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U. S. COMMISSION ON CIVIL RIGHTS
ROCKY MOUNTAIN REGIONAL OFFICE

FEDERAL REPORTING SERVICE INC.
DENVER, COLORADO

WORK SESSION

NEW FEDERALISM AND NATIVE AMERICANS

Friday, July 30, 1982

CCR
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Meet.
180

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on Civil Rights

Tower Room
Executive Tower Inn
1405 Curtis
Denver, Colorado



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I N D E XSPEAKERS:PAGE NO.

1
2
3 Introduction

4 Shirley Hill Witt

4

5 "Implications of the New Federalism for
6 Native Americans"

7 Linda Huber, Esq.

8

8 SWRO Block Grant Projects

9 Ernest Gerlach

62

10 Federal Perspectives

11 Rosa Morales

97

12 Issues and Answers

13 Joanne Birge, Esq.

145

P R O C E E D I N G S

9:10 a.m.

1

2

3 MS. WITT: Let me bring this work session

4 to order. Having been denied my opportunity to introduce

5 everyone, I'm relegated simply to the task of setting

6 forth today's mission.

7 The expectations the staff holds for this

8 meeting include the following: There is a need in this

9 whole complex business of federal block granting to

10 understand a difficult process, a process that has yet

11 to come into final shape with regard to the state

12 procedures, state formula for allocation of funding,

13 systems by which the federal government will allocate to

14 native groups in various states, and internal procedures

15 once such allocations are made.

16 The purpose of the meeting today is to learn

17 as much as we can about these complex issues in order to

18 make some educated decisions about future work of this

19 office.

20 We are particularly interested in the

21 concept of holding a regional consultation, which would

22 involve six states in Region 8 and the various advisory

23 committees, and a subsequent in-depth investigation and

24 analysis leading to the publication of a report.

25 Both the consultation and the report resulting

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1 from the investigation would have as the ultimate goal that
2 of being of service and use to native groups in Region 8
3 so that they can better handle this new complex item on the
4 horizon between tribal and federal jurisdictions.

5 I think that fairly sets out my understanding
6 and wishes for this meeting. I would invite other staff
7 members, if they have further points that I have overlooked
8 in this very brief introduction, to share them at this time.

9 But before I allow anyone to say another
10 word, I want to thank our guests so much for coming. I thank
11 you in advance. I am fully delighted that you are able to
12 come and share the best of your knowledge with us. Thank
13 you so much.

14 Joanne, have you something that you'd like
15 to add?

16 MS. BIRGE: No.

17 MS. WITT: Roger?

18 MR. WADE: This is related to other issues,
19 but I think it's important to, if you have any ideas or
20 insights about how this block grant situation is going to
21 affect race relations between Indians and other groups,
22 since there will be strong competition for these funds
23 and potential seems to be there, in my mind, at least, for
24 heightened conflict between the races around the money issues.

25 MS. WITT: Bill?

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1 MR. MULDROW: Well, I don't have anything
 2 specific. I know this is called a work session, which I'm
 3 glad it's labeled that way, since we do hope to come out of
 4 this with specific ideas for the project, both the
 5 consultation and project, specific issues, specific people,
 6 these sorts of things.

7 MS. WITT: Cal?

8 MR. ROLLINS: We're especially pleased to have
 9 Ernie, because we know his office has done a great deal in
 10 the area of block grants. They have had five consultations,
 11 and when I was in San Antonio several weeks ago, he gave
 12 me an excellent briefing. They seem to have had a great
 13 deal of experience in this particular area, so we're
 14 excited about that, and I'm sure that Ernie will be able to
 15 give us a lot of information about what they've been doing.

16 MS. WITT: I had the pleasure of sitting in
 17 on the last consultation, which was primarily Indian,
 18 although not exclusively so, and although the areas that we
 19 will explore today are areas without final answers at the
 20 present time, I found the hearing very, very instructive.

21 MR. GERLACH: I know there's a lot of time
 22 devoted to Indian issues in New Mexico, and unfortunately
 23 I wasn't able to be there for it. But were any of the
 24 issues covered there pertinent to what you are looking into
 25 here in your region?

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1 MS. WITT: Very much so. Ed Little of the
 2 All Indian Pueblo Council spelled out in almost a telegraphic
 3 style -- I was thinking of one of those early Mr. and Mrs.
 4 America Walter Winchell -- was it Walter Winchell who would
 5 speak in this telegraphic style? Ed Little came out
 6 boom-boom-boom, 16 issues, all of which are certainly areas
 7 of fruitful investigation. I gave Linda a list of the
 8 set and, certainly, I'd be pleased to share them.

9 MR. GERLACH: Were any arrangements made
 10 for you to get copies of the transcript from the Santa Fe
 11 meeting?

12 MS. WITT: My hope was to plead, whimper,
 13 and cry and beg to get a copy of the transcript.

14 MS. MORALES: You should be able to get that
 15 one and also the one from the Oklahoma SAC meeting, because
 16 they covered a number of Indian issues at that open meeting,
 17 at least in terms of background. I know that the situation
 18 is different, but that might be helpful also. The
 19 Southwest Regional Office has provided our office in
 20 Washington with copies of all the transcripts so far. We're
 21 expecting that they'll provide a copy of the New Mexico
 22 one, as well.

23 MS. WITT: If I may at this point, ask Linda
 24 Huber to speak to us with regard to implications of the
 25 new federalism for Native Americans, and welcome.

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1 MS. HUBER: Thank you. Well, I want to say
2 that I'm really pleased to be here in Denver at the
3 Regional Office.

4 I recall that it was four years ago that the
5 OGC hearing team came to this office in preparation for the
6 South Dakota hearing, which was really a wonderful experience
7 for me that I'll never forget. I guess Shirley and Bill
8 were the only -- I guess Cal was around, but you had other
9 responsibilities at that time. But I'm just really
10 delighted to be back.

11 I'm going to give an overview, and let me
12 begin by saying that I know that everything that I'm going
13 to say, one part of it or another, at least for some of
14 you, will already be well known and I ask your indulgence
15 when you're listening to something that you do already know
16 and please accept that as a compliment as to how well
17 informed you are.

18 I'd like to begin by just calling to mind
19 some of the general fundamental principles that govern
20 relationships between the federal government and the
21 Indian tribes that certainly must be kept in mind as we
22 look at the detail of how the block grant proposals and
23 regulations operate.

24 The first principle, of course, is the trust
25 responsibility, the trust relationship between Indian tribes

1 and the federal government. The tribes in the 18th and 19th
2 centuries ceded vast amounts of land and resources to the
3 government in return for a promise to guarantee and safeguard
4 Indian welfare.

5 In the decisions of the Supreme Court and
6 our law, this duty, the trust responsibility has been called
7 a duty of the highest nature of a moral character, really a
8 fiduciary relationship between the tribes and the federal
9 government. It has been likened to that of a guardian to
10 a ward. The trust relationship includes a duty to protect
11 Indian resources and also to safeguard the social welfare
12 of Indian people.

13 I might say, also, that this trust
14 responsibility is one that runs from the federal government
15 to the tribe. It has nothing to do with the states. The
16 states themselves have no trust responsibility and
17 certainly have no obligation to accept any such
18 responsibility from the federal government, and I think that's
19 important to keep in mind when we're talking about the
20 moving of federal programs from the federal government to
21 the states.

22 The second principle that we have to keep
23 in mind is that of Indian tribal sovereignty. Indian
24 tribes are governments which, although subordinate to the
25 general government of the United States, tribes possess most

1 powers of government over their own members and over the
2 land and resource base of their reservations.

3 This principle of tribal sovereignty has
4 been -- well, it dates from really the beginning of the
5 country and it's found in the constitution itself, and it's
6 been continually reaffirmed in court decisions and enactments
7 of Congress, most notably in the Indian Self-Determination
8 Act of 1975.

9 When we talk about the state, tribal, and
10 federal relationships that are modified by the new block
11 grant system, we really have to keep in mind the impact on
12 the principle of tribal sovereignty.

13 Before we get into the detail of the block
14 grant system itself, I would just like to give an overview
15 of the way in which federal resources and service delivery
16 is made to tribes in general so we have a context to see
17 where the block grants fit in.

18 Because of the federal relationship, Indian
19 tribes and Indian peoples are much more dependent on the
20 federal government for governmental services than other
21 components of the political system. Reservations are
22 federal enclaves. Moreover, most tribes and most Indian
23 people lack a tax base through which they could obtain
24 additional resources, other than what they obtain through
25 the federal government.

1 I think that's something to keep in mind
2 when we consider the impact of the federal budget cuts and
3 the block grants on Indian tribes, that we're talking about
4 a situation where there is almost total dependence, rather
5 than in the states where, although there is a substantial
6 impact, it is nowhere as great.

7 The principal federal agency that deals with
8 Indian tribes and peoples and administers the trust
9 responsibility is the Department of Interior through the
10 Bureau of Indian Affairs, and really through the Bureau's
11 own employees. If you go to any reservation, you will find
12 the BIA resident agency with many federal employees, a number
13 of whom will be Indian because there is an Indian preference
14 requirement for employment. But these are federal
15 employees who provide services in the form of land management,
16 social services, law enforcement, and the like.

17 In addition, the Department of Interior,
18 through the Bureau of Indian Affairs, administers the
19 Indian Self-Determination Act of 1975. Through this act,
20 tribes may apply to the Department of Interior and arrange
21 to contract for the tribes themselves to provide services
22 that were formerly provided by BIA employees.

23 There are a number of other federal
24 agencies who have programs that are specifically earmarked
25 for Indian tribes and peoples. Other than the BIA itself,

1 perhaps the largest federal Indian program is the Indian
2 Health Service of the Department of Health and Human Services.

3 IHS provides primary health services to
4 Indian communities. There are IHS hospitals and clinics
5 on most reservations, and it really is the primary source
6 of health care for Indian people.

7 There is also the Indian Housing Program of
8 the Department of Housing and Urban Development that has
9 upgraded housing, built new housing on Indian reservations,
10 a very significant program.

11 A less well-known program is the Indian
12 Affairs Program of the Department of Energy, which has played
13 a very important role for those tribes that possess natural
14 resources on their reservations. And the Indian Affairs
15 Program of DOE has provided technical assistance to enable
16 those tribes to deal on a more equal basis with oil
17 companies, energy companies that wish to contract with them,
18 that wish to obtain leases, and it has played an important
19 role in enabling the tribes to maximize the benefits that
20 they get from their own resources.

21 I want to mention, also, the Indian
22 Education Assistance Program of the Department of Education,
23 which provides education services on reservations.
24 Incidentally, it has been proposed that the Indian Education
25 Assistance Program be transferred to the BIA, since the current

1 proposal is to phase out the Department of Education altogether,
2 but that has not yet taken place.

3 Also, tribes have relied on a number of
4 federal programs that are not specifically earmarked for
5 Indians. One of the most significant of those has been the
6 CETA program of the Department of Labor. In the past and
7 in the present, although it has been diminished because of
8 budget cuts, tribes have obtained many employees through
9 CETA. They've been able to provide jobs on reservations
10 and also have been able to use the staff funded by CETA to
11 improve the delivery of services to their own tribal members.

12 In many tribes, their tribal police forces,
13 their law enforcement apparatus, has been staffed in great
14 part by CETA employees; other tribal programs, such as
15 social services, child welfare, and the like.

16 The Economic Development Administration of the
17 Department of Commerce has assisted a number of tribes with
18 economic development programs to provide an economic base
19 for the reservation, and I believe there are a number of
20 those programs in this region -- tourist development, ski
21 resorts, and the like -- which the idea has been to give
22 the tribes a base to generate income for themselves.

23 In addition, to the various and numerous
24 categorical programs that have been replaced now by the
25 new block grant system, tribes had been receiving benefits

1 in a number of areas through direct funding, through the
2 categorical programs.

3 There were a number of programs that had
4 been administered by the now defunct CSA, energy assistance
5 and health care programs administered by HHS, and I think
6 that one of the things that we are all interested in is the
7 impact of the transfer of those programs from the
8 categorical format to the block grant system.

9 We must keep in mind, also, the relationships
10 of the tribes to the states. Although Indian tribal members
11 have a special relationship with the federal government,
12 Indians are also citizens of the United States and the
13 states in which they reside, and they have the same rights
14 as any other citizen to partake of state programs.

15 There appears to be little information on the
16 national level as to how Indians have been able to use
17 state programs, whether the programs have been adequate
18 and whether there has been any discrimination or difficulty
19 in obtaining these services. That's, again, something I
20 think that could really benefit from analysis at the
21 regional level, because people in Washington don't seem to
22 know a great deal about that.

23 So, moving on to the new federalism and the
24 block grant system, we have a new administration, or I guess
25 not so new now, that was elected with a seemingly popular

1 mandate. And the new budget and the block grant program
2 really come out of a particular political philosophy, and I'd
3 like to try to articulate that, as best I can. The
4 President has called this philosophy the new federalism.

5 First of all, it is claimed that the current
6 recession and economic decline in which this country now
7 finds itself is really due to an overly fat federal government
8 that has been overspending, running up a large deficit, and
9 in order to turn that around to get back on the path of
10 economic recovery, it is necessary to reduce the amount of
11 spending in the domestic area.

12 In addition, the new federalism really seeks
13 to reorder the relations between the federal government and
14 the states and local communities, and this is really where
15 the block grant program comes in.

16 It is claimed that by turning over management
17 of federal programs to the states that there will be large
18 savings in administrative costs that occur by having programs
19 managed at the local level rather than by a series of layers
20 of federal bureaucrats in Washington and, therefore, even
21 if there are budget cuts, the savings in administrative
22 costs will be, in part, made up by transferring the
23 administration to the local level.

24 Further, it is claimed that programs managed
25 at a local level will be more responsive to local

1 constituencies than massive programs administered by
2 bureaucrats in Washington. So, we are on the way to the
3 putting in place of the new federalism, and several very
4 significant steps have been taken along those lines.

5 The Omnibus Budget Reconciliation Act of 1981
6 was enacted in August of 1981. It resulted in large
7 reductions in authorizations and appropriations for federal
8 programs.

9 You may remember the news at that time. It
10 was one of those marathon sessions of Congress. It was a
11 bill that really struck at every part of the federal
12 apparatus. The Congresspeople were staying up late into
13 the night, sometimes voting on scraps of yellow pad where
14 amendments were going back and forth. And the thing turned
15 out into one bill, and this is it (indicating), Public
16 Law 97-35, the Omnibus Budget Reconciliation Act of 1981,
17 and I invite you all to look at it.

18 MS. WITT: Joanne, she gave us a copy of this
19 to read at our leisure.

20 MS. BIRGE: Yes, I have one. I just haven't
21 gotten to it.

22 MS. HUBER: Yes, I can understand.

23 So the Act established nine block grant
24 programs, replacing 54 categorical programs in the area of
25 health, low-income energy assistance, social service, and

1 community development. Seven of those block grants are
2 under the supervision of the Department of Health and
3 Human Services, one under HUD, and one under the Department
4 of Education.

5 In the original bill that was proposed in the
6 process leading to the enactment of the Omnibus Budget
7 Reconciliation Act, there was no provision for direct funding
8 of Indian tribes in the block grants.

9 In the course of the consideration process,
10 representatives of Indian people, the lobbyists, such as
11 NARF and others, did interject themselves in the process and
12 in the later stages of the consideration and enactment of
13 the bill they were able to get provisions for direct
14 funding to tribes in some of the block grants with certain
15 restrictions. And this was really a part of the political
16 give and take. And the way that it finally ended up was not
17 very systematic or orderly, but I'll try to go through
18 the block grants and outline how it came out in the end.

19 MR. MULDROW: Can we ask questions as we go
20 along, or should we wait?

21 MS. HUBER: That's fine with me.

22 MR. MULDROW: What, precisely, do you mean
23 by "direct funding"? Does that mean they can get block
24 grants directly, like the states do?

25 MS. HUBER: Yes. Let me clarify that, that a

1 tribe itself may apply for a portion of the block grant funds,
2 for a particular block grant, and that would be given
3 directly to the tribes rather than passing through the
4 state.

5 MS. BIRGE: If I could interject, I think we
6 need to just back up a little bit. I think to stay out of the
7 political arena, it's really important to understand that the
8 new federalism did not invent the idea of block grants and
9 that it is a standard funding mechanism that's been used in
10 many, many previous administrations, and that all new
11 federalism does is increase the use of that standard method.

12 I think we need to understand what those
13 methods are of getting federal money to the local citizen
14 in whatever state and what kind of options have been used
15 as standard mechanism, then I think we can see better why
16 the block grant, which used to be maybe a secondary option,
17 is now being moved to more permanence.

18 MS. HUBER: What Joanne says is true, it has
19 been used before; however, the Reconciliation Act really
20 substantially increased the use of it and resulted in the
21 ending or the folding of a number of former categorical
22 programs that had been administered directly by the federal
23 agencies into block grants to be administered by the
24 states, and in some circumstances by the tribes.

25 MS. BIRGE: If I can talk a little bit about

1 the other funding methods, first, just a listing kind of
2 thing; I mean, direct to states, direct, bypassing states
3 going to local agencies, indirect, that kind of thing.

4 MS. HUBER: Right, there are a number of
5 methods. The block grants of giving money directly to the
6 states to be administered; there are a number of direct
7 funding methods where federal programs have given grants to
8 local community service or community development agencies,
9 not tribes or states but simply local programs who filled
10 out applications for the particular program that they wanted
11 to be a grantee for.

12 There are a number of programs, not only the
13 BIA but in many of the federal agencies where federal
14 employees themselves managed and administered the service
15 delivery. There's a whole range.

16 MS. WITT: Is this an area that we would
17 expect Rosa to share with us more?

18 MS. MORALES: I wasn't going to get into the
19 actual different types of funding mechanisms as such. I
20 was going to direct my comments at the block grant funding
21 approach.

22 I think it's important to understand that
23 federal financial assistance, as a concept, includes a very
24 wide range of ways in which the federal financial assistance
25 is distributed. Among those are some of the ones that Linda

1 mentioned. There are some formula programs that are
2 categorical in nature in which Congress enacts a particular
3 piece of legislation, appropriates a certain amount of funds,
4 and either specifies a formula on the basis of which the
5 funds can go either to the state, local governments, like
6 cities, et cetera, to run that particular program.

7 There are also, for example, programs of
8 contract and guarantee. It's another type of federal
9 financial assistance, and I'm not prepared to go into the
10 ins and outs of that type of assistance. But there are those
11 types of programs. I don't know how Indian tribes or tribal
12 governments have benefited from those types.

13 Within the block grant funding approach, we
14 have a tendency to view it as a continuum. There isn't just
15 one single type. You can go from a block grant that
16 incorporates a very limited number of programs, let's say
17 in the education area, that are, for example, to provide
18 library services, and they will pull together a number of
19 individual programs that have been funded for that particular
20 subject area into a very limited grant that then will go to
21 the state and the state will distribute the money among the
22 local areas.

23 But then you move into a middle range where
24 you get the type of block grant we're talking about here as
25 being found in the Budget Reconciliation Act where they've

1 taken some programs that may not be entirely related when
2 they were categorical and put them together, minimized the
3 federal requirements or strings, as people call them,
4 attached to the funds, and give the discretion to the states
5 to distribute the money.

6 Then at the other extreme of the continuum,
7 you may have a program, such as revenue sharing, where it's
8 just this huge amount of money that gets turned over to the
9 state and, again, no federal strings, or very few, until
10 Congress gets lobbied enough to attach some strings to it.
11 And under a revenue sharing type of program, you can fund
12 just about anything within certain limitations that might
13 be placed in the statute.

14 MS. WITT: I find that a very interesting way
15 of thinking about it, in terms of a continuum.

16 MS. MORALES: Right. We've had community
17 development block grant, which, by the way, that was a program
18 that existed and was essentially reauthorized in the budget
19 act. That's one of the nine that Linda mentioned, with
20 certain changes being made, some very substantial changes
21 being made in the CDBG program, which essentially was an
22 entitlement program for large cities or urban areas and a
23 small cities program which HUD controlled and gave direct
24 funds to small cities.

25 However, in the change, and I think Linda might

1 go into this a little more and I don't want to overstep
2 your presentation here, so that that was a program that was
3 in existence.

4 The Title 20 program, which is now the
5 Social Services Program, was in existence as a block grant,
6 to a certain extent. So that some of those were
7 reauthorized, some of them are totally new, of the nine
8 that Linda mentioned.

9 I don't know if that helps.

10 MS. BIRGE: Yes, I think that was exactly
11 what I had in mind.

12 To expand on it a little further, I think for
13 our purpose to know that when Congress says there is this
14 amount of money for this purpose, that the statutes vary --
15 and a continuum is a great way of looking at it -- that
16 Congress might say in this statute who can get this money
17 and they might say, states, Indian tribes, local agencies,
18 private foundations, private colleges. They can list them
19 all.

20 Then they can say how they go about getting
21 this money, and that can be a grant kind of thing. They
22 can also say who gets this money, and it could be an
23 entitlement kind of situation where they divide up that
24 this percentage will go to each state, and the statute itself
25 sets out the formula of the money.

