Broadway?

MR. HARRIS: I have run into more and as I ask around who is doing what or however I find out that they are working.

THE CHAIRPERSON: But there is no systematic way to take advantage of this new pool of talent?

MR. HARRIS: I think a systematic way would be marvelous but because I am frankly frightenend, I think -- I shouldn't, I guess, but I think of having to write a certain way and I don't think that should happen. I think that that is why I said that we should be represented in any systematic attempt to find new people and to know what they were ready for.

Now, auditions is the most difficult way of knowing people. I did that when I did the "Mass." I went down to Washington and auditioned people for on-stage. Bernstein had asked me to go

to Boston and I couldn't. I was on the West Coast and I went up there and then I chose from people I knew in New York to be among the thirty people on stage. We did ten, ten and ten. The pit orchestra in New York was entirely mine when I finally came here.

I auditioned a lot of people and you cannot, I found that out because we had about forty-five strings, thirty-five, something like that -- no, about thirty-five strings. This was about six years ago. You cannot tell how well a person plays with a section. You cannot tell their attitude about playing with people. You can't tell really about their general intonation. You can't tell how they respond. It is only one of the ways which is why when Rodnan, when Mel said he makes calls, I make calls, too, to people whom I trust, whom I know are not going to recommend a friend. You know, I must say parenthetically at this point, I know about racism. I know about American racism but I started as a jazz musician and I know that musicians, good musicians are not people who have a bone to pick who are unable to really be at the top artistically, but

musicians essentially want nothing more than to be playing with peers.

This, incidentally, is always what I attempt to do in setting up a pit situation or any situation. I feel a responsibility to each person and I play myself in the studio, that we enjoy ourselves, that there is life and art and that everybody is happy, there is no element that is going to bring down anybody and have a flute player say, this character is playing out of tune and in that sense racism does not happen among the top musicians, in that sense.

There are other built in elements but if a person's playing next to one of these top musicians, playing next to a black or whatever and they find that the music is great, there is about a large thrust turning toward acceptance and toward a feeling of we are together.

I think that is a very important point because if, indeed, musicians are thrust into jobs that are not, that they are not ready for, I think no good, nothing is accomplished. I don't think anyone profits. I think that you know after all, when you talk about Broadway and the

recording studio, you are talking about, especially as there is less and less work in networks and very few symphonies, comparatively, you are talking about the top of the profession.

Now, I hate to get into this old, you know, line of breaking in but when I was a kid we were able to learn our craft by traveling around the country by doing everything, by playing any joint, anything we had to do.

By the time we got to New York and looked for top work we had been doing an awful lot for many years. I somehow question the expectation of anyone, even if they are out of school and great to walk right into the job which requires more experience, which requires somebody with -- I am not saying you have to come up the hard way but experience and maturation and hearing and learning to phrase and learning different styles of music and being part of an orchestra, that is fun and it doesn't happen automatically.

THE CHAIRPERSON: But when "Porgy & Bess" opens with the same number of musicians today then it did a generation ago, there is little sense that people are coming up too fast

and that is the problem we have here, that is, the pits would look the way it did a generation ago if it were not for the black shows, despite the fact that it would appear from testimony that we have received today that blacks in particular have prepared themselves in music in very significant numbers in the last seven years.

The problem for the Commission is and for any civil rights agency is always to discover when will be the time that such preparation will manifest itself typically in America, such preparation and training has manifested itself only in the face of some form of coalition by law, not because people are maliciously keeping blacks out but because systems work the way they always work.

Let me ask you in what other shows you have contracted for, what shows on Broadway?

MR. HARRIS: Currently, "A Chorus Line," "Three Penny Opera" and I am trying to think if there is anything downtown running right now. No, there isn't actually. So, I would say just those two shows.

THE CHAIRPERSON: What is the ethnic

composition of the pits in those two shows?

MR. HARRIS: "A Chorus Line," four black musicians, two women and one, I think is Chinese-Hawaiin, I believe. He looks that way, I am not certain.

THE CHAIRPERSON: Out of how many musicians?

MR. HARRIS: Out of the usual twenty-five compliment.

THE CHAIRPERSON: And "Three Penny Opera"?

MR. HARRIS: "Three Penny Opera," steadily there are ten musicians and steadily there is one woman and no blacks. I have had people in there who are black but not on the regular payroll.

THE CHAIRPERSON: Have yougenerally found that like most contractors for shows that have a black motif are more likely to have black musicians than shows which have a more traditional motif?

MR. HARRIS: That is generally true.

THE CHAIRPERSON: How do you account for that?

MR. HARRIS: Well, for one thing you have already mentioned or alluded to the "nature" of the music and I lived through it when I said "Hair" which was not a black show but a rock show.

THE CHAIRPERSON: When you say nature of the music, do you believe that blacks can play black motif music in a way they cannot play traditional music?

MR. HARRIS: I believe that the number of people prepared and ready and who are available, numbers are in a far smaller amount than the white people who can play long-haired music, for instance. I think a very good example is the Philharmonic. I am around there enough to know how that works and I say there have been a number of Japanese or Korean string players at the Philharmonic subbing through the tour with us and stuff like that.

There continue to be very few black musicians and yet I know how Jimmy Chambers trys and how he keeps his eyes on the students coming out of the school yard or what have you.

THE CHAIRPERSON: There was a celebrated

case against the Philharmonic.

MR. HARRIS: That is right and I was there at the time and I also know the usual, as you point out, that you have a system and the system includes teachers and their students and certainly that continues the system.

THE CHAIRPERSON: Mr. Harris, the Philharmonic, the most prominent orchestra in the country seems to have a fairly high standard by which to judge Broadway. Would it not be considerably easier to find a pool of musicians to qualify for Broadway then for the Philharmonic?

MR. HARRIS: You asked me about the nature of the music.

THE CHAIRPERSON: Yes, but I do not think that the nature of the music in Broadway shows was truly like the music at the Philharmonic.

MR. HARRIS: No, it is not, except there are elements in that music which require, I mean there are elements in the Broadway pits which require, there are needs in the Broadway pits which require similar elements, intonation, phrasing, knowledge of a style.

THE CHAIRPERSON: Consider "Guys & Dolls"

which is a traditional American, that is to say, white show which twenty years ago white people put on.

Twenty years later black people put on the same show with virtually the same music and I have heard black people come back from "Guys & Dolls" complaining, what is so black about that show, the music sounds to me like regular American music.

The former orchestra, of course, at a time when America was different, didn't have any black musicians and therefore the music is not different.

MR. HARRIS: But in answer to that, as I say, there are certainly, certainly there are more people generally of any segment, color, woman, man, whatever, prepared to play "Guys & Dolls" then prepared to play not symphony but Philharmonic, certainly. But, my point is that if you are looking for wind players you need wind players, I don't know the composition of the winds but certainly you need the doublers, those that play perhaps four or five instruments and play them well and play them in tune.

