

TRANSCRIPT OF THE  
OPENING SESSION  
STATE ADVISORY COMMITTEE CONFERENCE

NEW ENGLAND REGIONAL OFFICE  
U. S. COMMISSION ON CIVIL RIGHTS

Monday, June 25, 1984  
Brandeis University  
Waltham, Massachusetts

PRESENTORS:

Andrew T. Stewart  
Chair, New Hampshire State Advisory Committee  
Bradford E. Brown  
Chair, Massachusetts State Advisory Committee  
Clarence M. Pendleton, Jr.  
Chair, U.S. Commission on Civil Rights  
Morris B. Abram  
Vice Chair, U.S. Commission on Civil Rights

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JACOB SCHLITT, REGIONAL DIRECTOR, NEW ENGLAND REGIONAL OFFICE. I want to welcome the members of the Advisory Committees in the New England region, and our distinguished guests, Chairman Clarence Pendleton and Vice Chair Morris Abram.

It was President Lyndon Johnson who was fond of calling upon people to "reason together," and as you can see from your agenda, this morning's session was arranged for just that purpose. We will have presentations by the chairs of our New Hampshire and Massachusetts Advisory Committees, Andrew Stewart and Bradford Brown, and they are going to fulfill their mandate "to advise the Commission upon matters of mutual concern." They will be sharing with the Commissioners some of the thoughts of the Advisory Committee members who met yesterday afternoon, and hopefully their collective wisdom will be of value to the Commissioners. We also look forward to the remarks of the Commissioners and to their comments and observations. Following the presentations of the SAC chairs and the Commissioners, we will hear from the Committee members who are here with us.

[NERO staff and Herbert Hentz, Assistant to the President and Affirmative Action Officer of Brandeis University, were introduced].

ANDREW T. STEWART, CHAIR, NEW HAMPSHIRE SAC. I would like to welcome the Commissioners who have come here, and to express the three northern States' appreciation, as I know Brad will express the three southern States' appreciation, for taking the time to come to listen as well as to speak.

It is a pleasure for us to be here. We in the States of Maine, New Hampshire and Vermont do not hold the same opinions across the board, anymore than people hold the same opinions across the country. We bring diversity of opinion here, and we look forward to sharing it.

By accepting our invitation I do not think that the Commissioners were really trying to escape from Bambi [Cardenas Ramirez] and Mary Berry, who, for many of us, represent the conscience of the Commission, as the Commission represents the conscience of the country. I am hopeful that the spirit of dialogue will prevail here.

In preparing for these remarks, Vermont [Advisory Committee members] expressed the concern that the -- I hesitate to say the new Commission, let us call it the continuing Commission -- may be stifling information. And that the information that is run through that conduit should not be limited to a specific political agenda. Maine observed that the Civil Rights Commission's approach has been -- and since we are in a spirit of dialogue, I will not search for euphemisms -- high-handed, uncommunicative. Certainly one problem has been poor use of language. For example, there has been reference to the "discredited" ideas of twenty-six years of Civil Rights Commission research. "Discredited" by whom and through what process, we might ask.

These are issues of concern. They are issues that are rough ones, but they need to be addressed if the SAC members, all 600 of us across the country, are to continue to be the eyes and ears and, perhaps occasionally, the voice of the Commission...if we do, indeed, share goals.

I think we do share goals. I think we share a sense of right, and a sense of commitment to fairness. We acknowledge strong and decent ethical concerns on all sides. We would like at this gathering to put polemic and ideology aside for the moment, put it on the back burner, and get on with the task of monitoring and factfinding.

To that end we would ask specific questions: What is the role and function of the SACs now? What will be the result of any modifications that are contemplated for the future? Will homogeneity of ideology be enforced upon the local SACs? It is possible to do it. We hope it does not happen. We ask whether the rechartering process will be geared to that end. What do the Commissioners perceive SACs as doing now and in the future?

There have been a number of letters sent from various SACs to the Commission. My own letter raised the issues of how the Advisory Committees can continue to provide specific and knowledgeable responses in a timely manner to local situations and how we can insure that the public will have full and timely access to civil rights information we send to Washington. We also have interaction with the media, which is inevitable, however we might wish it to be otherwise.

The Commission response was that, in the search for uniform quality, "to ensure the public's full and timely access to civil rights information," is outside the scope of the SAC's primary responsibility. The SAC responsibility is to advise the Commission, not to inform or educate the public, says Linda Chavez, who could not be here today.

I contest that. I do recognize that our mandate is to advise the Commission. However, I think that this is an effort to gag us.

Nebraska voiced the same concern. North Dakota concerned itself with the traditional role of the SACs of putting grassroots information into the system. We want to continue doing that and we look for your [the Commission's] reiteration of that as one of our functions.

