The meeting convened in Room 540 at 624 Ninth Street, N.W., Washington, D.C. at 9:30 a.m., Abigail Thernstrom, Vice Chairman, presiding.

PRESENT:

ABIGAIL THERNSTROM, Vice Chairman
JENNIFER C. BRACERAS, Commissioner
GAIL L. HERIOT, Commissioner (via telephone)
ARLAN D. MELENDEZ, Commissioner
ASHLEY L. TAYLOR, JR., Commissioner
MICHAEL YAKI, Commissioner

KENNETH L. MARCUS, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
TERESA BROOKS
CHRISTOPHER BYRNES, Attorney Advisor to the OSD & Acting Deputy General Counsel, OGC
DEBRA CARR, Associate Deputy Staff Director, OSD
PAMELA A. DUNSTON, Chief, ASCD
LATRICE FOSHEE
MONICA KIBLER
ROBERT LERNER, Assistant Staff Director for OCRE
SOCK FOON MacDOUGAL
EMMA MONROIG, Solicitor/Parliamentarian
EILEEN RUDERT
KARA SILVERSTEIN
KIMBERLY TOLHURST
AUDREY WRIGHT
MICHELE YORKMAN
COMMISSIONER ASSISTANTS PRESENT:

DOMINIQUE LUDVIGSON
LISA NEUDER
RICHARD SCHMELCHEL
KIMBERLY SCHULD

PANELISTS:

STEPHEN L. PEVAR
FRANK BIBEAU
ALVIN WINDY BOY, SR.
JAMES RUNNELS
BARRY D. SIMPSON
DUANE H. YAZZIE
TABLE OF CONTENTS

AGENDA ITEM                                         PAGE

I.  Introductory Remarks by Chairman                4

II.  Speakers' Presentations                        9
     Stephen L. Pevar                                 9
     Frank Bibeau                                     14
     Alvin Windy Boy, Sr.                             75
     James Runnels                                    84
     Barry D. Simpson                                 91
     Duane H. Yazzie                                  98

III. Questions by Commissioners and                  23
     Staff Director

III. Questions by Commissioners and                  107
     Staff Director
P-R-O-C-E-E-D-I-N-G-S
(9:37 a.m.)

I. INTRODUCTORY REMARKS BY CHAIRMAN

VICE CHAIR THERNSTROM: On behalf of the
U.S. Commission on Civil Rights, I welcome everyone to
this briefing on discrimination against Native
Americans in border towns.

Today, November 9th, 2007, the following
commissioners are present: Commissioners Braceras,
Melendez, Yaki, Ashley Taylor, and myself. And I
believe that Commissioner Heriot is going to
participate on the phone.

Gail, are you there?

COMMISSIONER HERIOT: Yes, I'm here.

VICE CHAIR THERNSTROM: Welcome to the
Commission. Commissioner Kirsanow has asked me to
convey his regrets that he can't be here. He is
hearing oral arguments in a major case as part of his
duties as a member of the National Labor Relations
Board. And the Chair, Gerald Reynolds, also regrets
his absence. He has extremely important business in
California.

So we address today a question that
actually is not new to the Commission. It has been
before the State Advisory Commission. And there has
been a recent report by the New Mexico Advisory Committee on precisely this topic, which is obviously an important one.

So past studies of the U.S. Commission on Civil Rights and its State Advisory Committees have investigated the claim by Native American reservation members that some non-Native residents, non-Native American residents of border towns, have willfully violated their civil rights.

The Commission will examine three questions: one, the number of civil rights violations, whether the number of civil rights violations has changed over time; two, what has been done to improve relations between the two groups and reduce incidents of discrimination; and, three, the nature of current problems.

The Commission has assembled a panel of experts to discuss this topic. And the speakers are -- and if I mispronounce anybody's name, please forgive me and correct me -- Mr. Stephen Pevar.

MR. PEVAR:  Pevar.

VICE CHAIR THERNSTROM:  Pevar. Thank you.

And I hope I remember it the next time.

-- Senior Staff Attorney, American Civil Liberties Union. Mr. Frank Bibeau, is that?
MR. BIBEAU: Yes, ma'am.

VICE CHAIR THERNSTROM: Oh, made one of them.

-- is an attorney with the -- hope I get this pronunciation here correctly -- Anishinabe. Is that correct?

MR. BIBEAU: Yes, ma'am.

VICE CHAIR THERNSTROM: -- Legal Services; Mr. Alvin Windy Boy, Sr., former Chairman of the Chippewa-Cree tribe, Rocky Boy's Reservation, Montana; Mr. James Runnels, Chief of Police at Farmington, New Mexico; Mr. Barry D. Simpson, Superintendent, Bishop Union Elementary School District; and Mr. Duane H. Yazzie, President, Shiprock Chapter, Navajo Nation.

The record will be open for 30 days. Public comments may be mailed to the U.S. Commission on Civil Rights, Office of Civil Rights Evaluation, room 740, 624 9th Street, Northwest, Washington, D.C. 20425.

So we have divided our experts into two panels. And panel one consists of Stephen Pevar. Got it right this time. Thank you. He was a graduate of Princeton University and the University of Virginia Law School.

From 1971 through 1974, Mr. Pevar was a
staff attorney with the South Dakota Legal Services on
the Rosebud Sioux Indian Reservation. From 1976 to
the present, he has been a national staff counsel for
the American Civil Liberties Union.

He has litigated over 200 federal cases
involving constitutional rights. His specialties
include free speech, Indian rights, prisoners' rights,
separation of church and state. He is the author of
The Rights of the Indians and Tribes.

Frank Bibeau is an attorney for the -- oh,
here we go again -- Anishinabe Legal Services -- did I
mess up this time? -- serving White Earth, Leech Lake,
and Red Lake Reservations in northern Minnesota.

He is an enrolled member of the White
Earth Reservation, has four cases before the Minnesota
Court of Appeals addressing different Indian civil and
treaty rights.

He has been in private practice and worked
as a tribal attorney for the Leech Lake Reservation
from 2000 to 2004. He has also been an attorney for
the State of Minnesota.

Please swear and affirm the information
you have provided is true and accurate, to the best of
your knowledge and belief.

(Whereupon, there was a chorus of
COMMISSIONER MELENDEZ: Madam Chair, I would like to read a statement before we hear the testimony, if possible. It's just acknowledging this month as --

VICE CHAIR THERNSTROM: Sure.

COMMISSIONER MELENDEZ: I want to announce that November has again been proclaimed National American Indian Heritage Month by the President. The President said that American Indians and Alaska Natives continue to shape our nation by preserving the heritage of their ancestors and by contributing to the rich diversity that is our country's strength. Their dedicated efforts to honor their proud heritage have helped others gain a deeper understanding of the vibrant and ancient customs of the Native American community.

We also express our gratitude to the American Indians, Alaska Natives who serve in our nation's military and work to extend the blessings of liberty around the world.

VICE CHAIR THERNSTROM: Thank you very much for that statement.

Well, I welcome you to the Commission once again. I am calling on you in the order you have been
given for the record. So, Mr. Pevar, you will speak for ten minutes. Please watch the clock. And we are really going to try to keep this on time because obviously we have a lot of speakers. Please proceed.

MR. PEVAR: Thank you very much. You know, ten minutes is cruel and unusual punishment.

II. SPEAKERS' PRESENTATIONS

MR. PEVAR: I want to acknowledge the Commission for continuing these investigations and for inviting me to participate in these discussions.

Border racism against Indians exists. It is pernicious. It is virulent. And it manifests itself every day in scores of ways: law enforcement, in the public schools, in voting rights, housing discrimination, and in banking, to name just a few.

I know it exists because I have seen it with my own eyes. I saw it happen numerous times when I lived on the Rosebud Sioux Indian reservation in the early '70s: the suspicious looks that I and my clients would receive when we went off the reservation to courts, the racial profiling that I saw occur, the seemingly unfair and harsh sentences that my clients often received.

In the question and answer period, I would love an opportunity to discuss one case in particular,
which for me manifested inexcusable racism against my Indian client in Murdo, South Dakota. I also know that it still exists.

I and my colleagues have filed race discrimination cases. The Voting Rights Project of the ACLU has been a leader in filing voting discrimination cases that have proven race discrimination in Colorado, Nebraska, South Dakota, and Montana. Federal court decisions have recognized that communities just off the reservation were where, let's say, school districts encompass portions of the reservation, have deliberately and intentionally discriminated against Indian citizens, such as by having block votes to elect their members.

In a school district, for example, there may be 40 percent Indian and they're all located in, let's say, the southeast portion of the district. If delegates were voted on by district, then the Indian population would likely be able to elect two people. Knowing this, communities have deliberately chosen to elect their representatives on an at-large basis, resulting in no Indian ever being elected to the school board.

In the past 18 months, I have been one of the staff ACLU attorneys pursuing a lawsuit entitled
Antione v. Winter School District in South Dakota, which alleges race discrimination against Indians in the public school system in Winter, Tripp County. This school district borders on the Rosebud Sioux Indian Reservation and has a sizeable Indian population.

Just very quickly, to give you an idea, the school's own records suggested rampant discrimination in virtually every aspect of the school administration. For instance, regarding out-of-school suspensions, expelling, kicking kids out of school, in the middle school, between 2001 and 2006, one in every 5 Indian students was suspended from school but only one in every 27 white kids.

Even though Indians are only 20 percent of the population of the middle school, they receive 60 percent of the school suspensions. The comparison of graduation rates was shocking. In the high school in 2003, for instance, only 11 percent of the Indian kids who began as a freshman or freshwoman ultimately graduated, a 90 percent failure rate, 90 percent. The graduation rate for white kids was 82 percent.

There is also in that school system what we call the school-to-prison pipeline, where Indian kids in our view were discriminated against and where
infractions if committed by a white student were viewed as "Well, boys will be boys," but if committed by an Indian student, it represented some violent act, some enormous threat to the school.

Between 2001 and 2006, 11 percent of Indian students were referred to the police, so one out of every 10 nearly. For white kids, it was less than one out of 50.

Now, here is the good news that I'm very pleased to report. To the enormous credit of school officials in Winter, South Dakota, a very proactive settlement of our lawsuit was agreed upon.

Just a couple of months ago, we negotiated an excellent remedial plan that I will be happy to discuss if anyone asks questions about it or needs more details. I will even submit a copy of the final decree to the Commission.

We are appearing December 10th in federal court in Pierre, South Dakota. Both sides are urging the court to adopt this remedial plan. And it will if implemented properly change virtually everything about the discrimination that has been rampant for decades in the school system.

Now, as the author of the book, The Rights of the Indians and Tribes, I keep a file on the
subject of discrimination against Indians. Obviously I do not investigate these issues throughout the United States. It would be impossible to do so.

But I do keep a sizeable file on that subject. And in preparation for these remarks, I reviewed my file. And, indeed, I did find articles or copies of studies on virtually every aspect of our society.

One article that I brought with me that I would be happy to leave, it's a December 24, 2003 article in "Indian Country Today" reporting on a survey conducted by the U.S. Department of Housing and Urban Development in the States of Montana, Minnesota, and New Mexico. And it found discrimination. And I'm reading now from the article, "Discrimination against American Indians occurred 28.5 percent of the time when families or individuals attempted to find adequate rental housing."

More than one-quarter of the Indians who sought to rent an accommodation were denied. But then when they sent a white person to rent the same facility, it was told that it was available. Hispanics were next at 25.7 percent, followed by African Americans at 21.6 percent and Asians 21.5 percent. So the HUD study found that Indians were the
most likely racial minority to experience race discrimination.

Now, I will also submit as part of my written materials as soon as I have an opportunity to gather them other articles or studies involving race discrimination against Indians. Indians have every constitutional right, both on the reservation and off, that every other citizen has. But these rights often are violated due to race discrimination.

No one, no one, should be made to feel inferior as a result of his or her race, not in this country and not anywhere. Racism cheapens and diminishes all of us. We all need to improve our race relations, all of us.

Thank you very much.

VICE CHAIR THERNSTROM: Thank you very much, coming in early even.

Okay. Mr. Bibeau, you are --

MR. BIBEAU: Thank you.

VICE CHAIR THERNSTROM: You have got ten minutes.

MR. BIBEAU: I appreciate being here today. And I'm glad that Bill couldn't come so I could come for Mr. Lawrence. And his remarks have already been presented. I'll try not to duplicate
those or Mr. Pevar's, which I think are accurate for almost every reservation.

It's interesting that he mentioned voting rights. The ACLU has set up a project in the three-reservation area where I live. And they worked on the voting rights. We had tribal IDs made, and we were allowed to use those for identification in the elections.

Shortly after that, because they didn't have the little strips on it that give all the other information on everybody like a credit card, our IDs were determined by the state to no longer be useful for anything.

We even have in one county where the police go and tell the pawn shops that they can't use the Red Lakers IDs to identify them for pawning whatever. And that pawn dealer actually takes pictures of the individuals because he wants to make sure he knows who he is dealing with. But, yet, the police have a habit of telling the businesses what they can and can't use for an ID, which seems very odd.

You are probably familiar with the Red Lake shootings that happened at the high school a couple of years ago. Interestingly enough, there's a
lot of problems between trying to figure out where you
want to have your kids, whether you want to have them
in a reservation school or off reservation.

One of the adjacent communities that we're
working through a couple of issues with right now, a
town called Kelliher, the school board has put a max
class size, which I would say coincidentally mirrors
the non-Indian population size for the people who
attend the school in an effort to prevent Red Lake
children from going to that school. It's very odd to
see those kinds of things, and we're going to be
working through that as well. But those things do
happen.

Minnesota is a different state in that
it's a Public Law 280 state. And it confuses, I
think, the state and the government that exists there
because in 1953, when the federal government gave
criminal jurisdiction and some limited civil
jurisdiction to the state, the state assumed all
jurisdiction.