THE CHAIRPERSON: So the wind player can play "Guys & Dolls"? Don't you think he might be able to play in "A Chorus Line," for example?

MR. HARRIS: Yes. Yes, the shows would be somewhat similar in that respect.

THE CHAIRPERSON: Is there not a problem that when -- and I say that charitably, problem that when a business starts to incorporate minorities for the first time, it has a tendency to do what you just did, to think first of what the most rarified qualifications are, the Philharmonic and then say no blacks are going to play there so how can blacks play here?

Is there not something wrong with that, what leads us to the Philharmonic when we are looking for players for Broadway?

MR. HARRIS: That was not my meaning.

THE CHAIRPERSON: It is a frame of mind. It is not that you consciously say I must find somebody who can play the Philharmonic, but it is in the sense of where one's mind starts and if you think of the Philharmonic, if you think of a black player you are probably thinking of a

player which would not cross your mind if you are thinking of a white player.

MR. HARRIS: I appreciate your point but some of the same elements that are necessary in the Philharmonic are true, are necessary in the pit. Intonation and I am not saying that a black musician does not play in tune but there are musicians who play in tune and those who don't.

THE CHAIRPERSON: Isn't the comparison then to other Broadway shows, isn't the comparison then, you need a black whose intonation and whose sense of music is such as would qualify him, for example, for "Guys & Dolls"? Isn't that the more appropriate analogy to fix in one's head than the premier orchestra in the country and some would say the world?

MR. HARRIS: I do not mean nor do I think I spoke of the Philharmonic as being the guideline for the choice musicians for Broadway shows. As a matter of fact, when I spoke about the Philharmonic there was an entirely different framework.

To head right at what I was talking about, even though we did combine the two, I

combined the two only in the sense that if you need a musician to play his instrument well and you too, it is just as necessary in the Broadway pit as it is in the Philharmonic. We can almost stop there. I am talking about --

THE CHAIRPERSON: Even given the gross difference in artistic training?

MR. HARRIS: There is no difference about pitch. There is no gross difference about pitch, none.

THE CHAIRPERSON: How about quality in the musicianship --

MR. HARRIS: Musicianship is a term which can be applied to jazz. You have great musicians playing jazz or can be applied to a string player in a symphony. Certainly musicianship of a great jazz musician is in my mind far superior to the average fiddle player.

THE CHAIRPERSON: Mr. Harris, when we had the Philharmonic case we ultimately, because of the musicianship involved, the judgment involved in choosing a player, we ultimately had to design a remedy that depended entirely on substitutes. We have had testimony here today

that substitutes come in, come into the pits often, often someone who has nothing to do with the show. That says to me that Broadway has been able to function for a very long time using musicians over which there was no quality control and that the insert of quality into the people when we are talking about employing musicians seems appropriate in light of standards that Broadway has set forth itself.

MR. HARRIS: The first thing I must say that any musician in my employ on Broadway or off Broadway who would recommend or send in a sub and I do not permit it that casually, would be laying his reputation and his involvement on the line if he were to send someone in who was not right.

He has a responsibility. If he was given that responsibility to send in a person --

Now, again, your point of systems perpetuate themselves. Certainly, he is probably or there is a possibility that he would be sending in someone who was in his particular kin and he would not reach out. He would send in the best musician he knew. So, in that way there is

perpetuation and your point is well taken but I don't think, I know it is not correct to presuppose that there are no standards just because the musician is permitted to send in his own sub.

THE CHAIRPERSON: For the record, I think that it is a fair point and I don't mean to imply that there are no standards but I mean to imply that Broadway standards have not suffered because of the freedom with which large numbers of musicians have in sending a player out.

MR. HARRIS: They have. Some Broadway orchestras sound awful, simply terrible.

THE CHAIRPERSON: And yet it is tolerated season after season.

MR. HARRIS: Again, it is not tolerated because if someone does not supply a good orchestra I don't think they continue to work or there are situations where all that pressure which comes from various sources, can cause one contractor to say yes to everything and another to throw up his hands and either quit or refuse to take pressure.

Now --

THE CHAIRPERSON: But you would agree,

would you not, that quality control is very uneven on Broadway?

MR. HARRIS: I have heard about orchestras on Broadway. I think that answers your question.

THE CHAIRPERSON: Commissioners?

Mr. Harris, I want to thank you very much for this testimony. It has been helpful for us.

(Whereupon, the witness was excused.)

THE CHAIRPERSON: Charles Dalton, musician.

I appreciate that some people have been waiting a long time. It is important for us to get a wide variety of views on the record because these hearings are not just for fun. A remedy will come and it has to be suited to Broadway and it would have to be quite diverse standards.

C H A R L E S D A L T O N, called as a witness, having been first duly sworn by Commissioner Kee, thereafter testified as follows:

MR. DALTON: I have been here for

quite a while and some of the things that have been said have hit so close to home and I want to make it brief but there seems that there are several issues here, one that is very positive in my mind right now because I see Ms. Leon here.

Recently I had a very positive experience and I think that will clarify right away as far as musicians being available, black musicians.

I don't know if the Commissioners are familiar with the Downstate of Harlem and their procedures but I was not. I feel this is valid because I was not known to Ms. Leon, she only knew me through other musicians that I have worked for and through her contractors.

I met Ms. Leon via the phone. Then an audition date was set up and I auditioned which would encompass from anything of great difficulty to anything of the other major symphony orchestras in this country.

Then I was given something to sight read. I am sorry, I was given the chance to perform something of difficulty to show myself off as a musician and I had a chance to play

two compositions, one was an orchestra solo from Don Juan and the other was a box suite, part of a suite which she and her assistant both listened to.

Then I was given something to sight read from that company's ballet repertoire and I was not notified then as to whether I was accepted for working with the company or not. I was later notified by mail, letter and I was told to come in and they talked with me there and I signed the contract and they gave me the philosophy of the company.

Now Mr. Clarence Cooper was the contractor, but we heard in earlier testimony that Mr. Shendell had worked as general manager with that company.

I cannot -- I have some copies here if the Commission would like, I will read them.

THE CHAIRPERSON: I would like you to.

MR. DALTON: Of the programs of the Dance Theater of Harlem this season on Broadway. There were a total of fifty-two in the orchestra and twenty-six were black. We were auditioned pretty much the same way and interviewed. Resumes

were submitted.

It is one of the most valid experiences I have had since being in New York.

The other thing, I am a native Philadelphian. I have heard so much about the Philadelphia story today.

The only thing I can say, we had two locals in Philadelphia; one black and one white and that is enough about Philadelphia.