There are various process issues that were quite well expressed by the House Appropriations Committee, and the three northern States would like to reaffirm what was said there. Specifically, we would like to reaffirm that identification of amounts of funding for specific purposes be mandated. We support the hope of the House Appropriations Committee that the Commission's historic factfinding role not be

jeopardized; that it be grassroots-based. The Appropriations Committee referenced the historic ability of the Commission to incorporate into the public record authentic and documented information, which ability has built an unassailable factual record of the state of civil rights in America.

We believe that twenty-six years of research should not be shoved under the table after a single Commission meeting. We reaffirm the finding that the current Commission is not a "new Commission", but an extension of the old one with a continuing mandate. We reaffirm that issues of budgets and appropriations remain central to civil rights jurisdiction...that they are a substantive issue.

We believe that the House Appropriations Committee was correct in saying that SAC reports should continue to be reviewed for factual accuracy and legal sufficiency at the regional level and released; not that they be "flowed" through Washington. We agree with the call for Commissioner accountability by requiring the Commission to report on the amount of funds that it spends for Commission professional staff salaries, consultants by name, and various field activities. We believe that these are essential controls for accountability in much the same way that we believe that flexible timetable controls are essential for accountability in the work world.

In New Hampshire we have this Yankee ingenuousness that makes us look beyond language to try to find out what it means. I have a few words for which I would like definitions, because their usage by the Commission seems off-balance.

For example, what are the "discredited" civil rights policies? Who discredited them? By what process? What are the "lingering traces" of discrimination? Only lingering? What does it mean to "enhance" the SAC functions, and to "improve" communication? What will be the criteria by which to gauge enhancement and improvement? That same memo said that our SAC reports were going to be reviewed in Washington for adequacy of content, and it also said that those of us who speak out of turn might be terminated. We know that this is a fact, but it is being said once a week. Maybe there is a message there. Is that what enhanced communications means?

What is "regulatory reform?" That phrase was used by the current administration as part of an attempt to limit the application and enforcement of Title IX. What does "streamline policy" mean? That was mentioned when, after the Administration's failure to get rid of Public Law 94-142, there was an effort to "streamline" the regs and to gut the law by doctoring the regulations.

What is "pinpointing?" Pinpointing sounds like hitting the bullseye, but if you are trying to keep the entire target dry in a rainstorm, you do not just cover the bullseye. When I was responsible for assisting to implement Title IX in New Hampshire, we looked to the tainting of the entire educational environment in evaluating the extent of discrimination of practices. Now "pinpointing" apparently requires consciously closing one's eyes.

Having read the pronouncements of current Commission apologists, I believe we need to watch out for the litany of references to the giants of the civil rights movement, followed by a recitation of the currently perceived bad guys, most recently, Jesse Jackson and Louis Farrakhan. Socrates told us a long time ago that when such litanies and recitations are enunciated, they are best shoved aside at once in order to study the content of the communication.

Finally, as we watch the current move toward a rewriting of affirmative action and the definitions of racism, I would ask you to recall that the definition of racism is not merely racial prejudice; it is racial prejudice with the power to enforce it. Reverse discrimination loses all its meaning in this context because those who are most loudly invoking this misnomer are retaining the power to enforce continued racial discrimination. Those are some of the concerns of the northern tier.

BRADFORD E. BROWN, CHAIR, MASSACHUSETTS SAC. The southern New England tier as well as northern New England want to express our appreciation to the Chair and the Vice Chair of the Commission for taking time out of their busy schedules to be with us today. We appreciate what both of them have gone through. I have made the red eye flight across the country and rushed in late at night more than once myself, and living on the Cape know what it is like to have to make a Monday morning meeting in Boston. We certainly appreciate your efforts. We in Massachusetts have appreciated the opportunities we have had to talk with Chairman Pendleton, and we look forward to that opportunity with Vice Chairman Abram.

Andy has raised a lot of issues. Many of them concern the future role of the State Advisory Committees. Will we be able to continue to truly be the eyes and ears of the Commission and report the concerns as we see them on what is happening in the area of discrimination and equal opportunities in our States? I wish to state that in the discussion of the southern New England SAC members, the same worries and concerns were raised.

I will not be repetitious and go into detail in terms of our concerns in those areas. We do look forward to responses to those concerns, particularly in terms of the viability of the State Advisory Committees to make reports to the Commission, as opposed to making reports for the Commission.

I will mention one issue that was not mentioned, that is of particular concern in Massachusetts, and I am sure shared by New York, California and Florida. That is the size restriction on the Advisory Committees. We would like very much to raise this question. In the States with very diverse concerns and diverse populations, we believe there is a need for a larger membership on the State Advisory Committees.

To parallel what Andy talked about on overall procedural issues, I would like to concentrate on some of the key subject areas of major concern in our region. Unfortunately I have to report that

discrimination is still alive and very well in southern New England. It is strong, it is entrenched, and it is much more difficult to eradicate than many of us who were active in the early sixties thought at that time. Some expected a good will response from the people in power to the passage of the various civil rights bills, such as the 1964 Civil Rights Act, or the 1954 Supreme Court decision, and then the later Federal court decision in the Boston school desegregation case.