1 Where, in the other one, the administrative
2 agencies, HHS or whatever, divided the money up between
3 those competing, those who submit applications. In the
4 titlement, there's that amount of money there. If they don't
5 apply for it, it doesn't get used, which is a lot of the
6 community block grant kind of things.

7 The statute then can exclude Indian tribes,
8 it can leave Indian tribes as optional. In many situations,
9 called the State Plan Situation, the money is set aside only
10 for states. When the state submits a plan as to how they're
11 going to distribute the money, then the state gets that
12 money and the state decides who is eligible as far as local
13 agencies, private organizations, Indian tribes, or so forth.

14 MS. MORALES: There's one other area, and
15 that's the statute may limit the extent to which certain
16 groups are eligible, and that becomes very important, I've
17 been finding out, with respect to the block grants and their
18 impact on Indian populations.

19 MS. HUBER: That's true. Also, with the
20 new block grants, by and large, and again it comes down to
21 the political philosophy that I think gives rise to that.
22 Each of these block grants, or most of them, a number of
23 former categorical programs have been combined into a single
24 block grant and the state is given discretion to determine
25 its own priorities.

1 They may let some of the programs slide. They
2 may decide that in this particular state the priority is to
3 give a far higher percentage of the funds to one particular
4 program or one particular need, and that is really seen as
5 giving the people in the local areas who are closer to their
6 own citizens and their own problems the ability to put the
7 resources into what they think is the greatest need.

8 MS. WITT: Which is also where the competition
9 will come in.

10 MS. HUBER: Right, and also where, really,
11 the danger to the minorities getting lost in the shuffle since
12 they aren't seen as priorities to the dominant group that is
13 parceling out the money.

14 MS. MORALES: The amount of political clout,
15 as we all know, that minorities and protected groups have is
16 not what other groups have, so therefore, the whole concept
17 tends to politicize a great deal the distribution of the
18 funds so that it's no longer necessarily that funds will be
19 distributed or targeted to the people most in need, but to
20 those who can shout the loudest, exert most political pressure
21 and what have you. It's one of the biggest dangers that we
22 encounter.

23 MR. WADE: Along that line, are there
24 certain legal obligations that the federal government has which
25 would still inhibit or limit the way the states distribute

1 funds?

2 MS. HUBER: We'll get into that, and I'm sure
3 Rosa will get into that in more detail, the various
4 nondiscrimination provisions still apply. However, the
5 enforcement mechanisms have become more attenuated because a
6 part of the deal also is to free the states from unduly
7 burdensome and expensive federal reporting requirements,
8 oversight requirements, and the like.

9 MS. MORALES: The agencies still maintain
10 that the federal government has a responsibility.

11 MS. HUBER: All those things are in place
12 and they are still the law. I think as the day goes on we'll
13 get into how the enforcement mechanisms are operating and
14 some of the questions raised.

15 I might say, also, that the administration
16 has announced that it wishes to expand the block grant
17 system and to include the aid for dependent children program
18 and also the food stamp program in new block grants.

19 It's interesting that they have met with
20 overwhelming resistance from the states and states own
21 organization, such as the National Council of State
22 Legislatures. The states were really very enthusiastic
23 initially about the block grants as giving them more
24 autonomy, something they had always asked for.

25 But since the block grants have been combined

1 with the massive federal budget cuts, it leaves the states
2 holding the bag with their responsibility for administering
3 programs and meeting needs with far less resources. It's
4 been said that it gives the states autonomy, perhaps more
5 autonomy than they had before, to decide what is going to
6 be cut.

7 But it's not a happy situation for the
8 state politicians and they have been resisting having any
9 more of this thrust upon them, which is an interesting
10 situation and as you get into the regions I'm sure it will
11 be very interesting to see what the state officials have
12 to say about this, as well as the tribes.

13 Let me just run through the nine block grants
14 and what they include and how they work, and particularly
15 as they relate to Indians. There are three health block
16 grants there were created by a new Title 19 to the Public
17 Health Service Act.

18 The first of those is the maternal and
19 child health block grant, which consolidated seven former
20 categorical programs. This program is administered by
21 HHS. I listed in my outline what those programs are:
22 maternal and child health, disabled children's care, lead-based
23 paint poisoning, sudden infant death syndrome, hemophilia,
24 genetic disease, adolescent pregnancy program.

25 Tribes are not eligible for direct funding

1 under this block grant. This has been a matter of great
2 concern, at least to the national Indian organizations and
3 the National Congress of American Indians is very eager in
4 the next go-round to amend the statute to provide for
5 direct funding of tribes under this block grant, because
6 the former categorical programs had, apparently, provided
7 significant services to many tribes, and that is no longer
8 available to them.

9 The second of the health block grants --
10 excuse me, there are four health block grants. The second
11 of those is the preventive health and health services block
12 grant. This consolidated eight categorical programs. It's
13 also administered by HHS. We have home health, urban rat
14 control, fluoridation, emergency medical services, health
15 education/risk reduction, health incentive grants, hypertension,
16 rape crisis centers.

17 Now, tribes are eligible for direct funding
18 under this block grant, but there are restrictions. First
19 of all, it has been the case for this fiscal year that tribes
20 may only be funded under this block grant if the state in
21 which they are located has applied for and received funds
22 under this block grant. The new HHS regulations have been
23 eliminated to eliminate this requirement, so for FY 83 a
24 tribe may apply for this block grant, even if the state in
25 which they are located chooses not to.

1 MS. WITT: This was a criticism that was
2 raised at the Santa Fe hearing, why should they be penalized
3 if the states hadn't taken the initiative to make their
4 own claims.

5 MS. HUBER: That has been taken into account
6 in the new HHS regulations. However, there is another
7 restriction, tribes are eligible for direct funding under
8 this block grant only if they received a grant during FY 1981
9 under one of the categorical programs that were replaced
10 by the block grant. And it doesn't count if the tribes
11 had received a subcontract from IHS administering a similar
12 service.

13 MS. BIRGE: So how many did, do you know?

14 MS. HUBER: That's interesting. In listening
15 to the tapes of the Dallas National Governor's Conference
16 meeting that Cal attended, an HHS official said that under
17 this particular block grant, there are two tribes that are
18 eligible. It's sort of, First the good news, then the bad
19 news. The tribes are eligible for direct funding, but
20 there are only two of them.

21 For those two tribes or for any tribes, their
22 allocation will be reserved from the state's block grant
23 according to a formula of the ratio of the eligible low
24 income people in the tribe to the eligible low income
25 people in the state. So for the smaller tribes, that can

1 result in an actual disbursement of \$200, \$300, which is
2 another problem.

3 The alcohol drug abuse and mental health
4 block grant, this block grant united a number of programs
5 for community mental health centers, drug abuse and alcohol
6 education and control programs, certainly a significant area
7 for Indian tribes. The same restrictions apply as apply to
8 the preventive health block grant.

9 MS. WITT: Wendell Chino went on at some
10 length about how these funds, which were seen to be so
11 important to the Mescalero Apaches, they are no longer
12 eligible for.

13 MS. HUBER: Yes. Well, just to illustrate
14 how this block grant has worked in practice, this is from
15 the statistics released by HHS itself.

16 On September 22, 1981, the Secretary of
17 HHS, Mr. Schweiker, sent a letter to all tribal officials
18 notifying them of this block grant and inviting them to
19 submit a letter of intent. Two hundred thirty-five tribes
20 submitted letters of intent, saying they wished to
21 participate in this program and receive funds under this
22 block grant.

23 Of this 235, only 21 were eligible by virtue
24 of past participation in previous categorical programs. Of
25 this 21, it was further whittled down to only 15 of those

1 being located in states which themselves were participating in
2 this block grant.

3 MS. BIRGE: But again, to put that in the
4 context of then and now, this is not the dramatic change
5 it appears to be. A few years back when there were 1100
6 programs in the domestic assistance programs, tribes had
7 participated in 85. So that's why I was talking about other
8 funding methods is there are many ways to cut off this --

9 MS. HUBER: Let me just finish the thought,
10 then we can come back to that.

11 At any rate, only 15 of those were eligible.
12 Of these 15, three were further stricken because they were
13 urban Indian organizations and the eligibility is only to
14 tribes themselves as are defined in the Indian
15 Self-Determination Act. So even though those urban Indian
16 organizations had operated programs under the previous
17 categorical block grant, there were not eligible because
18 they weren't tribes, actual governments.

19 When we got down to it, only seven tribes
20 received grants under this block grant in FY 1982 out of
21 235 who had indicated that they would have wished to
22 participate in this program.

23 MS. WITT: Do you think that's a paradigm
24 for what we're going to see everywhere at all times for all
25 of this?

1 MS. HUBER: No, not necessarily. It could be,
2 the block grants are varied and not all of them have these
3 restrictions.

4 The next one I mention is the primary care
5 block grant, which only comprises the former community
6 health center programs. This program is actually not
7 operational yet, because for FY 1982 the program has remained
8 under federal supervision.

9 This, again, is one of the block grants on
10 the continuum that Rosa mentioned wherein the consideration
11 and enactment process, advocates for low income people were
12 able to have certain restrictions placed into it. States
13 that choose to apply for this block grant must agree to
14 continue to operate the centers for at least one year after
15 they obtain the funding.

16 They can't just do away with them or spend
17 the money elsewhere. Or they may elect not to participate
18 and leave the centers under federal supervision, and in
19 those states, as I understand it, the program will be
20 operated essentially in the same way it did under the former
21 categorical program. Tribes are eligible for direct
22 funding under this block grant.

23 Low income home energy assistance. This also
24 is administered by HHS, and this block grant continues the
25 former federal low income federal energy program. It simply

1 turns the management over to the states with rather less
2 federal involvement and restrictions than otherwise was the
3 case. But it's really the same program.

4 Tribes are eligible for direct funding under
5 this block grant. For this year, tribes were eligible for
6 direct funding even if the states in which they were located
7 did not participate. They were also eligible to apply even
8 though they had not participated previously.

9 But the formula for allocation of funds is
10 the same as for the health block grants. In other words,
11 the tribe's allocation would be reserved from the state's,
12 according to a formula of the ratio of the eligible low income
13 tribal members to the state low income population of the
14 state in general.

15 MS. WITT: I find this particular one most
16 perplexing. In a trial in Phoenix that involved the
17 Lupton chapter of the Navajo nation, 40 of the Navajo
18 elderly were allowed to climb on a bus, which was hired,
19 rented by the Lupton chapter, and driven to the week-long
20 trial to sit in the audience to hear what was going on, using
21 the money from this grant. And I fail to quite see how that
22 would cover that particular kind of activity. Maybe I
23 shouldn't be asking this question. And they were put up in
24 the Hilton.

25 MS. HUBER: I think we need a lot more

1 information about the actual impact of the block grant
2 system for administering the low income home energy program
3 as opposed to the former federal administration. But at the
4 meeting that Cal attended, Bob Cocker, who is the director
5 of Social Services for the Colorado River Indian Tribe,
6 did bring some statistics of some of the Arizona tribes as
7 to the low income home energy assistance they had received
8 in FY 81 under the federal program and what they received
9 under direct funding by the block grant in 1982.

10 Some of these statistics, in '81, Hopi had
11 received \$79,481, and in '82 it was 29,790; Navajo in '81
12 had received 814,000, which went down to 374,000 in 1982,
13 or a \$500,000 reduction. Salt River, on the other hand,
14 somehow managed to increase from 16,000 to 19,000.

15 MS. WITT: They have a very interesting new
16 program, experimental program for solar collection, and
17 that might account for some of that.

18 MS. HUBER: Perhaps. I don't know.

19 MS. BIRGE: Do we know if that's proportionate
20 to decreases for, say, the State of Arizona?

21 MS. HUBER: It may well be, it probably is.
22 Although, I'm surmising, I don't know.

23 MS. BIRGE: In which case, I don't know that
24 we can bring it up.

25 MS. HUBER: I beg to differ, but I'll get to

1 that later.

2 The White Mountain Apaches declined from
3 79,000 to 38,000. And looking at the funding of all the
4 tribes in Arizona in '81 and '82 for low income home energy
5 assistance, in 1981 it was 1,171,000; in 1982, that was
6 decreased to 629,000 for a 53 percent reduction in low
7 income home energy assistance.

8 So, whether that is due to the overall budget
9 cuts, problems in the allocation between the tribes and
10 states under this block grant, I think those numbers are
11 significant. It would be interesting to know if the same
12 experience has happened in the tribes in your region, but I
13 think that that certainly gives rise to some questions.

14 The community development block grant, a
15 number of categorical programs for rural and urban
16 development, and this is the only block grant administered
17 by the Department of Housing and Urban Development. Tribes
18 are eligible for direct funding. I'm going to really not
19 say anything more about that. Rosa is really much more
20 familiar than I am with the hard regulations, I think, and
21 the former program and I will just note that as one of the
22 grants and leave that for the moment.

23 The education block grant unites 33 former
24 categorical programs, including Head Start, Follow-Through,
25 Teacher Corps, school library, emergency school aid, and

1 this is a block grant administered by the Department of
2 Education.

3 So far as I have been able to determine, tribes
4 are not eligible for direct funding. It is a block grant
5 that is for the states, and for the definition of states
6 it refers to the definitions in Title 1 of the former
7 Education Act, where states are defined as the 50 states,
8 Puerto Rico, Guam, et cetera, but not tribes.

9 Then finally, No. 9, the social service
10 block grant, which replaces former Title 20 of the Social
11 Security Act, and tribes are not eligible for direct
12 funding for that block grant.

13 MS. BIRGE: Except the Navajo. I don't know
14 how they're getting it. The administrator here told me
15 that they had given them direct.

16 MS. HUBER: The HHS regulations under that
17 block grant state very clearly that tribes aren't eligible
18 for direct funding. But if they've found a way to do it --

19 MS. BIRGE: It was Arlene Sutton told me
20 that.

21 MS. WITT: Maybe at long last the Navajos
22 have obtained statehood and the news really hasn't gotten
23 out yet.

24 MS. HUBER: Never underestimate the Navajos.
25 So, from what I have been able to determine

1 at the Washington level, and even in the national Indian
2 organizations at NCAI and NARF, there are concerns, there
3 are statistics at a national level available to some extent,
4 but nobody really seems to have information and has been able
5 to track how a particular tribe managed with a particular
6 categorical program prior to the block grant system tracing
7 that through to how they're doing now.

8 There really are all kinds of concerns being
9 raised, the sort of concerns that you raised, but nobody
10 seems to have any hard information about, is this really
11 taking place, in fact, in the tribes in the local areas;
12 are there other things that people haven't noticed, impacts
13 that people haven't yet identified? There really is not
14 good information available on the local level.

15 But I just want to note some of the
16 particular concerns and issues that I've identified.

17 MS. MORALES: Before you go on to actually
18 discussing the issues, since you just went through
19 essentially the block grant titles, there is one title
20 that you should also keep in mind within the Budget Act,
21 and that's Title 17, because it includes a number of
22 crosscutting requirements -- and I'll talk about it a little
23 bit later -- that apply to all of the block grants.

24 At this point, it's not clear the kind of
25 impact the requirements in that particular title would have

1 on the administration of block grants with respect to
2 Indian tribes, but it's there.

3 MS. HUBER: I hope you can speak to that.

4 MS. MULDROW: Also, the thing about what
5 you just said, there are certain statistics available at the
6 national level but no one has ever tracked differences in
7 particular programs that this block grant funding is
8 made, how they're doing now as compared to --

9 MS. HUBER: Right. For example, did the
10 Oglala Sioux tribe receive any money from the categorical
11 grant programs of the various alcohol programs. What has
12 happened since that time? By the way, the Oglala Sioux
13 tribe is one of the seven who is eligible for the alcohol
14 block grant, so right here in your region a real oddity.

15 MS. BIRGE: Not really, no.

16 MR. MULDROW: So what kind of things would you
17 need to determine that, previous funding available versus
18 present funding or --

19 MS. HUBER: Yes, that would be certainly
20 part of it, the application process --

21 MS. MORALES: The eligibility requirements.

22 MS. HUBER: How they have fared when they
23 were able to obtain their allocation directly from the
24 federal government, how have they been able to fare now,
25 even though there is direct funding that their allocation

1 is determined by a formula that takes into account the ratio
2 of their eligible population to the population of the state
3 in which they reside?

4 MS. WITT: From a literary approach, could
5 one say it would be useful to investigate and write up
6 something like the diary of a block grant to a reservation
7 and select a block grant or categorical grant?

8 MS. HUBER: That would be the second question,
9 but a need, say resources for alcohol abuse, how the tribes
10 have obtained the funding and services for that need in
11 prior years, how that has changed in this period.

12 MS. BIRGE: I think to go by that need and
13 to look at what grant, categorical or otherwise, was supposed
14 to have taken care of that need and then look at the -- and
15 I think eligibility is the key, because although we can't
16 predict dollars, we certainly can see eligibility.

17 And the eligibility of tribes can be cut
18 off in the statute; it can be cut off by an administrative
19 agency in its regulations; it can be cut off by the state
20 when it submits a state plan.

21 So if we looked at the previous grant, was
22 the tribe eligible by statute, was it eligible by regulation,
23 was it eligible by state methods or formula or whatever,
24 and then look at it was subsumed into the block grant.

25 Does the block grant, then, either by the

1 statute, by the administrative regulations, by the state
2 exclude the tribes? Because one that Allen Parker told me
3 about on the weatherization program, the supplemental, that
4 it went from whatever to zero, because in those levels that
5 can cut off eligibility, the state said, and the statute
6 didn't, that none of the money given you can be used for
7 administrative costs. Because of that, no tribes in the
8 state could apply for the grant money.

9 So that eligibility can be looked at as a
10 latter kind of situation, and I think to compare eligibility
11 legally by regulations and so forth, and practically, too,
12 to the block grant that took its place and then said, We
13 don't know yet if it's going to solve the need, we don't
14 know dollars. But by eligibility alone, we can see that
15 the tribe's not going to be covered.

16 MS. WITT: The other interesting idea that
17 seems to be forming here on the table would be to find
18 something of a tribal experience where there was a prior
19 categorical grant, or whatever, to track it through not
20 only this way as this happened and this happened, but to,
21 if we could get the documentation, if we could get the
22 letters that went back and forth, to actually do a diary of
23 a --

24 MS. BIRGE: Sure hard to get, though.

25 MS. WITT: I'm sure it would be, but if we

1 could just find one nifty one. We have 26 reservations.

2 MS. MORALES: Can I just interject something
3 here, and that is, I think that's a good idea. I think it's
4 something that needs to be done and that will give us some
5 very tangible types of information rather than talking in
6 abstract.

7 One caution that I would add, or one thing that
8 I would, one factor I would ask you to keep in mind is that
9 because, and this is -- I don't have any factual information
10 on which to base this conclusion, but I think that there
11 are going to be differences between the different tribes,
12 even within one state and between states, that you don't
13 limit it or don't think only in terms of one example or
14 tracing one, that you give some consideration to a number.
15 If not a number of needs, then a number of tribes and within
16 a number of states.

17 MS. WITT: Do one under each title.

18 MS. BIRGE: First you have to find the
19 tribes that have had this experience.

20 MS. MORALES: That, in itself, finding the
21 tribes that have had this experience and trying to
22 determine the impact, may limit it anyway. But I'm just
23 raising it for your consideration to keep in mind.

24 MS. WITT: I kind of like the idea.

25 MR. WADE: I suspect that there isn't, but

1 has there been or are there any particular logic in the
2 establishment of these criteria? How do they come about, just
3 politics?

4 MS. HUBER: My understanding was that, in
5 the consideration process, and I guess it was really
6 something, and not only Indians but consumer advocates,
7 advocates of low income people in those days when the light
8 on the Capitol was up till all hours while they were doing
9 it and they were getting in amendments and doing the best
10 they could. And originally, tribes were not included for
11 direct funding at all. I suspect that nobody really
12 even thought of it. And on some of the block grants there
13 are more restrictions than others, and you're right, it
14 was a political rather than really a logical process.

15 MS. MORALES: Let me just interject that our
16 experience, and we looked at the draft proposals, the
17 administration transmitted to the hill that were eventually
18 introduced, and those are the ones that were eventually
19 changed considerably, that a lot of these issues didn't
20 appear to have gone through any systematic review process,
21 just by the way the proposals were written.

22 It was at the time, as Linda has indicated,
23 that they reached the Congresspeople and were actually
24 introduced and the advocacy groups and the public interest
25 groups, civil rights groups, women groups, what have you,

1 got together and reviewed the proposals and said, "Whoa,
2 this is ridiculous. We cannot go, first, with all of the
3 different programs that the Administration is proposing to
4 be folded into each of these block grants."

5 So they managed, through political clout
6 and lobbying, expensive lobbying, to get some of the programs
7 left out of the block grants altogether, to get a lot of
8 the restrictions written into the legislation as it
9 eventually came out, et cetera.

10 But initially, the proposals were much
11 worse than they turned out in the actual legislation.

12 MS. HUBER: That's true. Actually, the
13 primary care block grant with the community health centers,
14 advocates of low income people were able to get that
15 restriction placed in the statute, that the states had to
16 keep them going at least one year, that they could not
17 assume the program and then get rid of them. They either
18 had to undertake to run it themselves or let the federal
19 government continue to.