I really -- I don't understand. I have worked for all the contractors that have been here except for Mr. Harris, whom I called last week in reference to a job that a friend who was here had told me about.

The whole procedure on the phone between he and I was so unprofessional I just said of the whole thing, "I am not interested in working now."

It is obvious there are many blacks who are highly qualified to sit in the pit. It is difficult when you are, say, forty-eight and you have someone twenty-seven or twenty-eight years old who is highly qualified who has had more experience than you have had.

Mr. Harris also reiterated that a lot of the procedures in gaining experience or going about the learning process is totally different when he came along then when I came along. I have studied with two of the principals of the Authority. I have attended Curtis Institute. I am a graduage of Cohens College. I hold two degrees.

I was advised by the former principal of the Philadelphia Orchestra although I was highly talented, it was a lost cause. This was 1968, that I would not find employment in a symphony and if I went to New York City seeking employment I would only be turned down. That I should seek education where blacks are being accepted and blacks can succeed.

I taught for seven years. I taught music and elementary education, because I have a degree in elementary education and taught when I came to New York City. I studied with Paul Doctor on the faculty of Juilliard.

I think those people in the business know Paul Doctor.

I had my first opportunity in joining

the union and I am not going too fast, but --

THE CHAIRPERSON: Have mercy on the stenographer.

MR. DALTON: You mentioned earlier about how one goes about joining the union. It was true again, I want to reiterate it, I have been successful in this City, meeting Mr. Robin, Mr. Shendell, Mr. Smyles. Lots of my peers have felt the concern I feel and I think this is how most of the black musicians in this City become successful. Then Mr. Smyles heard me, engaged me. He said you have to join the union and that is how I became a member. I went down to the union, told them I had been engaged. I had played and I was going to play for the Symphony of The New World, but could not perform with them until I had joined the union.

Now as far as auditions, filling out applications, I simply went to the treasurer's window with the $170-odd dollars and they gave me a card and said goodbye.

That's the only affiliation with that union I have had.

I cannot understand where Mr. Shendell

in his many years I thought he had only worked with the Dance Theater of Harlem. I said several years. I spent almost a decade with these members, twenty-six blacks in that orchestra, all who have -- I just can't further reiterate the excellence of musicianship in that orchestra and how they can be affiliated with Broadway.

I wish I had the clippings, I could not find them. I am sorry, but the reviews of the Times and the Post stated this season that orchestra was not just another pit ensemble and should be considered to be period as well as the visual aspect of the ballet company. And that is something I think the Dance Theater of Harlem rightfully deserves.

Another thing I would point out, Ms. Leon is of Hispanic background, but people in this City irregardless of their lineage are concerned and want to right the wrong of the hiring practices. Mr. Smyles is still trying to do that today, to fight against discrimination.

The issue is not being hired, but I think the issue here with the blacks is that so many of us have come from impoverished situations

that we have struggled so hard to attain those goals that we were told in conservatories we had to attain. Then when we got out here and wanted to get a job, could not get the job. And it was a slap in the face.

This is a thing I think why the black issue is so prevelant. Yes, there is a high percentage of people and New York City is the city for a freelance musician.

Another statement was made to the reference of musicianship on Broadway and in Philadelphia.

I would like to add that Philadelphia is not as esteemed as people seem to think. Among the five major symphonies, it is ranked last.

There was an article in the New York Times that said people were wondering why such sour notes were coming from such an expensive orchestra.

I am a little eager.

THE CHAIRPERSON: Do you read music as rapidly as you talk?

MR. DALTON: I would like to also point out I cannot read the name, but I received

a letter. I worked on a Barry White tour in 1974 and just three or four lines I wrote.

I would like to add that many times there aren't any violas used in many Broadway shows. I am currently a regular substitute for "Guys & Dolls" for the one violast that is there.

She did hire me, yes, but I had spoken earlier, prior to her knowledge, that I had spoken earlier with Mr. Roberts and I had written him earlier years back. Because, I had several friends who were in Broadway shows and subbing.

I should make my presence known to him and play more for him sometimes so he could keep me in mind.

He did say he would, but he was very hectically working at the time and he would get a chance to get back to me.

Well, he did and we talked. He said he had a prior commitment to keep.

The result was I did get a chance and Maxine Roach and I have worked together a lot in recitals and pre-openings.

I must say I did not go anywhere near that orchestra pit until I had a week earlier

taken the music with her and sat down as I am sitting before you now and went over it page by page and part by part.

I can, if you were going to have a handwriting analysis on the score, then you would see my handwriting as well as hers because it was about two weeks before you actually got to play after that initial reading-through of the music. And in my instrument, in case there was something I wanted to work out via a fingering, I did not get a chance to play the part for about two weeks. I wanted to write those things down, because she was going to be away. I wanted to be sure when I did sub everything we talked about, there was no misunderstanding.

I still, I find in reference to "Porgy & Bess" that all of the musicians had worked -- I have a little statement here to remind myself. I think if the contractors in this City would just take into consideration all of the blacks they have used at least once, they would not find themselves that handicapped.

During the Westbury Music Fair in July of 1975 I worked for the Sonny Bono Show

and Dionne Warwick for Mr. Rodnan.

I called Mr. Rodnan repeatedly myself this summer. I have his address and a letter from him with reference to my residual check I received because they had voted upon a new contract.

I would like to know why Mr. Rodnan couldn't get in touch with me when I could find his services.

THE CHAIRPERSON: Had you played for Mr. Rodnan in other shows?

MR. DALTON: Just Westbury and I can only assume -- I would initially assume that he was not pleased with my playing. But, he came up to me personally and thanked me for such a fine musical job.

THE CHAIRPERSON: He did not thank you for "Porgy & Bess"?

MR. DALTON: No, he did and my number is still the same and I had called him all summer off and on about six times and left word with his service and even taken the time to write him.

I want to bring back in again, it is very difficult and unfair, but ironically as it seems the issue seems to be somewhat black and

white.

There was a contractor by the name of Mr. Oscar Raderman in Forest Hills who was very nice, but doesn't contract for shows all the time that use strings and then again, violas. But he still was concerned. He said if he had anything, he would let me know and that's the result of this letter from Mr. Murray Pollack who said it was very good to hear from you, although I was very disheartened to see that as a very fine viola player you are not doing the work you should be doing.

I just read that basically to reiterate I had worked with members and there has been no personality conflict whatsoever. Because the ability is art and they are both the goals of the Dance Theater of Harlem, they are interested in those people who have attained those goals.

I think the business, if the Commission can be the guardian and see these things are carried out, if we deal with the art itself and not the fact this is show business and not worry about who likes whom and how we get along with this one, I think then more people, minority

groups, would be hired. Because the conservatories and institutions are turning out students that really want to work.