In all of our three States we are very concerned about the problems of school desegregation and education. We see some outstanding examples of voluntary efforts to address the problems of school desegregation. We also see very strong intransigence in some areas to come to grips with major problems. We are still faced with a real problem in the employment of minority teachers. This is particularly true in an era of retrenchment when the application of strict seniority means that minority teachers who were not encouraged, and in fact discouraged, from being part of the Massachusetts and southern New England school systems are being eliminated. We recognize the educational advantages that minority teachers bring to our public schools from their very presence.

We still have major concerns about bilingual education. Our States have made significant progress in terms of basic legislation addressing bilingual education. However, when we look at how bilingual education is actually applied, we see a large gap between the actual practice and the ideal of meeting the needs of the children. And we have a number of individuals on our State Advisory Committees who are literally the experts in these areas.

We continue to see strides being made in the area of equal opportunity for women. We face major issues such as domestic violence, and the effects of sexual harassment that our Advisory Committees are still working on.

We see a rising expression of concern on the part of the disabled, especially in the area of transportation. This is a concern that has been on the back burner, but many of us who have been active over the past quarter of a century in the civil rights movement are now becoming much more aware of the concerns of the disabled community. Again we see a gap between the legislation -- the establishment of handicapped affairs offices for example -- and the actual reaching out to the people concerned.

Housing is a very key issue. The Massachusetts Advisory Committee did a study a number of years ago of Route 495, which is the second beltway behind Route 128. We hoped that lessons would be learned from the Route 128 experience of the interrelationship between housing opportunities and employment opportunities. Route 495 has been slower to develop, but we still see very rigid housing patterns. A number of studies have brought to light steering by the real estate industry. We have also seen physical harassment as a means of restricting the opportunities of individuals. This has been focused on the black community and the Hispanic community, and now we see that the Asian American community as it expands is feeling the brunt of this type of tactic, this type of restriction.

In the area of the administration of justice we are very much concerned about racial violence, some related to housing. We are increasingly concerned about the police use of deadly force, and the rights of incarcerated women and minorities.

Employment is a very mixed picture. We see some areas where there has been significant improvement. These have usually been where employers, public or private, have a firm commitment to affirmative action, or where it is of concern to a union. We see many areas where regulations have been promulgated, for example in a State agency, and not at all adhered to. We see in industry nice statements by chief executives ignored further down the line. There is no question that such lack of positive action results in poor utilization of the talents of our many population groups. Our SACs are examining these issues. We are looking both in the union area, particularly in Rhode Island, and in the private sector business area in Massachusetts. We have been trying to locate examples where people have been successful, to use as guidelines for others.

We are very much concerned with the recent Supreme Court decision [Stotts]. If it is a narrow decision as some have said, then it can be dealt with one way, but if it becomes viewed broadly -- a fear raised by the statement of the Civil Rights Division of the Department of Justice -- we may well see this decision ranked with Dred Scott and Plessy v. Ferguson as a major turnaround, de facto instead of de jure. We are extremely concerned about the effect that this will have on public and private employers who may feel that they now have a license to discriminate. We see concerns that such employers will devote their efforts to buttressing legal defenses in individual cases, and not deal forthrightly with wiping out discrimination root and branch in Massachusetts, in Connecticut and in Rhode Island as well as the rest of the country.

CLARENCE PENDLETON, CHAIRMAN, U.S. COMMISSION ON CIVIL RIGHTS. Good morning. It's a long flight all day on Sunday from California. I left last Sunday on Father's Day and my little daughter wanted to know why I wouldn't stay home for at least two days. Fortunately, this time they left and went to Canada for a couple of weeks and it gave me a chance to depart this time without so much grief on my head.

It is a pleasure to be in Boston. Boston is not always pleasurable to me. I have been here about five times in the last year and it seems that no matter what we want to say, people want to go back to what happened in November [1983] through January [1984] redesigning the Civil Rights Commission and having, in spite of what Mr. Stewart says, is a new Commission by new law. Increasing the number of people in the appointment process is not to our way of thinking an extension of the old Commission.

I need to share with you what has been happening with some of us in the SAC meetings for the last six weeks. Within a six week period, I will have been in Denver, El Paso, St. Louis, New York and Washington for

SAC meetings. That isn't easy to do and sometimes when you don't know where the meetings are, it is difficult to know where to go and how to get there. Needless to say, getting in here last night at midnight is not an easy task, and a \$35 cab ride from the airport out here, and to try to check in, wasn't easy either last night at twelve o'clock.