In 1987, when some of the casino stuff
came up with the Cabazon decision, people started
realizing that the civil jurisdiction wasn't quite as
broad as everyone had assumed being 100 percent. And
since that time, we are trying to regain the rights
that we have always had but people don't want to let
us have.

One of the problems that I come across is
that -- and I will just tell you one of the little
stories. I was in county court. And when I go into
county court and I represent somebody, oftentimes the
other Indians in the room will come and stop me
because they also realize that I understand more about
what is going on.

There was a young man in there who was
about 20 years old. And he was in there for a ticket
for what they called the "Not a Drop" rule. And that
means that between ages 18 and 21, if you have any
amount of alcohol whatsoever and you're caught
driving, it's a zero tolerance violation.

I asked him how did he get stopped, and he
said he didn't have any license plates on his car.
And I said, "Well, did he give you a ticket for that?"

He said, "Well, no."

And I said, "Well, what about
registration?"

He says, "I didn't have that either."

I said, "Well, did he give you a ticket
for that?"

And he said, "No."
I said, "Do you have a driver's license?"
He said, "No."
I said, "Did you have insurance?"
And he said, "No."
I said, "He only gave you the ticket for 'Not a Drop'?"
He says, "That's it."

Unfortunately, the "Not a Drop" rule is perceived as criminal where we live, and the other four are perceived as civil regulatory. And they would go to tribal court. The police feel that the Indian people do not punish their own people severely enough or properly enough. And so they also don't want to write tickets and waste their time to go and testify at court for what may have happened for safe driving conduct for everybody in Minnesota.

Oddly, at the same time, because everybody's budgets are shrinking, they're looking for every penny they can find. And so they write tickets for what they think they can extract from Native Americans through their court system, as opposed to sending people to ours.

The opposite is happening on the White Earth Reservation. In White Earth, the casino was placed on non-trust land at the time. It's in trust
now.

They pay their taxes under protest. And for the last three years, the taxes have approximately reached $12 million. Mahnomen County is wholly within that reservation and cannot come up with $12 million.

They are so mad that the county attorney has told the records person for the county that they cannot give marriage licenses to tribal members who have been divorced in tribal court because it's not recognized by them. They can go to the next county over and get a marriage license, but they can't get one from that county.

When tickets are given to tribal members and they realize that the tribal members have a right to have it transferred to tribal court, rather than having it transferred to tribal court, they just dismiss it because it would cost time and money to put a letter together and send it over to tribal court.

Tribal court might actually collect the fine. So you actually don't have prosecution. But, yet, when they could recover the money for a marriage license or other things, they would rather just tell the Indian people no.

It's a very weird environment to live in because I grew up here in Manassas 25 years ago. I
moved here during the '60s and '70s during civil rights and everything else. Civil rights have not reached the Indian people.

Oddly, at this time, because of casinos and gaming, you have internal oppression as well and also good pieces. Minimum wage where I live is probably $7.50 because of the casino jobs. And most often reservations are the largest employer in the counties.

That has enabled us to get credit. That has enabled us to get cars and houses and things. That also means that we have patronage in our politics and that you can be fired just because you're in the wrong family.

When that happens, when we lose our jobs and our credit, the people who are adjacent to us in the non-Indian communities can't always tell who we are and what our backgrounds are. And so they don't want to give us credit again maybe.

We have destabilized our adjacent communities at the same time. It's a form of racism. It's a form of discrimination. I don't see it so much with the people, but the police I certainly see it. And the police, both internally, the tribal police, as well as the county police, have even come to some
agreement when if they perceive it's a tribal member who is called, they try to have the tribal police go out there because the county doesn't think they have to anymore.

It's falling apart, instead of coming together in a lot of ways. And it leaves people in a vacuum. It leaves people unsure of what rights are going to be enforced.

At the same time, I work on treaty rights in state court. A particular case that I have been working on for some time is called civil forfeiture. And you may be familiar with the concept that you've had drunk driving two or three times, fleeing from maybe a drunk driving or something. They call it a criminal thing. And they go to take your car.

Because it's civil and it happens on the reservation to tribal members, it's civil regulatory and it belongs in tribal court and state lacks jurisdiction, while I have been able to get cars back for many years and the county attorneys know I can get those cars back, they will not voluntarily release those cars when they know they have taken them from a tribal member on their reservation. They will attempt to keep that vehicle and sell it, hoping I don't find out.
I have finally gotten a judge to rule against me. I've taken it to the Court of Appeals now also. And hopefully I'll get a precedent set for tribal members on their reservations throughout Minnesota.

In the meantime, people are trying to collect everything they can from the poorest people. They're keeping us poor. We're helping ourselves sometimes keep us poor. But it's very difficult where I live for the distances. If you don't have a car, you don't have a job, you don't maybe get to keep your house, you don't maybe get to keep your family and kids.

There are people who go through CHIPS, Children in Need of Protection, because they are homeless. There was a woman who didn't have the proper refrigeration for insulin for the diabetes for her child. And so they took her child out of the home until she could get a home. Well, it's hard to get a home without a car and without a job.

It's very weird how the laws are starting to impact us. We're bringing a lot more stuff into tribal court, but we really don't always have the resources. And I'm not so sure that the counties and the state really want us to.
And in many ways, you know, it's sad for me, as much as I try to be friendly with all the attorneys. These are some of the smartest people in the world who know exactly what they're doing, who know they're doing things that I believe are against the law, and they continue to do them for the welfare of their own budgets.

When you talk about civil rights, I think people who are in positions of power in the establishment who understand what your rights are and intentionally look the other way or, contrarily, even penalize you, I find that very offensive. It's very sad. And there are things like that that I think people need to understand that still exist.

It's not very much different than what the South was 30-40 years ago, when I was a kid. It still arrived. And it's in the United States.

Thank you.

VICE CHAIR THERNSTROM: Two witnesses who have used their time extremely well, and we thank both of you. It is now open to questions and comments by commissioners. Yes, Commissioner Yaki?

III. QUESTIONS BY COMMISSIONERS AND STAFF DIRECTOR

COMMISSIONER YAKI: I would like Mr. Pevar since he opened the door to tell us about the one case
in South Dakota that he wished to discuss.

MR. PEVAR: I was appointed to represent an Indian man who lived in the town of Murdo. Murdo is a relatively small town, but it's on U.S. 90. And he was accused of possessing stolen property.

When I spoke with him, he told me the story that late one night, four Indian fellows, whom he didn't know, stopped off at his house and asked if he would give them $20 if they left this saddle with him.

And being Indian and this being part of his culture, he agreed. And he gave them $20. And they said that they were going to Rapid City and later in the week would come back and pick up the saddle.

They never came back. Three months later he then took the saddle to a rancher, whom he knew had horses, and offered to sell him the saddle. The rancher immediately recognized the saddle as his own saddle that had been stolen. The rancher then called the police. And they came and arrested my client.

At trial, I called three witnesses, including a former Chairman of the Rosebud Sioux tribe, as well as two very prominent Indian business people, all of whom testified that in Indian culture, you help one another, you don't question, you don't
worry, if you can help somebody, you do and that they had given money out to many Indian people who appeared needy at the time, took property, and about half the time, people came back for the property and the other half didn't.

In other to prove this crime, you would have to show intent that this gentleman knew that the property was stolen when he possessed it. Now, obviously he could not have known that it belonged to the very person whom he tried to sell it to. No one is that stupid. And the evidence showed that in the Indian world, it was perfectly reasonable for him to do exactly what he did do.

We also called as a witness the white woman whom this man worked for. And she reported that he had been working for her for almost two years, he was totally reliable, she gave him the key to his house, and he often did work inside the house, that she couldn't believe that he would have deliberately either stolen property or possessed property.

It took the jury less than 60 minutes to come back with a guilty verdict. I was stunned. I started crying. My client went like this to me as if I was the only one in the entire courtroom who actually thought that he would be found not guilty.
The next day the white woman who had testified called me to report that she drove her car out of her driveway that evening and the brakes failed and that when she took it to the shop in the morning, the mechanic told her that someone had slashed the fluid cable to her brakes.

This is the kind of thing that I in Legal Aid and my other co-counsel in Legal Aid experienced routinely. It is the kind of shocking thing that probably the majority of us don't experience or I should say the majority of white people anyway unless they might live in some minority community or minority country, don't even have a clue as to what goes on.

To this day, I am just so horribly disappointed at my fellow citizens in Murdo, South Dakota who sent to prison for a year this man, whom I am absolutely convinced was innocent. That's the criminal case.

VICE CHAIR THERNSTROM: Other questions from commissioners?

COMMISSIONER MELENDEZ: Yes. Mr. Pevar, you talked about recent voting rights discrimination. Could you comment a little more on specific cases?

MR. PEVAR: There have been four or five cases that I am aware of handled by the ACLU Voting
Rights Project: Thurston, Nebraska; in Martin, South Dakota; in northern South Dakota; in Montana; and in Colorado.

And all of them involve the same basic set of facts, as I mentioned. It was either the county commissioner's office or a school district in which there were substantial minority, Indian minority, populations. But they were congregated in an area, in a region within the voting district. And, rather than make voting by districts, they had an at-large election.

And, as a result, if the Indian population was less than 50 percent, as it was in all of these situations, Indians routinely lost the elections. All five of these cases resulted in federal court decrees finding intentional discrimination.

COMMISSIONER MELENDEZ: One more question I have, could you please talk more about voter ID requirements? I know that not every Native American person drives as far as a driver's license and the issue on using tribal enrollment cards and those types of things. Can any of you --

MR. PEVAR: Frank mentioned that subject and not me. The issue about voter IDs is a national issue, not only for Indians but a number of people who
might not have driver's licenses. And it is a pressing problem. I know it is for Indians that they have difficulty registering to vote if they don't have a picture government ID.

I don't have any personal information about this. So I need to qualify this. But I have heard that a number of Indians have had difficulty registering to vote, even when they have had tribal IDs.

But Frank may have more personal information about that than I do.

MR. BIBEAU: And I think his comments are accurate for where we are at. It was surprising for us, as a number of reservations, to go through the effort to try to get IDs out to everybody in concert with the state.

And then I think it was a year later they basically said, "Well, your IDs don't have all the stuff we like to have on, whether it's the PATRIOT Act, the Homeland Security Act."

We don't mind people knowing who we are and knowing where we live, but, you know, we also like a little privacy. And we don't just want the man who always seems to know where we live and when to find us to just be able to do it that much easier either.
And it seems odd that we would go through this. And now that we have met one hurdle, now let's put this little magnetic strip on there. And, as Indian people, we're not going to know what's on that magnetic strip. We don't know what kind of information is on there.

It's a very strange world in that sense. It just seems like as soon as you meet one barrier, another one comes up. And I guess that's the real problem because I know that I have gone to vote in what I would call white. And I use the term "white" like Mr. Pevar because in Indian law, you're either Indian or white. I mean, that's kind of how the language works.

So I have gone to vote there. And you can bring an electric bill. It shows your address. It shows you're currently there. It's strange. But they've gotten things now. And supposedly -- and you are aware of the other attorney general's firing. There was one in Minnesota that was intentionally fired. They're not sure. And a new one came out there.

The rumor around the reservations is that she is looking at the voting rights issues because tribal members when we go to our elections, we give a
lot of people rides because they don't have cars, they
don't have driver's licenses, and they don't like --
and I say, "they." I'm guessing the Republicans don't
like the way we turn out to vote. And I guess we help
each other with gas money or whatever. And so they
think that maybe we're doing this, which is in a
predominantly DFL state.

And so supposedly the U.S. Attorney
General is going to be looking at the way we do our
voting on reservation to see how it may impact off
reservation as well. And we're not that big a people
to impact the vote.

Are people looking for a problem? I don't
know. Are they making a problem? I don't know. It's
interesting.

COMMISSIONER YAKI: Aren't there also some
sovereignty issues involved? I mean, don't you have
the ability to make your own ID? What is it that in
that interplay between the notion of a sovereign
nation and the neighboring town that enables them to
say that "We're sorry. We decide not to recognize
your own sovereign form of ID"? Has anyone brought
that up or how has that been --

MR. BIBEAU: I don't think it's the people
so much. Minnesota is a very diverse population.
Even in the early turn of the Nineteenth Century and the late 1800s, you have many, many ethnic groups that were all discriminated against over the years.

And so they have all been intermarried for 10 decades, 15 decades. But it's the system. I perceive it's the actual institution. If we don't have a Minnesota driver's license, we haven't paid $18.50. They want us to pay them for the stuff that they recognize.

I perceive it as a way to keep us in poverty in a sense. I don't get it. Our tribal IDs used to be free. We have to pay a little bit for them now. But it seems odd that who I am, even as an attorney at times, I still have to be able to prove much more of who I am to be able to do things. And it all seems economic. Almost every problem I look at, if you look at it, there's an underlying dollar sign problem.

And that's what I think is happening with the budget problems and everything everywhere in the United States. In Indian country, when you are dealing with a lot more poor people, it just becomes a lot more obvious.

COMMISSIONER MELENDEZ: Just one more question I had. Can you talk more about how legal
jurisdiction on and off reservation affects the enforcement of criminal and anti-discrimination laws?

MR. PEVAR: Yes. Chapter 8 of my book goes into this in detail. Criminal jurisdiction on Indian reservations is enormously complicated. And who has jurisdiction over a particular crime will depend on where the crime occurred, whether on Indian land or non-Indian land. It can also depend on the race of the victim as well as the race of the perpetrator. And all of those factors have to be considered in determining whether the tribe, the state, and/or the federal government has jurisdiction.

There have been a host of court decisions as well as several federal statutes that help decide many of these questions of criminal jurisdiction. But having said all of that, let me emphasize, as I do in my book, that one of the very unfortunate and shameful aspects of the complex and complicated set of jurisdictional laws is that, as Frank mentioned, many law enforcement agencies simply throw up their hands and say, "Well, I'm not going to spend my time and my money prosecuting violators on an Indian reservation." And, as a result, there's a vacuum of law enforcement.