20 MS. MORALES: It's interesting, because
21 initially, the thrust of the groups was, "We're going to
22 oppose altogether the use of the block grant funding
23 approach." That was the posture that the Commission itself
24 took in its 1982 budget analysis in the chapter on block
25 grants, that we had serious reservations about any type of

1 block grant consolidation, which is another term that's
2 used of formerly categorical programs.

3 Then it moved on when it looked as though
4 the battle for preventing block granting altogether had
5 been lost, then people started focusing their attention
6 more on, "Well, we have this legislation. It looks like
7 it's going to pass in some form, and we might as well
8 direct some attention to putting in some restrictions that
9 at least we can live with."

10 So that that was all part of the whole
11 process. And as Linda has suggested, you had people
12 coming up with -- I mean, draft proposals on little pieces
13 of paper and none of the Congresspeople really knew what
14 they were voting on.

15 MS. HUBER: When you read this, it really has
16 that kind of flavor. This is not an orderly document.

17 ^RMS. MULDROW: Let me ask this: Is it too
18 early to determine the actual effect of this change in
19 funding methods? Is it fully in place, these grants you're
20 talking about?

21 MS. HUBER: Most of them have been operating
22 for one full fiscal year, and the application process is
23 occurring right now. I believe September 1 is the deadline
24 for applications for FY 83, at least that's true for HHS.
25 I'm not sure about the other agencies.

1 MR. MULDROW: So we do have a year's history?

2 MS. HUBER: Sure.

3 MR. WADE: Some of the block grants.

4 MS. HUBER: Most of them, really. All of them
5 except primary care, which does not go into effect until
6 FY 83.

7 MS. MORALES: And education. Education block
8 grant goes into effect in FY 83, and because it's a forward
9 funding type of mechanism, the applications for that block
10 grant were due from the states as of July 1, because
11 September starts the school year. So they can't expect to
12 have the applications in in September and know how much
13 money they're going to get, so they had to do it as of
14 July 1.

15 That one is really quite different, although --
16 and I'll get into this this afternoon again in my
17 presentation about what's going on with the education block
18 grant so far as we've been able to determine in terms of
19 some of the likely impact. It's already, even though it's
20 just going into effect, some of the issues are already being
21 raised and they have to do with funding formulas, again,
22 is the primary concern there.

23 MR. WADE: I sit on the "CAP" board here in
24 Colorado, and they're still waiting to find out what the
25 state's going to do as far as block grants regarding CAPs,

1 and I suppose that comes under the social services block
2 grant.

3 MS. HUBER: It might come under the
4 community services.

5 MR. WADE: But Colorado hasn't gotten
6 straight what it's going to do as far as that grant.

7 MS. MORALES: One of the problems that's
8 complicating the whole system has been that we're on a
9 continuing budget resolution, so for the longest time, even
10 federal agencies didn't know exactly, and I don't know that
11 they know now, how much money we're going to have for any
12 particular program.

13 So OMB -- this was a problem that had been
14 raised at the Texas SAC meeting and at the Oklahoma meeting
15 and that the other ones -- is that OMB is not coming forward,
16 even though the states have in their applications and so
17 forth, OMB hasn't been coming forward with the money, and
18 OMB has claimed to a certain extent that's because we are on
19 a continuing resolution. We don't know exactly how much
20 money we're going to have available.

21 So in terms of actual impact, I think that's
22 one of the reasons why it's been difficult to date to
23 actually determine that.

24 MS. HUBER: But I'm sure that on a local
25 level there might be a lot of impact that you can identify

1 from people who in 1981 were operating a tribal program and
2 in 1982 are not able to or at a far reduced capability and
3 far less resources, while the people in Washington and the
4 states are trying to find out what's going on.

5 I'm sure for people at the local level their
6 service delivery has been impaired. I would expect that to
7 be the case, but again, we don't really have that information
8 of what really is occurring at the local level. That's
9 something I think you could play a very important role in.

10 MR. GERLACH: Let me add a point to that.
11 I know in the experiences that I've had in the five states
12 in our region, most of the state governments have already
13 determined where they've had to cut back. They've had to
14 determine new eligibility criteria to take into account the
15 cutbacks in federal funding.

16 So consequently, they should have some
17 information on just how many people have been eliminated in
18 certain kinds of programs. This is at the state level. So,
19 in effect, they've done some kind of impact analysis, at
20 least in our region. This is probably true in the states
21 in your region. You can get that kind of information.

22 However, when you get down to the local
23 level, that's where the difficulty lies, in the cities and
24 the counties. The data will probably be very limited as to
25 what effect it has had on people living in those

1 communities. But in terms of what you're going to be doing,
2 you can get some data in terms of impacts.

3 MS. MORALES: Also, don't forget there are a
4 number of special interest groups at the state and local
5 levels that have begun to establish networks for monitoring
6 implementation of block grants within the states and within
7 local areas that have, or might have, a certain amount of
8 information. Certainly, I think that they would be, I think,
9 extremely useful.

10 MR. WADE: What are some of those groups?

11 MS. MORALES: I can't give you the names right
12 now, but I have a list. There's a national coalition on
13 block grant and human services that exists in Washington that
14 is composed of more than 100 or so groups at the national
15 level. But then, they have developed some lists of some
16 local groups by states, and I have copies of those and I
17 can certainly make those available to see if, within the
18 states in your region, there are some already existing.

19 MS. WITT: There might be, but I myself have
20 heard nothing like that. But, may we get back onto topic
21 here, Linda.

22 MR. HUBER: Well, I want to just note
23 briefly some of the issues that I've identified. As to the
24 block grant program itself, I think that one concern is the
25 application process and it's accessibility and comprehension

1 by the tribes.

2 In the news articles I provided to you, I
3 noticed that when Mr. Schweiker first determined that
4 tribes would be eligible for direct funding or that he would
5 exercise his discretion to permit that, he made that
6 determination one week before applications were due.

7 MS. WITT: In fact, wasn't that the one that
8 took place, the information was given to the tribes on the
9 day before Thanksgiving and, of course, there was the long
10 holiday and they were due in Washington on Monday, something
11 like that?

12 MS. HUBER: Something like that. There may
13 have been some improvements in that. I know the meeting
14 in Dallas that Cal went to that people from HHS in
15 Washington were there and said they were sending letters to
16 the tribe and expressed their desire to be available to
17 answer questions. So it may be that they are becoming
18 somewhat more responsive.

19 But it would be interesting to know, from the
20 point of view of the tribal people, if they understand how
21 you get one of these block grants and what you have to do.

22 MS. WITT: One of the major complaints was
23 notification.

24 MS. HUBER: Right, and if there has been any
25 improvement in this year's process as opposed to the initial

1 year.

2 I think it's also of great concern that
3 allocation formula for dividing block grant funds between
4 the states and the tribes and whether it fairly allocates
5 funds to the most needy. The allocation formula in the
6 statute really takes the gross number of eligible low income
7 people in the tribe and state and makes a direct ratio.

8 There seems to be no distinction made between
9 urban and rural communities, the additional costs in
10 providing services when a population is dispersed --

11 MR. MULDROW: You mean for grants going to the
12 state?

13 MS. HUBER: No, if a tribe obtains direct
14 funding, the amount which it will receive in its direct
15 fund is determined by a formula, and it's a set aside,
16 really, from what the state would otherwise have received.

17 Apparently this allocation formula, in some
18 cases, has resulted in tribes receiving 100 or \$200, and
19 you can't operate a program for that. And it certainly is
20 an impediment to smaller tribes, and I think that has
21 certainly implications to the sovereignty issues.

22 MR. WADE: So money that goes to the tribe
23 directly the state doesn't have any control over, so there's
24 politics involved here.

25 MS. HUBER: The state doesn't have control

1 over, but the dollar amount is reserved from what the state
2 would have gotten otherwise, according to the population
3 formula.

4 MR. WADE: So the state's interest would be
5 in preventing the tribes from getting that money.

6 MS. HUBER: So it would seem, although, as I
7 understand, the formula is taken from national census data
8 and not from the state's own data. Of course, we know
9 historically there has been a problem of undercounting of
10 Indians in the census. But I think that's something that
11 bears examination, this allocation formula. The Arizona
12 statistics on low income home energy assistance, I think,
13 raises some questions on that.

14 MR. MULDROW: So there are really three
15 things, then, on direct funding to tribes, the amount that
16 tribes would be eligible for is somehow tied to a general
17 formula which would be the same as what states themselves
18 would get?

19 MS. HUBER: Right. Beyond that, there's a
20 national formula by which OMB allocates it to the various
21 states.

22 MR. MULDROW: As Roger has indicated, the
23 amount also may involve some struggle politically, or
24 whatever, between the states and the tribes for amount
25 which a state is eligible for.

1 MS. HUBER: It could. Or, on the other hand,
2 if a tribe chooses not to seek direct funding and try to
3 get services through the state block grant, then I think
4 you're in a situation where the tribe is competing among
5 all the other potential recipients who desire a piece of the
6 money. And we really don't know how that is operating on
7 the local level.

8 I think another issue that we need to look at
9 is the impact on the smaller and less well organized tribes
10 of the restriction in some of the block grants to only those
11 tribes who have previously participated in the categorical
12 programs, and that really is an action that freezes
13 development.

14 There are many tribes who are improving
15 their governmental structure, who are desiring to increase
16 the amount of services they provide to their tribes, and
17 because they haven't participated in FY 1980 or '81, they
18 are frozen forever out of these block grants, and in
19 particular the alcohol block grant and preventive care block
20 grant.

21 MS. WITT: Some years ago a number of the
22 tribes in Wisconsin and, I believe, Minnesota, as well,
23 formed into something of a consortium in order to have
24 enough numbers to have the numbers to claim grants of one
25 sort or another. I wonder now if they, as this consortium,

1 would be eligible for funding as opposed to --

2 MS. HUBER: For direct funding?

3 MS. WITT: For direct funding.

4 MS. HUBER: Probably not, because the
5 eligibility is really restricted to tribes as defined in the
6 Indian Self-Determination Act, and that was the problem with
7 some of the Indian urban alcoholism programs who had
8 received categorical funds but now are not eligible for block
9 grant funds because they're not tribes. It's a crack that
10 they've managed to fall into, the way that the law is
11 drafted.

12 MS. WITT: This was also raised in the
13 Santa Fe meeting insofar as more than half of the native
14 population is off reservation, maybe as much as two-thirds.

15 MS. HUBER: Yes.

16 MS. WITT: So that means that native persons
17 in those programs geared for native persons as recipients
18 are not serving them.

19 MS. HUBER: Those people, under the present
20 system, as I understand it, are really left to the
21 states. They have to compete within the state system.

22 MS. BIRGE: I would just like to interject,
23 and I guess there's no really right place to do that, but
24 I think we're in great danger of, project-wise, of dealing
25 with the symptom rather than the disease. I think that all

1 of these issues are included, but I think when we
2 originally talked about a project it would look at block
3 grants in particular in the context of federal funding, so
4 it was federal funding and block grants kind of thing.

5 MS. HUBER: You read my mind. I'll be getting
6 to that.

7 MS. BIRGE: Because I think that, even if we
8 talk a whole lot about block grants and how they exclude and
9 don't deliver services, that the very basic problem is that,
10 even though tribes have legal status as sovereign
11 governments and even though there is the fiduciary relationship
12 existing in every branch of government, that traditionally
13 tribes and Indian people have very, very dramatically been
14 minor participants in federal assistance programs. I think
15 that's where we're at, and block grants is a part of that.
16 It's not the totality.

17 MS. HUBER: That's true.

18 Another issue is the problem of accessibility
19 of tribes to state programs funded by block grants. I think,
20 Roger, you've identified many of those issues and I think
21 that's something we can discuss in more detail later. But
22 I just want to note that that is a significant issue.

23 Related to that is whether people on the
24 local level have experienced discrimination or difficulties
25 in the application process or in service delivery and how the

1 enforcement mechanisms have functioned if such has occurred.
2 Again, we have little information about that.

3 Then, finally, and I think this is the most
4 important thing that I want to say, I think, as Joanne says,
5 it's a mistake to focus only on the intricacies of block
6 grants. All the regulations and so forth are important --
7 application regulations, reporting regulations, and so forth --
8 but the really critical issue is the impact on Indian
9 tribes of the operation of, for want of a better word, of the
10 new federalism and the disparate impact, first of all on
11 Indian tribes and people of the budget cuts.

12 Indian tribes are almost totally dependent
13 on federal resources for their well being, and when you're
14 talking about a budget cut of 10 percent, that may have a
15 10 percent impact of some components of the society, but on
16 Indian tribes it can end up having an actual impact of
17 40 to 50 percent.

18 I gave Shirley a New York Times article
19 regarding the impact that the Navajos have experienced,
20 certainly the most wealthy tribe in the country, and simply
21 the gross amount of money that is available, whether it's
22 administered by direct funding or by the tribes or by the
23 states or whoever, I mean, nothing is nothing and no matter
24 what mechanism you set up to deliver it, if there's nothing
25 there it really doesn't matter whether it's a block grant or

1 a categorical program or anything else.

2 I think the other thing that needs to be kept
3 in mind and communicated is the impact on the trust
4 responsibility, that even if it's the fairest of allocation
5 formulas between the states, and even if it is not administered
6 in a discriminatory way, there is a special trust
7 relationship and there are many in the states and others
8 that call Indians super citizens and criticize that special
9 role, but there is this special federal responsibility that
10 persists.

11 It is not the states' responsibility and
12 we cannot expect the states to assume. And with whatever
13 mechanisms, I think that we have to consider the impact of
14 the budget cuts and also the mechanisms for the delivery of
15 federal funding and the impact that has on the trust
16 responsibility.

17 MR. MULDROW: Does the direct funding honor
18 that responsibility, or is there conflict there?

19 MS. HUBER: I would say no. If you've got a
20 direct funding that results in a tribe getting \$100, so what?
21 It means nothing if the service isn't delivered.

22 MR. MULDROW: In other words, the
23 responsibility is for meeting a need?

24 MS. HUBER: For meeting a need. And all of
25 these mechanisms are very important to examine, but I don't

1 think that we can lose sight of the ultimate results.

2 MS. WITT: Therefore, going back to an earlier
3 point, in view of our mandate, our jurisdiction from the
4 Commission to examine disparate treatment, how would you
5 structure the statement of what would be a mission here?
6 What is the question that we would pursue? What is the
7 jurisdictional question we would pursue in examining the
8 receipt of federal block grants to Indian groups?

9 MR. HUBER: Well, I would say, first of all,
10 the nature of any disparate impact on Indian tribes and
11 people over and above the rest of society. Again, because
12 of the special federal nature and the dependence of Indian
13 tribes on the federal government, I think that disparate
14 impact may exist and I think it is also within the
15 Commission's jurisdiction. We certainly operated on that
16 basis in the Indian project. How the federal government is
17 fulfilling its trust responsibility toward Indian peoples
18 is certainly something that falls within the jurisdiction
19 of the Commission.

20 MS. WITT: And equal protection.

21 MS. HUBER: Yes.

22 MR. WADE: Now, disparate impact, as I
23 understand it, would be a comparison between the impact on
24 the Native Americans versus the state's population as a whole.
25 But you're also saying that, since the federal government has

1 a trust obligation, it doesn't even matter, it's not meeting
2 a need.

3 MS. HUBER: That is part of the question, but
4 that's not the answer to it. If the reply is that, Well,
5 it's an across-the-board cut and Indians aren't suffering
6 any more than any other group, well, first of all, I'm not
7 sure that that's the case, given the overwhelming federal role
8 in relation to Indian tribes.

9 But even if it were the case, that doesn't
10 answer the second question, what about the trust
11 responsibility? How did the trust responsibility happen to
12 disappear, if that is what is occurring.

13 MS. BIRGE: And the other point you made, I
14 think, is really important, Linda, about it's not the
15 state responsibility. It seems to me like, as Reagan's
16 passing everything over to the state, this is one more thing
17 that's passed off.

18 MS. HUBER: Right.

19 MR. MULDROW: Just for my own thinking, I'm
20 sure we could find indications that prior to the block
21 grant funding the trust responsibility was not being
22 fulfilled.

23 MS. HUBER: Yes.

24 MR. MULDROW: Do we need to demonstrate that
25 it's not being fulfilled to a greater degree than before, or

1 is it simply enough to look -- I guess that's what Joanne
2 was getting at -- to look at the block grant system in toto
3 without necessarily making reference to previous problems and
4 say, "Look, under this present method of funding the block
5 grant method of funding, this responsibility is not being
6 fulfilled in such and such an area," or does there need to
7 be that kind of a contrast and comparison? is this what
8 you're saying, Joanne?

9 MS. BIRGE: I didn't mean it to be a
10 contrast or comparison. In all fairness, I don't think we can
11 make it look like this is Reagan's fault or Reagan's problem,
12 or whatever. I think, in all fairness, we have to put it in
13 the context that this has been a longstanding problem and
14 that, instead of addressing the problem or exacerbating the
15 problem, I think that, very simply, for example, Linda's
16 Issue No. 5, accessibility to Indian people and tribes to
17 state programs, period, funded by the federal government,
18 funded by grants, take out the block. Then just put block
19 grants underneath that, just D underneath that. Do you
20 see what I mean?

21 So that it's not a contrast. I think if we
22 come out making it look like the Reagan Administration has
23 just started dumping on Indian tribes, I think we're in big
24 trouble. That's why I was saying before, the block grant
25 has a longstanding funding method and that the new federalism

1 philosophy might step it up some, but it isn't their idea.

2 MR. WADE: Well, I think that's where
3 disparate treatment comes into play.

4 MS. HUBER: I don't think there's any
5 question, also, the new Administration and with the budget
6 cuts in its new system, I think Bill's point is certainly
7 true that we can't portray a system of peaches and cream
8 before. But there is simply no question that poor people
9 in this country have absorbed the budget cuts, in large part,
10 and their impact.

11 I think that looking at this region, you would
12 probably find that, particularly Indians, and I think it
13 will be quite a big jump between 1980 and 1982 that you're
14 going to find, going from pretty bad to really very terrible.

15 MR. MULDROW: I guess what I'm thinking, it's
16 going to be a much more sizeable project to go back and
17 demonstrate that things were not peaches and cream before
18 and that there were deficiencies in fulfilling the trust
19 responsibility as compared to just carving out an area where
20 we look at the block grant system of funding and say,
21 "Look, this system in itself, regardless of previous
22 problems, is not meeting that responsibility."

23 I'm not sure we want to point out the Reagan
24 Administration. I'm not sure that's our purpose, but to look
25 at the method of funding.

1 MS. HUBER: Although, how you define your
2 project and how wide a circle you wish to draw is something
3 for you to consider. But I think there is much to argue for
4 including within it also the effect of the budget cuts in
5 general, which also affect IHS to a terrible extent, BIA,
6 and that all along the line there has been this impact.

7 MR. MULDROW: Outside of the block grant?

8 MS. HUBER: Outside of the block grants, and
9 nothing to take up the slack, really, because, in fact, that's
10 all declining at the same or greater rate.

11 MR. WADE: I think that's a good point,
12 because the real concern of ours, I think, would be what
13 about the services, and that goes beyond just block grants.
14 What is going on on the reservations? What's the impact of
15 all this?

16 MS. BIRGE: But at what point do we make -- for
17 example, with the education block grant, we say it's
18 subsuming the categorical programs of Head Start, Follow-Through,
19 Teacher Corps, library program, emergency school aid, and
20 tribes are not eligible for direct funding. What point do
21 we make if under those programs tribes were never eligible
22 for direct funding? We just really haven't addressed the
23 problem by looking at the block grant and saying tribes are
24 not eligible.

25 MR. WADE: Yes, I think it does need to be

1 looked at in a broader respect.

2 MS. HUBER: For education, I think it's
3 important to note that there is a separate Indian Education
4 Act, so probably the impact will be greater in some of the
5 other block grants, particularly the health ones and low
6 income energy assistance than in education. But I think that
7 needs more study.

8 MS. WITT: Were we to look in a broader
9 circle, we would look at what happened to that education,
10 special education act, also, which has nothing to do with the
11 block grant.

12 MS. HUBER: Which was preserved, by the way,
13 and that was one of the small victories in the enactment of
14 this. They saved that. They wanted to do away with it,
15 but it's still in here.

16 MS. WITT: Yet if it's still under the
17 Department of Education, which is fast on its way to
18 becoming a foundation --

19 MS. HUBER: They're supposed to be transferring
20 it to BIA.

21 MS. WITT: Of course, it wasn't BIA and it
22 was a disaster.

23 Linda, have you about come to a close for
24 your presentation today?

25 MS. HUBER: Yes, I have.

1 MS. WITT: Why don't we all get a cup of
2 coffee and then ask Ernie to share with us his views and
3 perceptions of what he's heard today and prior to today.

4 (Whereupon, a short recess was taken.)

5 MS. WITT: Shall we start.

6 Ernie, thank you very much for the continued
7 generosity of your office in sharing its information with us.
8 We have certainly been beneficiaries of your hard labor, and
9 I would ask you for some more right now.