Let me say that the comments that I have heard in the call for some kind of dialogue seemed to be that both Mr. Stewart and Mr. Brown are somewhat entrenched, and if they expressed the attitudes of where you are, I think that there is an entrenchment on your part and that doesn't give me much room in which to deal. I'm looking for that intersection between what it is you believe, and what it is that we believe as new Commissioners or a new Commission. To be castigated for not going back to where Mary Berry and Blandina Ramirez are, I think is an unfortunate choice of words, if you want to talk about the choice of words and terminology. I think that does have some sense of racism or sexism in it, and we have to speak on our own. We don't castigate them for speaking on their own, nor do we want to be castigated for speaking on our own, and both camps come from a sincere set of beliefs based upon experiences.

I also want to say that we have been trying in the last several meetings, and I think we have come close, to some sense of collegiality on issues. You spoke about Farrakhan and Jesse Jackson. That was a unanimous opinion on a unanimous vote by the Commission including Commissioner Berry -- Commissioner Ramirez was not there -- that we should send letters to all Presidential candidates. To say that we did it out of partisanship was just not accurate. You mentioned about domestic violence. What we really said in that letter to all the candidates was that we want you to denounce those people who might be your supporters that talk about violence, hate and bigotry. We felt as though, being the Nation's conscience on civil rights, it was important that we raise the issues. At our last meeting we decided that there would be no further action taken, on a 6 to 2 vote. I think some people switched on that one in terms of where Commissioners Abram and Bunzel were, and I certainly do not want to speak for Morris Abram for he can speak for himself, but they feel strongly about that issue. My own personal belief is that we need to put that behind us as much as we possibly could, between that time and the political convention, because we didn't meet until the fifth of July.

Let me ask by a show of hands, how many of you have read the U.S. Commission on Civil Rights Act of 1983? You know what Section 5F says? Well, Ms. Chavez and I have been beaten over the head for making the study of discrimination against Eastern and Southern Europeans a priority item. I notice Mr. Stewart and Mr. Brown carefully avoided that issue, and those of you who talk about Congress and its wisdom to curtail the way we spend money, Mr. Stewart, let me say to you, I wish that you and the SACs and the civil rights groups could have averted Congress from talking about a whites-only clause in its act. This is the first time the civil rights act has had a whites-only clause in it. If you don't know who Eastern and Southern Europeans are, they are

plentiful in this area and they are Russians, Byelorussians, Latvians, Lithuanians, Poles, Hungarians, Turks, Slovaks, Armenians, Italians, Serbians, Croatians, and a few more. Congress mandated in 1978 that we study discrimination -- for that matter, Mr. Stewart, and Mr. Brown, reverse discrimination -- against these people. And it was put into very carefully crafted language that says you will study the adverse effects of discrimination against people of Eastern and Southern European ancestry. This is the only time that that was put into the law, and where the Leadership Conference was, as I mentioned to them last week, and the like, I don't know, but it is there and it is a priority item only because Congress has mandated it. It is no more priority than the other studies we have for the coming year, which I think address many of the questions.

I can only say to you that in terms of what you have mentioned about the process issues, I think that when SACs go to those issues they go beyond what is intended under FACA [Federal Advisory Committee Act]. If you want to do that as an individual, that is up to you. But as to whether or not a SAC supports what Congress does to the Commission, if you read FACA, that is an inappropriate action and we would urge you not to engage in that kind of action at all.

I think we have cleared up our memo. I got pretty much reamed out at my first SAC chairs meeting in Washington when I gave the results of the Commission's vote about terminating those SAC people who use their SAC positions to write to the Congress and President, which is not appropriate under the FACA guidelines.

I think that if the Democrats in Congress let us alone, we could go about the business of doing our work. The business of defunding, led by Pat Schroeder who does not have the support of the Women's Caucus; led by Bob Garcia who does not have the support of the Hispanic Caucus; and led by Julian Dixon who does have the support of the Black Caucus, I think begins to compromise the Commission's independence.

To say that we have not lived up to our statutory mandate is just a blatant falsehood. We did for the first time in many years in January, after having the hiatus between September and January, we did complete the planning process. We did put projects on the board, and we did approve those in subsequent meetings. To say we have not carried out our statute is again a falsehood. We have done exactly what we were supposed to do, and there have been votes on those projects, and I think those projects, some of which will take two or three years, will certainly begin to answer some questions.

There is absolutely no way that the Commission or the SACs can do the kind of factfinding you gentlemen talk about on the budget we have and the time frames involved. A hearing or factfinding study takes a considerable amount of time, and during my first couple of months on the Commission we had to release the Miami riot report. That report was two years old when we planned to release it, and we had to send staff down to Miami to get an update on what was going on to be able to add an addendum to our report.

Perhaps what needs to be shared with you at the SAC level is the Commission's planning process, which is an extensive one. Your ideas can contribute to that process. When the projects are put together by the staff, which is their responsibility, and given to the Commissioners, we pick those areas which we think are appropriate for study.