I don't know if this Commission has been aware of the recent Amnesty International report on
violence against Native American women, but if not, I
cannot urge you more strongly to incorporate that into
your findings.

Amnesty International found that women,
Native women on the reservation, were two and a half
times more likely to be raped than non-Native women
off the reservation, and the majority of the time by
white men. In the vast majority of these instances,
there's no prosecutions.

So that is a very dramatic way of trying
to answer your question. I could, if you would like,
spend some time and explain who does have jurisdiction
on Indian reservations. Let me just pick one example.

In 1885, Congress passed the Major Crimes
Act. And he had authorized the federal government for
the first time to prosecute people who violate any one
of then seven major crimes, including rape. A number
of crimes have been added.

As a result of the MCA, the Major Crimes
Act, anyone now who commits a major crime on the
reservation, whether an Indian or a non-Indian,
against an Indian -- the victim would have to be an
Indian, but the perpetrator could be either Indian or
non-Indian -- would then be prosecuted in federal
court for committing that felony. But, here again, I
can report that there is a vacuum in law enforcement.

On the Rosebud reservation, for example, the nearest federal court is 100 miles away. That is where the marshals are. That's where the FBI is. And they're simply reluctant to spend that much time and energy, days of investigating 100 miles from their home these heinous crimes.

COMMISSIONER BRACERAS: Can I ask a question?

MR. PEVAR: Sure.

COMMISSIONER BRACERAS: Because I think I am not disputing that there's a lack of prosecution of these crimes, but you have taken quite a leap in positing why that might be.

MR. PEVAR: And I will defend it.

COMMISSIONER BRACERAS: With what evidence?

MR. PEVAR: Years of experience.

COMMISSIONER BRACERAS: I'm not doubting that there is a lack of prosecution. What I am asking you is, you're asserting that it's because they don't want to spend the time and money, right?

And what I want to ask you is, what do the federal authorities say is the reason for the low number of prosecutions?
MR. PEVAR: You will have to ask them.

COMMISSIONER BRACERAS: Have you ever pursued that with them or do you just jump to conclusions that it's because of money or discriminatory reasons?

MR. PEVAR: I believe that there are a number of reasons. I know that Indian people often distrust white people. And I'm sure that prosecutions have been hampered by Indians not wanting to testify against others.

I mean, your point is very well-taken. And I certainly --

COMMISSIONER BRACERAS: And whose fault would that be? I mean, in other words, if witnesses aren't going to come forward to help law enforcement prosecute a case, you can't very well blame law enforcement.

MR. PEVAR: You're absolutely right.

COMMISSIONER BRACERAS: You see that in many domestic violence cases, right?

MR. PEVAR: Yes, I do.

COMMISSIONER BRACERAS: Across races?

MR. PEVAR: Yes, I do. I still believe that the primary reason, though, -- and this was discussed in the Amnesty report as well -- is that the
U.S. Attorney's Office simply lacks the funds to adequately prosecute many crimes.

COMMISSIONER BRACERAS: Right. And so if I understand you correctly, you're saying it's a lack of resources, which doesn't single out crimes on Indian reservations. I mean, my guess is that the lack of resources hampers prosecutions across the state in a major city as well as in rural areas and on reservations.

MR. PEVAR: I'm sure it does. I still stand by my statement, though, that in my professional opinion based on years of experience, including living on an Indian reservation and begging U.S. attorneys to become involved in heinous crimes, that the only explanation other than intentional discrimination -- and I don't want to go there -- is a lack of resources.

COMMISSIONER BRACERAS: But I guess what I am asking you is, if you don't want to go there, why are we here? Because our jurisdiction as a commission is to investigate discrimination, not a lack of resources, right?

I mean, all law enforcement agencies and federal prosecutorial offices are, arguably, under-funded. And there's nothing this Commission can
do or say to affect that debate.

MR. PEVAR: The reason that I don't go there is that I have not studied that. I did go there with respect to the voting rights cases. I did go there with respect to the school cases.

COMMISSIONER BRACERAS: Right.

MR. PEVAR: But, as you have pointed out, and properly so, I have not looked into why, exactly why, these men and women are making those choices.

COMMISSIONER BRACERAS: I guess what I'm wondering, though, as far as --

MR. PEVAR: But I think you should.

COMMISSIONER BRACERAS: That is what we are trying to do. And in bringing you forward, we're looking for evidence from you as witnesses, right?

MR. PEVAR: Then you have asked the wrong person because I haven't studied that issue. I can report on what I did report. But you then should call some people who are criminal lawyers, which I am not.

You should call some U.S. attorneys and show them that "You have had 100 rapes or sexual assaults reported on this reservation and, yet, 4 prosecutions. Why?" You should ask them those questions.

I am charitably saying it is a lack of
resources, but I haven't studied it. And I hope you will.

COMMISSIONER BRACERAS: Right. And I'm charitably saying that the U.S. Commission on Civil Rights doesn't investigate issues of under-funding. We only investigate allegations of discrimination. So what we're looking for from you as witnesses is evidence and data that support an allegation of discrimination. If there is no data or evidence that supports such an allegation, I am not sure what we are supposed to do.

MR. PEVAR: Well, I don't think you should be blind to evidence that is out there. I am just saying that I don't have it. But I know that others have investigated this.

COMMISSIONER BRACERAS: Well, I guess what I would ask from you, all of the witnesses as well as our staff, is to try to uncover that evidence and submit it to us before the time we close the record because --

MR. PEVAR: I am giving you the evidence in my area of expertise. If you want evidence on some other area, then you should ask someone else.

VICE CHAIR THERNSTROM: Mr. Bibeau?

MR. PEVAR: And I hope you will.
VICE CHAIR THERNSTROM: Mr. Bibeau, you have something to say.

MR. BIBEAU: I would just like to add a little bit. And this comes back to jurisdictional questions as well and sovereignty as well. And that is where some of these problems occur.

In the middle '90s, there were two trials in Minnesota on White Earth and Leech Lake reservations. And they convicted three tribal leaders on each reservation. On White Earth, it was voting fraud and other kinds of kickbacks. And on Leech Lake, it was basically theft and things like that.

While the United States wants to say, on one side, you know, "You guys are sovereign. We don't want to butt into your affairs," at the same time the feds come in and they arrest a number of people and prosecuted and convicted three of them.

They never told us how we were being ripped off. They never told us who else was ripped off. They took three people out and let the entire system in there that was ripping us off continue. That is criminal in my mind.

Someone owes us an explanation of how they know that these things are ripped off, not just that millions of dollars were taken but tell the victims so
we can correct it. Don't leave us wondering who else
was in there. That's part of the problem.

The other thing is sometimes these guys
just -- they don't know. And Mr. Pevar was getting to
that. The Indian people don't know who they can rely
on because you give information, and it seems like
nothing is done.

The prosecutions that took place, Bill
Lawrence, who is not able to be here today, probably
spent five or six years trying to convince the feds,
giving them information on a weekly basis before
something happened. I've tried giving things to the
fed.

On the other side -- now I'm talking about
the AGs, the Attorney Generals. The FBI in Bemidji --
when I was fired from Leech Lake as a tribal attorney,
I didn't know it when I had served a lawsuit on the
chief of police that I had been reported to the FBI as
an al-Qaeda terrorist. They actually attached my
complaint to their complaint report and gave it to the
FBI. I didn't find out until March.

When I found out, I directly went to the
agent in Bemidji. And I asked him what the hell was
going on. And he said, "Oh." He said, "I read the
papers. I know you're not a terrorist."
And I'm thinking, "The chief of police of a reservation says, 'al-Qaeda terrorist' and gives it to the FBI. And the FBI knows that the chief of police is full of crap and does nothing for months because he knows there is no reliability in our system because nobody wants it to be reliable. They want us to not succeed."

If we are successful, we may be able to do a lot more than people understand. And keeping us impoverished, that's how you keep the third world in its place.

COMMISSIONER BRACERAS: That's a very broad accusation that the government in general or the government in your state wants to keep all Indian peoples impoverished.

MR. BIBEAU: Well, I'm just looking at how the result is. I can't say that they wake up in the morning or saying their prayers at night.

COMMISSIONER BRACERAS: But you basically did just say that. You said that their goal and objective is to keep Native American peoples impoverished and politically powerless.

MR. BIBEAU: In a technical sense, 98 percent of the resources of the United States have been taken from the Native Americans. They're looking
for the last two percent.

VICE CHAIR THERNSTROM: Well, that does not answer the question that Commissioner Braceras just raised, which is you have made a very broad statement about intent to keep --

MR. BIBEAU: Could be omissions.

VICE CHAIR THERNSTROM: Well, I mean, I find that, the accusation, troubling in its breadth. I mean, that's the kind of statement, it seems to me, that needs a lot of evidence.

But people have their hands raised here, and I will go to them. I have a few questions myself, but I will let others continue. Commissioner Yaki?

COMMISSIONER YAKI: Yes. Thank you.

I just wanted to respond briefly to something that Commissioner Braceras had said when she said she was looking for direct evidence. To me part of the Commission's duties is to look at whether or not resources are being properly allocated for the enforcement of civil rights.

Prior to this year, we had always put out a report documenting how much money the federal government was spending in different agencies on civil rights enforcement. And I think that when you get a report from Amnesty International talking about the
disproportionate rape and sexual assault cases of Native American women and the lack of prosecution thereof, I think that is a legitimate question in terms of the enforcement of our civil rights statutes.

And it may be a resource issue. It may not. But, even if it is a resource issue, you can always ask the question, why is there one U.S. attorney and one deputy for a 5,000-mile territory? I mean, that's the way.

In the old days, that's how you carried out non-justice if you wanted to do it. You posted your lousiest attorneys out to the middle of nowhere, where they had to go eight months riding from one place to another to administer justice. And that evidence gets stale. Things happen. Community pressure gets involved. So I think that we have to be careful when we talk about resources not being a civil rights issue. It absolutely is when it comes to enforcement.

Second of all --

VICE CHAIR THERNSTROM: Can I just ask you a question, Michael?

COMMISSIONER YAKI: Yes, yes. Feel free.

VICE CHAIR THERNSTROM: I mean, if there was disparate distribution of resources for law
enforcement that had a disparate impact on one area, in this case a disparate impact on law enforcement in the areas we're talking about, then you would say, yes, it's a civil rights --

COMMISSIONER BRACERAS: Wait. Or even if there's a lack of funding with respect to civil rights types of cases, --

VICE CHAIR THERNSTROM: Right.

COMMISSIONER BRACERAS: -- as opposed to other types of crimes.

VICE CHAIR THERNSTROM: Right.

COMMISSIONER BRACERAS: I think you could then also --

VICE CHAIR THERNSTROM: Right.

COMMISSIONER BRACERAS: -- make that case. But I see no evidence on that question today.

MR. PEVAR: Have you asked for it?

COMMISSIONER BRACERAS: Well, that's why we're holding the hearing, isn't it?

COMMISSIONER YAKI: Wait, wait, wait, wait, wait. First of all --

MR. PEVAR: I don't know.

COMMISSIONER YAKI: First of all, no, that's not -- we can talk about the scope of the hearing later, but just to say one, what you're
saying, Madam Temporary Chairwoman, is that --

VICE CHAIR THERNSTROM: Just call me Vice Chairman.

COMMISSIONER YAKI: -- is a legal standard that goes toward a burden of proof brought by the plaintiffs or appellants in a case. That's not what we're here for. We're here and have been here for 50 years to determine whether or not our government is doing the job and doing --

VICE CHAIR THERNSTROM: But if it is --

COMMISSIONER YAKI: I'm sorry. Now, with regard to --

VICE CHAIR THERNSTROM: It shows a lack of resources in every nook and cranny with respect to law enforcement or prosecutorial offices. You cannot say there's particular discrimination.

COMMISSIONER YAKI: Well, then I think that we ought to take a look at the Amnesty report and incorporate that into the record and, if need be, call in witnesses from DOJ to respond to that report, respond to other instances.

We've heard that they have been responsive on, at least it seems to be responsive on, some of the voting rights issues, which is good. So we know that there has been some interaction there. But just in
terms of the scope of the briefing, I think that we need to respect what questions the witnesses were given by staff and how they responded.

If they are saying to us with some genuine surprise about some other parts of this, it means that: A) they were not asked to do it. So b) we should not criticize them for not having it. And c) if that's something where the Commission needs to go, then we should promulgate some interrogatories, send out some subpoenas, and get the information that we need to make this a fuller thing because there's one thing that I want to hear from them and from the next panel, you know, and that's the topic that we're kind of dancing around, which is why is this endemic to borders, to towns bordering Indian reservations. What is it about that unique set of circumstances that causes this kind of hearing to be held and the friction that seems to be resulting there from?

VICE CHAIR THERNSTROM: Commissioner Braceras, do you want to answer this?

COMMISSIONER BRACERAS: Well, I just want to be perfectly clear. I'm not in any way blaming the panelists. I very much value your testimony and hope that you will supplement it in whatever ways you feel necessary to support some of the points that you're
making. And I welcome that.

To the extent that I'm blaming anyone, I think that, you know --

COMMISSIONER YAKI: You can blame me, Jennifer.

COMMISSIONER BRACERAS: No, I'm not blaming you, but I guess I would say that it's going to be difficult for us, I think, to do a report with any findings and recommendations when the topic is so broad and to some extent nebulous as to sort of defy proof, right?

I mean, you know, the summary of the methodology here says that panelists will present information on: One, the number of reported incidents alleging discrimination; two, the state of race relations. I mean, what is that, the state of race relations? We could write volumes and volumes on that topic alone. Three, examples of discrimination in border towns. Four, what, if any, changes have occurred in the way discrimination is inflicted, felt, and understood in border towns?