10 MR. GERLACH: I also want to say one thing.
11 If our office in any way can help, we'll be glad to, in terms
12 of what you do here in this region. We've always talked
13 about setting up some kind of interregional cooperation in
14 the past, and there have been stops and gos, but I think there
15 is a lot of commonality between our offices in terms of
16 the projects that we do and certainly some of the issues. So
17 I'd like to extend that cooperation in the future, especially
18 in this project, if it comes to pass.

19 MS. WITT: Thank you.

20 MR. GERLACH: I think what I'd like to do is
21 sort of give you a brief rundown on our project, how we went
22 about doing it, and how we conceived it and how we carried it
23 through and where we're going, and then spend most of the
24 time, however, dealing with the issues that we focused in on
25 in each of our five consultations.

1 In terms of the conceptualization of the
2 project, last September we had pulled together representatives
3 from each of our five advisory committees in San Antonio to
4 discuss region-wide projects, what projects we could look at
5 in the Southwest Region.

6 One of the issues that came up at that time
7 was the whole issue of block grant funding and, related to
8 that, federal cutbacks in funding.

9 One of the things that came out of that
10 regional meeting was a decision by each of the chairs of our
11 advisory committees to carry forth and to do some field
12 investigations in our area by going to the various state
13 capitols to see what had been done or what was going to be
14 done in terms of administering the federal block grant
15 program or how they were going to deal with those programs.

16 So in the fall of last year, we went ahead,
17 we interviewed state officials in each of the state capitols,
18 and we came back at that time when we put together our
19 reports, we came back and we found out that the state
20 administrators, for the most part, weren't really sure what
21 they were going to do and how they were going to carry through
22 on the programs and how they were going to deal with block
23 grants in general, let alone the cutbacks in federal funding
24 as a whole.

25 So we reported back to each of our five

1 chairs in another meeting that we conducted in Dallas in the
2 early part of this year, in January, and at that time it was
3 decided to go ahead and implement a region-wide process
4 involving a series of five consultations. Along the way, of
5 course, we carried through on the usual process of
6 developing a concept paper and project proposal and so forth.

7 The core or the major factor or the major
8 instrument in terms of gathering information in our project
9 was the consultation themselves. We just finished that
10 process, as you all know, but I'd just like to go into the
11 structure of those consultations a little bit.

12 Each consultation was developed sort of in a
13 modular, taking a modular approach. In other words, we
14 wanted to develop a regional record rather than just solely
15 a state record, so we designed each of our consultations on
16 the basis of having a certain commonality, certain common
17 issues we wanted to explore in each of those consultations.

18 Those issues were: civil rights enforcement;
19 what was the federal role? what was going to be the state
20 role? The issue of citizen participation in the context of
21 the block grants: What was going to happen, what was
22 required, and how were the states going to get this kind of
23 input from various community groups, citizen groups, so
24 forth?

25 We also wanted to look at the state

15

1 decision making processes. What was going to be required of
2 them, again, in the context of the block grants by the
3 federal government? How were they going to realign their own
4 decision making processes?

5 Then we also wanted to look at the impacts,
6 at least get some idea of where the cuts were, who was being
7 affected most by the cuts as a result of the block grants and
8 the general cutbacks in federal funding.

9 Then in the states of Oklahoma and New Mexico,
10 we wanted to look more specifically at the Indian issues in
11 those two areas.

12 Well, we had consultations, again, in Little
13 Rock, Baton Rouge, Austin, Oklahoma City, and Santa Fe, and
14 transcripts were developed in each of those consultations
15 which are available. As I said earlier, we'll certainly
16 make the ones in Oklahoma City and Santa Fe available to you.

17 Where we're going after -- right now, we're
18 in the process of preparing a region-wide report. That
19 report will cover the issues that I just outlined. There will
20 be a section dealing with Indian issues as they relate to
21 block grants, at least as they pertain in our region. There
22 will be a section dealing with civil rights enforcement,
23 citizen participation, impacts, and state decision-making
24 processes.

25 We're doing state profiles as well as trying

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1 to determine the overall patterns. That report we plan to
2 release at the chairpersons' conference in September, so
3 we're running on a very strict time schedule.

4 MS. WITT: Why did they let you out of the
5 office?

6 MR. GERLACH: Well, I can say I'm going pretty
7 fast, at least in my component of the report. But we're
8 making progress on that. Now, whether we are able to stick
9 with the schedule is another thing, but I think that's what
10 Mr. Avena wants to do. So that's where we're heading for.
11 What we do after this particular project will be determined
12 later on.

13 We're planning to hold another meeting of our
14 advisory committees in August. But I have a feeling that
15 one of the things we're going to focus in on is the impacts
16 of the cutbacks, trying to do some impact analysis, and also
17 look further into the enforcement structure, see what's
18 happening, especially at the state level.

19 Now, with regard to the issues that we focused
20 in on, in terms of civil rights enforcement, one of the
21 things that we discovered is that for the most part, at
22 least under the block grants in the context with what the
23 federal government is doing, there is still a lot of
24 confusion as to what the role of the various federal
25 enforcement agencies will be; in this case, OCR and Health

1 and Human Services and Department of Education and, to a
2 lesser extent, to HUD.

3 With respect to the OCR HHS, they are still
4 in the process of defining an enforcement structure. This
5 is what we found out in the course of all five of our
6 consultations. They are still in the process of setting up
7 models, prototypes by which they're going to enforce civil
8 rights laws and regulations under the block grants.

9 I think it's interesting to note that their
10 enforcement structure will not change with regard to the
11 categorical programs. They intend to keep the same kind of
12 mechanisms in effect. The block grant programs, however,
13 set up a different kind of situation for them and they are
14 still trying to grapple with that.

15 Under the block grants, as you know, the
16 states have more discretion to deal with the civil rights
17 enforcement structure. For example -- I'll just give sort
18 of an overview with regard to this -- if complaints under
19 the block grants are forwarded to OCR, for example, they
20 have to return that complaint back to the states for
21 handling, then the states are given a 60-day period by which
22 to deal with that complaint. If not, if the state cannot
23 resolve the complaint, then OCR will take control of it
24 again.

25 At the state level, we have found in all of

1 our states that there is no statewide mechanisms set up to
2 deal with civil rights complaints, but rather the existing
3 agency mechanisms are, for the most part, being utilized at
4 this point in time to handle civil rights related
5 complaints. But it's a problem in the sense of many of the
6 states really don't know what their roles are going to be.
7 This is what we discovered in our region, and this will be
8 a continuing problem.

9 In the consultations that we held, some
10 suggestions were raised as to setting up state civil rights
11 commissions, not solely to deal with the block grants but
12 as one means for dealing with overall issues relating to
13 civil rights enforcement.

14 But this is going to be a continuing problem
15 in how the states are going to handle their responsibilities,
16 and it's going to be an involving one over the time period,
17 and especially as the programs become more mature and as they
18 change. The federal role has yet to be defined; the state
19 roles are still changing with regard to enforcement.

20 But again, the agencies themselves are the
21 ones that are primarily responsible right now for dealing with
22 civil rights complaints under the block grants. To
23 reiterate, under the categorical programs OCR will still have
24 primary responsibility for dealing with complaints.

25 Another issue that we wanted to focus in on and

1 which we think is very important with the whole idea of
2 citizen participation, under the block grants the role of
3 citizen involvement has changed considerably. As you know,
4 again, under the categorical programs the role of citizen
5 input is very well defined, or reasonably well defined.
6 Under the block grants, this role is not so much there. I
7 don't know how this affects the tribal governments in terms
8 of their input. I have a feeling it's probably minimal in
9 terms of citizen participation in terms of that issue.

10 Another key issue was the whole idea of
11 state decision making and how they were going to deal with
12 this whole issue of block grants. Of course, one of the --
13 and Linda pointed this out -- one of the key elements of
14 the new federalism and the block grant programs is to give
15 the states more discretion in terms of how they're going to
16 allocate funds. And this relates, in part, to setting up
17 eligibility criteria and the allocation of funds to the
18 various programs, the various state agencies.

19 We discovered that, for the most part in our
20 region, that eligibility criteria had to be modified
21 extensively to take into account the federal cutbacks. This,
22 in turn, meant that a lot of the recipients of many of
23 these programs had to be cut.

24 For the most part, the recipients were the
25 marginal recipients in the sense they were not the neediest

1 people that were cut, but rather those that are on the
2 borderline, and this has caused a lot of problems on the
3 states on how to deal with this.

4 It's become a major issue and will continue
5 to be a major issue because the states don't really have a
6 mechanism for dealing with that marginal group of people that
7 are not needy, but they're poor. This is going to --

8 MS. WITT: The truly needy, as opposed to
9 the not truly needy.

10 MR. GERLACH: That's right.

11 That's a very important consideration for many
12 state governments. In terms of programs at the agency level,
13 there have had to be some cutbacks, and the input that
14 we've gotten thus far is that the cutbacks haven't really
15 been that severe.

16 This is only the first year of the program,
17 but we suspect, and we also received a lot of testimony from
18 various state agency officials that the cutbacks will become
19 more severe as time goes on as the impacts will be assessed
20 and as the funds continue to be cut back over a period of
21 time.

22 For the most part, we discovered in our
23 region that the governors and the governors' offices tend
24 to have most control over the programs, that the legislatures
25 themselves, maybe because they weren't in session when the

1 block grants were taken over or they didn't have a mechanism
2 for dealing with the block grants within the legislative
3 context, there's going to be a lot of conflict.

4 We discovered this in Louisiana, for example.
5 We have a strong governor, but also a very strong
6 legislature. There's going to be some conflict, and this
7 may also happen in your region. Again, this gets down to
8 your constituencies and the kind of impact that minority
9 groups in each of your states have with regard to the
10 legislature.

11 This, I think, is really pertinent to the
12 Indian groups in your state, which their political clout,
13 which was pointed out is virtually nil, I would suspect, at
14 least in your region. In our region it is. So this is
15 going to be a key consideration, I think, that you're going
16 to have to take into account.

17 MS. WITT: I very much enjoyed the testimony
18 of the New Mexico Governor who said, "I'll be just real
19 glad to get them straight federal funding. I don't want
20 any part of it. We'll work with all of them." And he's
21 just batting away like at a bug or something in the air.

22 MS. BIRGE: In Colorado, Ernie, because there
23 is so much conflict between the Governor's Office and
24 legislature, as soon as the Reconciliation Act was passed,
25 the legislature wanted to make absolutely certain that the

1 governor would not use the state's reserve fund to make up
2 any of the cutbacks. So they had a massive tax rebate and
3 gave 98 percent of the state's reserves fund back to the
4 taxpayers. So now they have no money. So it doesn't matter
5 what the governor wants to do now.

6 MR. GERLACH: Another thing, too, with regard
7 to the state governments and their relationship to the
8 tribes and the tribal/state relationship, in New Mexico -- and
9 I'm sure this came out -- was a real key problem. It's
10 been a continuing problem in just how the tribes related to
11 state government, and I think it's going to become even more
12 of a definite problem now with the block grants. If the
13 tribe decides not to go into direct funding, it will have
14 to go to the state government. Because they lack the
15 political clout, this is certainly going -- I think this is
16 going to be a real key issue that you're going to have to
17 look at in terms of your own region.

18 But in Oklahoma, where you have a different
19 kind of situation, where you don't have any kind of
20 reservation set up in that particular state, we have found
21 one of the key problems there was, first of all, determining
22 just how much funds that the tribal groups were going to
23 get for various programs under the block grants; secondly,
24 what effect this would have on those Indians living in urban
25 areas.

1 This is an issue, also, in New Mexico, and
2 certainly might be an issue here in your region. True, they
3 would be eligible for state programs, but I don't know if
4 this is an issue in your area, but determining eligibility for
5 urban Indians has been a key issue in Oklahoma and in New
6 Mexico. The question of whether the state can or desires
7 to give aid to Indians through state programs is really an
8 important one for you to deal with.

9 MR. MULDROW: In an open situation, why are
10 they considered differently?

11 MR. GERLACH: Some of the states have said
12 they're still a tribal responsibility.

13 MR. MULDROW: So they still include them in --

14 MR. GERLACH: Either that or it makes it much
15 more difficult for an Indian family residing in Albuquerque,
16 for example, a Navajo family, for example.

17 True, the state is required to provide them
18 assistance through various state programs, but there is always
19 this nebulous kind of relationship, just what role the tribes
20 have with regard to their citizens and the state has and
21 they're citizens of both worlds, that particular Navajo
22 family, for example.

23 MR. MULDROW: Or neither.

24 MR. GERLACH: Right.

25 So under the block grants, and with the fact

1 that the states do have so much more discretion and the fact
2 that they have the strength to deal with eligibility criteria,
3 modified the eligibility criteria, this may cause some
4 disparate treatment to arise. Again, especially in those
5 marginal groups, and I think this is an issue that the whole
6 eligibility criteria, the fact that it certainly needs to be
7 looked at more closely.

8 One of the things that we weren't able to deal
9 with and which may be a factor in terms of your own project,
10 was the impact on local governments, at the city and county
11 levels and at the programs at that level, either through
12 community action programs or county health programs and so
13 forth.

14 We were not able to get enough data to indicate
15 what would be the local impacts. I have a feeling that at
16 the filtering down process when it finally gets down to those
17 particular governmental levels that the impacts will be very
18 severe.

19 The states have had to reorganize their
20 programs, the state programs; but nevertheless, the local
21 levels will certainly have to feel the brunt of this, and
22 there's really been very little done on that area.

23 MS. BIRGE: Why do you think that's so? Are
24 you saying that the state is going to take a lot of the
25 money? As I understood you, you said that you didn't see a

1 lot of impact right now at the state level but that you
2 anticipated a lot at the local level?

3 MR. GERLACH: No. At the state level, there
4 is severe impact in terms of cutbacks. As a result of the
5 cutbacks in funding, they've had to cut back on programs. One
6 of the ways the states have dealt with that issue is to change
7 eligibility criteria, to tighten up their programs. So that
8 means some people have had to be eliminated from the various
9 programs.

10 For example, through the community services
11 block grant and through the small cities discretionary program
12 under the CDBG, what you're going to have is that there's
13 going to be cutbacks in those programs already. Consequently,
14 at the local governmental level, they're going to be faced
15 with the same kind of situation. They, themselves, are going
16 to have to cut back on programs.

17 But not enough time has elapsed to determine
18 just what kind of impacts are going to occur.

19 MS. BIRGE: Well, now, in those situations,
20 I don't know if health is a good example or not, where there
21 are services provided by the state and then services provided
22 by the local, does the state have the option to take that
23 block grant money and use it, say, three-quarters for their
24 state program and divide up the rest locally?

25 MR. GERLACH: I think, for the most part, the

1 funds -- you have to remember, of course, what you have in
2 the block grants has been a number of categorical programs
3 that have been incorporated into the block grants, and what
4 a lot of state agencies have done already is just simply
5 retain the categorical structure in terms of administration
6 of the programs and have just simply used a smaller amount
7 of funds to fund or to continue the same programs. So the
8 categorical structure still exists, in a way, even though
9 they've been subsumed under the block grants.

10 So that's what happened in terms of the
11 cutbacks at the local level and at the tribal levels as a
12 result of reduced amount of funding, and this is going to be
13 a severe problem because we mentioned the fact that the
14 formulas for direct funding. There certainly will not be
15 enough money to continue whatever programs there were at the
16 tribal level before, and this is true, also true for the
17 categorical programs as well as for the programs that were
18 being funded directly by block grants. And this is
19 certainly going to increase, because what you're going to
20 have is continual cutbacks and continual decrease in federal
21 funding.

22 MS. WITT: A question is, you spoke in terms
23 of state level and city and county level. Do you have an
24 insight, have you learned something with regard to regional
25 entities applying for grants and dispensing funds?

1 MR. GERLACH: I think, for the most part,
2 regional entities have been pretty much eliminated in this
3 overall process. For example, one of the things that the
4 Council of Governments, for example, they have responsibility
5 for undertaking A-95 reviews on a lot of projects that were
6 conducted under various federal programs. Well, that, of
7 course, has been eliminated under the block grants.

8 Consequently, at least at this point in time,
9 a lot of your regional entities will probably not play a
10 major role. Area agencies on aging, for example, they will
11 probably play some role but it's going to be reduced
12 considerably, I think.

13 They may have to end up dealing with the same
14 kind of issues that the state is, that is reduced funding
15 and how are they going to reallocate a lot of the monies,
16 lesser amount of monies than they've had before.

17 MS. BIRGE: Did you find more similarities
18 or more differences from state to state in, say, maintaining
19 the categorical nature of how the money is distributed and
20 those kinds of things?

21 MR. GERLACH: There's a lot of similarities.
22 You don't have an entirely different system in operation
23 under the block grants than you had before. There's been
24 more discretion given to the states, and maybe down the
25 road to local governments, but the structure hasn't changed

1 that much. At least, we've discovered in our region that it
2 hasn't changed that much.

3 MR. WADE: Do you think that's just because
4 states were sort of hit by this rather quickly and haven't
5 really geared up?

6 MR. GERLACH: Yeah.

7 MR. WADE: That it will change more in the
8 future?

9 MR. GERLACH: Yes. I think that's true. I
10 think what has happened, the states have accomodated through
11 the cutbacks and changes in programs and, for the most
12 part, the states have dealt with revenue sharing inthe past,
13 it's not an entirely new process for them.

14 The states have accomodated themselves to it,
15 and whether they change in the future, set up different
16 kinds of mechanisms to deal with block grants is still an
17 open question. I don't know just how far along states are
18 in terms of changing their administrative structure and the
19 decision-making process and so forth.

20 MS. HUBER: In the states in your region, how
21 does the public hearing process work? Has that been
22 effective in bringing forth the most needy segments of the
23 state's population and getting service to them?

24 MR. GERLACH: No. In terms of the public
25 hearings, we discovered that there were virtually no public

1 hearings conducted in the first year of the block. Of course,
2 I believe in the first year the requirement was for only
3 one legislative hearing. Am I correct, Rosa?

4 MS. MORALES: Yes, but in the case of HHS,
5 Secretary Schweiker indicated to the states in a letter that
6 for FY 82 they did not need to conduct the hearings. So in
7 some cases states did and in some cases they didn't.

8 MR. GERLACH: But in this coming fiscal year,
9 they will be required to hold public hearings. Now, from the
10 testimony that we received in each of our consultations, a
11 lot of the state agencies, people weren't really sure in how
12 they were going to deal with this issue of public hearings
13 under the block grants.

14 In Texas, they tried a different approach.
15 The governor's budget and planning division held a series of
16 hearings in various cities around the state, focusing
17 entirely on block grants for preparation of intended use
18 reports. To date, hearings were held in seven or eight
19 cities, and the results of those hearings were presented to
20 the legislative budget board in Texas for consideration by
21 that board. Then the results of those hearings would then
22 be transmitted to the legislature, which meets next
23 January again.

24 In the other states, the whole question of
25 hearings is really pretty much up in the air, and a lot of the

1 people that we had testify, especially those from
2 community and professional organizations, felt that there
3 wouldn't be any change. If anything, they would have less
4 input into this process, into the block grant process because
5 of discretionary nature of the states, that states have more
6 control over this particular process.

7 So I don't have very much hope, unless there's
8 a change in the regulations as the block grants evolve over
9 the years, that the whole question of public participation
10 is really going to become an issue in our region. I'm sure
11 elsewhere, and just what role citizens will have in terms
12 of program development now with regard federal funding, just
13 how the states are going to utilize citizen input in the
14 various programs is certainly going to be a major issue.

15 MR. WADE: I know a little bit about Colorado's
16 situation. They're in the process of holding some hearings
17 now for the community services block grant. What they've
18 done is, they've located the hearings in some of the
19 smallest, most out-of-the-way towns of the state, not in
20 Denver or --

21 MR. MORALES: That seems to be one of the
22 major problems with the hearing process, and that is, first
23 of all, accessibility to the hearing sites, provision of
24 information so that people know ahead of time that the
25 hearings are taking place, where they're taking place, and

1 they have enough time to actually prepare to participate in
2 them.

3 That was an issue that was raised very much
4 in Texas and in Oklahoma, that the information was just not
5 being made available and that they were inaccessible. There
6 was also some confusion as to what types of hearings they
7 were. In some cases, state agencies were holding hearings,
8 in some cases, governor's offices or someone attached to the
9 governor's office was holding hearings.

10 Even if they held the hearings, there was no
11 indication that the information collected at that point was
12 going to be used in any way to develop the actual plans for
13 the use of the funds, which is one of the reasons they're
14 supposed to hold the hearings. In some cases, it turned
15 out the plans on use of funds had already been developed,
16 so they were just going through the motions of holding
17 these hearings.

18 MR. GERLACH: So consequently, you don't
19 really have any change of process, at least with regard
20 to citizen participation. In some cases, it's even worse,
21 because of the confusion as to what role the states are going
22 to have.

23 Another factor that needs to be taken into
24 consideration is the federal oversight responsibility. The
25 categorical programs have some fairly strict guidelines with

1 regard to holding public hearings and getting citizen
2 input.

3 Under the block grants, you don't have this.
4 Consequently, the federal monitoring role becomes vastly
5 reduced under the block grants and the states, not knowing
6 how, I suspect, how to deal with this, are trying to come
7 up with a process, and each state will probably develop a
8 different process.