I reject and resent the notion that we are trying to bring some ideological homogeneity to the Commission, no more than other Commissions did. I can say to you that since I have been the Chairman of the Commission, the White House has never told me what to do, and I would reject that out of hand. There are members of Congress in connection with this last appropriations bill that Mr. Stewart talked about, that say in a very distinct way in the language of the appropriations bill, the four members that they appoint will report to them on what the Commission is doing. If that is not compromising independence, and if that is not interfering with our Commission's work, I do not know what is. To divide us up that way is not the right way to go. We are going to try our best to work on those areas that we think are appropriate to work on.

With respect to whether or not we do factfinding, perhaps you need to read the Commission's statement about Detroit and the whole issue about quotas. Strangely enough, the Democratic platform upheld what we did in their meeting the other day when they said no quotas, but we like affirmative action.

The Commission likes affirmative action. The Commission supports affirmative action. As a matter of fact in the Detroit police case, it was affirmative action that increased the number of black police officers from four to 48 percent. But then we got to the separate but equal situation in terms of Plessy v. Ferguson and the issue of a black list and a white list to appoint people to the rank of lieutenant. That list put all Hispanics on the white list. White women went to the white list, and only blacks were on the black list in the Detroit quota case, and we think that, in public employment, as many of us read the Constitution, separate but equal lists are impermissible under the equal protection clause.

Just a couple more things: In terms of "discrediting" -- it is a term many of us have used in our own speeches and we believe that is not a Commission position. In terms of "lingering traces" we do think that there are lingering traces, and one of our studies will indicate that we want to find out whether or not every missed opportunity for employment or admission to college might not just be caused by discrimination. There might be other factors about culture, economy and a lot of things that make people not avail themselves or are not able to take advantage of opportunities. We want to study that.

In terms of enhancing the SAC functions, we voted and I figure it is highly improbable that we will increase the number from 11, but there is a way to be able to increase the number of members on SACs where that is appropriate in larger States with diverse populations and larger geographies. We have said that.

In terms of "clearing" and in terms of "stifling" you, that is a term that SACs are using and it is a term that Dr. Berry used -- "it would have a chilling effect". The idea is that it is no more than what has been the process all along. The Regional Counsel reports to the General Counsel as I understand it, and "in draft form" really means that once you have finalized the report, before the report is printed, we just want to make sure that there is legal sufficiency in the areas of defame and degrade, and it is not a problem to us. There is no way to change the content. You can say what you please. We don't really care. The important thing is that we don't want to have any problems with what you do later on. I know a lot of these reports say they are disclaimed, but if you are going to be a part of the Commission, why should those reports be disclaimed? Why shouldn't they be a part of the process? We are talking about coming closer together.

Mr. Brown mentioned Title VII, and I have heard the talk before about going back to Dred Scott, Plessy v. Ferguson. If one reads Section 703H of Title VII of the 1964 Civil Rights Act you will see very clearly in that where bona fide seniority systems that are in place will not be disturbed. I don't think we would have had a civil rights law today if the unions figured seniority system was a problem. What we have to remember about Memphis is that in the second case there was not a finding of discrimination; it was clearly an economic issue. There was discrimination originally in the Memphis Fire Department, but I don't think that anybody realized that in the sixties and seventies when we were making all these consent decrees and cities were fat with budgets, that we would have the problem today of economic crunches.

And as a result of that you have the collision course of liberal principles: On the one hand is affirmative action and on the other hand is collective bargaining and seniority. And the two are really mutually exclusive and don't come together at all.

So if you read the law, there is no point in getting mad at Ronald Reagan, Brad Reynolds, Linda Chavez, Morris Abram, or Clarence Pendleton. You need to get mad at Congress, the same way you got mad at Congress about Title IX. I think if the bill goes through the way it is, it will be one horrendous system to enforce Title IX. People will say that it won't be that bad. They didn't think that affirmative action would turn around on us in the 1980s. In 1964 Humphrey said we should not have a problem. This is really an intent test, and that if there is discrimination in the workplace it is important that the employee bring the charges and prove that there was discrimination. And since 1964-1965 that has all changed around. The weight of proof is on the employer, not on the employee. So when you look at Title IX, is that justifiable? It gets to Title VI and it gets to the Age Discrimination Act. You have to be careful about how it is implemented. From my way of thinking, many times what you think Congress does for you, it does to you before it does it for you.

I am prepared to engage in any dialogue you want to engage in, and you should feel free not to be kind with your questions because I might not be kind with my answers, and that is one way to get it out.

MORRIS ABRAM, VICE CHAIRMAN, U.S. COMMISSION ON CIVIL RIGHTS. I am going to say things that I did not plan to say because I want to respond to the issues that were presented by Andy and Brad, but I do want to put what I have to say in a fairly broad context of philosophy, political theory and principle. I have not the slightest doubt, none whatever, that Brad and Andy are persons of extraordinarily high motives and good intentions. Otherwise they would not be in this position.

I am a lawyer, and I have spent my life in the civil rights movement. And I have realized the only protection anyone has in this country of such diversity and trust and initiative and passion is obedience to the law and to the political foundations and theoretical underpinnings of the Republic.