So I think I have a problem with the scope of the briefing, not that all of those issues aren't important and relevant, but, as I sit here and listen to the testimony, I am beginning to wonder how we are
going to sort of put this all together into recommendations for policy-makers that can be useful. Does that make sense?

MR. PEVAR: It makes perfect sense. And when I was invited, the first thing that I said is, how could any one person respond to everything that you want them to respond to?

I mean, you're obviously a knowledgeable person in this area. If I were to put a microphone in front of you and say, "Okay. You know something about discrimination against women. Tell us about discrimination against women in health care. How about law enforcement? How about employment?" --

COMMISSIONER BRACERAS: Right.

MR. PEVAR: -- I mean, the list is endless. And I said I feel very comfortable in speaking about the areas about which I know.

COMMISSIONER BRACERAS: Right.

MR. PEVAR: And to the extent I could contribute, that would be great. But since you and the Commission, and rightfully so, have an interest in law enforcement issues, I could not urge you more to get experts in that field. I can tell you that there are people who would have no qualms about sitting here and accusing the United States of absolute racism in
law enforcement.

COMMISSIONER BRACERAS: Well, accusations mean nothing unless they're supported by --

MR. PEVAR: And they would have that support. I don't. It's not an area that I have investigated.

COMMISSIONER BRACERAS: Right. I just think -- and this is for the staff and not the panelists -- that as we go forward and begin to cull through the testimony presented today and the evidence presented today, we may need to think about narrowing the scope for purposes of putting together a report. And that may require asking more specific questions, more targeted questions, either of these witnesses or additional witnesses, because it's, as I said, too vast right now.

MR. PEVAR: It is.

VICE CHAIR THERNSTROM: I know, Commissioner Melendez, you have had your hand up, but Commissioner Taylor hasn't had a chance to speak at all. Would you give him a chance first?

COMMISSIONER TAYLOR: Mr. Pevar, you mentioned early but briefly a remedial plan that you are apparently submitting along with the defendants for approval by a federal court presumably and then to
a consent decree, et cetera. And you said you were hopeful that that would bring about change.

And to Commissioner Braceras' point, that sounded like an area where you were not only experienced but you had obviously submitted a complaint to a federal court. And the complaint was presumably based on allegations of discrimination, disparate discipline within the school setting.

So I wanted to hear about the specifics with respect to the remedial plan and on some aspects of the plan and what you hoped would be the result once the plan was implemented.

MR. PEVAR: Thank you.

My own feeling -- and this is really what has been a motivating force for me in my life -- is that reasonable people can reach reasonable decisions. And if they will sit down and shed their initial cloaks of prejudice or whatever, you could come up with a decision and a resolution that is in everyone's best interest. And that's exactly what we did.

The federal judge appointed a U.S. magistrate and literally locked us in a room for two days.

VICE CHAIR THERNSTROM: What was the charge that was before the judge?
MR. PEVAR: We had filed a massive lawsuit accusing the Winter School District of discriminating against Indian students in virtually every aspect of --

COMMISSIONER BRACERAS: Do you have the case name or docket number?

MR. PEVAR: The case name. I could give you both. The case name is Antoine, A-n-t-o-i-n-e, v. Winter School District. And I could give you the case number.

COMMISSIONER BRACERAS: You don't have to do it right now. That's fine.

MR. PEVAR: Okay. And the result that we came up with is phenomenal. Among other things, it requires that the school district will hire someone who is Indian.

COMMISSIONER BRACERAS: I'm sorry. Before you talk about the remedy, can I just get a little more information?

MR. PEVAR: Sure. Yes.

COMMISSIONER BRACERAS: So the case was filed in federal court alleging violations of what statute, Title VI or --

MR. PEVAR: Of the equal protection and Title VI. That's correct.
COMMISSIONER BRACERAS: Okay. So it was Title VI and a constitutional violation as well?

MR. PEVAR: And equal protection. That's right.

COMMISSIONER BRACERAS: Okay. And you said that the district court judge sent it to a magistrate and the parties working with the magistrate came up with its remedy?

MR. PEVAR: That's correct. We were involved in months of discovery.

VICE CHAIR THERNSTROM: So there was never a trial here?

MR. PEVAR: There was never a trial. And both sides were not looking forward to a trial. For one thing, it would polarize the community. The Indians would be calling school officials racists. And school officials would be calling Indian parents all manners of things.

So everyone knew that this was not in the best interest to actually go to trial and force the plaintiffs to prove race discrimination. But the statistics were so glaring that it assisted us in reaching a settlement.

VICE CHAIR THERNSTROM: These were statistics on student performance or --
COMMISSIONER BRACERAS: Discipline.

MR. PEVAR: Discipline.

VICE CHAIR THERNSTROM: But also on student performance? You were concentrating on discipline here or --

MR. PEVAR: Well, we showed that Indian kids, as I mentioned, were far more likely to leave or be expelled from school.

VICE CHAIR THERNSTROM: Right. But were there other issues as well on the table?

MR. PEVAR: The other side would have argued that the reason is not because of racism but because Indian kids couldn't compete, which we felt was --

VICE CHAIR THERNSTROM: The reason for the disciplinary problems?

MR. PEVAR: I'm sorry?

VICE CHAIR THERNSTROM: The reason for the disciplinary problems?

MR. PEVAR: The reason for failing in school, not doing well.

VICE CHAIR THERNSTROM: So you are talking about student academic performance as well as disciplinary. Those were both before the judge?

MR. PEVAR: More discipline --
COMMISSIONER BRACERAS: Departures from school both because of expulsion and discipline or because of academic reasons, right?

MR. PEVAR: Yes, that's right. All right.

So the result is this wonderful consent decree that we trust Judge Kornmann will sign December 10th in a hearing. And, among other things, the consent decree requires the district to hire an Indian ombudsperson, who must sit in on every disciplinary hearing with a principal or a vice principal and represent the interests of the Indian child. There is also a requirement of having several programs each year student or school-wide that commemorate Indian culture and Indian history. Every child must have certain courses on Indian history and the contributions that the Lakotas made to South Dakota. There's a requirement that parents be notified of certain instances and be given an opportunity to meet with school officials.

We focus on informal resolutions. And only if nothing else succeeds, then discipline and expulsion can be considered. But it is very proactive in terms of the culture of the Native Americans and seeking to arrive at remedies that involve the family and the community.
COMMISSIONER BRACERAS: But will the disciplinary procedures be the same for white students and Native American students? In other words, you described --

MR. PEVAR: The punishments will be the same.

COMMISSIONER BRACERAS: The punishments will be the same. But you described a new --

MR. PEVAR: Process.

COMMISSIONER TAYLOR: Process.

COMMISSIONER BRACERAS: -- framework and process for adjudicating claims of student misconduct that you believe are more consistent with Native American culture. Are those processes equally applied --

MR. PEVAR: No.

COMMISSIONER BRACERAS: -- to white students?

MR. PEVAR: The only difference --

COMMISSIONER BRACERAS: So the Native American students get an ombudsman or defense counsel, if you will? And the Caucasian students are on their own to face down the principal?

MR. PEVAR: Yes.

COMMISSIONER BRACERAS: And that's equal
how?

MR. PEVAR: That is an accommodation of what we felt was historic discrimination.

COMMISSIONER BRACERAS: Interesting.

VICE CHAIR THERNSTROM: I still don't quite understand this.

MR. PEVAR: Let me just mention one other main thing about the lawsuit. The school district must contract with a federal agency, the Inter-West Mountain -- the name escapes me, but it is federally funded -- it works out of Colorado State University -- to go up and to analyze in South Dakota why there have been these problems in the first place. They have a set of techniques and studies that they have used throughout the United States, not just for Indians but in minority school districts where minorities have been underachieving.

And there is a host of variables from ignoring bullying to not having teachers being adequately sensitive to the needs of minority students. The Inter-West Agency will then make recommendations.

COMMISSIONER BRACERAS: Well, wait a minute.

MR. PEVAR: Sure.
COMMISSIONER BRACERAS: Let me just stop you there because I don't doubt that those things are true, but a red flag is raised in my mind when somebody tells me that a school district, an agency of the government is going to be applying different disciplinary procedures depending on the race of the child.

MR. PEVAR: No. They're not going to. They're going to make recommendations as to why are we where we are today --

COMMISSIONER BRACERAS: No, no, no. But --

MR. PEVAR: -- and what you need to do or what suggestions they could present to the school district to --

COMMISSIONER BRACERAS: So under the consent decree, the school district is not obliged to adopt different disciplinary procedures for Native Americans versus --

MR. PEVAR: No. I didn't say that either. I acknowledged that under the consent decree, they would be required to.

COMMISSIONER BRACERAS: Oh, okay because I --

MR. PEVAR: And that's the ombudsperson.
COMMISSIONER BRACERAS: Right. And that is something I have to say that raises a red flag for me as somebody who teaches Title VI and somebody who has read and studied and written a great deal on issues of civil rights and education. Equal processes are at the heart of what the equal protection clause is all about.

MR. PEVAR: Well, then you may want to attend the hearing and object.

VICE CHAIR THERNSTROM: There's some --

COMMISSIONER BRACERAS: I don't think I want to go that far. I'm just pointing out that the rights of the same procedures and the same process, the same due process, is, regardless of race, inherent in the equal protection mandates of this country. So I find it bizarre that that would be the remedy that you would seek.

I'm not in any way questioning that there were violations or that there needs to be some remedy. I'm just questioning the choice of remedy.

MR. PEVAR: Right. Fine.

VICE CHAIR THERNSTROM: You know, I have --

MR. PEVAR: I don't find it bizarre.

VICE CHAIR THERNSTROM: I'm still confused...
on a basic point here. When you have a
disproportionately high number of Indian suspensions
from school and other disciplinary actions, what was
the process?

I mean, getting suspended from schools is
-- this is not something that happens in general
easily without quite an elaborate process, a hearing.
Parents have rights. And schools have got their hands
tied in terms of getting rid of troublemakers in
general or kids they perceive as troublemakers.

So what was the process before this
remedial action? Surely, the principal couldn't wake
up one morning with a kid sitting in his office whom
some teacher had been unhappy, whose behavior had
provoked some teacher, and the principal says, "Out."
I mean, there had to be a process in place and --

MR. PEVAR: There were numerous processes,
almost all of which we contended were racially
discriminatory, starting with a subjective evaluation
of the severity of what the child had done.

VICE CHAIR THERNSTROM: Who did that
evaluation?

MR. PEVAR: The school did. We subpoenaed
the school disciplinary records. And we sat there
literally for weeks looking at how teachers and the
principals and administration described the events that resulted in various punishments.

And you could just sit there and see that Bill and Johnny, whom you later find out are two white kids, were engaged in horseplay. And, therefore, they were given detention.

You then read another report of Johnny White Owl, who was engaged in the identically described conduct and was cited for violence or was cited for insubordination, a much higher offense. So one thing that --

COMMISSIONER BRACERAS: If the underlying conduct is the same --

MR. PEVAR: The underlying conduct was identical.

COMMISSIONER BRACERAS: -- but it's being simply described differently and punished differently, then that's --

MR. PEVAR: Exactly. That was one thing.

COMMISSIONER BRACERAS: That is discrimination.

MR. PEVAR: Right. That was one thing we --

COMMISSIONER BRACERAS: I understand what your concern is, but --
MR. PEVAR: Right. That was one thing that happened. Another thing that happened -- and this was part of the lawsuit -- is that -- and 95 percent of the victims of this were Indian -- they brought the kid in. They refused to allow him or her to contact their parents. And they kept him in that room until he or she signed a confession, which then the principal, who was a notary, conveniently notarized. And they sent it to law enforcement.

The very first thing that happened after we filed the lawsuit and brought this to everyone's attention is that they said, "Okay. We'll stop doing that." That was a Fifth Amendment claim under self-incrimination. They forced these kids to write statements.

And in the complaint, you will see that the allegations were that they denied them even bathroom breaks and would keep them hours until they "confessed." So that was another part of the process.

But the end result -- and it's listed in detail in the complaint -- is that we believe that the conclusions, the disciplinary confessions, were tainted from start to finish and that they were unreliable and that they were discriminatory.

COMMISSIONER TAYLOR: One follow-up
question.

VICE CHAIR THERNSTROM: Yes? Yes, we interrupted Commissioner Taylor here.

COMMISSIONER TAYLOR: Did you find that the reaction of the school district was any different if the teacher or the principal was Indian?

MR. PEVAR: Very good question. There's only one Indian employed in the school district. And she -- I think it's a she -- is not a teacher. That was another aspect of our lawsuit. Even though there's such a high percentage of Indians in the community, they have never been actively recruited.

We weren't able to get information as to who applied and if they were denied employment, but we have been swamped with applications for the ombudsperson position.

Now that the school district has had to advertise for a position filled by an Indian or Indian preference, the outpouring has been enormous.

COMMISSIONER TAYLOR: One more question. How have you described the "discrimination"? I'm presuming when you meet the school officials, they aren't foaming at the mouth and "racists" such that they are using racial slurs and et cetera. So I'm presuming that's the case.
What do you characterize as the discrimination?

MR. PEVAR: In the closed door sessions, I took somewhat of a leap. And I said, "I lived here 35 years ago. And I wanted to file this lawsuit then. And I regret that I didn't."

"I feel in my heart that you are discriminating against my clients. I don't want to have to prove it. And I don't think it's in anyone interest to go to court over this."

"But one of two things must be true. Either Indian kids as a class are miscreants far more violent, far more likely to engage in trouble then non-Indians or there's race discrimination. It has to be one or the other. The statistics were so glaring. How could you explain having 20 percent of the population be Indian and 60 percent being expelled from school? They're either worse kids or there's subjective or intentional" --

COMMISSIONER BRACERAS: Or a little bit of both.