9 This is another factor to take into
10 consideration under the block grants. The states, by virtue
11 of their discretion, will probably develop different kinds
12 of mechanisms to fit their needs. You won't have a common
13 set of mechanisms. OMB is in the process of developing some
14 audit standards which will provide some guidance to states
15 throughout the country, but for the most part, each state
16 is going to develop it's own mechanisms.

17 How this affects the state/tribal
18 relationships in your region where you have a number of
19 states, each state is going to set up a different kind of
20 structure in how to deal with various types. This is
21 something you may want to consider looking into, as well.
22 There's not going to be any set approach.

23 MS. WITT: I would raise this question, I
24 wonder if this occurred in the information you gathered with
25 regard to Oklahoma. In your New Mexico hearing there seemed

1 to loom the possibility that the state Indian Commission
2 would somehow wrest control for disbursing of funds or
3 somehow administering funds, and possibly even having some
4 policy role in decision making having to do with the
5 disbursing of funds, a human rights commission headed by a
6 governor's appointee with no constituency whatsoever, with
7 a staff certainly not equipped to deal with any of these
8 functions.

9 The fear that was expressed on the part of a
10 number of tribal leaders who were in Santa Fe was enormous.
11 I wondered if that possibility, that scenario took place in
12 your hearing in Oklahoma, as well.

13 MR. GERLACH: In Oklahoma, the human rights
14 commission has been established by the legislature and it's
15 a very strong entity in state government. There has been some
16 talk of that commission taking a greater role with regard
17 to the monitoring of block grant funds, to deal with civil
18 rights issues relating to block grants, and so forth.

19 That commission, though, is very unusual by
20 the fact that it does have a lot of authority and prestige and
21 so forth. The one in New Mexico, as you mentioned, has
22 been having a lot of difficulty of late in pulling its act
23 together of dealing with issues. In none of the other states
24 in our region do we have another in comparison to Oklahoma.

25 I don't know whether in your region, whether

1 any of the states have created any kind of commissions or
2 agencies to deal with some of these issues. That is
3 certainly something you would need to look into, just what
4 would be the role.

5 MS. WITT: It would certainly be one thing to
6 monitor civil rights equality of treatment, that's one thing,
7 but to be disbursing agents, to be administratively involved,
8 these kind of things, is very, very different.

9 MR. GERLACH: I don't think that the states,
10 or certainly the governor would allow this to happen, because
11 it is, in the long run, I think, a political question and I
12 don't think the governor, for example of New Mexico, given
13 the fact that he has had so much difficulty with that
14 particular commission, would allow this to happen.

15 MS. WITT: Of course, the governor of New
16 Mexico wants no part of any of it, anyway. But what it did
17 was come to mind as a possible system -- I guess not a
18 system but a process -- another state somewhere else that
19 did want to handle, get its hands on state disbursement of
20 funds.

21 MR. GERLACH: Specifically for Indian tribes?

22 MS. WITT: Uh-huh.

23 MR. GERLACH: I think this is something that
24 needs to be looked at.

25 Let me throw a question back at you. Have any

1 of your states set up a very strong or reasonably strong
2 commission that has a lot of authority to deal with civil
3 rights issues or to handle something like this?

4 MS. BIRGE: There's an Indian Affairs
5 Commission in every one of our states. Some, by their
6 statute, could come to that and others, by their statute,
7 couldn't.

8 MS. WITT: That's everything from one person
9 and a secretary to more complex.

10 MS. BIRGE: And South Dakota's doesn't have
11 the statutory authority to get into it, anyway. Of the
12 states' Civil Rights Commissions, Colorado's is by far the
13 strongest, and its statutory authorization just wouldn't
14 permit it at all.

15 MR. MULDROW: That raises all kinds of
16 interesting questions. The state is charged with being
17 the primary enforcement entity for the civil rights
18 provisions of the block grant program; they are, in effect,
19 monitoring themselves.

20 MS. HUBER: Designedly so. That is the way
21 it is set up.

22 MS. BIRGE: Or not monitoring themselves.

23 MR. MULDROW: What then, what about direct
24 funding to Indian tribes? Are they responsible, then, or
25 is the state responsible for civil rights monitoring?

1 MR. GERLACH: First of all, the state is not
2 really responsible for monitoring itself, because whatever
3 happens, I have a feeling that the federal enforcement
4 structure with regard to the block grant programs will still
5 be there.

6 MS. MORALES: According to the block grant
7 titles in the statute, the federal agencies administering
8 the block grants have the ultimate responsibility for civil
9 rights enforcement.

10 MR. MULDROW: But the primary responsibility
11 lies with the state if a complaint --

12 MS. MORALES: No, that's what I'm saying.
13 According to the statute, it still lies with the federal
14 agencies, but they've written in another layer within the
15 civil rights enforcement mechanism that turns over to the
16 state a certain amount of responsibility for dealing with
17 complaints, for example, and this was the issue that Ernie
18 was alluding to. I think that the federal agencies right now
19 are grappling with defining those roles now that the state
20 is going to have a certain role to play.

21 MR. MULDROW: The state has 60 days to
22 resolve --

23 MS. MORALES: To resolve or deal with a
24 complaint that has been referred to it.

25 MR. MULDROW: So the complaint actually goes

1 to the federal enforcement agency?

2 MS. MORALES: Ultimately. Presumably, that's
3 the way it's going to operate.

4 MR. MULDROW: If an individual has a complaint,
5 to whom does that individual complain?

6 MR. GERLACH: The individual can either go to
7 the state agency and utilize the existing mechanisms -- let's
8 assume it goes under the block grant program, a program is
9 being funded by a block grant. Okay, the individual can go to
10 the state agency and seek to have his complaint dealt with,
11 or an individual can go directly to OCR.

12 Now, what OCR will do when they get the complaint,
13 they will simply transfer the complaint back to the state
14 for resolution. Now, if the state cannot resolve the
15 complaint at the end of 60 days, then OCR theoretically is
16 responsible for taking back the complaint and resolving it.

17 MR. MULDROW: All right. For example, North
18 Dakota, there is no human rights or civil rights agency on
19 the state level. To whom would OCR refer the complaint?

20 MS. MORALES: The governor or the chief
21 operating state official.

22 MR. MULDROW: So the governor's office would
23 be required to deal with the complaint?

24 MS. MORALES: Well, if not the governor's
25 office, then the governor in a state would have the

1 responsibility of setting up some kind of mechanism. That's
2 the point, they are going to have to set up some kind of
3 mechanism for handling these complaints. What we've been
4 finding so far is that in almost every state those
5 mechanisms don't exist or are not clearly defined.

6 MR. MULDROW: In the case of tribes, then,
7 presumably it would be referred to the council?

8 MS. HUBER: The HHS regulations require that
9 tribes who are direct funding recipients must administer the
10 programs in accordance with the Indian Civil Rights Act. But
11 the block grant process really implies that the recipients,
12 either the states or the tribes, have wide discretion as to
13 what kind of mechanism they want to set up for discrimination
14 enforcement.

15 It's contemplated that it may vary widely.
16 It's part of the local control and the people on the local
17 level being best able to determine what kind of mechanism
18 will suit their needs.

19 MR. MULDROW: So the fact is, there will be a
20 wide diversity of mechanism, plus this added layer of
21 60-day provision, further delays in resolution.

22 MS. MORALES: Exactly. That's one of the
23 big issues that our office has been concerned about, in
24 addition to which the federal agencies, at least from what
25 we've heard. The complaints we've heard from federal

1 officials is federal agencies are not providing guidance to
2 the states at this point or defining how those procedures
3 should be established and what they should consist of and
4 so forth.

5 MS. BIRGE: As I understand it from Julie
6 Sugarman, in giving of much more discretion to the states
7 there has also been dropped a significant amount of the
8 federal data collection requirements, so that almost to the
9 point that there will be no data collected. So even if
10 you had that complaint processed, it's possible that there
11 would not be the data with which to resolve the complaint.
12 So it's just kind of a circle you go around.

13 MS. MORALES: That's a big problem, Joanne,
14 data collection.

15 MS. BIRGE: He said he thought that was one of
16 the most serious long term detriments to the plan, because
17 the federal government has long been the major collector of
18 data, civil rights and otherwise.

19 MS. MORALES: Relatively standardized, which,
20 of course, is not going to be available now.

21 MS. BIRGE: So ten years down the road, we don't
22 know what's been going on.

23 MR. MULDROW: Sounds like a whole project in
24 itself.

25 MS. HUBER: On the other hand, I think it's

1 fair to say that in past years OCR has not exactly
2 distinguished itself by the advocacy of its enforcement
3 efforts.

4 MS. MORALES: That compounds the problem.

5 MS. HUBER: Who knows what the states will come
6 up with.

7 MR. MULDROW: It might be an improvement.

8 MS. MORALES: It may very well be if, in fact,
9 these issues are serviced in states -- and I would imagine
10 there might be some states out there that are actually
11 concerned about establishing or setting up, developing some
12 sort of process that would be effective.

13 MS. HUBER: And have the sophistication and
14 ability to do so. But who knows?

15 MR. MULDROW: They're not going to have any
16 money to do this with, anyway.

17 MS. MORALES: That's another problem. With
18 the cuts that civil rights enforcement agencies have
19 suffered and that we documented in that little report we
20 issued recently, that's going to have a negative impact also,
21 because the federal agencies are just not going to have the
22 resources, either in terms of just actual money and in terms
23 of staff.

24 MR. MULDROW: Just in terms of cuts the states
25 are taking, I can't see any high priority being given to

1 setting up more enforcement apparatus.

2 MS. MORALES: Shirley, I wanted to go back to
3 what you raised earlier about the state Indian affairs
4 types of commissions that might exist. I remember vaguely,
5 admittedly, from the Oklahoma SAC meeting that they had a
6 representative from their state commission, Indian Affairs
7 Commission, and a question was raised as to the extent to
8 which that commission had been asked for input and had been
9 consulted on the development of state plans for the use of
10 the block grant funds.

11 It appeared to me that they had not been
12 consulted in the actual development, but after the fact. So
13 they were placed in a situation of reacting rather than being
14 a pro-active type of group.

15 It wasn't quite clear to me, and there might
16 be more in the transcript, with respect to their position
17 as to whether or not they would want to have a certain amount
18 of responsibility for actually either becoming involved in the
19 actual disbursing of funds and/or enforcing civil rights
20 type requirements and so forth. That's just a bit of
21 information.

22 MS. WITT: Thank you.

23 MR. GERLACH: Right now, with regard to the
24 enforcement structure, I might add that OCR has set up some
25 interim guidelines with regard to dealing with complaints

1 under block grants, and these are that if a complaint goes
2 to OCR and if the states can't resolve the situation, then
3 they would get involved with the Washington office. The
4 Washington office then will take over the issue, the
5 complaint itself, if it cannot be resolved at the state
6 level. OCR at the regional level, at this point in time,
7 is really not going to get involved in the block grant
8 enforcement process.

9 MS. MORALES: I'll go into that a little bit
10 more.

11 MR. GERLACH: Right now, on the basis of
12 testimony that we have received in our region from OCR
13 representatives, they are in the process -- first of all,
14 a national task force was set up to develop a mechanism for
15 enforcing civil rights under the block grants. What they've
16 come up with is a series of 12 prototypes of 12 models or
17 approaches they might want to take into consideration in
18 terms of dealing with this issue.

19 Once they've narrowed down the alternatives
20 they've come up with thus far, they then will want to
21 test some of these approaches in a number of states.
22 Somewhere along down the road, maybe two, three years from
23 now when they make a final determination of what mechanism
24 they are going to be utilizing, they will put it into
25 effect on a nationwide basis. But only when they have got to

1 a point where they have made their decision will they then
2 develop the data collection tools and the other instruments
3 that they are going to utilize in terms of enforcement, only
4 then will those go into effect. But right now, no one has
5 any idea what kind of data collection strategy OCR will
6 utilize in terms of under the block grants.

7 It's a long-term issue, and no one is really
8 sure when OCR will be able to implement an enforcement
9 structure under the block grant, just what kind of system
10 OCR will have with the states when its totally under the
11 block grants.

12 MS. BIRGE: And if the states refuse, I'm not
13 sure the statute allows room if they absolutely refuse to
14 comply with data requirements. They could make the
15 argument that the statute doesn't make us anymore kind of
16 thing.

17 MR. GERLACH: I don't know. I really can't
18 answer that.

19 MS. HUBER: I think there are fairly limited
20 requirements on the states. Their application process is
21 not required to follow any particular form. They are
22 required to have a public hearing process but, again, that
23 is not required to be in any particular form and they are
24 given initial responsibility for the discrimination
25 enforcement process. I wouldn't want to answer definitely

1 without taking a look at the statute again and the committee
2 reports, but I do not recall any particular data collection
3 requirements mandated.

4 MS. BIRGE: I'm thinking if OCR came out with
5 some great regs, a lot of the states would fight them like
6 hell.

7 MS. MORALES: It's likely that OCR, and I hate
8 to say this, but it doesn't look like they will come out with
9 the kinds of regs that would really have some very tight
10 reporting requirements. The department secretary, at least
11 in the case of HHS, in the overall implementing regulations,
12 has already indicated that the reporting requirements would
13 be next to none, based on the statutory requirement. They
14 didn't elaborate on that, but they certainly didn't, in the
15 broad regulations, did not put in any reporting requirements.

16 MS. HUBER: That, again, is a reflection of
17 the political philosophy that gives rise to this program,
18 and it's stated very clearly in the Secretary's initial
19 comments to the permanent regulations that this is the new
20 federalism and we no longer have detailed federal
21 regulations that the states must comply with and waste all
22 their money filing reports and sending them to Washington,
23 et cetera, et cetera. It's all right there, and it's very
24 much in line with that.

25 MS. WITT: So carrying the language farther,

1 it would be fair to say that the OCR safety net has very
2 large mesh.

3 MS. HUBER: Well, to state it more neutrally,
4 that the whole import of this system is to give the
5 initial responsibility to the states to allocate the money
6 and put these safeguards in place, and the OCR safety net is
7 really, how shall I say, placed much further below.
8 Presumably, if everything works properly, it's supposed to
9 be caught at the state level. The requirements are still
10 there, absolutely, all the nondiscrimination provisions of
11 the law are in place and have not been cancelled.

12 MR. GERLACH: Over the long term, which may be
13 very significant, is the role of OMB in establishing audit
14 standards that each of the states will have to comply with.
15 I know in the testimony that was given at our consultation in
16 Louisiana, Mr. Kelly was there for OMB and he indicated that
17 this might be a very good instrument, the audit standards
18 themselves, for setting up some nationwide standards with
19 regard to at least reporting requirements and perhaps in the
20 area of civil rights enforcement.

21 MS. BIRGE: Except what Linda is saying, that
22 that philosophy is embedded in OMB, so maybe that's not
23 hopeful.

24 MR. GERLACH: But this may be something that --
25 I know our office was asked to provide some input into OMB's

1 process in terms of setting up civil rights compliance that
2 each of the states would have to deal with. But initially,
3 OMB had not even considered that as a part of its audit
4 review, the incorporation of civil rights enforcement at
5 the state level. So this may have some significance in the
6 long run. I don't know how this would relate to the various
7 tribes and to the Indian people with regard to the audit
8 standards and what the states are required to do or how they
9 must comply with federal standards, but this might be
10 something that deserves some further investigation.

11 MS. WITT: Interesting.

12 MR. GERLACH: I guess that's about all I wanted
13 to say in terms of an overview of the project. If you have
14 any more specific questions in terms of what our office has
15 done and where we plan to go, or at least some of the issues
16 we've already looked at, I can respond. I'm sure we'll be
17 here this afternoon if there's anything else that comes up
18 with regard to what we've already done.

19 MS. WITT: I think, unless someone has a
20 burning question, we'd better burn our way downstairs to the
21 restaurant or restaurants in the area if we hope to have
22 lunch in a timely fashion. If we may hold questions, then,
23 and meet back here at one.

24 (Whereupon, at 11:50 a.m., the above-entitled
25 work shop was recessed, to reconvene at 1:15 p.m., the same date.)

A F T E R N O O N S E S S I O N

1:15 p.m.

1
2
3 MS. WITT: Rosa, it is your turn to enlighten
4 us. May I say, on behalf of all of us, I'm so grateful for
5 your help and your having come all this distance to bring
6 Washington light into our dark lives. We've had excellent
7 presentations and discussion by Linda and Ernie, and we're
8 looking forward to your particular perspective on this issue
9 that is so complex and so difficult, counting on you to make
10 it utterly clear.

11 MS. MORALES: You're counting on the wrong
12 person. Let me just say that I really appreciate the oppor-
13 tunity to meet with you and to discuss what to us has been of
14 long-standing concern in the Office of Federal Civil Rights
15 Evaluation in which I work.

16 Given our discussion this morning, perhaps
17 what I'd like to do is, we touched on a lot of the issues that
18 I had intended to cover, and what I would like to do is tell
19 you what our office has been doing in a very brief way and
20 relate that to some of the issues we discussed this morning,
21 and then give you some suggestions or some ideas of some of
22 the issues that we think are important.

23 This morning in the presentation by Linda,
24 she talked about the whole concept of the new federalism and
25 the philosophy behind that. Our office has been concerned

2
1 over the implications that that philosophy has for civil rights
2 enforcement, specifically, in federal financial assistance
3 programs.

4 We have focused our attention, more than
5 anything, on looking at the nondiscrimination provisions
6 that are actually contained in the block grant titles; and
7 secondly, on the activities of the federal agencies, such as
8 HHS, Education and HUD in how they propose to implement those
9 nondiscrimination provisions.

10 In the course of doing that, we have found that
11 there is a lot of confusion among the agencies, among the
12 groups that have been tracking block grant implementation.
13 In Congress there are a number of activities going on where
14 they're trying to sort out the issues and the problems that
15 are resulting from the implementation of the block grants.

16 So let me start by saying that the office
17 looked to the agencies for their implementing regulations.
18 So far, each of the agencies have published block grant
19 implementing regulations.

20 Let me start with the Department of Health and
21 Human Services. They chose to issue one set of regulations
22 that essentially applies across the board to the implementation
23 of the seven block grants under their jurisdiction. In some
24 instances, they made slight distinctions because the statutory
25 requirements from one block grant to another are different,

3
1 but essentially, it's one set of regulations.

2 Our major concern in reviewing those were that,
3 essentially, they had not provided the type of guidance to
4 the states that you would normally expect in implementing
5 regulations. Essentially, what they did was to reiterate
6 the statutory language, did not provide any interpretations,
7 and as a matter of fact, turned over a great deal of respon-
8 sibility for interpreting statutory requirements over to the
9 states, and we covered all of that this morning.

10 They imposed next to no reporting requirements,
11 just to reiterate, there was no format for applications, no
12 format for hearing, and so forth.

13 With respect to civil rights, of the block
14 grants that are under their jurisdiction, all six of the
15 seven include a very specific nondiscrimination provision
16 in the statute. The only one that does not is the social
17 services block grant.

18 Let me just mention that the other block grant
19 that did not include specific nondiscrimination language was
20 the education block grant, and there was a great deal of
21 controversy last fall at OMB and within the Department of
22 Education as to whether or not existing civil rights statutes,
23 meaning Title 6 and Section 504 in Title 9 were applicable to
24 those two block grants, since Congress had not written specific
25 language into that.

3
1 General counsel at OMB requested that the
2 Justice Department issue a legal opinion, which the department
3 has issued, and essentially has concluded that existing civil
4 rights statutes are applicable to those two block grants,
5 meaning education and social services.

6 So going from there, we commented extensively on
7 the fact that the Department of Health and Human Services had
8 not written specific provisions into its implementing
9 regulations with respect to nondiscrimination; secondly, that
10 in the procedures they had outlined, general administrative
11 procedures they had outlined, it seems as though those were not
12 appropriate to handle civil rights complaints and civil rights
13 concerns. The Commission urged the department to make very
14 clear in the regulations, either in the existing ones or in
15 separate ones, what the civil rights provisions were to be.

16 The Department of Health and Human Services
17 has now issued its final regulations, and while they take
18 account and acknowledge that civil rights provisions exist
19 and they are applicable to the funds being provided under the
20 block grants, they have chosen not to write into the regulation
21 nondiscrimination provisions.

22 On the other hand, they have indicated that,
23 in essence, there are some novel aspects of nondiscrimination
24 in block grants that the department is reviewing and will
25 propose separate regulations on. Let me just mention that from

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1 what we know so far, the novel aspects of the block grant titles
2 that they might be referring to are some sex and religious
3 discrimination provisions that are included in some of the
4 block grant titles.

5 In the meantime, the department, as Ernie
6 mentioned earlier, formed within the Office of Civil Rights
7 a task force on block grant implementation, and that task force
8 has been in the process of developing specific enforcement
9 mechanisms, but those have not yet been defined.

10 I'd like to pick up on the fact that what
11 they've done, essentially, is develop a number of options,
12 which Ernie again mentioned this morning, that have been
13 presented to Secretary Schweiker. Among the options for
14 carrying out civil rights within block grant programs are some
15 joint agreements between state -- cooperative agreements
16 between state government and federal agencies in actually
17 doing complaints investigations, resolving complaints,
18 conducting compliance reviews, et cetera. We will continue
19 to work with the task force at the national level to see if we
20 can get clarification as to which of those they will be actually
21 undertaking in the pilot projects, which of them have been
22 dropped, and why, and so on.