I was reading just the other day the words of Daniel Webster which could very well be said today: "It is hardly too strong to say that the Constitution was made to guard the people against the dangers of good intentions."

I differ with that brave man who is our Chairman when he referred to the Civil Rights Commission as the conscience of the nation. There is no repository of a conscience of a democracy. Certainly not in six or eight people, with all their SAC advisory groups, if they were extended to a thousand per State. In our Republic, thank God, the conscience lies in the individual. There are no vestal virgins who keep the conscience of the Nation. Certainly not six people or eight people with a bureaucracy protected by tenure and created by appointment. If this or any other body politic in the country is the conscience of the Nation, our Founding Fathers would be mightily disturbed, as well as they should be.

In 1979, Jimmy Carter, who grew up sixty miles from where I did (and who, I might add, I did not hear from when I was defending Martin Luther King's kids held for capital offenses without bail in a Sumter County jail while he was a Senator in 1963. I did not hear from him. Not one word. Be that as it may), he offered me this seat I hold on the Civil Rights Commission, and I said you ought to know that in accordance with my traditional values and principles which have been unbending and unyielding, I will be against quotas. I will enforce the Civil Rights Act precisely as Hubert Humphrey said it was written: race-neutral, sex-neutral, without preference. Three days later my appointment did not materialize because the Commission was a quota Commission, total conformance; the Commission, by the way, whose views were precisely opposite the views of the Supreme Court of the United States as stated ten days ago in the Memphis case. The court correctly interpreted the law which, as Hubert Humphrey said, if it contains an iota of quota or race preference he would start eating the pages one by one, and he was the floor manager of the bill.

Diversity? Yes, there is diversity now. Ms. Berry and Ms. Cardenas are entitled to their views, although I do not see how they can read the Act which said "no" preference shall be given, and no discrimination, to mean "some". But they are entitled. But let us not fool ourselves. This was a rigidly conformist group, and neither they nor we as we are reconstituted, are the conscience of the Nation.

Now I understand that I operate from a view of American political theory and doctrine which may not be shared by everyone, but let me tell you what it is, so you can debate me on my terms, and I can debate you on your terms. I believe that this country starts from the premise that there shall be no preferred religion and no preferred race. The statement with respect to religion was absolutely essential in a country in which religious groupings are so diversified and feelings so passionately held.

If the government were on the scale with its thumb we would be clawing each others eyes out about religion. Similarly, this country was intended, since the 14th Amendment, to be neutral as to race, thank God. And the other side -- race preferences in my time -- was a thing I struggled against, for they were called white supremacists.

I can remember so very well as a young child in Fitzgerald, Georgia, population 6,000, standing in front of my father's store on a Saturday night and seeing the swarms of blacks come in from the fields where they worked all day. Tenant farmers, sharecroppers, to trade from nine to midnight, and I had just heard the word integration at the university. I didn't know what it meant. And I said to myself, how many of these unwashed, illkempt, illiterate people do I want in my house? And, I said none. Something in me rang a bell. I turned and asked myself a question that my fellow whites were not asking themselves. I said how many of these illiterate sharecroppers, unwashed, coming from the fields, who are white and Baptist and Methodist do I want to have in my home tonight? And I said none. And then I said, why do I treat blacks as a group and I am not treating whites as a group.

This is the essence of prejudice, and this is the essence of the kind of group rights theory which has gripped so much of the civil rights movement in its toils, and as long as you deal with people as groups rather than as individuals you are destroying individuality and you are doing injustice. It is wrong when 79 percent of the people in this country who earn less than \$5,000 a year in 1979 were white, when 83 percent of the people of this country in 1977 who have not finished high school were white, to grant preferences to blacks.

The problem should have been dealt with in terms of need. White need, black need, Hispanic need, women's need, and that is the only way in the political theory of this country that you can deal with these problems, appropriately or properly or fairly.

Now the next principle that I believe that undergirds my theory is that the individual is the best judge of what is best for him and he expresses that judgment by a vote, and that vote must be unfettered and free, without discrimination.

I have given much of my life to the principle of one man-one vote. I knew damned well that when we got in this country, as a result of a Supreme Court decision, one man-one vote coming out of the Georgia case, I knew that it would take a long time for blacks to catch up, because they have been mistreated so long. But I never heard and I never believed, and I don't think that you believe, in one man-three votes to catch up, do you?

Or since white registration has soared and black registration has remained fairly low, why not apply the theory of quotas and the theory of race preferences? Why not let black registration go forward and hold white registration back until it is equalized, proportionately to the population figures? That would be affirmative action as so many construe it, applied to the political process.

I have just finished my service as Chairman of the Presidential Commission on the Ethical Problems of Medicine, appointed by Carter, and we dealt with the problems of scarce transplants. I know from the figures blacks have more real diseases than whites, probably as the result of tensions that blacks have to go through in this society. But I would never, and you would never, support giving scarce kidneys to people on the basis of race as compensation.