If you are going to school today you realize that you have to play almost doubly as good as those individuals did years ago, so you are ready to work.

Ultimately, when I played for some shows, it has been nothing in comparison with symphonic work.

What I mean to say, there has been nothing since I have been in New York other than the Symphony of New York and the Dance Theater of Harlem have been the only two organizations that have played standard repertoire and whose standards have exceeded that.

There are people who are interested. Ms. Tania Leon may be an exile in this country, but is a citizen and took the initiative to go out and find qualified blacks. Yet, she has fifty-two pieces and only twenty-six are black. But I personally feel we do not have to have "X" number.

THE CHAIRPERSON: That is half.

MR. DALTON: Yes.

THE CHAIRPERSON: That is pretty good.

MR. DALTON: But there are others there I think she wanted to use and could not.

I would like also to add two of those members are now playing, one in the Pittsburgh Symphony and the other in the Buffalo.

I have been a substitute. I did say I looked at the music. When I did get asked to play in a show a very unusual thing happened. The concert master's name was Harry Urbont. We placed ourselves on an unmarked stage and he said, "Just go down, take a chair at random." He said, "You, you, you, you. You are here purely for cosmetic reasons."

I don't appreciate that. If he said that to me elsewhere, that would have been all right. But it is in front of a lot of other people. It makes people think that you are working--like I'm a musician. If I were a surgeon and another doctor came into me and said, "Don't touch the body, you are only here for cosmetic reasons."

I think a lot of the other people there would feel I am incompetent or not really

here about the job itself, that I am here for color. That is basically what it is.

That is not the only incident that I have had. I think some of the other people here could further elaborate on those type of things.

I couldn't help just feeling why contractor after contractor can constantly sit here with two organizations and a fine rapport in this City. The Dance Theater of Harlem and the Symphony Theater of the New World have a large percentage of blacks. There are only eight blacks in "Guys & Dolls," as far as string players are concerned.

As Ms. Dixon said earlier, it isn't possible --

THE CHAIRPERSON: Mr. Dalton, have you or your colleagues in the New World Symphony been contacted by Broadway contractors looking for black musicians?

MR. DALTON: Never.

My inception on Broadway was via working "Guys & Dolls," working in the City. I thus became personally acquainted with Maxine

Roach.

THE CHAIRPERSON: Are you testifying that so far as you know contractors do not regularly use the resource of the New World Symphony?

MR. DALTON: Most definitely. Without hesitation, most definitely.

I think Mr. Smyles when he testifies will have more to say.

Like I said, I am not a native New Yorker. I did not grow up in the City. My inception here was initially with teaching.

THE CHAIRPERSON: One final question.

You spoke in some detail of the process of audition that you had gone through for the Symphony of the New World and you found --

MR. DALTON: Also the Dance Theater of Harlem. Because, like the Dance Theater because I wanted to further reiterate the point that Ms. Leon is also non-black and she took the initiative. And you had earlier, I believe I cannot quote you, but I can try to touch on what you said. Being a middleman with Mr. Rodnan if he had perhaps taken that opportunity to be a middleman and gone out on his own to seek those

blacks or asking other blacks. I think that is how Ms. Leon formed her orchestra. I think it is a very fine orchestra.

THE CHAIRPERSON: Broadway in the main does not use an audition process.

Do you think blacks would fare better on Broadway if there were auditions?

MR. DALTON: No, I really don't, because I can't help -- I don't like to do this.

I must say since I have been in New York there is only one way to see things. I consider myself a very sincere and religious person. It's gotten to be a very racial issue. It's tense. There are a lot of younger people.

If I am working and if I am ready for retirement and if I have been doing "X" number of years in the pits, perhaps that is all I can do right now. And, I don't want it taken away from me. I have to make a living. I have to look at it from that standpoint, also.

THE CHAIRPERSON: Thank you very much, Mr. Dalton.

THE CHAIRPERSON: This direct testimony

from a black musician is very important to our record and the next few witnesses are very important for getting a complete picture of this.

Do you want to take the stand?

MR. HARRIS: He did accuse me of unprofessional behavior on my part. I would love to know what it is.

THE CHAIRPERSON: I will ask the question.

You spoke earlier of a telephone call you had initiated to Mr. Harris last Sunday. You also said you found his responses indicative of unprofessional behavior.

Would you elaborate.

MR. DALTON: I assumed I had awakened him. He was somewhat groggy.

THE CHAIRPERSON: What time did you call him?

MR. DALTON: Anywhere from 9:30 and 10:00 o'clock, which I think is business.

If you are going to be a contractor I think you should certainly be up by that time of day.

I spoke with him. I identified myself.

I said, "Mr. Harris, I am calling you. I understand you are looking for violasts to improvise."

He asked me if I were a professional musician.

I gave him a brief synopsis and he suggested I send him a resume.

I took down his address, because it would be too long over the phone. He didn't want to go through that, which is all right.

He asked if I was a professional musician and something else, but I had already stated why I had called and what, very briefly, I had been doing.

I said again, you know, it boils down to a lot of musicians that are highly qualified won't get a chance to work because of certain attitudes. I have had State Department tours. I have had also recently a tour I was under which was under the auspices of the People's Republic of Poland, which I think is a rare experience.

I don't know too many of my constituents that have had those chances. Because Poland just recently opened their door to the Western

World.

THE CHAIRPERSON: I do not know if I shouldn't just be a middleman and get you two together.

MR. HARRIS: I would just like to say one thing.

I get many calls. It is my home. I am not always prepared. I mean a telephone ringing does not mean that you must snap to attention. It can be an imposition upon your private person.

Nevertheless, whenever a musician calls I do ask him something about what they are doing. It so happened I had a particular job in mind and at the same time I always get resumes and I use resumes. I have hired people with resumes.

My reaction when I put down the phone was I could not understand what offended the gentleman, I did not know who it was.

MR. DALTON: I do have a resume here.

THE CHAIRPERSON: Mr. Harris, before you leave this hearing it shall accounted itself to have accomplished something concrete. If the

gentleman might submit his resume at this time.

MR. HARRIS: I would love it.

THE CHAIRPERSON: I think Mr. Dalton you have forcefully brought yourself to the attention of the profession.

(Applause.)

(Whereupon, the witness was excused.)

THE CHAIRPERSON: I would like to call Robert Stewart, a musician.

R O B E R T S T E W A R T, called as a witness, having been first duly sworn by Commissioner Kee, thereafter testified as follows:

THE CHAIRPERSON: Mr. Stewart, do you have any statement you would like to make first?

MR. STEWART: Well initially, my first response to the whole subject at hand was through Jackie Jeffers. he is a very good friend of mine.