MR. PEVAR: Or a little bit of both. Exactly. So I started out by saying, "Let's not try to figure that out. Let's make a commitment to doing the right thing in the future and to having people in
place," such as Inter-West, who has had decades of experience with this, "of having an ombudsperson, of having an open door policy and meeting with parents to discuss particular concerns." And I think in the end, everyone agreed that that is the right way to go.

VICE CHAIR THERNSTROM: You know, one thing that is bothering me about this -- and I know that Commissioner Melendez wants to talk. And I certainly am not going to hog the mike here.

But, I mean, in most schools, just leaving aside the question of the disparate impact, which obviously is extremely important and at the heart of our concern here, just leaving aside that for a second, I mean, making it more difficult for schools to in general, whatever the ethnicity, color, race of the kid, for schools to remove kids who were disciplinary problems is not doing a service to the educational quality in the school. I mean, most urban schools in America can't get rid of the 10 percent of kids who make it impossible for the other 90 percent to learn. That's not a good thing.

MR. PEVAR: And nothing prevents that from occurring in our case.

VICE CHAIR THERNSTROM: Prevents what from
MR. PEVAR: Getting rid of the bad student.

VICE CHAIR THERNSTROM: I hope that that is the case because it --

MR. PEVAR: I think the school --

VICE CHAIR THERNSTROM: -- is a nationwide problem that schools can't do anything --

MR. PEVAR: I agree.

VICE CHAIR THERNSTROM: -- with kids who are extremely disruptive in the school and are stopping learning for --

MR. PEVAR: And I'm sure that school officials wouldn't have agreed to this settlement if they thought that their hands were tied.

VICE CHAIR THERNSTROM: Commissioner Melendez, you have had your hand up for a while.

COMMISSIONER MELENDEZ: Yes. The question I had was I think some of the disputes between students -- I thought that I had read that it did have something to do with racial dialogue between the Native Americans and --

MR. PEVAR: In the Antoine case?

COMMISSIONER MELENDEZ: I think that I had read that.

MR. PEVAR: Yes.
COMMISSIONER MELENDEZ: And some of that was there. It wasn't as if it wasn't present. And then also I had read also that I believe in the Winter's material that basically the Office of Civil Rights was basically the first investigative agency to look at this issue.

And they basically sounded like the ACLU was saying that they were kind of maybe not agreeing that there was a problem or there was actually agreement that they were trying to make sure the agreement was kept between some type of agreement to make sure that all of these issues were met. But it sounds like when the ACLU came in basically on top of them and said, well, they weren't really addressing the issues. Is that correct?

MR. PEVAR: You raise two issues. And let me comment on both. First, it's true that part of our proof that we would have introduced at trial is that school officials were ignoring discrimination, peer-on-peer discrimination.

Indian kids were being called all kinds of racial epithets and were reporting that, both the students and the parents, to school administrators. And the allegations were that the administrators were not doing anything about it, "lazy Indian," "dirty
Indian." A favorite, if you'll pardon the expression, was "prairie nigger." That is what seemed to be one of the worst things that white kids were often calling Indian kids. So that was another aspect of our case.

To go into your question, yes, the parents back about ten years ago filed a complaint with the Office of Civil Rights with the Department of Education and came out and the school district entered into a settlement in which the district essentially acknowledged, although that is not required in these settlements, that they needed to do more to help Indian kids.

The school district then sent in a host of papers that the U.S. Commission agreed was sufficient. We looked at the same papers and couldn't believe that the commission was willing to sign off on the paltry amount of information and to close the case.

We did a fresh analysis and decided that things, if anything, were worse than before the U.S. Commission had begun. And we filed our lawsuit.

VICE CHAIR THERNSTROM: We really need to move on to the next panel here. We are ignoring good people who have been very patient in the wings.

MR. BIBEAU: I would just like to add something because she has asked some very interesting
questions. One of the cases I have is a tribal member who lives off reservation.

The state has made an agreement with the reservation governments to where even if you live off reservation in certain counties, that you can't use public services. And so everybody in Aitkin County is allowed to go in and use the MFIP, the Minnesota family stuff, in poverty but tribal members. And it's only some tribal members.

I like equal protection, too, but it doesn't work for us very often. When it doesn't work for us, they call it a political class or a political group when we call it racism. And so when you say these things, I think, "Well, sure, that sounds great out here, but it doesn't play very well out West."

COMMISSIONER BRACERAS: Well, I think there are a lot of people trying to have it both ways, both on the part of the government and probably sometimes with respect to tribe members. It's difficult, you know, the dual sovereignty. And it does sometimes create incentives for actors on both sides to try to have things both ways. But in my view, that's always wrong.

VICE CHAIR THERNSTROM: Thank you very, very much for your participation this morning. And
please do feel free to supplement your record in any way that you think would be responsive to the questions this morning.

COMMISSIONER TAYLOR: Particularly with information on the case.

VICE CHAIR THERNSTROM: Yes, particularly with information on the case Commissioner Ashley just requested.

COMMISSIONER TAYLOR: Yes.

VICE CHAIR THERNSTROM: And I do second that request.

So we move on at this point. I should have asked the Staff Director whether he had any questions. I actually had some questions myself, but in the interest of time, I do want to move on here.

COMMISSIONER YAKI: Madam Chair?

VICE CHAIR THERNSTROM: Yes?

COMMISSIONER YAKI: Could I ask that the record be open for 60 days? Some of the panelists were only notified this week that they were to come. We can afford them a little more time to get their stuff together.

VICE CHAIR THERNSTROM: Do we have any problem with that?

STAFF DIRECTOR MARCUS: I don't see a
problem with giving 60 days. We will have to look at whether we need to have a formal motion when we have a business meeting, as opposed to that, but if there's a consensus here, well, assume that we're doing that and see if we need further formalities.

MR. PEVAR: Just so that the record is clear, please if I don't file anything, for example, about criminal prosecution --

VICE CHAIR THERNSTROM: Now, we'll understand that is not your area.

MR. PEVAR: Okay. Yes. I told the person who invited me that I am just extremely busy and that I don't think I could even do a written statement. So I apologize at the outside and don't --

COMMISSIONER BRACERAS: No worries. Can we take a vote right now to keep the record open?

VICE CHAIR THERNSTROM: If we have a quorum.

STAFF DIRECTOR MARCUS: We don't have a business meeting.

VICE CHAIR THERNSTROM: No. We cannot. We do not have a business meeting.

COMMISSIONER BRACERAS: We do not have to have a business meeting to take a vote. We just need a quorum.
STAFF DIRECTOR MARCUS: You need a notice.

COMMISSIONER BRACERAS: But this was noticed.

VICE CHAIR THERNSTROM: Only as a briefing.

COMMISSIONER YAKI: This is a consequential --

COMMISSIONER BRACERAS: That's absurd. That's absurd. That can't be right because we used to do it all the time, have meetings and briefings in one session.

VICE CHAIR THERNSTROM: I know we did, but we're not doing that today.

STAFF DIRECTOR MARCUS: If you want to take a break, then we can look at it, but I will tell you that it was formerly the case that we would have meetings and briefings in both sessions, that we would notify them as such.

COMMISSIONER BRACERAS: And this wasn't notified as such?

STAFF DIRECTOR MARCUS: Right.

COMMISSIONER BRACERAS: No.

STAFF DIRECTOR MARCUS: This was to be a briefing only. So it was noticed --

COMMISSIONER BRACERAS: I am a huge
proponent of separating out the business meetings and
the briefings, but for the purposes of keeping our
options open, I think you should notice that it's both
so that if we want to vote on something, we can
because things arise in the course of hearings that we
may want to ask the staff to look into or what have
you. And it is absolutely absurd that we can't then
take a vote and we have a quorum. Am I right?

VICE CHAIR THERNSTROM: That is to be
brought up at the next --

COMMISSIONER BRACERAS: You have got to at
least agree with me on that one.

COMMISSIONER YAKI: I am.

VICE CHAIR THERNSTROM: Jennifer, it seems
to me that is to be brought up at the next --

COMMISSIONER BRACERAS: It's just my
parting advice.

VICE CHAIR THERNSTROM: It is to be
discussed, but it creates a bunch of problems to have
both. So let us leave that for the time being and
welcome the next panel.

Mr. Windy Boy, an enrolled member of the
Chippewa-Cree tribe. He serves on the Chippewa-Cree
Tribal Council, served on numerous national boards,
the National Indian Health Board, the National Tribal
Self-Governance Advisory Committee among them. In addition, he has worked to convey concerns to congressmen, senators, congressional subcommittees that affect Indian country and federal government services. He has met with the President on numerous occasions as an advocate for Indian people.

James Runnels, Chief Jim Runnels, has been with the Farmington, New Mexico Police Department for over 21 years. He was appointed chief in December 2006 after serving in a variety of other capacities.

Prior to his time -- Commissioner Yaki?

COMMISSIONER YAKI: What?

VICE CHAIR THERNSTROM: Are we having a discussion in the wings here or are we part of this?

Okay.

Prior to his time with the Farmington Police Department, Chief Reynolds spent ten years with the Fort Worth, Texas Police Department. He has a B.S. in criminal justice, M.A. from the University of Colorado. He holds degrees as well from the FBI National Academy, the FBI Southwest Command College, and the Northwestern University Traffic Institute School of Police Staff and Command.

Barry D. Simpson, currently Superintendent of Bishop Union Elementary School District in Bishop,
California. He previously served as superintendent in two California school districts. Mr. Simpson received his Bachelor of Arts degree in economics from Whittier College, his Master's degree in education from Chapman University, and is currently a doctoral candidate at the University of LaVerne.

Duane Yazzie. Mr. Yazzie is a self-educated man who has technical training in computer programming, has taken a variety of classes at the Navajo Community College.

He has been an activist since the 1960s. He's regarded as a leading Navajo advocate against civil rights abuses. He has been in public service for 32 years, mostly in service with the community of Shiprock Navajo Nation. He served on the New Mexico Human Rights Commission for six years.

Please swear and affirm that the information you have provided is true and is accurate, to the best of your knowledge.

(Whereupon, there was a chorus of affirmative responses.)

VICE CHAIR THERNSTROM: Well, I welcome all of you on behalf of the Commission. And I call on you according to the order you begin for the record.

So, Mr. Windy Boy, please start. And,
again, you have ten minutes each. And we are watching
the clock.

MR. WINDY BOY: I was hoping to interject
the last dialogue.

(Native language spoken.)

MR. WINDY BOY: Good morning. That would
be my first language or the only language that I know.

What I am going to be talking to you is
from a second language. So if I misuse a word, it’s
not intentional. I don't have a Ph.D. I don't have
an M.P.H. I don't have a B.A. or an A.A. But I am
just plain old Al Windy Boy, Rocky Boy.

Background that was not mentioned is law
enforcement, trained at the Federal Law Enforcement
Training Center, Marana, Arizona; served as a
livestock inspector with the State of Montana; and a
rancher; and, most importantly, a great grandfather, a
grandfather, and a father, the oldest being 37 years
old, and my youngest 10 months old, and all points in
between.

After saying that, before I begin this
testimony, I want to start my reaffirmation of the
Foundation of Sovereign Status of Tribes with a quote
from a well-respected former tribal leader, a good
friend of mine by the name of Joe DeLaCruz, where he
said, "No right is more sacred to a nation, to a people than the right to freely determine the social, economic, political, and cultural future without external interference. The fullest expression of this right occurs when a nation freely governs itself," the late Joe DeLaCruz, former President of the Quinault Nation from '72 to '93.

The over-arching principle of tribal sovereignty is that tribes are and always have been sovereign nations. Tribes preexisted, the federal union, and draw our right from our original status of sovereigns before European arrival.

The provisions of health, education, and welfare service as tribes is a direct result of treaties, executive orders, and other acts of Congress entered into between the United States government and tribes. This federal trust responsibility forms the basis of providing health, education, and welfare services to tribal people.

This relationship has been reaffirmed by numerous court decisions, proclamations, and congressional laws. One area that -- and you heard from the previous panel those dealing with education. The situation today I want to talk a little bit about is access to health care.
You know, racism comes in many forms and is often a domino effect of racist attitudes and actions that negatively impact my tribal people. The result of these negative impacts could be defined by racial and ethnic disparity, American Indian, Alaska Native health disparities.

You know, American Indians have long experienced lower health status when compared with other Americans, disproportionate poverty, discrimination in the delivery of health service, and cultural differences. It has contributed to the lower life expectancy and disproportionate disease burden suffered by American Indians. American Indians born today have a life expectancy that is 2.4 years less than U.S. all races.

American Indians die at higher rates than any other American: from tuberculosis, 600 percent higher; alcoholism, 510 percent higher; motor vehicle crashes, 229 percent higher; diabetes, 18 percent higher; unintentional injuries, 152 percent higher; homicide, 61 percent higher. And these statistics I derive from many congressional testimonies done by people in the health industry, tribal health industry.

Some of these health disparities are historic. Alcoholism continues to be a serious
challenge to American Indian health. Since introduction to tribal health people in this nation's history, alcohol has done more to destroy Indian families, individuals, and tribal communities than any other disease. Today in 2007, tribal people are dying at a rate of 510 percent higher than any other Americans from alcoholism.

The overall impact of these health disparities made us, "at risk" communities, weakened and vulnerable. In fact, as reported in the national news, Billings area tribes, which is within Montana, Wyoming, a tribe was targeted by Mexican drug cartel because of their history with alcoholism. The drug dealers figure that the tribal community, already inundated in alcohol addiction, would be easy to infiltrate for drug distribution.

Their business plan included marrying into the tribe, give free samples to get people addicted, and then get them to distribute to support their addiction. This approach is being implemented throughout Indian country. And this happened to be on a friend of mine's reservation on the Wind River.

As the federal government develops models or "best practices," that aim to reduce or eliminate racial and ethnic disparities, closing the gap, a
balance seems to be made between the federal deficit model in comparison to all U.S. races and a positive development model. Otherwise health policy and the subsequent allocation of funding toward Indian health care will be determined on the basis of tribes being a marginalized minority and not as sovereign nations with distinct treaty rights, which have been negotiated with the "full faith and honor" of the United States of America.