And if these preferences are the result of a desire to rectify long institutionalized problems of slavery, tell me then why under the old Commission, race preferences were favored for Hispanics who never knew slavery, or Asians who seem to be doing very well on their own, or women who never knew slavery, but who did know discrimination, but never knew slavery. It is fashionable to say that all kinds of disabilities are slavery, I know, but let those who are manacled in chains and their children define it better than some of us. The fact is that the whole system of preferences was a political matter. When one group got it, another group with political muscle wanted it, and that's why it makes no rational sense.

I was at a meeting not very long ago of these white ethnics. They were there, the Byelorussians, the Ukrainians, the Italians, the Armenians, the Slovaks...These people in that room stood up and said to me, Mr. Abram, what we are interested in is changing the census. I said, Why? and they said so we'll know how many we are so we can know what proportion of the jobs and promotions we should get under this bill that Congress passed and Penny referred to, to look into the effects of discrimination upon Southern Europeans. Do we want a Nation like this? Is this what we are after? I think not.

The final thing I think this country stands for is, at least my particular view of it, is it stands for a model of civic virtue. I'm not speaking of the Moral Majority; I'm speaking of civic virtue in that the discourse amongst our people will be civilized. I'm speaking of it in a sense that we will reason rather than strike out in passion, and that we will seek some common denominator of the common good.

Now I want to conclude by telling you what you may not expect and what I think you may expect from the Commission: You will never see this Commission as long as it sits, confuse a certain level of food stamps or housing appropriations with a civil right. You look at the statute. Civil rights in this country means equal opportunity, nondiscrimination, the right to vote, equal protection of the law. They do not mean a certain level of food stamps or a certain level of housing.

Second, you will not see this Commission, when a Grove City case is decided, and one of the Commissioners, Ms. Berry, moves to express our -- it wasn't the word outrage, but I'll get the word in a minute -- with the Supreme Court's decision, the same day, the same hour. I turned to the General Counsel and I asked how was that decision decided? And he said it was either 7 to 2 or 6 to 2-1. I said what? You are asking us to condemn a decision of the Supreme Court of the United States which has decided, not even narrowly, based upon the statute itself. You won't see this litmus paper reaction from this Commission.

You will not see this Commission do what I gather some of my brothers would like to have us do, condemn outright the Supreme Court for the Memphis Fire case. That case was right. There was no question about it. It says clearly on its face in the Civil Rights Act, no preference shall be given. And it says seniority shall be respected. Why should we condemn it? Why is it a Dred Scott decision case? Why is it wrongly decided? Sir -- read the statute, tell me why it is wrong, and why we should condemn it, as it would have been condemned, believe me it would have been condemned, by the old Commission.

The first time the word "comparable worth" came into the language and became a shibboleth -- pay equity -- don't expect us to enter a pronouncement favoring it simply because a mass of people want it. What we did do is hold a mighty hearing in which we heard both sides. Let me tell you -- this was fascinating. We were told "en banc" that there is a discrimination factor against women in this country by which women earn 60% of what men earn. But when we began to question the experts, we learned the following: That's gross, overall; if you break it down to hourly wages, the figure is no longer 60%, it is 70%. And then when you begin to look at the figures from a viewpoint of people in the age group of 25-35 since the sexual revolution, thank God, has taken hold, the differential is only 11%. And when you ask Ray Marshall himself, who has a different view than mine, how much of that

11% is due to the immobility of certain women, because by tradition they are tied to certain occupations in the home for periods when other people are getting ahead, he says he doesn't know. So we are not going to make a pronouncement like that based upon a litmus paper reaction. We're not going to do it, nor should we.

No, I tell you there is one thing that I do feel this Commission feels very keenly and that is that you have got to separate out the issues of the disadvantaged in this country that are due to racism from those that are not, and we will not condemn, as the civil rights movement did for 20 years, Daniel Patrick Moynihan, simply because he said some factors other than racism were behind this. Now the whole civil rights movement says that is true. That is one of the discredited theories -- that the whole functional difference between blacks and whites in terms of income and opportunities is racist. Much of it is, but a lot of it is not. So if we are going to attack the problem, we better find out how much of it is one thing and how much of it is another.

Finally let me say this to you -- If this country cannot be kept free of racism in politics it is in dreadful shape just as my Southland was. And racism is in politics today. When Harold Washington was not supported by Mondale or Kennedy, the Black Caucus, without a peep from the Civil Rights Commission, telegraphed them that they had been betrayed and that they felt that this was insensitive to support a white candidate against a black candidate. I don't believe that. I think Andy Young can represent Atlanta, I think Ted Kennedy can represent Massachusetts, all people in both places -- and when we get to the point that only blacks can represent blacks, whites can represent whites, and Jews can represent Jews, when we get to that point, we have fractured the country. And it was for that reason that this Commission sent word to Jesse Jackson to disavow this man who says all whites are devils and who is one of your principle allies; disavow him exactly as we sent word to President Reagan about the support of the Ku Klux Klan. Thank you.