I was calling -- I am a tuba player. I was calling a tuba player friend of mine in order to sub for me at a particular type job I couldn't make.

I called him and got his wife on the phone and asked.

She told me he wasn't home. She said he isn't home, because he is doing a show.

I said, "Oh, great. What show is he doing?"

She told me, "Porgy & Bess."

It came as a great shock to me.

THE CHAIRPERSON: Is he white or black?

MR. STEWART: The gentleman is white.

Begrudging nothing to him, he is a fine musician. But it came as a great shock to me and a disappointment to me because I consider myself a fine musician, also.

Up to that point I was kind of hoping there was no tuba book on the show. You know, I mean that shows you the negative point it is coming to in my existence where knowing full well that there is great difficulty as far as hiring of blacks are concerned and the fact is it's not very likely it's going to come around I am going to get a phone call for "Porgy & Bess" or "Tremonisha" which again the same thing happens. Another friend of mine got the show, a white

gentleman.

When I heard "Porgy & Bess" was coming to town I said maybe there will be a tuba book.

Finding out through the back door a friend of mine got the show, you know it really does -- just the testimony from some of the contractors that I have heard, it seems to me totally that their inferences on this whole situation, they totally miss the point. They absolutely miss the point. When they start asking questions like if there is a Jewish show are we going to hire all Jewish players or a Latin show -- that is not the point of the matter.

The point of the matter doesn't particularly have to do with the color of the show or color of the musician you hire. Unfortunately, it's come to that in many minds, because here in New York when a black show comes to town as was previously mentioned, quite often a larger number of blacks are hired for the pit. So you say maybe if a black show comes to town, I will get hired.

So when it comes to a show like "Tremonisha" that comes to town, which is written by a black person for a cast initially for a cast

of black people and white musicians are hired in the one shot that I have, you know besides being the racist aspect of it, it is downright insulting. It really is downright insulting and I am not even -- at this point my emphasis isn't on trying to get into giving you a white show quote, unquote. My emphasis isn't trying to get there.

I personally felt some affiliation with the show "Porgy & Bess" just because of my background to it, the arrangements.

I am playing right now with Gayle Evans orchestra. We just came back from a tour of the Far East which took us through Japan and all through the southern part of Asia. Even more recently, we just got back from a three-week tour in Europe.

A lot of his music and his arrangements he did in an album of "Porgy & Bess." I am very familiar with it.

When I heard the show was coming to town I was really hoping to get it and it was really just a dagger in the back.

THE CHAIRPERSON: You did not know

then that they were recruiting for "Porgy & Bess"?

MR. STEWART: I had no idea.

Like I say, that was the first contact I had with it.

I immediately called Jackie Jeffers and asked him exactly what was happening.

And he explained to me after "Tremonisha and the whole thing that went down with "Tremonisha" and forty-one musicians and three are black or four are blacks. He wrote a letter to the Human Rights Commission.

Thereafter, he wrote a letter to the producers.

THE CHAIRPERSON: Of "Porgy & Bess"?

MR. STEWART: Yes, the same people are there, the same people.

THE CHAIRPERSON: They are the same people that produce "Tremonisha"?

MR. STEWART: Yes.

He said hopefully things will change if it happens again.

"Porgy & Bess" came to town and I was kind of hoping things might change. Again, the same thing happened.

I called him again. Then I heard the next day I think it was announced whether it be television or whatever, the Human Rights Commission was going to have an open hearing on the hiring practices of Broadway shows.

And I called Ms. Leverstein having to do with it, which is why I am here.

THE CHAIRPERSON: It would be helpful to know what your own background, training and experience has been.

MR. STEWART: Initially I am a classically trained musician. I have a Bachelor's Degree from the Philadelphia Music Academy and a lot of my background is very similar to Mr. Dalton's in that I am from Philadelphia.

I received my degree in Philadelphia.

I went to high school partially in Philadelphia. I studied with the principal tubist with the Philadelphia Orchestra.

I left Philadelphia for the very same reasons this gentleman had, having to do with as of 1964-1965 there were no black musicians in the white local. The first one to get in was a young lady named Ann Harrison which is a harpist and

she is now playing with the Boston Symphony, Boston Pops.

You kind of see the handwriting on the wall. There are two groups in Philadelphia that handle most of the shows that come through on their way to New York or Boston or where ever they are coming from or going to. And you say it is not going to happen here and that is why I am in New York.

I moved to New York in 1968 hoping for something different and working towards something different. And again, there is a falsehood of ideas and the gentleman that stated you can't expect young musicians to come in and take over a job, there is certain experience necessary, no one in their right mind, black or white or different, no one comes to New York no matter how bad they play or well they play to come in and take a position in a major show.

I didn't expect that when I came to New York. I came to New York expecting to learn and have many experiences and get a wide background behind me before I would expect someone to call me for whatever work necessary.

Now this is the reason I feel so insulted having to do with this show because I have done my homework, you know, and I have paid my dues.

The music that I played in the Gaule Evans Orchestra is some of the most difficult music I have ever heard. I mean that I know of as far as literature for tuba and it in itself has prepared me for anything that is available.

THE CHAIRPERSON: Were you known to Mr. Rodnan?

MR. STEWART: No.

THE CHAIRPERSON: You do not think he knew you existed?

MR. STEWART: To my knowledge.

THE CHAIRPERSON: You do not know if your name was on any list he might have?

MR. STEWART: I don't know.

I asked Mr. Jackie Jeffers whether or not my name was on that list.

He said no.

He could have discovered me very easily by speaking to Jackie, because Jackie and I are very good friends.

THE CHAIRPERSON: While you may not be known to him, it would not be hard to come upon your name in the field?

MR. STEWART: Not at all.

THE CHAIRPERSON: Your own musical background is obviously impressive.

Are there any significant number of minority musicians in your acquaintance with musical training and background and experience similar to your own?

I do not mean on your instrument, I mean music music.

MR. STEWART: There are a number of, on my instrument as well.

THE CHAIRPERSON: Even on your instrument?

MR. STEWART: Yes.

There is a gentleman that is affiliated with the Dance Theater of Harlem, Mr. Joe Daly who has his Master's Degree and is a superb arranger and tuba player and trombone player.

THE CHAIRPERSON: You believe then there is a pool of musicians for most instruments for Broadway?

MR. STEWART: Most definitely.

THE CHAIRPERSON: Thank you very much, Mr. Stewart. This testimony is vital for our record. I appreciate your waiting to give it to us.

(Whereupon, the witness was excused.)

THE CHAIRPERSON: Mr. Harry Smyles.

Mr. Smyles is the orchestra manager of the Symphony of the New World.

H A R R Y S M Y L E S, called as a witness, having been first duly sworn by Commissioner Kee, thereafter testified as follows:

MR. SMYLES: You have to forgive me. I had an extraction yesterday and my jaw feels like somebody has been hammering at it.