Indian health care funding, given the significant health disparities that tribal people suffer, funding for Indian health care should be given the highest priority within the federal government. Many of the diseases that tribal people suffer are completely preventable and/or treatable with adequate resources, funding.

For some time now, the United States has not funded the true need of health services for American Indian and Alaska Native people. The medical inflation rate over the past 10 years has averaged 11 percent. The average increase for the IHS, [The Indian] Health Services, over the same period has been only four percent. This means that IHS tribal urban health programs are forced to absorb the mandatory costs of inflation, population growth, and pay cost
increases by cutting health care services.

There simply is no other way for the Indian tribes and urbans to observe these costs. And the basis for calculating inflation used by government agencies is not consistent with that used by the private sector.

OMB, Office of Management and Budget, usually increases ranging from 2 to 4 percent each year to compensate for inflation when the medical inflation rates range from 7 to 13 percent, you know, the disparity and level of quality of care. This question has never been investigated in Havre, Montana.

And the question always arose, do Indians receive different care at local hospitals in comparison with other patients? Are Indians discriminated against by hospital staff? And is the level of care provided to Indians different because of financial factors? Indian Health Service and Tribal Health have reduced rate agreements with the hospitals for lack of empathy.

You know, I can only speak from my own experience, but I do know that my experience I shared by many other tribal people. You know, for the first time in my life, I am covered by private insurance.

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701
www.nealrgross.com
(202) 234-4433
through my wife's employer, Montana State University. She's the bioenergy director.

I never thought that I would receive different health care from the hospital due to my status as a recipient of health care through our IHS compacted tribal health facility.

This past spring, this past spring, we had an epidemic. And I am a rancher by choice, because I want to. We had an epidemic of trichomoniasis in our bulls. So then the ranching organization then rounded up all of these bulls and got them tested.

I took mine in to the local vet in Havre, which is close to 40 miles away. And this particular vet place, there was only women working there. And they were trying to chase one of my bulls in. And they were getting him more heated up, getting him mean. So I told them, "Here. Let me do it."

So I jumped over the fence. And when clearing the top rail, I slipped. The bull turned around and just beat the heck out of me. And I often wondered what Elvis Presley felt like, all those girls screaming.

(Laughter.)

MR. WINDY BOY: So, anyway, as a result of that, the bull stepped on me. I ended up in the
hospital for about three and a half days. And the
doctor that I was assigned to was on call. When I
first was admitted, my wife hadn't received her proof
of insurance card and although I was covered at the
time, the hospital emergency room billed my care to
our tribal health facility in Rocky Boy. And I was
run through the process of tests and X-rays.

I was admitted for my injuries and then
released two or three days later. I was still in
pain. My mobility was limited to crutches and a cane
for the next several weeks. And part of my injuries
included a big abrasion from my knee down to my ankle,
where the skin was taken off.

And although I followed up on care with
that same doctor who treated me during my initial
hospital stay, I developed an infection serious enough
for my wife to insist that I return to the emergency
room, which ultimately was a staph infection. And
this time --

VICE CHAIR THERNSTROM: I hate to tell
you, but you do need to wind this up because you are
way over time.

MR. WINDY BOY: Well, this time my private
insurance information had entered the hospital
database. So the second time I went through this, I
went through a cadre of tests where they had four blood pressure cuffs on my legs, determined the circulation in my leg. And they also went through a CAT scan and found that I had a broken hip on my upper bones. So I guess, to make a long story short, that was one of many incidents.

Do you know Paul Harvey, you know, the guy that says "the rest of the story"? You know, he said one time "If you want to get away with murder, do it in Hays, Montana," next reservation over, small town located. You know, that's synonymous with this country.

You know, what I talked about, the disparities, the disparities is in a wide range. In fact, you've got a team here. You've got a team we call the Washington Redskins. You know, to me that's derogatory. The Atlanta Braves, where they sing some funky song, you've got a guy running around, parading around in the gymnasium, Illinois, you know, that's derogatory. If a guy paints his face, that's derogatory to me because we go through great measures to get our face painted. And there is a process. And for somebody to come by and mock that, that's discriminatory against me.

VICE CHAIR THERNSTROM: Why don't you come
back to these in the question and answer period, if you would, because it's just not fair to the rest of your panelists to keep talking when you are way over?

MR. WINDY BOY: Well, I wish it would have been fair for me even for the previous panel to also look at the time that was spent.

VICE CHAIR THERNSTROM: Well, wait a minute. They were under the ten minutes, both of them.

Sir?

MR. RUNNELS: Madam Chair, members of the Commission, I appreciate this opportunity to come here. I have been told to express my regrets that Mayor Standley couldn't be here. He's far more involved in the cause that we're going to talk about here today than I am, but I also appreciate the opportunity.

The City of Farmington is no stranger to the Civil Rights Commission. You have been there twice since 1974. Regrettably, the incidents of 1974 have left a stain on Farmington that I don't know will ever be erased, but we are making some efforts to do that.

For those of you who aren't familiar with Farmington, Farmington is still, and not as much, an
oil and gas center in northwest New Mexico. Because of that, Farmington has traditionally been a boom and bust town. During the boom periods, for a while there, they average every 10 to 15 years.

During these boom periods, you would experience population growth of 200 to 300 percent. The busts would come along. And these people would leave.

Part of the problem with boom periods is the people that are coming in are often from out of state. Any time you have a huge influx of a population that is not from the area, is not aware of the cultural differences, and is not willing to take the time to learn what the issues are, this creates problems. And I feel that is probably part of the problems we have had in the past.

There are definitely issues of racial discrimination in Farmington. There is no question about that. I am not an expert in very many areas, but I have seen it in my 20-something years I have been there.

In the educational system, there is still a lack of a willingness, I believe, to incorporate cultural education into the current system. I say this because one of my other roles is I am an adjunct
faculty member for the local community college.

You know, I have to grade the papers. And I feel like, you know, that there hasn't been an effort to incorporate the style of writing from the Native American into the current English system. And you see that in the papers that we have.

You know, the opportunities in school are often dependent upon the home life. And I know for a fact that a lot of these students endure long, tenuous bus rides to get to and from class. And this doesn't make for the best opportunities.

The business community has a very poor record with Native Americans in Farmington. We often in law enforcement deal with this on the other end of it as far as, you know, being called on so-called civil standbys.

You know, we deal with a lot of the Native elders who are not fluent in the English language and don't understand the legal documents they have signed. When there is a question as to why, you know, these people are here to repossess whatever they're after, you know, we're caught in the middle of that often. And I think that is probably one of the bigger issues we have there.

Customer service in the past has always
been an issue in the Farmington area as far as the way
Native American clients were treated. I will have to
say that customer service in Farmington is poor
regardless. I have been just as unhappy as some other
people there, but that is part of what is going on in
Farmington.

Of course, law enforcement I do know
about. You know, I don't think there's any question
that the criminal justice system in New Mexico and in
San Juan County is discriminatory against minorities.
Now, it's not much different than it is in other parts
of the state depending on the population, but we see a
predominant number of the people that we arrest, you
know, often wind up in the hands of public defenders.

Now, you know, we have some good public
defenders. We have some not so good public defenders.
Personally I would like to make sure everyone gets the
best legal services they can. It makes our job
easier, believe it or not. Now, you don't really hear
law enforcement saying much complimentary about
attorneys, but it does make our job easier.

Misconceptions from law enforcement with
Native Americans. You know, I'll tell you a short
story that in my resume, I spent ten years in Fort
Worth. I was born and raised in Fort Worth. I come
to New Mexico. I am suddenly working among Native Americans, predominantly Navajos.

We had a huge problem with Native Americans not having insurance on their vehicles. So the prominent misconception amongst my fellow officers back then, who were predominantly white, was one of two things. Either they couldn't afford it or they felt like they didn't have to have insurance.

Well, cultural awareness training was not very common as far as law enforcement or any city employees at that time. So after I had been there probably three or four years, we have our first training. And it is finally explained to me that one of the reasons Native Americans don't have insurance is because some of them felt like by having insurance, then you were creating your destiny that you were going to have an accident. It was a superstitious act. And, you know, once these kinds of things were explained, you know, it made a lot more difference there.

Another issue that we work with as far as law enforcement is recruiting Native Americans. We have had a lot of success lately, but I will tell you the standard around the country is a battery of five psychological tests. I wish I could tell you the five
names, but, you know, we are offering the MMPI and
some of the other testings like that.

    Luckily, we have a local psychologist who
does our psychological testing. And he calls whenever
he has a question. And he will go on the record
anywhere saying that he feels like a lot of these
psychological tests are not based on tribal cultures
and they will tend to show up in the negative on these
tests, but we're willing to talk about these things.
Now, are we the exception? I don't know. But that is
one of the issues that they deal with as far as the
legal system.

    I am here to say that I think in the
20-some odd years I have been in Farmington, that we
are making some progress. You know, the City of
Farmington has an affirmative action plan. It's
updated every year. We're not under any type of court
decree to do this. It's something that we believe in,
something that we have done for a number of years.

    We strongly recruit Native Americans in
the police department. I can say within the last
probably three to four years, we have doubled the
number of Native Americans we have. Is it a lot? No.
I mean, I believe right now we have about 12 Native
American officers out of 135 sworn, but we are making
some in roads on that.

You know, the city council and the mayor have done a lot in the past couple of years as far as dealing with the alcohol issue. You know, we have created what we call the Total Behavioral Health Unit, which has actually worked towards a treatment program, instead of a solely incarceration program.

In the business community, the city has gone out with the Chamber of Commerce in creating a cultural awareness program to get the business people. All City of Farmington employees are required to go through this. This has gone a long way.

The biggest thing the city is involved in now which is a result of the report from 2004 from the Civil Rights Commission is the creation of the Community Relations Commission. The resolution was introduced last Tuesday for this. And hopefully they will have that on board in the next month, as soon as they get through all the legal work that they have to for the city commission.

I think the biggest thing that the City of Farmington and that Farmington as a community by and large has realized is that the Native American population is needed. They are an integral part of what we do.
You know, we're not an oil and gas town. We still have it, but we are a retail center. We need to work with everyone. You know, they are valued customers. We see that more and more. At least I do.

So I think we have made some progress. We have worked successfully with a number of tribal members, including Mr. Yazzie. And hopefully we can continue to move forward with this.

Thank you.

VICE CHAIR THERNSTROM: Thank you very much. And thank you for keeping under the ten minutes. I very much appreciate it.

Yes?

MR. SIMPSON: First, I would like to thank the Commission for allowing me the opportunity to take part in this briefing. And I appreciate the chance to hear the other panelists' views on our topic today. My hope in attending was that I could find some ways to strengthen the ties with our Native American community within our community in Bishop.

I will start by telling you a little bit about Bishop, California. We are located in beautiful Owens Valley on the eastern slope of the Sierra Nevada mountain range. We are a small community. Our school district services 1,300 students. Of those 1,300,
approximately 20 percent are Native American, 28 percent are Latino, 48 percent white, and 4 percent representing other groups.

Our school district boundaries border the Paiute-Shoshone Indian Reservation, which has approximately 2,000 members. Our school district is currently identified as a program improvement school under the guidelines of No Child Left Behind. In addition, our schools are experiencing declining enrollment, having lost over 250 students in our district over the past 5 years. The reasons for this decline are due, in large part, to increased housing costs in our area. We're a resort-type area near the Mammoth Mountain ski area. In addition, there are few opportunities for employment.

Still, with the many difficult challenges that face our district, I would probably say that we have a strong teaching staff that is caring and dedicated to providing a positive environment for all of our kids.

You might be asking, what makes Little Bishop School District significant for this briefing? And the answer to that question is that my attendance today is a direct result of an incident that occurred on our middle school campus in October of 2005. The
incident resulted in a complaint being filed with the American Civil Liberties Union.

Two years ago the conduct of our school resource officer was called into question during an incident that took place on our campus. It was alleged that the school resource officer acted in a physical and threatening manner in an attempt to resolve an issue with a group of Native American students.

In addition, a second complaint was filed, alleging that our school district had engaged in a pattern of discriminatory discipline. While I wasn't the superintendent of the district at the time, nor employed by the district, it's clear after my review that many mistakes were made in resolving this issue. It boiled down to a young man who was wearing a headband. That does violate our dress code, but it escalated quickly. So obviously there is certainly some concern there.

It's also true that after a review of our disciplinary data, disciplinary actions involving Native American students have occurred at higher rates compared to other student populations. These are facts that can't be denied.

As the Superintendent of Bishop Union
Elementary School District, it became my responsibility to work on these issues. And I believe that we have had some success in that area. In September, the district reached an agreement with the ACLU. This agreement includes several actions that I will believe will make a positive impact on the entire district.

Our agreement includes ongoing staff development on cultural awareness and diversity issues as well as the integration of conflict resolution and cultural diversity awareness into the day-to-day lives of our students. We have also agreed to discontinue the school resource officer program, although that can be reinstated by a vote of our school board.

While this agreement has only recently been signed, many changes have been taking place in our district, which I am very proud of. Disciplinary actions have been reduced. And recent state testing data shows that our Native American students at the middle school level have exceeded all proficiency targets in mathematics and language arts. So I'm proud to say that we're making some academic improvement there.

I realize that these are just the first early steps in our path to improvement, but it's my
goal to see this continue. And, again, my hope here was to learn about new ways to strengthen the ties between our two communities.

I would like to take a few minutes to briefly address the questions that are included in my invitation to this meeting. I admit it's difficult for me to comment on the forms of discrimination that Native Americans face in our border towns. However, I have taken some time this week to meet with our tribal leaders in Bishop, ask for their input on any concerns that they would like to express to me.