23 I want to mention some of the activities that
24 deal with some of the other federal agencies that we've been
25 following. Those include the General Accounting Office and the

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1 Office of Management and Budget. The General Accounting Office
2 has undertaken a 13-state survey of block grant implementation
3 and they are about to come out with a report that deals
4 mostly with the administrative procedures that have been
5 instituted within the states for implementing block grants.

6 We've recently learned, and I will be meeting
7 with staff of the General Accounting Office, that Congressman
8 Edwards and Hawkins, back in January of this year, requested
9 the General Accounting Office to do a report or study that
10 would address civil rights concerns within block grants, and
11 GAO is in the process of planning to carry out that study,
12 which is separate from this 13-state survey.

13 So we're trying to meet with them to get
14 clarification on the issues and the questions that they will
15 be addressing in that report.

16 The Office of Management and Budget has been
17 involved in providing presumably clearer guidance to states
18 with respect to auditing of funds within block grant programs
19 and what is expected of the states in terms of complying with
20 statutory requirements. The statutory requirements that they're
21 referring to are crosscutting requirements. They're controlling
22 administrative cost, some reporting of financial information,
23 as well as the possibility of including nondiscrimination
24 requirements.

25 They have issued, to my knowledge, two guidances

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1 to the states. One is a framework for conducting audits within
2 state block grant programs; the other and more recent is the
3 one that you were alluding to, that Mr. Kelly from OMB
4 mentioned at the state advisory committee meeting, which is a
5 set of compliance standards for the states to use. That
6 just came in this week to the office, and I brought a copy
7 for the Southwest and I have a copy for your office, as well.

8 Right now, those compliance requirements do
9 not include nondiscrimination provisions in them, but
10 presumably OMB will be working with the Department of Health
11 and Human Services, OCR, in developing civil rights requirements.

12 MS. BERGE: Rosa, how does OMB and GAO fit
13 together?

14 MS. MORALES: I'm glad you raised that question.
15 The General Accounting Office has responsibility for actually
16 setting auditing standards for grantees of federal funds. They
17 have issued, not just for block grants, but they have in
18 existence essentially something they call the yellow book and
19 the red book, which are spelling out of the guidelines under
20 which audits are to be conducted of any federal funds, not
21 just block grant funds.

22 On the other hand, the Office of Management
23 and Budget issues a number of circulars that are applicable
24 to state and local governments as well as to educationals
25 institutions, as well as to nonprofit groups as to what is

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1 expected of them in terms of meeting statutory requirements of
2 programs under which they are getting funds.

3 So that OMB and the General Accounting Office
4 are working together to come up with some specific guidelines
5 for conducting audits and meeting other administrative
6 requirements for the states to use.

7 MS. HUBER: It's important to note, also, that
8 GAO is a part of the legislative branch, does not report to the
9 President and the executive branch, as does OMB.

10 MS. MORALES: So they are trying to cooperatively
11 work, but essentially the GAO responds to requests from the
12 Congress. That's essentially their auditing arm and not the
13 executive branch's auditing arm, which OMB has more of a
14 responsibility for.

15 Just as an aside, I'm glad you clarified that,
16 the General Accounting Office, primarily because of the fact
17 that there are a lot more of these block grants coming down
18 the pike, have essentially -- the controller general has
19 decided to develop a strategy that will last over a period
20 of years wherein the General Accounting Office will be involved
21 in a number of different types of evaluative-type studies on
22 their own, as well as respond to any specific requests they
23 might receive from Congress people. So that they have more or
24 less a three-year strategy on block grants and what they would
25 do to address that.

9
1 Let me move on to some of the specific issues;
2 that's just background information. With respect to civil
3 rights enforcement, it is not clear what the respective roles
4 of the federal agencies are going to be. We talked about it
5 this morning, and what the role of the state agencies are
6 going to be.

7 What is clear is that it's going to be different
8 from the civil rights enforcement apparatus that is in effect
9 right now, which is essentially a federal apparatus. It's
10 questionable the extent to which states are willing and/or
11 able to put into place the type of apparatus that would be
12 required for them to essentially carry out the kinds of work
13 they're going to have to do, like complaints investigation,
14 for example.

15 It's also of concern that because the states
16 have so much discretion, essentially, in interpreting
17 statutory requirements, that what you're going to have are 50
18 or more interpretations of the same statutes. So there's not
19 going to be uniformity in that.

20 The Department of Health and Human Services,
21 at least, has stepped back and said, Unless there has been an
22 egregious misinterpretation by a state of a statutory
23 requirement, we're not going to get involved. Who is going to
24 define what an egregious misinterpretation is, and how will
25 the department -- what action will the department take, if any?

10 1 All of those are questions that are up in the
2 air. And I don't know, for example, how that would relate to
3 what you were raising this morning, which is a very important
4 question, and that is the extent to which, for example, tribal
5 governments that are eligible to receive direct funding, where
6 they fit in this whole scheme of things. I'm sure that not
7 a whole lot of thought has been given to that.

8 Let me move on now to talk about, just by way
9 of information, about some of the new proposals that are being
10 made. In terms of actual legislation that has been introduced,
11 there are two proposals. One is to block grant the food stamp
12 program, and the other is to block grant adult and vocational
13 education. Those are actual legislative proposals that have
14 been introduced and during the next few weeks are going to
15 be undergoing consideration.

16 There are also some draft proposals being
17 developed that would block grants, for example, more of the
18 health programs. Some of them would be folded into the
19 existing health block grants. As a specific example, the one
20 that there is a lot of concern about is the women and infant
21 care program, WIC, which is currently operated out of USDA,
22 Food and Nutrition Service. They're talking about folding that
23 program into the maternal and child care health and transferring
24 responsibility, of course, for the program to HHS.

25 They're also talking about the big proposal of

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1 new federalism, which is the swap proposal, which involves
2 Medicaid, food stamps, and AFDC. As Linda talked about this
3 morning, and I won't go into it a great deal, it looked for
4 a while as though the proposal was dead.

5 Whereas initially states were very willing to
6 get all this federal money turned back to them and all the
7 responsibility and the discretion for administering the
8 programs, what they found was that they were facing two things:
9 one was the budget cuts and the other was that there were
10 still a number of strings left attached to the block grants
11 and, therefore, they were not going to have as wide a discretion
12 as they had anticipated in administering the programs. And
13 when it comes to programs such as Medicaid, AFDC, and food
14 stamps, the same thing would happen.

15 So the governors and other state groups
16 opposed the swap proposal. The local governments are in
17 opposition because what they want to see are some pass-through
18 provisions wherein the state's going to get this money, it
19 would automatically flow through to the city governments, and
20 the counties are also concerned about that. They are not too
21 optimistic that the states are going to be responsive to the
22 needs of the county and city governments, so they're also
23 opposed to them.

24 So given that, the administration has had to
25 go back to the drawing board on a number of occasions and redo

12 1 the swap proposal. And the situation we're in right now is
2 one in which the last proposal presumably was announced by
3 the President at the Baltimore meeting earlier this month.
4 Well, even that proposal is still undergoing changes, and
5 what we keep hearing is the actual proposal will be transmitted
6 to the Hill by the end of the month. Well, tomorrow is the
7 end of the month and we have yet to see the proposal.

8 Anyway, so we've been following that, so we
9 have some information on that that might be useful to you.

10 Let me talk a little bit about what's going on
11 in Congress since the block grants were enacted. Senator
12 Durenberger's subcommittee, which is called the Subcommittee on
13 Intergovernmental Relations of the Government Operations
14 Committee, held a series of hearings in May specifically on
15 block grant implementation. The advocacy groups have not let
16 up their pressure on Congress to go back and relook at the
17 legislation that was so hurriedly passed, meaning the block
18 grant titles last year.

19 MS. BIRGE: Were there any Indian groups at that
20 hearing?

21 MS. MORALES: I attended two of the hearings,
22 and as I recall, there were no Indian representatives there
23 testifying. Whether there were some in the audience, I'm not
24 sure.

25 That brings up a very interesting point, and

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1 that is that we consider the focus that this office wants to
2 give to the impact on Indian groups and the focus that was
3 given by the Southwest Office crucial because it doesn't
4 appear to us, as Linda mentioned, that there is much activity
5 going on, at least at the national level, on this issue.

6 So what you're going to have are some possible
7 changes in existing block grants, and then some new ones on
8 top of that wherein they're not going to have any input again.
9 And they didn't have any input into the development of these
10 proposals.

11 Anyway, with respect to the Congressional
12 activity, they've held these hearings and what they're trying
13 to push for are some more tightening requirements, given the
14 fact that we do have block grants in existence, clarification
15 of some of the requirements, some further tightening, and so
16 on. So two hearings have been held on that.

17 In addition to that, there is a piece of draft
18 legislature which Durenberger has developed, and to my knowledge
19 has not been introduced yet but is expected to be introduced,
20 that would clarify the crosscutting requirements that are
21 currently contained in Title 17 of the Budget Act. I alluded
22 to that earlier.

23 Essentially, those crosscutting requirements
24 were put in at the urging and strong lobbying by the public
25 interest groups, and Title 17 is very short, and essentially what

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1 it does, it sets out auditing requirements for block grants,
2 that they have to be done every couple of years, and some
3 other requirements. I can't recall specifically. There are
4 some reporting requirements in there.

5 So what they're trying to do through this new
6 piece of legislation is strengthen that Title 17 in the current
7 bill. At this point, it hasn't gone anywhere, but that's
8 another way that they're trying to amend what's already in
9 existence.

10 This week, we learned also that the Edwards
11 committee, the House Subcommittee on the Judiciary, Subcommittee
12 on Civil and Constitutional Rights, wants to hold some oversight
13 hearings on civil rights enforcement. The reason those
14 hearings are going to be important is because they intend to
15 cover, possibly, HHS and possible HUD and possibly the Office
16 of Revenue Sharing, and most definitely the Department of
17 Education.

18 They want to focus that hearing, which is the
19 first one, which will take place in a couple of weeks, on
20 Chapter 2, which is the block grant or consolidation of
21 education programs in the Budget Act, and specifically to
22 address the issue of the funding formula and the issue of
23 equitable distribution of funds by the states under the formulas.

24 The problem that has arisen thus far is that
25 the block grant title for education makes some general reference

15 1 to some criteria the states are supposed to follow in developing
2 their funding formulas, and it's the states who are developing
3 the funding formulas.

4 What the states have turned around and done is
5 develop their formulas, and the Department of Education has
6 gone ahead and approved those with what appears to be next
7 to no scrutiny. It has resulted in the loss of great
8 numbers of funds going to communities that had been specifically
9 targeted in the past.

10 A lot of groups, for example, have said -- one
11 of the critical examples that has been raised is school
12 desegregation efforts. They are losing, under the funding
13 formulas developed by a number of states, a considerable
14 amount of the money that was formerly available to them.
15 Again, I give you that as information. How that might relate --
16 Linda had indicated that the tribes are not eligible for
17 direct funding under the education block grant. Certainly
18 the broader issue of equity in the funding formula is one that
19 does apply.

20 That's what's going on so far in terms of
21 Congressional activity, and we'll be following that more
22 closely.

23 In terms of some of the issues with respect to
24 Indian tribes, I ask you to bear with me, because essentially
25 what I've done is, in reading the transcripts from the other

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1 open meetings and in reading some of the material collected
2 by staff, we've covered a lot of these already and I've sort
3 of just listed them, and perhaps we can discuss them a little
4 bit.

5 I've already indicated that there does not
6 appear to be a real concerted effort to address Indian issues,
7 and it seems to me that one of the basic questions we need
8 to be concerned about, and there are two, and I put those out
9 separately.

10 The first set involves, with respect to the
11 impact on Indian and Indian tribal governments, the extent
12 to which they want to address and how the problems they are
13 confronting with the existing block grants. That's one set
14 of questions that I think might be worth exploring in a
15 project that you might develop.

16 MS. WITT: Would you restate that?

17 MS. MORALES: The first set -- and this is my
18 own personal sort of pulling together of the issues or questions
19 into two sets. One has to do with how to address the problems
20 or the disparate impact or negative impact that Indian tribal
21 governments and Indian populations are experiencing in already
22 existing block grants.

23 MS. BURGE: I think that's what we have down,
24 better phrased, but I think it's the same thing as our number
25 one. It's just phrased better.

17 1 MS. MORALES: That would include the impact on
2 the Indian populations, identification of the statutory
3 requirements that are resulting in the funding problems that
4 they are having, over and beyond the general budget cuts,
5 identification of the administrative requirements and some
6 possible changes to ensure equity in the distribution of
7 funds, what legislative changes are required and the actual
8 development of legislative changes that can be proposed for
9 the existing block grants to correct the problems.

10 So to me, that's one set of issues that I think
11 is appropriate to address in some kind of a project. What
12 I'm trying to say is, dealing with -- since we have a number
13 of block grants already, how to make those -- that's one
14 alternative -- is how to make those more equitable, if that's
15 possible. I'm not saying that it is, but I think that needs
16 to be considered.

17 The second set of questions has to do with
18 whether and to what extent Indian populations, Indian tribal
19 governments want to oppose block grants that may be coming
20 down in the future and existing ones.

21 And building a record -- and this goes back to
22 what we were talking about earlier, tracing, taking one or more
23 of the programs that were categorical, tracing them for a number
24 of tribes to what has happened to them, the impact under the
25 block grant approach, and on the basis of that, developing a

18 1 record based on the experiences with existing block grants that
2 can convincingly argue that block grants are neither appropriate,
3 feasible, or what have you, for Indian populations.

4 Again, that goes back, I think, to what we
5 were talking about earlier, the whole trust relationship that
6 exists between the federal government and Indian tribes. So
7 broadly, those are some of the thoughts I had and we can
8 discuss those.

9 There are some other ideas that I'll just
10 throw out for discussion purposes. I think it is important
11 and I think I alluded to this this morning, to make some
12 distinctions between the different impacts on the various
13 Indian tribes, either within a state or among the states
14 within a region.

15 MR. MULDROW: You mean tribes with different
16 administrative setups?

17 MS. MORALES: Yeah, that they might be starting
18 from different points in terms of administration of programs,
19 experience with programs, and so forth, that the size of the
20 Indian populations would in some way -- do in some way
21 determine the amount of funding that they will receive and
22 so forth, that there are some differences that may exist
23 between and among them.

24 MR. MULDROW: How about 280 and non-280 states?

25 MS. MORALES: I'm not an expert on those, but,

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1 yes, that's one of the possible, I suppose, and most of you
2 know more about the 280 and non-280 states -- I mean, I know
3 they exist, I just don't know.

4 MS. HUBER: I would have to think more about
5 that. I'm not sure -- well, Public Law 280 was part of the
6 termination legislation of the '50s that still persists to
7 this day, even though at this point we're in the phase of
8 Indian selfdetermination.

9 MS. WITT: More enlightened period in history.

10 MS. HUBER: So it would seem. But essentially
11 under Public Law 280, that gave the states authority to, if
12 an individual state wished, to assume civil and criminal
13 jurisdiction over Indian reservations within their states
14 rather than what was formerly federal jurisdiction.

15 Some of the Public Law 280 states adopted
16 only part of the jurisdiction that they might have otherwise
17 been able to do. It has a great impact on law enforcement,
18 it has a great impact on resource management, tribal versus
19 state taxation, tribal versus state zoning requirement, and
20 management of land and resources.

21 I'm not sure now it really impacts, though, on
22 funding distribution of federal funds, either directly to the
23 tribes or passing through the states.

24 MS. WITT: We kicked that around that a little
25 bit in the office the other day trying to get a grip on it.

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1 MS. BIRGE: I agree with Linda, we could leave
2 it out. It seems to me the only reason for considering it might
3 be from the tribal point of view that in those states where
4 the state exercises jurisdiction, is there any better
5 delivery of the states services or has the state, for example,
6 in the 280 state where the state law enforcement officer will
7 go onto the reservation and do the police officer's duty
8 there and the non-280 state they don't, unless there's some
9 other agreement.

10 I don't know if, from their point of view,
11 they'd want to look at social services and say, Do we get any
12 more or do we get any better because it's a 280 state, and
13 maybe they'd care about it. But I don't anticipate it would
14 be that much.

15 MS. HUBER: On the other hand, as Rosa pointed
16 out, I would think it would be very significant to consider
17 both small and large tribes, certainly with the currently
18 operating allocation formula. A small tribe with perhaps only
19 a few hundred eligible low income members to compete for
20 allocation with an entire state's population, it's those tribes
21 that end up getting 100 and \$200 to implement an entire block
22 grant program.

23 MS. WITT: That was, in fact, a case where a
24 program recipient did get \$200 in New Mexico after doing all
25 kinds of gymnastics to get money at all, and here it comes.

21 1 They could have saved the postage.

2 MS. MORALES: I'm going through these quickly,
3 I hope I can read my writing here.

4 What is the state responsibility for serving
5 Native Americans or when federal funds are cut? This is
6 across the board. Some block grants, as you know, and we
7 already discussed, don't have direct funding provisions to
8 tribal governments, so that the responsibility, it seems to
9 me, and this is not coming from any factual information that
10 I have at this point, but it seems to me that the responsibility
11 would fall on the state out of the money that they get as
12 a block to serve all of the population within the state,
13 including Native Americans. And what provisions is the state
14 making for doing that?

15 MS. BIRGE: I think that's where the 280 and
16 non-280 question might come up the most, and perhaps there
17 is some theoretical argument that the 280 state has a
18 different or greater obligation. And it might be interesting
19 to see, in reality, if there is any difference at all.

20 MR. MULDROW: You say, What is the state
21 responsibility before serving Native Americans when federal
22 funds are cut or caught?

23 MS. MORALES: Cut, c-u-t.

24 MR. MULDROW: My real question, I guess, is this,
25 say under a particular block grant a tribe is eligible and

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1 applies for and receives direct funding and the state has a
2 similar grant under the same program. The tribal grant may
3 not be sufficient or anything near like it was before to cover
4 their need in that particular area. Are you indicating that
5 the state may have some responsibility to make up the
6 deficit?

7 MS. MORALES: What I'm saying is that I think
8 that, certainly, the states, since native Americans over and
9 beyond what the tribe may get to serve the population under
10 a block grant, still has a certain responsibility to the
11 citizens of the state, and I don't know if the states will
12 take the position -- that's a very important point -- whether
13 the states will take the position and since the tribe received
14 some direct funding under the same block grant that then
15 they wouldn't offer any services to, let's say, Indians on a
16 particular reservation or so on.

17 MR. MULDROW: So the question really is, are
18 Indian people eligible for both funds?

19 MS. HUBER: That's a very important point you
20 raise, and it's addressed in part by the HHS regulations. I'm
21 not sure if it's reflected in the HUD or Department of
22 Education regulations. The regulations make a distinction
23 between tangible and nontangible benefits, and I'll read it to
24 you and see if it's perfectly clear to you. This is Section
25 96.42(f) of the HHS regulations.

23 1 "A state receiving block grant
2 funds is not required to use those funds to provide
3 tangible benefits, e.g. cash or goods, to Indians
4 who are within the service population of an Indian
5 tribe or tribal organization that received direct
6 funding from the department under the same block
7 grant for the same fiscal year.

8 "A state, however, may not deny
9 Indians access to intangible services funded by
10 block grant programs, e.g. treatment at a community
11 health center, even if the Indians are members of a
12 tribe receiving direct funding for a similar service."

13 MS. MORALES: What I'm saying is that is so
14 totally confusing that you might have a situation, I would
15 suspect, in which there are certain groups or individual
16 Indians that are in need of both. I don't know exactly whether
17 in a project of the kind you are considering that would become
18 any more clear.

19 MS. HUBER: That would be important to explore.

20 MS. MORALES: Yes, and try and get a clarification
21 on it.

22 MS. HUBER: What I think it means is, for
23 example, they probably would call low income energy assistance
24 a "tangible" benefit if a recipient is getting actual money
25 or a voucher for home energy costs. For example, if a smaller

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1 tribe applied and their direct funding through the block grant
2 were only several hundred dollars so that it would be very
3 difficult for a tribe to run an adequate program to meet the
4 needs of its own members, at the same time, because that tribe
5 had received the direct funding, these regulations would
6 permit the state to deny tribal members access to their low
7 income home energy block grant funds.

8 MR. WADE: But tribal members can get services
9 is what is says.

10 MS. HUBER: Yeah, they could go to a clinic
11 or something like that. I think that's what it means. It
12 would be real interesting to see how the states are interpreting
13 that and exactly what's going on.

14 MS. MORALES: And how even the department, if they
15 can give any examples of what it is that they mean by those
16 statements, some clarification, perhaps.

17 MS. BIRGE: Do you think that where it says
18 "service population area," could the state of South Dakota
19 decide that the service population area for the Oglala Sioux
20 was the entire state so that if you were in Aberdeen or Sioux
21 Falls, they could say, You return to the reservation to get
22 this or you don't get it? Is there room for that, do you
23 think?