I feel especially qualified to give testimony at this hearing because I am not only the personnel manager of the Symphony of the New World, but also I have made about twenty Broadway shows since I have been in New York, a player of about twenty-five years.

I originally came from Cleveland, Ohio and I feel a great deal of kinship with my

two fellow musicians who come from Philadelphia.

I came to New York because I knew that was the center, the center of musical experience, a place to get musical experience. I was very lucky because I was given a Rosenwall Fellowship. If I hadn't gotten that, I probably would still be in Cleveland.

However, I am here.

As I said, one time I was in the orbit of a well-known Broadway conductor who is now dead. He discovered me and I played Leonard Bernstein's show "Candide."

He was riding on the Long Island Rail Road one night with a fellow musician of the other hue and he mentioned my name to this gentleman and he highly recommended me. So when the show was -- I guess I should mention his name is Hal Hastings. He did just about all of Hal Press' musical shows and in a five year period I did every show that he did.

I became a school teacher along the way for some of the same reasons as my colleague here took a degree in education and at present I am teaching school.

I sort of went out of this man's orbit. I'm an oboist, by the way.

Another obo player came into his orbit and was hired.

Mr. Rodnan, who was here this afternoon, hired me to play "Jesus Christ Superstar" and it ran for two years.

When I heard "Porgy & Bess" was coming to town I had every reason to believe I would get a call. I knew about the contractor and sort of knew a little of the history of the personnel business with the show. However, Mel didn't call me and I understand that the show has two obo players. Not one, but two.

At the same time to go along with this, I am not -- it's not my point right now to down Mr. Rodnan or any other contractor because they are all just doing what they usually do. The general practice on Broadway is as crude in my mind as the old shape-up on the docks where somebody comes and picks out so many longshoremen to do the job. This is a fact of life.

So, Mr. Rodnan and Mr. Harris and Mr. Shendell or whoever contracts a Broadway show

all do exactly what other contractors have been doing for years. They hire people in their office, hire associates, hire neighbors, hire maybe the maid, the maid's son.

The president of Local 802 once enjoyed telling us this story. There was a policeman, a monitor policeman that went up and down the block on 44th Street. A show was coming in and in Manhattan and Mr. Minuti at that time was the president of Local 802 was a bass player. He tells the story how he missed out on this show because this policeman was able to see that the producer could park and not get a ticket. And in turn, he promised to hire his son as a bass player in his show that Al Minuti wanted to get. So he lost the show.

Al Minuti was very happy to tell a group of twenty musicians this story about twenty years ago.

When he went to him after "Porgy & Bess," the same -- "Me & Bessie" we are talking about now, had been sent to Germany on the State Department tour and twenty black musicians, myself included sent a delegation to the producers

who are Green & Dreyfuss.

Green & Dreyfuss in turn sent the contractor at that time a telegram in which it directed him to find as many black musicians as he possibly could to be in the show since the show had been a State Department showcase to show how this country allowed its black citizens to develope their talent.

The contractor subsequently called me and first of all, right off the bat, he told me I couldn't get the show because the conductor of the show used a certain obo player, so he had the show then.

He proceeded to ask me did I know a colored boy who played legitimate clarinet and saxophone and did I know a colored boy that played jazz trumpet, but also could read.

Four musicians were hired at that time.

This is 1958 or so.

Four black musicians out of an orchestra of forty-one or forty-two, just like 1976. So we haven't gotten very far.

THE CHAIRPERSON: You have no more

boys than you had then?

MR. SMYLES: Subsequently, this is a side to this contractor that if he used the word, but there was a period of history there behind it, I was advising him it seems -- I don't know if I said black in those days. I probably said Negro or colored.

Anyway, I took exception and he never hired me. I was never hired by Mr. Tanzik.

This all seems to me like an exercise in futility because I was present at the Philadelphia Philharmonic hearings.

There are several white shows on Broadway. I understand "Guys & Dolls" has been criticized by certain members of Local 802 as being discrimination in reverse because the orchestra is made up of predominantly black musicians.

I guess that is my statement.

I was hoping for questions.

THE CHAIRPERSON: Your cynicism is well placed, I might say for the blacks. I think though that the difference between your experiences with such hearings in the past and this is that this hearing is designed to get an enforcement

remedy.

I think Broadway has had an opportunity to show its good faith without correlation and clearly the pits need some help.

We intend to supply that help.

MR. SMYLES: I wonder if any consideration is given to Local 802's role or non-role.

They allow something very illegal to exist.

THE CHAIRPERSON: I think Mr. Rodnan or one of the contractors pointed that out.

MR. SMYLES: There originally was a house contractor who did all the hiring and the Schubert people I think it was the Schubert whose house contractors were such -- I won't say bad musicians -- but they hired bad musicians. And it was a great concern, these expensive scores were not being reproduced the way they should.

Then came into being someone called an outside contractor. Somebody, a member of Local 802 hired by the producer to get him a good orchestra and this is what exists today. We have an illegal person as far as 802 is concerned. A person is not recognized by Local

802.

THE CHAIRPERSON: The outside contractor?

MR. SMYLES: Yes.

THE CHAIRPERSON: Now they are getting rid of house contractors?

MR. SMYLES: Right.

Now there is one other evil which maybe the Commission could direct its attention to. That is one person hiring for any number of shows. They could do it.

If they say to a producer I can get you a show and it is a matter of power, I can get you a good orchestra and I will do it for $75.00 a week or $25.00 a week or nothing. There is nothing in the union contract that Local 802 stipulates to as to salaries.

Then the violinist, who everybody has read about in San Francisco, myself, I guess just the three of us.

THE CHAIRPERSON: Finally, I would like you to comment because of your own expertise and experience on the nature and difficulty of Broadway music as compared with so-called black

music and whether or not an artist can make the changeover.

MR. SMYLES: That is one of the reasons when I say exercise in futility, that is one of the things that really gets you because music is music and I used to think that jazz musicians couldn't play regular musical scores and how wrong I was because I was brain washed the way many people are in the revival of "Porgy & Bess" where I happened to be at the orchestra, they came to the edge of the stage and said how wonderful it is to see a white musician playing his instrument and the black musicians playing theirs and what he meant was violins and strings, those are white instruments and white musicians and trumpets and saxophones and drums are instruments of black musicians, which is as far from reality as anything can be.

There are some Broadway shows, if you played the Beethoven 9th Symphony every night, it would be like playing some Broadway shows that require that you play every second. Some Broadway shows you rest a lot so you don't really work that hard.

"Jesus Christ Superstar" was the case where we had a rock band on one side of the pit and a classical band on the other side.