One statement I would share from our Indian Education Center director was he pointed out to me that the parents that I work with want their children to be treated as students, not Indian students, "We do not want special treatment. We want our students to behave. We want them to learn, to be successful." He stressed to me that his tribe is diverse, that not all of those families act in the same way, that all children are individuals and should be treated as individuals.

This resonated with me because I believe that we often spend too much time thinking about how to work with groups of children, rather than working directly with the individual student.
To continue, I would like to comment on some of the current issues facing the public education system. It is impossible to discuss these issues with Native American students without discussing No Child Left Behind and its significant impact on our nation's schools, especially in our Native American communities.

Although the goals of the No Child Left Behind Act are noble, I think we can agree that the implementation has been less than perfect. Its desired result of 100 percent proficiency will be difficult, if not impossible, to attain. And this is probably a discussion for another meeting, but I felt it was important.

In an environment where schools are facing the demands of high stakes testing, it has become increasingly difficult to provide a well-rounded curriculum. School administrators and teachers are faced with mounting pressure to raise test scores, often sacrificing other important curricula, including the arts, music, or cultural offerings. In fact, many struggling students are now forced to take additional courses in math and language arts and forego electives, where they may have significant ability. I have seen firsthand where this has led to low teacher
morale, student and parent frustration, as well as an increase in dropout rates.

    It is my fear that many students, Native American students included, will become increasingly disengaged as many programs slowly become eliminated. Clearly this legislation has had some unintended negative consequences.

    Finally, I would like to take highlight a few steps that we have taken in our school district and community to improve relations. Our school district employs three Native American liaisons, whose responsibilities include providing a vital link between school and home. Our liaisons offer before and after school academic support as well as bringing in guest speakers and performers in an effort to share the Native American culture with our students. We also offer a Paiute language course.

    Each year our school board holds a board meeting on the reservation at the tribal council chambers. This meeting in devoted to discussing the progress of our Native American students. Our administrators meet regularly with the Indian Education Parent Committee.

    These efforts are producing positive results. However, we feel there are many more ways to
explore to help strengthen this tie. I understand this will take time. We're not going to make this improvement quickly. But we are dedicated to this improvement effort.

Once again, I would like to thank the members of the Commission for this opportunity. I look forward to hearing more steps that we can take to improve our district.

VICE CHAIR THERNSTROM: Thank you so much and again for your concise remarks.

Mr. Yazzie?

MR. YAZZIE: Madam Chair, commissioners, Mr. Marcus, your staff, I will be reading from my statement that was distributed by staff here after you started your session.

Yeigo, Naas to Farmington, the Selma, Alabama of the Southwest, declared Fred Johnson our leader as 2,000 strong, Natives and non-Natives, supporters, marched on a beautiful idyllic Saturday morning in the Summer of 1974. We marched to protest the mistreatment of our people by the racist minority of the straggling border town across the river from the Navajo Nation.

The march boycott, one of seven that we did on successive Saturday, was our answer to decades
of outright discrimination on the streets by regular folks and over the counter by conniving, greedy business people.

The breaking point, what brought us to the streets of Farmington with pounding drums, our medicine people, our elders, and young, was the murder of three of our Navajo brethren by three young Anglos engaging in their sport of Indian rolling. This is where, usually under the influence of booze, drugs, or just raw hatred of people of colors, young white guys would go cruising the late night streets in search of the right prey, a stranded Indian in need of a ride or a coming-down-off-of-a-high Indian in need of a drink. With promises of a ride or a drink, the unsuspecting Native is whisked away to Chokecherry Canyon or other similar isolated location where the young white guys proceed to beat their victims.

In the case of the three murdered Navajos, the separate scenes were described by the then Sheriff Doug Brown. The white boys after beating the victims proceeded to place firecrackers in the ears and anuses of the victims and exploded them. They also burned their genital areas over an open fire. They then took rocks the size of basketballs and slammed them down on the heads of the desperate and pleading Indians to
make sure they would die. That was the Summer of 1974.

I am sure the Commission is also interested to hear about our current condition. In June of 2006, William Blackie, a Navajo man hoping to get a ride out of town, ended up getting hauled out to Chokecherry Canyon by three young Anglo men. They proceeded to beat him up while barraging him with racial slurs, including, "you brown nigger."

Mr. Blackie survived his ordeal. The three men received sentences averaging six years each. The sentences were enhanced by the New Mexico hate crime law. This is the first time the DA has ever filed hate crime charges, despite Farmington's history of crimes against Navajo people.

One week after the Blackie beating, a young inebriated Navajo man was shot pointblank four times by a white police officer, Farmington police officer, three shots to the chest, one shot to the head.

There remains an equally divided contention whether Clint John was armed with the police officer's baton. The Farmington Daily Times, the area newspaper, has declared that the unarmed Navajo man was shot by the white police officer.
The officer has been cleared of any wrongdoing by the San Juan County Sheriff's Department, the appointed investigating entity. The police officer was an officer in the City of Aztec, the county seat, and the sheriff is a former Farmington city police officer. We tend to contend that this might be one of those good old boy situations.

We do not deem the shooting of Clint John a hate crime. We more question the standards that dictate the use of lethal and excessive force by the Farmington Police Department against Natives.

On September the 1st, 2006, we marched on Farmington again. This time we termed it a walk for peace and justice. We have made this an annual event. This past September, we did the walk in Cortez, Colorado, another border town where a consistent string of incidents that are termed "crimes of hate" continue to be reported.

In November 2006, we also protested Gallup, New Mexico, New Mexico's area history of discrimination against Native people. The Navajo Nation has 13 border towns. And every single one has a history of racial mistreatment of Native Americans.

In the month after the Clint John killing,
other examples of police misconduct in Farmington occurred. And several separate attacks on Native Americans in Cortez were reported in November 2006.

As a result of these incidents as recent as January 2007, there were incidents of harassment and intimidation by armed Forest Service officers against Native individuals offering traditional religious prayers on the San Francisco peaks. The spiritual leaders say that they were detained at the base of the mountain by county sheriff deputies and interrogated about what they were doing on the mountain.

After the recent resurgence of these hate crime situations, the Navajo Nation Council took measures to document the incidence of hate crimes against Navajo people in the border towns. The Navajo Nation Council approved the Navajo Nation Human Rights Commission Act.

The act authorized the establishment of the Navajo human rights office. This office is to work proactively to document border town hate crime against tribal members and to work proactively with the border town governments and civic groups to minimize such crimes, if not to prevent them.

DNA, the Navajo Branch of the People Legal
Aid Service, produced a report called "Race Relations Report." And I have submitted a copy of the report for the record.

The report reviews statistical data from the 13 border towns about the quality of life of Navajos. Although we do know that most adult Navajos have either encountered such treatment firsthand or have heard descriptions of such treatment directly from family or community members, of the border towns that provided information in response to the data requests, only two reported that they had received reports of discrimination or mistreatment of Native Americans, either through hate crimes or police brutality.

Thus, we asked, is it possible that Navajos are victimized in the border towns but they simply do not report it? If so, why is that? To answer this question, the report cites the study of Dr. Barbara Perry entitled "In the Name of Hate: Understanding Hate Crime" and "Crime by Any Other Name, the Semantics of Hate."

The study provides a substantive and detailed analysis on hate crime summarized as follows. Hate crime against Native Americans is so widespread as to be considered normative by community members.
In spite of the extensiveness of racial victimization, fewer than five percent of victims report incidents to police. The two main reasons given for the unwillingness to report were: one, the perception that police do not take Native American victimization seriously and, thus, failed to respond appropriately; and, two, the fear of secondary victimization, harassment, or violence at the hands of police officers. The fear of secondary victimization arises from individual and collective experiences and perceptions of police misconduct.

The forms of discrimination that our people continue to be subjected to include occasional snide racist remarks and outward verbal abuse, treating less formally educated Navajos by charging excessive interest rates and contracts for loans, particularly with vehicles and mobile homes.

The graphic situations that I shared with you earlier are hopefully incidents far and between. However, we do have numbers of people who are missing who have been missing for years. And there has been speculation that some of these individuals may have fallen prey to those who would do us deliberate harm.

The common forms of discrimination we see today appear to be less aggravated and fewer in number.
than what we experienced in the '60s, into the '70s. Even so, some have surmised that perhaps this is just that perpetrators have only become more adept and have more refined their culture of hate.

Even as this appears to be the situation in the Four Corners region, the Federal Bureau of Investigation's 2005 statistics on hate crime reports that while Alaska Natives and American Indians represent only one percent of the United States population, they are victims of two percent of racially motivated crime.

To their credit, the border town communities of Farmington, Gallup, and Cortez have taken definitive steps to attempt to address the scourge of hate crime. And we participate in these efforts.

We accept that definitive and long-lasting results are dependent on attitude change of entire communities. And, as such, these efforts will take sustained and patient work. Much of the reason why opportunity arises for discrimination is economic.

In that the Navajo Nation has a limited retail economy, this condition compels us to have to go to the border towns to shop. Another cause is that our reservation is dry. And those that need to drink...
are also forced to go where the booze is.

This results in the situation where the border towns have to contend with panhandling, inebriated street people, Native people. Thus, to a certain extent, we do bring the problems of abuse through discrimination and exploitation upon ourselves.

We do, however, openly submit that we recognize the vast majority of these of our non-Native neighbors are people with good hearts and that the race problems are exacerbated by a small redneck and/or white supremist minority.

The diligent scrutiny that the U.S. Commission on Civil Rights maintains on such situations certainly has a positive impact by bringing pressure on the border towns and our tribal governments to take these crimes against human rights and human dignity seriously and that it is an important issue enough to continue to address.

I am pleased to report that your colleague John Foster Dulles has been a true advocate for justice and equality such that we have accepted him as a friend and brother.

We realize that, unfortunately, racial hate crime is a phenomenon that has always been with
humankind and will probably always be with humankind. But, as my dad once told me, just because you know a situation is going to be, don't just let it be. Do something.

Thank you for this tremendous opportunity.

VICE CHAIR THERNSTROM: And I thank you and all of the panelists. And we now go to questions. And we start with Commissioner Melendez.

COMMISSIONER MELENDEZ: Yes. Thank you, all panelists, for coming.

III. QUESTIONS BY COMMISSIONERS AND STAFF DIRECTOR

COMMISSIONER MELENDEZ: I would like to know from Mr. Yazzie. You said that many people don't really report the crimes. It's probably under-reported. What do you think? And basically along with reporting, there are probably statistics that need to be gathered, either from federal agencies or state agencies, that really tell the true picture of what is actually happening out there.

What do you think could be actually done to enhance that more because we want to have a clear picture of how serious are the things that are happening out there in Indian country as far as discrimination?

MR. YAZZIE: Thank you, Commissioner
Melendez.

One of the efforts that the City of Farmington is making is to establish a process where people can report these types of crimes. And the observation and recommendation that I made to Farmington is that you need to have people whom these people, whom these victims can relate to.

What I have seen is that they tend to have people our version of the Uncle Tom, the successful downtown Navajo business person, sit there expecting to receive these complaints from the people from the south side.

That isn't going to happen. Until Farmington and other border towns develop the mechanism that truly works and that is available to have our people volunteer to bring these issues forth, that will not happen.

VICE CHAIR THERNSTROM: Other questions from commissioners? Commissioner Heriot, you haven't been heard from all morning. Do you have questions? And are you still with us?

COMMISSIONER HERIOT: I'm sorry. I don't have any questions right now, but I am still here.

COMMISSIONER MELENDEZ: I think some of the panelists wanted to comment on my question
further.

VICE CHAIR THERNSTROM: Sure. We would welcome that.

MR. WINDY BOY: In reference to it, with the civil rights, the Commission on Civil Rights, when you step back and take a look globally, that is what is happening with people in Indian country now. The panel before me talked about victims.

Maybe a recommendation from this organization to the powers that be would be recommendations of trying to address racism on border towns needs to be twofold from a tribal perspective and from whether it would be a city or a county government. They both have to work together.

Two things that happen in my area, the University of Montana, there is a big report that came out that hit the newspaper airways. The reporters came from my neighbor's place. They asked if I wanted to do an interpretation of racism.

Oh, he suggested, "You don't need to write. Go there and tell them. Ask them about Indians. They will write it for you." Sure enough. And that's where this report came out of.

The second panel before me talked about the FBI and their inability to follow up on a number
of cases because we have many of those in Rocky Boy.

But how can you as the Commission on Civil Rights address these when the highest form of this government doesn't even recognize the indigenous rights of indigenous people? Four countries, the United States being one of them, Canada being the other, Australia and New Zealand, where there are indigenous people, won't sign onto this supposedly treaty.

Rights of our people, the Ojibwa, Anishinabe, Na-Kah-Wi-No-Wuc, we have a treaty called the J treaty. That's not even recognized yet. The homeland security bill came in absent our recommendations in Indian country.

So this racism is a lot bigger, a lot bigger. And whether your suggestion goes forward, you know, we need to address this. And it needs to be real. And we need to come up with some solutions because Washington Redskins are still going to be here in 20 years, Atlanta Braves are still going to be here. Those things have to change.

VICE CHAIR THERNSTROM: Well, we would welcome anything you would like to add to the record you submitted in the way of recommendations.

Do other people -- yes?
MR. RUNNELS: I would just like to add a little to what Mr. Yazzie said to Commissioner Melendez. For a number of years, Farmington has had the Citizens Police Advisory Commission, which was created basically to hear complaints against police officers.

And one of the issues that we have dealt with, like Mr. Yazzie talked about, is, how do we get out there? And I say "we" because it falls under the direction of the city manager's officer, not the police department, but we are working on ways to get, the Commission is working on ways to get out into the community, where people are more inclined to bring forth issues like that.