24 MS. HUBER: That's a good question. I don't know.

25 MS. MORALES: I don't know either. I can't

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1 answer it, but it is a good question.

2 MS. BIRGE: South Dakota would probably try it.

3 MR. GERLACH: It seems to me that you would
4 have to do a state-by-state survey because of the different
5 interpretations.

6 MS. BIRGE: That's got to be a terrible threat
7 to urban Indians.

8 MR. MULDRON: A related problem, in South
9 Dakota, for example, the Indian people very jealously guard
10 their autonomy. They resent anything which would appear to
11 be further state encroachment on the jurisdiction they have.
12 They like to relate to the feds only. This is not to say
13 they don't relate to some state programs now, but for example,
14 a program for which they now look entirely to the federal
15 government, if they're cut back on this under the block grant
16 program so that they have to get part of their needs satisfied
17 by the state, I would think this will be more of an issue to
18 them than the actual cutback, the fact that they are now
19 having to come under the state in an area where they did not
20 before.

21 MS. BIRGE: I think it's more likely than not
22 now, isn't it? I think it's more likely than not that they
23 won't have any choice.

24 MS. WITT: And this is the squeeze.

25 MS. HUBER: Certainly on the block grants where

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1 there is no direct funding permitted, the ones like the
2 alcohol block grant where, even though it exists on paper, it
3 doesn't in practice.

4 MR. MULDROW: Is there a legal issue
5 involved here relating to the trust responsibility of the
6 federal government whereby this would, in fact, abrogate
7 that relationship? Do you see what I'm saying?

8 MS. HUBER: I think so. If the needs aren't
9 being met and are being cut back, I think that's an abrogation
10 of that responsibility, and it's not a responsibility that
11 can be passed to the states and that the states can certainly
12 legitimately refuse to undertake if the federal government
13 is not meeting it. Both the trust issue and the tribal
14 jurisdiction issue, I think, are somewhat related but can
15 also be considered separately.

16 MS. BIRGE: Legally, the tribal government is
17 a sovereign government of the status of a state government,
18 and I think by forcing them to go through the state government
19 that you've lost all recognition of that fact. And the more
20 that you chip away at that, the more in danger it has to be.

21 MR. GERLACH: -- the approaches used, you have
22 the categorical programs, which a lot are still in existence,
23 then of course you have the blocks, then you have the programs
24 being funded through the Bureau of Indian Affairs and Department
25 of Interior. So you really have three channels, almost, as I

27

1 see it, where you have to look into in terms of the trust
2 responsibility and in terms of the overall cutbacks in
3 federal funds. Do you see where I'm going? You can't just
4 take the blocks, I think you have to look at the other
5 categorical programs still in operation, as well, as well as
6 the Bureau of Indian Affairs' programs. You almost have to
7 deal with all three channels.

8 MS. HUBER: I think that's important to keep
9 in mind; particularly in a period where there has been very
10 substantial cutbacks in the funding of the Indian Health Service,
11 which make the health block grants potentially more important
12 to the tribes than the categorical programs might have been
13 in past years, which is, again, why I think you really have
14 to not just look at block grants in isolation but how they
15 are operating in practice and with the federal budget cuts.

16 MR. GERLACH: Another question, does the block
17 grant, vis-a-vis the Indian and the services that are provided
18 to the Indian Health Service, do they tend to cancel each
19 other out or what is the relationship there? Can an Indian
20 conceivably take advantage of both programs, to the funds that
21 are channeled through the IHS as well as state programs funded
22 through the block grants?

23 MS. WITT: If you move real fast, the answer is
24 yes.

25 MR. GERLACH: It's sort of a conflict here,

1 maybe.

2 MS. WITT: Well, something like the BCM Center,
3 Bernalillo County Medical Center in Albuquerque, was faced
4 with the problem of Native Americans wanting to use it and have
5 the services changed to the Indian Health Service and having,
6 at the same time, Indian Health Service of fairly large
7 magnitude on the Navajo reservation. And there was the
8 business of shuffling them back and forth and the tragedies
9 of someone dying on the road in between, and so forth.

10 Reciprocal arrangements worked out a long time
11 ago in, I guess, the early '70s so that, yes, you could go
12 back and forth and you would just say, I'm so-and-so and
13 charge it to the Navajos or whatever. So that has worked,
14 to some degree in the past, but on a more complex and newer
15 issues and block grants and categorical programs, I don't
16 have an answer for you.

17 MR. GERLACH: It could change the whole
18 relationship, then.

19 MS. WITT: It could well.

20 MS. MORALES: There are two other areas that
21 I think need some clarification, and Linda may already have
22 an answer to one of them, I'm not sure. One has to do with,
23 in cases where Indian tribes are eligible and receive direct
24 funding, does that reduce the funding, the block grant funding
25 allocation for a state?

1 MS. HUBER: Yes, that is very specific. It's
2 specifically in the statute. The tribe's allocation is
3 reserved from the states.

4 MS. MORALES: That raises, I think, some very
5 serious concerns, then, about how the states are going to
6 relate to Indian tribal governments and Indians vis-a-vis that
7 particular situation.

8 MS. HUBER: That is what this regulation, I
9 think, is supposed to address and this distinction between
10 tangible and intangible benefits. I think this is the best
11 answer to us available at this time, and it will be interesting
12 to see, what, exactly, the states are doing with it.

13 MS. WITT: So that can go back to the question
14 of racial question. That could target the whole population.

15 MR. WADE: I can see legislators as not being
16 very prone to favorablock grants going to the reservations.

17 MS. BIRGE: They could stop the mail coming
18 off the reservation so the block grant application doesn't
19 get in on time.

20 MS. MORALES: My concern is that that type of
21 situation will create a spillover into other areas, and I'm
22 not sure that I can clearly articulate what I mean, but I think
23 it will certainly have an impact on perhaps other -- I'm not
24 sure what those would be -- relationships between states and
25 Indian tribes or --

1 MR. WADE: In some states those relationships
2 are pretty hostile already.

3 MS. MORALES: I think it will just exacerbate
4 that.

5 MS. BIRGE: It's a perfect situation to be used
6 as a trade-off so that when they're in a situation where they're
7 forced to negotiate, law enforcement, as an example, "We
8 don't have any on the reservation. Why have you stopped
9 giving traffic tickets on US 36 crossing our reservation?"
10 Then the state says, "We'll do this if you won't apply for
11 that," and it's just a trade-off, which sets it up and it's
12 awful.

13 MS. MORALES: I tend to think of it as holding
14 the Indian tribes hostage on other issues for the sake of
15 their getting some direct block grant money. That's the
16 extreme I can see.

17 MS. BIRGE: But it just could be used so
18 politically.

19 MS. MORALES: The other area that I think needs
20 substantial clarification is the extent to which these federal
21 standards or requirements that I talked about earlier, if I
22 didn't totally confuse you, dealing with auditing requirements
23 and meeting other statutory requirements, such as cost
24 principles and the like, apply to Indian tribal governments
25 that have gotten direct funding from the federal government.

1 I mean, we know for sure that the states have to meet these
2 requirements but the extent to which they're applicable to
3 tribal governments I think that this point is very unclear.

4 MS. WITT: Well, let's go one step further.
5 If they are, do the tribes have the capability of meeting
6 such things? What is the cost, what is the overhead on any
7 of these kinds of questions and these kinds of requirements?

8 MS. MORALES: I think we can go one step further
9 and say, to what extent are the standards and requirements
10 that have been developed for state governments appropriate
11 for tribal governments?

12 MS. BIRGE: But that distinction hasn't been
13 made in any other kind of funding program. It's usually,
14 This is what you do to apply or to qualify, and I don't think
15 that they say states meet these standards, tribes meet these
16 standards.

17 MS. MORALES: See, that's where, because I'm
18 not familiar with exactly how existing requirements are applied
19 in other areas, leaving aside the block grant issue that we're
20 discussing. For example, existing auditing requirements for
21 federal financial assistance programs, I know that there is
22 no separate OMB circular or separate GAO set of auditing
23 requirements that tribal governments have to meet, but then
24 I also do not know that they have to conform to the existing
25 ones that have been developed for state and local governments.

1 MS. BIRGE: As far as I understand, when they
2 apply on an equal status with the state, they come under all
3 of those standards that the state does. If they receive on
4 the level of a local agency, such as in some of the educational
5 areas, then they comply with the same across. But I think
6 it's exactly that provision, and what you said about are they
7 also appropriate for a tribe, in many instances they're not
8 and have actually thrown tribes into bankruptcy in trying to
9 meet the data collection requirements.

10 MS. MORALES: Which goes back to Shirley's
11 point about the extent to which tribal governments have the
12 capability to actually meet these requirements.

13 MS. WITT: Financial and technological.

14 MR. MULDROW: Although some of these limited
15 administrative expenditure of these grants to 5 to 10 percent.

16 MS. MORALES: It differs.

17 MR. MULDROW: Which would mean they could not
18 spend more than that for administration?

19 MS. MORALES: At the upper limit, of, say,
20 10 percent of the amount you could use for administrative
21 costs, and if that's written into the statute, then I don't
22 think that you can go above that.

23 MS. HUBER: You can spend more if it's your
24 own and not the block grant.

25 MS. MORALES: But not the block grant money. In

1 some cases, they just give a range, let's say, so you have to
2 stay within that range. In some, they actually say, Not more
3 than 10 percent of the monies provided under this block
4 grant can be used for administrative costs. Then, I would
5 think that you couldn't use block grant money, at least not
6 more than that percentage, on administrative costs.

7 MR. WADE: Typically, from my experience, social
8 service agencies, for example, you're talking 60 percent
9 administrative costs.

10 MS. BIRGE: Well, and in the other types of
11 funding, it's not uncommon to find a situation where the
12 statute will allow that the first year you can spend 40 percent
13 for administrative costs and then for the second year and
14 afterwards it's 10 percent, or whatever. And I think they've
15 allowed for that. The block grant assumes --

16 MR. WADE: It forces local funding sources to
17 come up with the money for administrative costs.

18 MS. BIRGE: I think there's an assumption that
19 you have the mechanisms in place because you used to get this
20 money anyway.

21 MS. MORALES: And that you have the basis on
22 which to draw, the economic resources on which to draw to
23 cover those.

24 MR. WADE: Which gets us back to the point Linda
25 made earlier about reservations not having a tax base. So

1 where do they get the money?

2 MS. WITT: Which then raises one more time in
3 a different way the question of who assumes the cost for
4 administering a grant that goes through a state to a tribe,
5 since there is no tax base and the state can then extract
6 from the recovery whatever the amount is, it's overhead.

7 MS. MORALES: One of the problems related to
8 administrative costs that's been raised, apparently, by a
9 number of national Indian organizations in Washington, one of
10 the members of the staff in my office has been trying to
11 collect information that we can share on what's going on,
12 specifically with respect to the block grants and Indian tribes,
13 is that a lot of the people that were employed by tribal
14 governments to actually provide services, let's say under a
15 program that was a categorical program, were funded, the
16 employees were funded out of CETA, for example.

17 Now, we all know that there are four or five
18 different CETA legislative proposals to replace CETA, which
19 goes out of existence at the end of September of this year,
20 and none of those proposals has actually been acted on. I
21 think that the House was in the process last I heard, of coming
22 up with one of the bills that is the one that will go through
23 the process of consideration and so on.

24 So that they've lost, already, a lot of the
25 individuals, the people that would actually provide the services.

1 So that's a related -- it shows you.-- it's one more example
2 of how one budget cut compounds the problem in another area.

3 MS. WITT: Moving back to the prior thought,
4 so this is where the whole issue of tribal sovereignty could
5 come really crashing down, because if the state were to have
6 to assume the administrative costs and the tribal persons are
7 not taxable because of trust status and land status, then
8 might come the major final attempt for the states to tax the
9 reservations because, of course, they are providing services.

10 MR. WADE: No representation without taxation.

11 MS. WITT: Exactly.

12 MS. BIRGE: I don't think with the existing
13 law they could get away with that, do you, Linda?

14 MS. HUBER: That's a whole other area; the
15 whole area of state taxation of Indian reservations, of Indian
16 taxation of non-Indians and so forth.

17 MS. WADE: But the fires for that could be
18 fanned.

19 MS. WITT: The Congress for Equal Rights and
20 Responsibilities worked very hard toward that end a few years
21 ago, and they're in a much more favorable climate I would think,
22 for trying other ways to bring legislation through Congress.
23 Congress, of course, can make over court decisions left and
24 right, as we've seen in other areas.

25 MR. WADE: I know in Montana that would make a

1 lot of sense to a lot of people up there.

2 MS. BIRGE: I think in every state you name
3 they say, Sure, why not? I think that's probably the basis
4 of the bitterest conflict one-on-one.

5 MR. MULDROW: Just background information,
6 some programs are administered on the reservation by the IHS,
7 some by BIA, and some by the tribe. How does that affect the
8 block grant program?

9 MS. MORALES: I was just going to say, I don't
10 know, and that was my next area that I just wanted to throw
11 out for consideration. That is that there are a number of
12 existing categorical programs run by federal agencies, such
13 as BIA, Indian Health Service, some education programs and
14 so forth.

15 That issue came up a little bit in the state
16 of Oklahoma meeting that there appears to be absolutely no
17 coordination, no talking, no discussion among the federal
18 agencies that have these different existing responsibilities
19 for programs or coordinating.

20 MS. BIRGE: There never has been. It was very
21 typically the situation when HUD started building houses and
22 couldn't finish them because HHS hadn't come in to put the
23 plumbing in. I think that's just an old program.

24 MS. HUBER: Well, the BIA continues to provide
25 service, the tribe continues to contract with the Interior under

1 the Indian Self-Determination Act, the IHS is operating. But
2 all of these agencies have experienced substantial budget cuts
3 and I think that something we're seeing in the health area
4 in particular, is with these cuts, some of the tribes had been
5 receiving maternal and child health services from IHS. They
6 had been receiving alcohol treatment services from IHS.

7 Now that those funds are drying up for the
8 maternal and child health services, there is much more of a
9 need for the funds available from those block grants, maternal
10 and child health for tribes that are not eligible for direct
11 funding and must go through the state.

12 In the alcohol drug abuse and mental health
13 block grant, many of the tribes are not eligible because the
14 previous programs had been run through IHS and they weren't
15 participating in the categorical grants before and they're
16 frozen out now.

17 MR. MULDROW: Say a categorical program
18 administered under BIA, the tribe would not be responsible
19 for direct funding for that program?

20 MS. MORALES: Only if it's been block granted,
21 I would imagine, and only if there is a direct funding
22 provision within the statute.

23 MS. HUBER: None of the BIA's categorical
24 programs themselves have been block granted.

25 MR. MULDROW: I see. What about IHS?

1 MS. HUBER: Yes.

2 MR. MULDROW: Yes, they have not been?

3 MS. HUBER: Yes, they have not been block
4 granted, they've just been cut.

5 MR. GERLACH: You only have 54 basic programs,
6 previous categorical programs, at least those that are block
7 granted in health and human services have been put into these
8 grants right now.

9 MR. MULDROW: And they were all administered
10 by the tribes?

11 MR. GERLACH: I don't know.

12 MS. HUBER: Some were and some weren't. Many
13 of those did have direct funding provision, not only for
14 tribes, but also for urban Indian organizations, in some cases,
15 could obtain direct funding.

16 MR. MULDROW: But none of them were administered
17 by IHS or BIA?

18 MS. HUBER: No. Those, so far, have not been
19 block granted only that those available funds have been shrunk,
20 which makes the block grant programs more important and more
21 necessary to the tribes, which goes, again, why I feel it's
22 really necessary to look at the block grants in the context
23 of the budget cuts.

24 MS. BIRGE: That's what I was talking about, Bill,
25 with the 1100 and the 85; is 1100 programs, and that's housing,

1 health, education, the entire thing, and perhaps out of those
2 1100 the statute itself would have permitted direct funding
3 to Indian tribes in 40 or 50 percent. Then as a matter of
4 fact, 85 had ever provided straight to the tribe.

5 And a lot of the in between is not knowing how
6 to apply, not having the money to apply, all of that. But
7 the 1100 programs are what we're talking about alcoholism and
8 all the other kinds of things, and 85 is, of course, miniscule.
9 So that means they're either getting the program through the
10 state or they're not in any way participating in the program,
11 and most of the answer was the second.

12 MR. GERLACH: Also, we haven't really discussed
13 this question, and that's the transfer provisions that are
14 included in the blocks themselves. What some of the states
15 have been doing to make up the short-falls was to transfer
16 funds among the blocks to make up some of the cutbacks. I
17 don't know if this will impact any of the Indian tribes in the
18 region, but this certainly might be an issue to look into.
19 There are, again, 5 percent, 10 percent transfer provisions
20 within the blocks and that might be an issue. I don't know.
21 Has that ever come up with anything with the Commission
22 regarding the transfer?

23 MS. MORALES: Well, the transfer funding
24 provisions, per se, are a concern across the board. There have
25 been some limits in the way those transfers can take place.

1 Some of them don't have them, but the ones that do, the concern
2 is that -- and there are limits on the percentages of funds
3 that can be transferred -- is that one state may decide, in
4 setting its priorities for one block grant, that it's not
5 going to use 100 percent of the funds for uses that are
6 specifically for that block grant, just out of sheer -- it
7 decides it's not going to and it decides it's going to transfer
8 10 percent of the funds to some other area.

9 So that might result in some individuals and
10 groups not being served on a particular block grant that
11 should be served, because the state has decided, on whatever
12 basis it can decide to move the funds over to some other
13 block grant.

14 Like I said, there are some limits. We've
15 not looked at those as closely as, perhaps, we will at some
16 point. Again, the question is to what extent are tribal
17 governments -- I don't even know, I guess if states are able
18 to transfer funds from one to another, I suppose that in those
19 block grants that have that provision and also have the direct
20 funding provision for tribal governments, that they can do the
21 same thing. But I don't know.

22 MR. WADE: Ten percent is the maximum?

23 MS. MORALES: It depends. They differ from
24 block grant to block grant, and not all of them can you transfer
25 funds from one to the other.

1 MR. GERLACH: They also specify to what area
2 you can transfer. It's just not simply transferring from one
3 block to the other, there is some limitation on that.

4 MR. MULDROW: Let's go back a minute to
5 non-urban Indians. Is it clear that they would be covered under
6 state programs, or is that unclear as to which program they
7 would fit into?

8 MS. HUBER: My understanding is that if the
9 tribe was not participating in direct funding, that the
10 reservation Indians would be eligible on the same basis as
11 any other citizens of the state and that the tribe itself could
12 compete in the state allocation process and to go the public
13 hearing and all that. If the tribe is participating in
14 direct funding, then you get back to the tangible and intangible
15 regulation.

16 MR. MULDROW: For urban Indians, if the tribe
17 is participating, then is the status of urban Indians unclear?

18 MS. HUBER: It might be. If they were not
19 reservation residents and not participating in the tribe's
20 funding, then I don't think a state would be justified in
21 excluding them from tangible or intangible benefits. But I
22 think it would be a matter of interest as to how the states
23 are viewing that and what they think they can do with urban
24 Indians.

25 MS. MORALES: The issue you raised earlier about

1 competition with other groups for, essentially, a much smaller
2 pot, money, that the states are getting.

3 MR. MULDROW: So there are a lot of urban
4 Indians, of course, who are tribal members, most of them,
5 many of them even vote in tribal elections.

6 MS. MORALES: Well, those are my thoughts.

7 MS. BIRGE: I'd like to ask Charlotte, on the
8 comments Rosa made about not being sure whether the states
9 were able or willing to take over those compliance standards
10 that the federal government has previously imposed on them,
11 what's been your experience in that regard? Are they interested
12 at all?

13 MS. MC KINNEY: Let me tell you where we're
14 at. Like I attended the training session in Maryland, and
15 then the purpose of that training was so that I can come back
16 and train our states in their responsibilities. So I don't
17 know how receptive they are at this point. We'll be holding
18 our training sessions the end of August, August 24, 25, and 26.

19 MS. BIRGE: How heavy-handed does HUD intend
20 to be insofar as pushing the states into doing this?

21 MS. MC KINNEY: What I did, I'll pass these
22 copies around. I haven't had a chance to get an original. I'll
23 show you the civil rights laws that we have and how -- this is
24 called nondiscrimination and affirmative action (indicating).

25 So we'll be looking at the states, you'll see the

1 one column, the A and D, and we expect them not to discriminate,
2 but then you'll see the other columns, like affirmative
3 action, and you can see that it's not required in that many
4 cases. And then it's voluntary in quite a few cases.

5 MS. MORALES: Is what you're saying that the
6 department has determined -- I want to make sure that I under-
7 stand this -- that certain existing nondiscrimination statutes,
8 as well as the nondiscrimination specific regulations that
9 are in existence with respect to CBG are applicable to the now
10 state-administered small cities program?

11 MS. MC KINNEY: Yeah, that's correct. For
12 example, the laws that I'm sure you're aware of, like Title 6,
13 okay, the first one in services and facilities in the state
14 block grant program. Of course, we don't expect them to
15 discriminate, and then affirmative action is required and it's
16 also voluntary.