The rock musicians, I had just as much respect for them as I had for the other musicians and today's musician is a person who can go into a recording studio and play almost anything. Those guys play just about any kind of music there is.

There is something to be said for knowing the repertoire of a symphony orchestra and if you have eyes of becoming a symphony player then you have to know the repertoire. It is as simple as that.

THE CHAIRPERSON: Thank you very much, Mr. Smyles, for this excellent testimony.

(Whereupon, the witness was excused.)

THE CHAIRPERSON: Tania Leon, music director, Orchestra of the Dance Theater of Harlem.

T A N I A L E O N, called as a witness, having been first duly sworn by Commissioner Kee, thereafter testified as follows:

MS. LEON: Okay, before I begin I would like to clarify some terms which have been

used towards myself and several of these cultures that have been previously stated.

First of all, I arrived into this country nine years ago.

THE CHAIRPERSON: From where?

MS. LEON: Cuba, Havana.

I confronted something that I never experienced in my life. It was that I was black, I was Latin and I was a female. Female conductor, so that is three in one. That is the first thing that I confronted.

The other thing that I confronted was black, white, yellow, green, pink, a lot of differences which I never had because my background, I mean, I might state that I have a Chinese grandfather, a white grandfather, a French mother, I am very mixed, so therefore that is why somebody called me "no black" and perhaps that is the way.

THE CHAIRPERSON: In America you sure would be black.

MS. LEON: Now, as far as "no black" means, my philosophy I am talking about personally now, is peace and I cannot work on the grounds that I found, you know, when I came, so that is

why I have been so eager to fight and try to make amends towards all these programs that we have been talking about.

Now, the first thing that I saw which was wrong was a minority experience to our -- when you put a minority experience in contrast to a no minority experience, it is a tremendous explosion.

For instance, I had the opportunity to interview a non-minority person about two weeks ago. He came and played. He had been in the City for only two months. This same person had played for several contractors. Automatically he has been engaged already into a major orchestra that he was scheduled for a tour abroad. He is very young.

We have been talking here about inexperienced musicians coming out of, young, as a young musician coming out of conservatories. What I don't realize or what I don't understand is how this person coming from another state comes with a recommendation already to see these various personnel and then is hired in a matter of seconds.

That is very, very aggravating and

that is the type of normal situation that you might find in the City which is very corrupt. That is from the producers, from the contractors, from the union, from everybody. The entire management is entirely corrupt.

One of the things is that the contractors are business men, they want a secure position. Contractors, they own stone houses on the west side and most of them work with clans. Clans mean they have their groups and their group is their group, that a man might play mostly Mozart, they move themselves to this City, they take care of the commercial -- they move into this area, they take care of promises and they take care of everything and these are the same people. So if you checked the personnel in each show controlled by whichever management, it is going to be always the same people.

So, therefore, first of all, the young musicians have no opportunities. If they are minority, they have less. You see?

That is the problem right now. There is another thing that isn't exactly taking off the ground and the Korean and the yellow face.

They are starting to get into the symphonic media. You are going to see a lot of young musicians coming from Japan which nobody knows of and they are already there, so all the minorities I am talking about, blacks and Spanish that have been in the City trying to make their efforts to be known to play, to be ahead, you know, you are still in the same situation, so that is why at the Dance Theater we have discussed this problem because for us to make possible the dancing media, in other words, ballet, often we have to go out there and fight and prove that we could dance and play and then we had to make a list of followers and actually found in 1972 and that was played by the New York Symphony, The Symphony of the New World.

In 1975 we decided to create the Dance Theater of Harlem Orchestra and we manage ourselves. Thus, as I said, this City is very corrupt so you need a person to be there who has connections. If this person is willing to work with you, that is something different and I must say he has been willing to work with us.

THE CHAIRPERSON: Does that mean then

that he had been willing to look for musicians for you who are minority as well as white?

MS. LEON: He had the need to find, I don't know why the need, perhaps the needs are being answered by you but he had the need to fire, to find -- no -- minority musicians for his shows in the future and this was expressed by him in 1972, so he is the only person that had been calling us as far as --

THE CHAIRPERSON: Who called you for --

MS. LEON: For an information for making a list and this happens since 1972 when he has, he was working with Harry Smyles, so Harry Smyles, also and myself had been working towards a list of people that have this experience, that experience, how do you get them on and things like that.

THE CHAIRPERSON: Would you discuss what your techniques are, what your outreach techniques are for recruiting minority musicians?

MS. LEON: Well, actually our techniques are the same with everybody. We found the orchestra and we found that it was necessary for everybody to work for the project with the same philosophy.

The philosophy is to get along together and play together so therefore everybody who goes uptown to work with us comes and makes an audition. After the audition is made by the whites, the blacks, by the pink, by everybody, and if they pass the test and qualify as a musician, they will go into another test.

If they don't pass the second test they don't go anywhere.

Do you follow me?

So, it is a matter of trying to make a group together and that is the only thing that we are aiming to, to make people work together, less individuality and more, a common thing for everybody.

The thing is, as I told you, it is very important that everybody is controlled by the same people. It was very unfortunate that Mr. Rodnan left because I arrived into this country on September the 7th, I am talking about this year, and I found on my answering machine a message by Sam Levitan. We are friends. It seems that when the whole thing started to get very negative about our participation into the

"Porgy & Bess" situation, Sam called me in order to try to see if he could get different musicians to get into "Porgy & Bess." But, unfortunately, when he was given that show, that show was already laid out.

I am talking about the personnel. So, he couldn't do anything and I am here, I am sitting here and I am seeing the whole thing twisted. It is all twisted and specifically when certain people are not present you can use names and blame things on other people who are not present.

THE CHAIRPERSON: Finally, how would you characterize the ease or difficulty today of recruiting minority musicians who are classically trained and can read music?

MS. LEON: Actually, that is something that we have been trying to talk to the different organizations in town to make this type of togetherness that I told you about it and we have been talking with the director of the Symphony of the New World, we have been talking about Janet Wolfe, she is from the Port Authority and we were trying to get in touch with everybody who is in the leading minority groups or organizations into the

field of music and one of the things that we have proposed is that since we received some kind of formal aid in order to create concerts and things like that, we were trying to aim for jobs where you will have to invest your time in playing all types of repertoires or a standard repertoire.

We are aiming for master classes, scholarships, things like that. The thing, the plan, is that if you are equipped, your personnel with all that, a personnel has to fight, when they confront situations such as the one that you have been hearing.

Nobody would be able to say that they are not able to read because it is very easy.

In this way, the way it looks at things now, it is very easy to say, well, the black musicians, they have another experience because he has a poor resume. That is not the answer.