One of the things, as I mentioned, is the Community Relations Commission. And I don't know where that is going to go. You know, it's out of my bailiwick. But one of the things we saw from CPAC meetings was we would have a number of Native Americans that would come to these meetings, but their complaints would be on predatory business practices. Of course, we have absolutely no control over that. You know, we could give them some advice, but we're treading on legal ground there we don't want to go on.

And that's one of the things that the
Community Relations Commission hopefully will provide is a point of contact for those types of complaints as well as, you know, if they're more comfortable, if they bring a complaint as far as, you know, police action, then that will be forwarded on to the CPAC Commission.

COMMISSIONER MELENDEZ: Let me ask you a question. What about within the police department itself? Do you think that there needs to be a public relations person that is actually a Navajo or somebody that actually could interact directly from the Farmington Police Department to the community?

I've seen that happen in some cities. In Reno, Nevada, they have tried to reach the Afro-American community with an Afro-American person that's part of the police force that kind of tries to bring relationships better, working relationships.

MR. RUNNELS: Actually -- and I'm glad you mentioned it because now I know I have a contact, who to go talk to. Yes, we're looking at that. You know, the Farmington Police Department, the City of Farmington is probably unique in a lot of places in that, really, we have a lot of money. You know, you all buy gas. So you know where the money is going.

And, you know, we have just now recently
been able to staff at the levels we need to. And we
are looking at a number. We had talked about a public
relations-type position.

The City of Farmington just hired or
created a public relations position. But, to be
honest, I had never thought about one just gearing
specifically toward the Native Americans. But, you
know, right now I can think of a couple of good
candidates for that. So I appreciate that comment. I
will certainly know how to get a hold of Reno.

COMMISSIONER MELENDEZ: Okay.

VICE CHAIR THERNSTROM: I thank you very
much.

Yes, Mr. Yazzie?

MR. YAZZIE: Madam Chair, I just want to
elaborate a little bit on Commissioner Melendez's
question. I think one avenue to look at would be to
look at the model that the Navajo Nation is looking
at, you know, rather than having this Commission or
any of your associates from the outside recommend how
we can generate that information that is needed.

The Navajo effort is from the inside. And
I would think that the process that the Navajo Nation
is putting in place to document border town
discrimination really takes into the consideration the
experiences that we have all had in the problem of generating those statistics.

So I think the Commission here might recognize the Navajo Nation's effort with this Navajo Nation Human Rights Commission and support that effort and see if we can't do a better job from the inside in generating the information.

VICE CHAIR THERNSTROM: Commissioner Yaki has a question.

COMMISSIONER YAKI: Oh, yes. I just wanted to say, one, thank you all for being here, especially Mr. Yazzie. It's always great to have someone whose name follows mine in the alphabet.

A couple of points I wanted to make. One is this is obviously not an isolated issue. We have had similar reports in other states other than New Mexico regarding border town issues. At the same time, each of it is individually localized.

One of the interesting things I heard -- and this just goes to my admitted ignorance of just how large some of the nations are -- is that Mr. Yazzie talked about 13 or so border towns around the reservation.

The question I had for both Mr. Simpson and Mr. Runnels is, to what extent have you either
networked or attempted to find common ground or common
lessons or common strategies with other jurisdictions
that also touch upon the same nation, the same
reservation, whether it's Chippewa-Cree or whether
it's Navajo? I mean, there is a commonality of a
people there.

And then, as you said, you are doing a
community relations commission, which, quite frankly,
is something that is an offshoot of a lot of large
cities nowadays. My own hometown of San Francisco has
something called the Human Rights Commission. The
Human Rights Commission deals with the issues that
would be brought up that you talked about that you
could not with the citizens advisory committee, which
we call the police commission in our town. But it
deals with economic development. It deals with issue
of human rights, civil rights, that type of stuff.

But I guess the question is, how have you
worked with other communities that also border the
Navajo Nation I guess for both of you?

MR. SIMPSON: For us I have to say very
little to be quite honest. Each of our school
districts in our county, -- there are seven school
districts -- all have border reservations in some way
or another. So we do do some connection that way. We
have made some communications with other school
districts in regards to starting a Native language
class and those kinds of things.

But, quite honestly, part of my attendance
here was to hear about these kinds of things and find
a way to --

COMMISSIONER YAKI: Has the state taken
any proactive role in encouraging the school districts
to get together and trying to work on this issue
together?

MR. SIMPSON: Not that I am aware of.

COMMISSIONER YAKI: Okay.

MR. RUNNELS: Well, of course, one thing
about, as Mr. Yazzie said, 13 border towns, you know,
that is a huge reservation. And, of course, the towns
closest to Farmington are Gallup in New Mexico and
Cortez in Colorado.

Now, we talk to Cortez, especially on a
law enforcement stand, but not as much because, you
know, Colorado laws are way different than New Mexico
laws. But we do talk and compare notes and ask advice
from Gallup a lot. As a matter of fact, this Monday,
you know, my deputy chief, assistant city manager, and
a couple of officers are going to Gallup to meet with
their mayor and the police chief on some issues that
we share together.

So I know the mayor, Stanley, has been in constant contact with Gallup because we share a lot of the same issues and they have tried to put their heads together to come up with common solutions.

VICE CHAIR THERNSTROM: Let me just see if anybody else, people have already asked questions. You're okay. Has Jennifer left? Okay. All right. Well, Mr. Melendez, you're on.

COMMISSIONER MELENDEZ: One of the questions, my understanding, it really gets down to this is a broad issue, you know, as was stated at the beginning. But at one point, we were -- in the Rocky Mountain region, we were trying to basically work on a project back in 2003. Basically it was designed to find common things that were happening within the Rocky Mountain region because basically they had some of the same problems.

So my understanding in 2003 under John Dulles, he was trying to organize like a project where all these different border towns within the different states could actually come together and basically dialogue to find out what are the top issues because there's a number of them out there, everything from all the things that were mentioned here.
But you can see the issue on the importance of SACs and how they should have been allowed to complete that project, which had been ideal coming into this hearing today. If that would have gone forward and we could have had some great answers, we would have narrowed it down to some real specific areas here. Now we're still broad.

So I'm just saying when we have those things on the table back from 2003, we should have kept that going. And we would have had at least the Rocky Mountain region really having some specific dialogue between each other. And it would have been clear today.

So that's my point, that we need to put more funding into the SACs to help us basically deal with these regional areas so that we can bring them all together. And I think that is very important to do in the future, even though we kind of missed the boat on it.

MR. WINDY BOY: So is that initiative still on the table or --

COMMISSIONER MELENDEZ: I don't know. It was basically a funding issue or something.

STAFF DIRECTOR MARCUS: I really don't think so. And, frankly, I'm a little puzzled by the
way you're describing it. There were a number of SACs that were chartered and that were looking into border town issues. Within that region, at this point, unfortunately, we have, as I recall, one chartered SAC. And it's in the State of Utah.

I encouraged them to continue in this project. And, in fact, they did meet since they were rechartered. I believe it was approximately last year, might have been earlier this year. And they looked at the project.

Of course, the Utah State Advisory Committee has their own discretion as to whether they want to continue on that subject or to look at another subject. They do have a meeting coming up. And they will have to make that decision.

We are trying to get the other states chartered as quickly as we can. As they do get chartered, of course, they will be able to decide whether they want to look at this topic or some other topics at their discretion.

COMMISSIONER MELENDEZ: My point was at the time before we started rechartering all of these SACs, I think there was interest in doing that through John Dulles at the time. Now he is gone also as a regional director.
So at the time that the SACs were in place, we could have. We were moving in that direction. And, all of a sudden, now, really, what we're saying is because of rechartering, we're going to have to start all over and start the whole idea again if that's what we want to do.

STAFF DIRECTOR MARCUS: The one thing I would add is that, even while some of these have not been chartered, I did provide funding so that regional staff could continue doing research on this topic without the SAC so that they wouldn't have to get started again.

Now, again, whether these SACs will want to address this issue or another issue is up to the SACs when they are rechartered.

MR. WINDY BOY: That brings us to a point. You know, the three, four reservations in north central Montana that border the Canadian border as a result of this University of Montana report, in other words, not only the Commission on Civil Rights but the Department of Justice came in on four, five occasions to hold these city commission, Hill County commission, and Rocky wanted Fort Belknap to come up with a plan.

Whatever that plan was that was implemented a year and a half ago, we hadn't heard in
Indian country what it was or even what the report looked like. Even me prior to coming wanted to take a look at, what was the end result? That one is still unbeknownst.

So yes, that would be a good recommendation or suggestion to reinstitute or reenact those projects to enjoin, embody those people in authority, tribal governments, city commissions, county commissions. This isn't going to go away.

COMMISSIONER MELENDEZ: Just one more question I had. We had talked about business practices against Native Americans. It is almost like discrimination through economic suppression or whatever we call that.

I know that Mr. Reynolds had commented a little bit about business practices. Could you comment, or anybody that wants to weigh in, on the kind of discriminatory practices against Native Americans, whether it is interest rates or gouging them because there's a language barrier also?

MR. RUNNELS: Well, in New Mexico, predatory lending has always been an issue, not necessarily specifically against Native Americans but, you know, a lot of people in New Mexico and, you know, the whole payday loan thing. And, of course, the
State of New Mexico just last legislative session finally passed a law regulating payday loan businesses, but it still doesn't have a lot of teeth to it.

I know, again, just what I have been told in the research that I have done that that is an issue and, you know, if you are familiar with the whole process, the interest rates that are charged and things like that.

I do know that from personal experience, you know, from being on the law enforcement side as far as, you know, reading contracts, you know, specifically in the area of automobile purchases and mobile home purchases, that oftentimes depending on the person that's buying them, they may not understand the contract. And there's always the little caveats put in there that really, you know, open the buyer up to legal action.

Vehicle purchases, you know, for a long time there, there was, you know, an issue in Farmington as far as them selling vehicles, basically "Here are the keys. You drive away with it. And we'll take your credit and let you know later if the loan is approved."

Well, then two or three days later, they
come back and say, "I'm sorry. Your loan hasn't been approved. You know, you need to return the car. But we're going to charge you a usage fee" or whatever kind of language they wanted to make up to justify it. That's not as predominant as it used to be I have been told.

You know, I think some of the business practices have bettered themselves. You know, Mr. Yaki asked, what are we doing with other -- you know, the City of Gallup is probably a third the size of the City of Farmington. But that's one of the major retail centers for the Navajo Nation.

And, you know, everything revolves around dollars. And so the city council and the business members in Farmington went to Gallup and wanted to know, "Why are you getting this business and we can't because we have so much more to offer?" Well, it was the way they treated their customers. And so there has been a huge push, you know, in Farmington to improve customer service.

Part of the reason I think, you know, that some of the business practices have improved is the fact that, again, it revolves around dollars. And, you know, New Mexico is a gross receipts tax state, you know, very little property tax.
So if you want money for your community, it comes from sales. So you have seen people finally realizing that everyone is a valued customer. You know, you treat them right, your profit is better. And so the city grows.

VICE CHAIR THERNSTROM: I would like to try to wrap this up. It's past noon, and it's been a long morning, as valuable as this is, unless people have important questions that are still on the table.

MR. WINDY BOY: I don't know. I would like to leave a copy of the commission --

VICE CHAIR THERNSTROM: Absolutely.

MR. WINDY BOY: -- several documents --

VICE CHAIR THERNSTROM: And please supplement your testimony in any way that you would like.

MR. WINDY BOY: -- that deal with the former Governor Stan Stephens' initiative with --

VICE CHAIR THERNSTROM: Absolutely. And if you don't have enough copies, we will copy for you. But it will also become part of the record.

Commissioner Yaki, you don't want us to wrap it up. You want to say something further.

COMMISSIONER YAKI: I will just say something really briefly. And that is through the
years, there's a lot of institutional memory out there amongst current and former SAC members about reports previously done, reports in progress, ideas, other kinds of things. I think that we ought to take full advantage of that.

I don't believe that this is a topic that lends itself easily to a simple briefing and report. I think it lends itself more to a hearing. I think that we should consider perhaps using the slot that I have in June that I said that I might not want to use for that particular hearing to go out to the field and do a full-blown hearing and hear from people from many different jurisdictions, hear from state and local governments, and explore this in greater detail because this is obviously an issue for a discrete segment of our population, that the problems repeat itself over and over again, notwithstanding a change in jurisdiction, whether it's this state or that state.

So I would just put that on the table and again thank you all for coming and thank you, Madam Chair.

VICE CHAIR THERNSTROM: Thank you. Obviously at a business meeting, we can raise that question of having an actual hearing.
COMMISSIONER HERIOT: Can I say something?

VICE CHAIR THERNSTROM: Absolutely. We are delighted to hear your voice.

COMMISSIONER HERIOT: I am in favor of that motion. I agree that this is such a broad-ranging topic that I don't know that it makes a very good subject for a briefing report. There's just so much that we have covered.

I really appreciate everything that the witnesses have brought to the table here, but there are a lot of different issues within this. And it may be that we should break one of them off and do a hearing on that particular topic so that we can draw conclusions.

I think we have bitten off an awful lot here for a briefing report. And even a hearing is an awful lot. And we need to think about ways that we can focus this discussion and make something productive out of it. And a hearing may be the way to go.

VICE CHAIR THERNSTROM: Well, we need to discuss this at a business meeting, which this is not. So let us bring it up at the next business meeting. I will count on Commissioners Yaki, Heriot, and Melendez to raise the issue. But let us not discuss it now.
since this is not a business meeting.

COMMISSIONER MELENDEZ: Just wanted to say thank you to all of you for being here, the tribal leaders and also all of our panel. I think you did a great job here. So we really appreciate you being here and coming a long distance to be with us.

VICE CHAIR THERNSTROM: And I thank you as well. It's been two very, very good panels. And so we have begun the process of going down a road of looking at what everybody agrees is an enormously broad topic.

And, with that, without objection, I bring the briefing to a close.

(Whereupon, the foregoing matter was concluded at 12:18 p.m.)