17 MS. HUBER: Wait a minute.

18 MS. MORALES: I don't understand that if it's
19 required, then how can it be voluntary?

20 MS. MC KINNEY: Well, we require that but they
21 can take additional measures.

22 MS. MORALES: Additional measures than what you
23 require?

24 MS. MC KINNEY: (No verbal response.) I don't
25 know if I've been clear for you, but for example, in employment

1 they're not supposed to discriminate, but we can't say, You must --

2 MS. MORALES: Develop affirmative action plans,
3 for example?

4 MS. MC KINNEY: Right, or recruit.

5 MS. MORALES: Or take certain recruitment steps,
6 like typical.

7 MS. BIRGE: There's no room for voluntary
8 measures, then, as far as employment is concerned?

9 MS. MC KINNEY: No, that's my understanding
10 at this point -- or that it is voluntary and it's not required.

11 MS. BIRGE: That's the only one I can see that
12 doesn't have voluntary action checked, is the employment area.

13 MR. WADE: Does that mean it's mandatory?

14 MS. BIRGE: So there's nondiscriminatory
15 policies, but I just don't understand that column for
16 voluntary action.

17 MS. MC KINNEY: Let me see if I can state it
18 another way. Okay, like we have two arms, like the technical
19 assistance arm and the compliance in HUD and we'll give -- the
20 states have the option to enforce their own civil rights laws
21 or they can request that from us.

22 Then, on the other hand, if they're not
23 successful in enforcing the compliance or resolving a complaint,
24 then we'll automatically assume that responsibility.

25 MS. BIRGE: So where it says voluntary action,

1 that's where they could opt to enforce it themselves?

2 MS. MC KINNEY: Right.

3 MS. BIRGE: And under employment, they don't
4 have that option, because Title 7 doesn't allow it?

5 MS. MC KINNEY: (No verbal response.)

6 MS. MORALES: Can I just ask a question? Is
7 the department planning, to your knowledge, to issue some
8 type of guidance to the states with respect to the CDBG state-
9 administered program and civil rights compliance, sort of the
10 type of guidance that may be forthcoming from HHS? Is there
11 some kind of a task force internally within HUD that is
12 addressing the issue of civil rights concerns within the new
13 state-administered small cities program?

14 MS. MC KINNEY: Right now, we're just at the
15 training stage or the technical assistance stage.

16 MR. GERLACH: In some of our consultations, we
17 had the record from the Fair Housing/Equal Opportunity Division
18 within the regional HUD office at Fort Worth, and he had
19 mentioned that their office would still retain a very strong
20 civil rights compliance oversight responsibility vis-a-vis the
21 small cities program and all HUD programs. And he's very
22 emphatic about that, that HUD would, indeed, retain that
23 authority.

24 As to the role of the state in carrying through
25 its compliance functions under the small cities program, it

1 was almost understood that they would have very little role.
2 That was the impression I got. So I don't know. Of course,
3 that was in the Southwestern region and, of course, in your
4 region I'm sure you're going to have the same kind of guidelines,
5 and there might be some different ideas as to just what role
6 HUD would play.

7 MS. MC KINNEY: I think there is. I made a
8 copy of the functions so you could see those, and it says:
9 "For compliance reviews, the EHEO regional office staff will
10 perform civil rights compliance reviews of state administration
11 of the program and recipient administration, unless the state
12 opts to carry out the compliance function."

13 MS. MORALES: But see, that's the key, "unless
14 the state opts," so that the agency, it's already considering
15 that the states, they will allow, it's permissible for the
16 states to opt to carry out the compliance function.

17 MS. BIRGE: What if they opt and then that
18 compliance function is half of what yours was? Are you going
19 to say it's unsatisfactory or do they get away with half?

20 MS. MC KINNEY: I don't think they've made the
21 determination yet.

22 MS. BIRGE: None of them are going to duplicate
23 HUD. I would think they would all opt and then do a bare
24 minimum.

25 MS. MORALES: In order to get HUD off their

1 backs.

2 MR. GERLACH: Can a state assume the small
3 cities program, administer the program and all that and not
4 accept the compliance responsibilities? Could that still be
5 retained in the HUD office?

6 MS. MC KINNEY: Yeah, it can be.

7 MR. GERLACH: I have a feeling that's what most
8 of the states will probably do, then, is not take on the
9 compliance responsibility but go ahead and administer the
10 program.

11 MS. MORALES: Do you really think that the
12 states, once having opted to administer the program, are going
13 to want to continue to have a federal agency on their back
14 about how their administering the program?

15 MS. MC KINNEY: With our region, the compliance
16 is only a small part of it, because we spend a lot of time
17 monitoring. We conduct monitoring visits, we give them
18 assistance. And we can't find them in noncompliance, but we
19 can cite their deficiencies.

20 MS. MORALES: What kind of sanctions can you
21 impose on them for deficiencies in not complying with
22 discrimination requirements?

23 MS. MC KINNEY: I'm not certain of that right
24 now, but I'm sure for the deficiencies there aren't that many
25 sanctions. It has to be noncompliance.

1 MS. MORALES: This is an aside, but is it the
2 case, such as is the case with HHS, that decision making and
3 responsibility for outlining the policies with respect to
4 nondiscrimination in the state-administered program is being
5 tightly controlled and kept in the hands of the Washington
6 office headquarters, as opposed to -- I don't want to put you
7 on the spot -- all I'm saying is that we've had occasions from
8 HHS regional people at some of our open meetings that because
9 there is a lot of confusion about respective responsibilities
10 with respect to civil rights enforcement between the federal
11 agencies and now the state's responsibility that the
12 department level, it's the place where they're trying to
13 grapple with the problems.

14 But they have sought input from the regional
15 offices in the way of forming this task force and they have
16 some members on the task force from the regional offices.
17 But essentially, the HHS department level will be essentially
18 taking on the responsibility for developing it and putting out
19 the issuances and so forth.

20 All I'm trying to see is whether that same
21 type of structure currently exists within HUD. In other words,
22 your regional offices are not expected to go off on their own
23 and develop what they feel would be the most feasible procedures
24 and mechanisms for carrying out civil rights enforcement.

25 MS. MC KINNEY: Right, that's correct.

1 MS. WITT: I see that it is time to ask Joanne
2 Birge to raise further issues and answers or to recapitulate
3 the issues and answers we probably will want to address.

4 MS. BIRGE: Cal has been totally unable to
5 articulate why I am on the agenda or what I am supposed to do.
6 I'd like to pass it off to him so that what's at the back of
7 his mind might come forward.

8 MR. ROLLINS: We thought of a list of issues
9 which we wanted to cover and if you'd look at the second
10 page of the program, I think that most of these have been
11 covered, but we ought to look at the list to make sure we
12 haven't missed anything.

13 MS. BIRGE: Some of them don't tell me enough
14 to know what we're talking about.

15 MS. WITT: Maybe I can clarify. Which ones
16 would you like clarified?

17 MS. BIRGE: I really liked the divisions that
18 Rosa made, the two major areas. It seems to me that that's
19 a very logical way of going about it, and those are Roman
20 numeral I and II, and that under those, these become
21 perhaps (A) or (1).

22 It is very easy in the kind of thing we're doing,
23 to invite people in, to get carried away talking about No. 6, or
24 No. 7, or No. 8, or whatever, and forget that your major areas
25 I or II are the ones that Rosa set out.

1 I think those two she set out really cover it
2 and that we ought to just go with those and see what fits
3 under them and begin the outline as if they were Roman numeral
4 I of III and see perhaps where these fit in or don't fit
5 in or what's Capital A and B and what's (1) kind of thing,
6 because I think that the weights of these are very uneven
7 insofar as what we could take up and that they're not equally
8 important.

9 MS. WITT: The whole area of reapportionment,
10 I had forgotten, does impact, again, racial tensions,
11 competition for funds, goods, and commodities or services,
12 or whatever. The reapportionment, particularly in New Mexico,
13 is a case in point.

14 MS. BIRGE: It seems to me that if we worked
15 with the two that Rosa had as I and II and then worked out
16 the major divisions under I, the major divisions under II and
17 kind of worked into an outline, that that outline would not
18 only carry us through interviews, consultations, but also
19 report.

20 MS. WITT: Investigation report?

21 MS. BIRGE: Yes, that would keep structure to
22 what we're doing and not let us get carried away on other
23 things.

24 MS. WITT: Some of them aren't going to fit very
25 nicely. Urban Indians, for example, is going to be --

1 MS. BIRGE: I think they could all fit.

2 MS. MORALES: I was trying to organize my
3 thoughts, so I always try to approach, when there are so
4 many issues, try to approach an organization in my own mind
5 by thinking of some really broad types of headings under which
6 I can organize my own thoughts. That's what I came up with.
7 I'm not sure that all of the various issues that I think are
8 important to be covered may or may not fall within that, but
9 I thought of those two ideas as a way of focusing in on what
10 you might want to accomplish as a result of a project.

11 MR. MULDROW: Just state again your one and
12 two. I have four or five, really.

13 MS. MORALES: The way I organized it in my mind
14 is, one, are those issues that relate to dealing with block
15 grants and their impact on Indians as block grants currently
16 exist. What the impact is, what some of the changes are,
17 identification of what some of the problem areas are with
18 those, and then perhaps some discussion of what some of the
19 changes ought to be in either the statute or administrative
20 requirements, et cetera, that would make those more equitable.

21 I mean, there is an underlying assumption there
22 that I'm not sure Indian tribes or populations are willing to
23 accept, and that is that they have to live with the block grants
24 that exist. They may not want to make that assumption.

25 So that leaves the second area, and that is

1 discussing why it is that the block grant funding approach is
2 not feasible or appropriate as a means of meeting the needs of
3 Indian populations and building a record that identifies the
4 problems and so on and so forth and, perhaps, and I didn't
5 say this earlier because it just occurred to me, coming up
6 with what would be their alternative or alternatives or
7 options for meeting their needs. See what I'm saying?

8 MS. BIRGE: So under II, we could look at the
9 other kinds of standard funding options. I think urban Indians
10 fits really nicely under II, because of the block grant forces
11 an Indian to choose that he will live on a reservation or
12 live in a city and forces a state to -- I mean, every time an
13 Indian needs something, is this tangible or intangible?

14 MS. WITT: And where are you standing at the
15 moment that you need it.

16 MS. BIRGE: So maybe that's one of the specific
17 kinds of things that make block grants inappropriate in the
18 entirety.

19 MS. WITT: If not ludicrous.

20 MR. MULDROW: My question is --

21 MS. MORALES: I'm not saying -- again, let me
22 reiterate that that was a way of organizing my thoughts. Use
23 it as you think or might consider appropriate. It's not anything
24 that I sat down with a group or even with people in my own
25 office and came up with them or anything. It's just that in

1 reading the material that I have so far, that was a means of
2 organizing my thoughts.

3 MR. MULDROW: I guess my concern, the question
4 I raise is, we've covered the waterfront today on block grants
5 and do we want to try to hit all of the issues we have
6 discussed, answer the questions that have been raised, or do
7 we want to focus on one or more broad areas and try to do more
8 indepth analysis?

9 MR. WADE: Isn't that our office's decision?

10 MS. WITT: Right. It is certainly the question.
11 Maybe we can deal with it next week as opposed to this
12 afternoon.

13 MS. MORALES: I think one of the reasons all of
14 the issues came up is because there are a lot. They're very
15 complex and so forth, but at least we've had an opportunity
16 to share and talk about the full range. I'm sure we left some
17 out.

18 MS. BIRGE: It's an immense area.

19 MR. MULDROW: Well, I know the decision is ours,
20 any way it goes, but I thought it might be well to knock it
21 around a little bit here while we've got some outside people.

22 MS. BIRGE: I think maybe it meshes more with
23 what we've previously talked about than it might first appear.
24 For example, if you can follow me under Rosa's Roman numeral I,
25 the block grant impact as they presently exist, I have as A the

1 statutory administrative barriers and B, the budget impacts,
2 the dollars and cents kinds of things.

3 Now, I think we have that A, we have down here as
4 our Roman numeral I and probably B is there too, maybe the
5 political ramifications come in as C on our No. II. Then
6 under No. II, the block grants as not appropriate or feasible,
7 I have A, the sovereignty trust responsibility issues and B
8 other funding methods, which is our 4 and 3.

9 So I think that we're really talking about the
10 same thing and that it's a matter of organizing our thoughts,
11 because the area is so incredibly vast and difficult.

12 MR. MULDROW: In other words, focusing.

13 MS. BIRGE: I think what we're talking about
14 today and what we're talking about specifically and what we've
15 set down here in our four major areas really fit very, very
16 well.

17 MR. MULDROW: The other thing I would like us
18 to touch on today is sources of information, how we go about
19 getting information that would be helpful from our outside
20 guests.

21 MR. GERLACH: I think at the state level,
22 generally people have already been designated by the governor
23 as to be a liason person between the state and federal govern-
24 ment, and that person can be identified very quickly.

25 MS. WITT: What kind of title does this liaison

1 usually have?

2 MR. GERLACH: Governmental affairs --

3 MS. BIRGE: Office of budget and planning.

4 MR. GERLACH: A person in the governor's
5 budget or planning division, something like this. A person
6 has been designated. In the states in our region, it has
7 happened. I would assume it's also happened here.

8 MS. HÜBER: I'm sure it's somebody you could
9 readily identify with one or two phone calls to the state
10 capitol.

11 MS. MORALES: Also, some of the legislatures
12 have appointed either some task force or some staff members
13 attached to their budget and finance committees and the like
14 that are supposed to serve the same type of function as the
15 individual who is appointed by the governor serves.

16 In a number of states, I know at least from
17 the mid-Atlantic region, the governors have appointed task
18 forces for block grant implementation that have ten members
19 and they're out there meeting with state agency officials
20 and having some of the public hearings and that sort of thing.
21 So there are some of these "task forces" on block grant
22 implementation.

23 I don't know within your own states in the
24 region of six states whether any of those have been set up,
25 but it's certainly worth exploring. Normally, someone in the

1 governor's office, if it was a task force appointed by the
2 governor -- and in most cases they have been -- would know
3 and can identify who the chairs are or who the members are
4 and so on, and what responsibilities they've been charged with
5 and so forth.

6 MR. GERLACH: I might also add that, for the
7 most part, your block grants are going into specific state
8 agencies, two or three or more major state agencies that
9 will be handling the existing block grants and they will
10 probably already have people that are experts or serving
11 as liason persons, either with the governor's office or with
12 the federal government. So you're going to have these people.

13 MS. MORALES: State education programs, social
14 services or health and human services, whatever the state has,
15 health department, that would then be responsible for the
16 health block grants.

17 MS. HUBER: You'll probably have state people
18 who have been around long enough to have participated in the
19 application process for the former categorical grants and
20 what have you and would have some sense over time. I'm sure
21 you'll find tribal people who have done the same thing on
22 their end, and they would really have a wealth of direct
23 information.

24 MR. GERLACH: Since the block grant programs
25 have been in place for a year, you should be able to get

1 information on the kind of cutbacks that have occurred, the
2 cutbacks in the population, the recipient population, who has
3 been cut back, basic race ethnicity. So you'll be able to
4 determine what the impacts have been. In many cases, they've
5 already done some impact studies.

6 MS. MORALES: They will have developed the
7 plans, their use of funds plans. They will have submitted
8 their applications, whether those be letters or some very
9 detailed applications is another question, but they all would
10 have those.

11 MR. GERLACH: I think pretty early in the game
12 you might want to designate certain professional and community
13 groups that are either serving in an advocacy function with
14 regard to block grants. In our region, almost all of our
15 states, groups, have been formed to deal -- either existing
16 groups or new groups have been formed to deal with block
17 grants as a separate issue from everything else, and the same
18 condition may exist in your region.

19 MR. MULDRON: What is our purpose? For
20 example, come up with alternatives for block grant funding
21 on reservations? Is that realistic to think that those kinds
22 of changes are going to be made?

23 MS. HUBER: Well, to some extent. When you're
24 talking about the adequacy of block grants as a mechanism for
25 delivering funds to tribes, well, it might well be, the idea in

1 itself, a direct funding to tribes, but it depends on how much,
2 whether the amount you finally get is adequate to meet the
3 needs. And if you're talking about \$500, I don't care what
4 sort of wonderful application procedures and all this, I mean,
5 it doesn't mean a great deal without the bucks.

6 MR. WADE: It would probably cut administrative
7 costs.

8 MR. GERLACH: I think what we're doing can
9 certainly have a lot of impact on the kind of information
10 we get. If you assume that the block grant program, the whole
11 concept is an evolving kind of thing and it's not been set
12 in concrete at this stage of the game, but will continually
13 change over the years. The fact that GAO is doing some
14 studies, OMB is dealing with the issue, I think it's still
15 at a point in time where there can be some influence on what
16 will be the final shape.

17 MR. WADE: It isn't even set in concrete that
18 we'll always have block grants.

19 MS. HUBER: But if you're talking about
20 confining it to a manageable scope, one way to do it might be
21 to focus on the delivery of federal funds and services to
22 Indian tribes and Indian peoples in the area of social services,
23 housing and education, which would mean that you will not, for
24 the purpose of this project, be dealing with law enforcement,
25 you would not be dealing with state tribal taxation issues,

1 all those other sorts of jurisdictional things.

2 And you're talking about how federal funding
3 gets to Indians, whether it's directly, whether it's through
4 BIA, whether it's through block grants with direct funding
5 or tribes participating in a state's block grant. But it
6 seems to me that that might confine it somewhat to a manageable
7 level.

8 MS. BIRGE: If you're looking forward to
9 recommendations, I don't know if that was what your question
10 was at, but I think that there's two obvious impact areas.

11 One is in the statutory administrative barriers
12 and the strident Indian position that if it is true, as we
13 have at least on paper, that the Indian government is sovereign
14 on a status with the state government, then every funding
15 mechanism out of Washington, D.C., ought to provide that the
16 tribe can get direct funding from Washington, D.C. That's
17 one end at least open up many more to direct funding than are
18 now. In other words, there is no reason ever for the tribe
19 to have to go through a state plan.

20 MR. WADE: But even an economic argument that
21 that's wasteful administratively.

22 MS. BIRGE: Yes, so part of the impact is right
23 there when you write the statute to open up the statute to
24 direct funding or direct application.

25 Then I think the next level down would be the

1 administrative agency, that they be strictly scrutinized to
2 see that they do not set up barriers that are not provided
3 in the legislation so that where those states that, by their
4 state formula, said none of the money coming out of this
5 block grant through our state will be used for administrative
6 costs, that's a barrier that's artificially created. So that's
7 the next level where you have impact.

8 Then I think beyond that, you can show to the
9 state governments, when you get this block grant money for
10 which the tribe couldn't even apply, this is ways you can take
11 in the consideration of the tribes in their unique situation,
12 et cetera, et cetera, and by formula set up or set aside
13 on your own initiative funds that will go to the reservation.
14 Because at this point the states really don't know how to
15 get out and reach for tribal services that they've never had
16 to before provide.

17 So even if there is some recognition of the need
18 and some willingness to do something about it, how do you do
19 that? What are the options for figuring out what's an equitable
20 amount of money? I think there's different places where you
21 can have impact. I don't know if you'd want to shoot for all
22 or one. I don't know that it matters.

23 MR. MULDROW: So you're suggesting the scope
24 by focusing on block grants with a particular function, social
25 services or ---

1 MS. HUBER: No, on federal funding. For
2 example, for a particular area, health services obviously
3 would be one, how the tribes are being served through IHS,
4 through BIA, through the block grants, whatever. It might
5 take a couple of areas like that, if you wanted to confine
6 it. Health and housing, for example.

7 MS. BIRGE: Or food. I think you could just
8 take the need for food.

9 MR. MULDROW: Then trace that through the
10 statutory requirements, meeting the need of the tribes, the
11 civil rights --

12 MS. HUBER: The trust responsibility issues.

13 MR. MULDROW: Effect on racial relations.

14 MS. BIRGE: I think if you took food, you would
15 logically go through every program out of USDA Food and
16 Nutrition Service and every program out of HHS providing food
17 to see initially which ones tribes have participated in or
18 can't participate in by statute and which ones were subsumed by
19 block grants and if they aren't now no longer participating,
20 the amounts of money.

21 MS. HUBER: I'm not aware of any block grant
22 program comprising food at the present time.

23 MS. BIRGE: I think that the WIC will be after
24 October 1.

25 MS. WITT: Food stamps.

1 MS. HUBER: Not yet. I doubt that's going to
2 be enacted.

3 MS. BIRGE: Today's paper said it would be
4 AFDC, that the government would keep the rest, that all they
5 could swap would be AFDC.

6 MS. WITT: I see by Bill Muldrow's watch that
7 it is three o'clock, and I promised all of us that we would
8 wrap it up at this time.

9 I would like finally, it is the last time to
10 express our gratitude to our guests for sharing with us a
11 vast amount of information. I don't know if we're inspired,
12 but we certainly are pointed in a lot of different directions
13 at once for a study that is looming over us. I think maybe
14 I'll just go on permanent vacation for the remainder of the
15 year. In any event, you have our gratitude. Have a good
16 trip back to your respective homes, and we'll let you know
17 how our foray into this complex field goes as it goes along.
18 Thank you.

19 (Whereupon, at 3 p.m., the above-entitled
20 work session was concluded.)
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