THE CHAIRPERSON: So you are making this effort to --

MS. LEON: We are making this effort and we are asking for money in order to create all kinds of, let's say, experienced for the minority musician which is something that, let's

assume that you are being, having your courses of studies at Juilliard and you are non-minority. By the time you get graduated you already have a place to go and specifically in order to get training you already have an orchestra where you are going to be training.

THE CHAIRPERSON: So this is about a comparable experience for minorities?

MS. LEON: Exactly.

THE CHAIRPERSON: I want to thank you, Ms. Leon, for this testimony. It's been very helpful to us.

(Whereupon, the witness was excused.)

THE CHAIRPERSON: Finally I want to call a musician, George Scott.

G E O R G E S C O T T, called as a witness, having been first duly sowrn by Commissioner Kee, thereafter testified as follows:

THE CHAIRPERSON: Mr. Scott, have you any statement to make?

MR. SCOTT: I am currently teaching music in the public school system and have been for the last fifteen, eighteen years. I go way

back.

I became a member of Local 802 in 1945 after being discharged from the Army. I worked with the Big Bands, many of them and in 1948-49 when the big bands began crumbling, I went to Juilliard. I graduated from Juilliard in 1952. I studied at Juilliard for about four years and things were still bad so I went over to Columbia Teachers College, received a Bachelor's, Master's Degree in music education.

I met a contractor, I think after that, after pushing and really pushing, I met a contractor at the Musician's Union and found out that he was only talking to me for one job specifically because I think it was Negro History Week and they wanted one or two black musicians in the symphony orchestra that was being conducted, I think, at the time, by Demitrius Child and I became very discouraged because I didn't even get that job and I went straight from there to teaching.

I think I got the job teaching right from, I went straight from the Musician's Union to this school. I read in the paper I had taken the teacher's exam and gotten a teacher's license

and I have been teaching ever since.

My resume has been with the Juilliard School of Music Placement Bureau since 1952. I was never called. I received a list with every contractor for every Broadway show from the Musician's Union. I think at that time Mr. Shendell was in charge of the Broadway shows at the union. I received from the secretary a list of every contractor. I sent every contractor a copy of my resume with a photograph. I think I received one reply from one, I think I sent about a dozen. I think I sent out about a dozen, I received one reply from one contractor stating that he received my letter but unfortunately there was nothing that he could do about it.

I think this was in 1957.

Two or three years later I sent out some letters or cards and I have never received an answer.

Lately, the last year or two I sent resumes again to the contractors and I have yet to receive a reply or an answer from any of them.

THE CHAIRPERSON: What instrument?

MR. SCOTT: Trumpet.

THE CHAIRPERSON: And you have studied at Juilliard?

MR. SCOTT: I studied and graduated from Juilliard.

THE CHAIRPERSON: Is it fair to say given the experience that you just outlined, you were never in the pool of musicians known to contractors in the sense that they seriously looked at you to see if you qualified?

MR. SCOTT: I was never in the pool.

THE CHAIRPERSON: Would that be true of your contemporaries, people in your age group who are black musicians?

MR. SCOTT: I remember when I graduated from Juilliard there were four of us. I remember four black musicians and as of today not one of them are performing as musicians. They are working in the Transit Authority, some of them are teaching, not one of them that graduated with me are in the profession.

THE CHAIRPERSON: So you are a veteran of World War II?

MR. SCOTT: Yes.

THE CHAIRPERSON: Your testimony then

that most of the musicians, trained musicians -- I take it you went to school under the GI BILL?

MR. SCOTT: I did, yes.

THE CHAIRPERSON: -- who took advantage of the GI Bill to develop their musical talents, who were black, were forced to go on to other occupations and never able to play?

MR. SCOTT: Right.

I was forced to go into teaching.

THE CHAIRPERSON: I want to thank you very much, Mr. Scott. I think you have struck the appropriate note on which these hearings should end.

(Whereupon, the witness was excused.)

THE CHAIRPERSON: If the hearings are at an end -- I am sorry, I have to call the hearings to an end because I have, myself, to sit on a dais for which I am already late.

However, if there is testimony that I have not received, I am going to allow that testimony to become a part of the record by inviting any such person to come here and have that testimony taken down by a stenographer. I want simply to say because Mr. Scott's testimony

summed it up, that he belongs to a generation of invisible black musicians, invisible to all but themselves.

People in this room who perhaps could be the sons and daughters of Mr. Scott and they feel almost as invisible.

Mr. Scott, ladies and gentlemen, these hearings are at an end but this subject is not. Our work lies ahead, work that should have been done a generation ago when "Porgy & Bess" first came upon the scene as a revival. "Porgy & Bess" perhaps teaches us a bitter lesson, that if you let things go for themselves, whether it is music or in engineering or in baseball or in life, in a country where race has signified second-class citizenship, nothing will happen.

Something is going to happen out of these hearings. These hearings have been for the purpose not simply of receiving your testimony but in informing us on how to go about in designing a remedy.

Out of each bit of testimony has come part of the mosaic that will go into designing a remedy. Perhaps some would consider it

inappropriate that the arts go under a remedy. That is enforceable. That case perhaps might have been made out ten years ago, the Urban League first began to look at this question.

Given the substantial lack of progress during this decade, there is simply no case to be made that the arts would rectify themselves any faster than the rest of the American society.

What the arts might do for themselves we have to do for the arts. We will seek to find and I stress talent for this Commission is sensitive to the fact that we are dealing in the heavy world of art. Indeed we have been gratified by the extent to which the black artists who have testified here have been sensitive to the fact that one needs to be highly qualified to pursue a career on Broadway.

But, it is clear that one needs to be more than highly qualified. One needs to be visible.

Black musicians may stand out in a crowd but they clearly have not stood out for the producers or the contractors or the other actors in this sad, sad tale. It is time for

action. The time for action is now.

I thank you for attending these hearings.

These hearings were prepared by a staff member, Miriam Lieberstein who didn't know anything more about music than I do.

For the record, I want to say that even though I am black and the daughter of a talented father who knew music by ear and read music, I know less about music than you. It all goes to show you don't have to be black to put together a hearing about exclusion of black musicians.

I do want to say for the record that the array of extraordinary witnesses that I believe literally have helped us to the point where remedy will be forthcoming, simply that quality of witness does not produce itself but that through the hard work of a staff member who has a record of special commitments to the cause of equal rights and I want to go on record when a staff member operates above and beyond the call of duty and produces a hearing of that quality, that that person is Miriam Lieberstein and I want to say for the record she has produced an excellent hearing in a setting

where notevery witness was inclined to be forthcoming easily.

While we have our subpoena power in our back pocket and are always prepared to use it, she managed to get the relevant actors here without having to resort to that legal process.

These hearings are now closed.

(Time noted: 6:25 P.M.)

I N D E X