DOROTHY JONES, ACTING CHAIR, MASSACHUSETTS SAC. I have a problem in talking about the new Commission and the old Commission, because civil rights is not like fashion. We can have new and old fashions, but civil rights is a constant and we need to think in those terms.

Like Dr. Abram, I have spent my entire life in civil rights. I come with a sincere set of beliefs based on experience. And I want to focus on that very personal kind of experience, myself and my family's, to make my point. Dr. Abram spoke of the fact that from the time of the 14th Amendment we were supposed to be equal. First of all I would like to point out that most blacks in this country including my family, predate the 14th Amendment. You made the point that we should be looked at as individuals, but those slaves were not individuals. They were not slaves because somebody looked at people and said this one deserves to be a slave and this one doesn't. We were slaves as a group. Black people were slaves.

When we were set free, blacks were still perceived as at the bottom of the heap. They were not in a position to compete with whites.

My great grandmother, a very bright woman, who I think had she been white could have done many things, as it was, she was restricted to a domestic job, a fancy domestic job. She was a companion to the children of a millionaire family; she went with them on their trips to Europe, but it was still a domestic job.

Her daughter, my grandmother, was trained in the South to be a nurse, in a segregated training program. When she moved to Massachusetts, her training wasn't adequate; she could not practice her profession in Massachusetts. My mother grew up in the South, was qualified to teach in a segregated southern school, but when she came to Massachusetts she was in no way prepared to teach here.

In each of those generations, my people, my own family, were not in a position to compete with whites. White people got the jobs that my mother, my grandmother, my great-grandmother should have had. And I am speaking of the women because unfortunately in those generations, the men died early. I don't know what they might have done if they lived.

I did not go to a segregated southern school. I went to a school in the city of Boston, at a time when there were not enough blacks to create a segregated school, and yet my guidance counselor advised me to go into practical nursing because "you're good with people." I did not go into practical nursing, but I did not get a scholarship which is the only way in 1940 that I would've been able to go to college, because scholarships weren't given to "us." Someone else got my scholarship. Then finally, as with most of my generation, by the time we reached middle age, we made our way into the professions.

But I look at the next generation; I look at my son-in-law for example, who had a decent job. He was one of the last hired, but he got a good job, he was doing very well for my grandchildren. But then came layoffs on the basis of strict seniority. Two years ago his job disappeared and he has been doing the best he can, working hard at what he can find, ever since. Now I have four grandchildren. I would like by the time my grandchildren are grown up, to see a world where people can be looked at as individuals. But I was never discriminated against --or any member of my family -- as an individual. When I went for a job and the person who was hiring said, "You wouldn't be happy here, but I need somebody to help my wife at home," he wasn't doing that to me as an individual. He didn't know me as an individual. He was looking at the group.

I make a distinction between restrictive quotas which you and I both know. We grew up at a time when there were restrictive quotas which said we will have only "x" number of thus and so, and "y" number of those. That's one thing we must deplore, but quotas as goals I see as a constructive approach to ending the kind of situation I have just

described. I don't know how else we are going to do it. Having had all that in the past, and now to say everybody is equal, is saying to a person, "We've kept you out of the race all this time, we've kept you locked up in a box so you've never seen the daylight and your limbs are crippled, but now we are going to put you out here at the starting gate; you run with everybody else." You'll never catch up.

CLARENCE PENDLETON. Ms. Jones, you're absolutely right! But let me make these two statements to you. Ben Hooks in a recent speech said affirmative action is to blacks what Israel is to Jews. But what you've got to remember is that blacks have no monopoly on affirmative action. It is not a form of compensation or reparations for the past. The affirmative action laws are not exclusively black laws, and if you look at it in this country, there is nothing in the Constitution, there is nothing in the civil rights statutes, that will compensate for what happened to us in slavery, and I can trace my roots all the way back to Madagascar. Nothing is going to do that -- absolutely nothing.

If you take the tack you're taking, affirmative action is for qualified people. And as I asked Congressman Garcia on a television show recently, tell me what affirmative action has done for the 60 to 70% black and Hispanic teenage unemployment rate in your district of the South Bronx. Absolutely nothing. And if you are qualified, we've had 20 years of this practice. It is not going to be in perpetuity. It does not mean that your grandchildren are going to be able to take advantage of all that. It's just impossible.

There is nothing in the law that says equality of opportunity means equality of results. And affirmative action is not a compensation for the past and quotas and goals don't work. Quotas are distinctly discriminatory.

If you look at the number of protected classes that we had in 1964 and the number we have today, you'll find out that 80% of America is covered by some special preferential treatment. Which means to me, it is a zero sum game, because you've got to take benefits from one to give to the other, and there is not that much to go around, and the American pie is no bigger. And if we think this just means for blacks and that it is supposed to make up for slavery -- it will never happen.

MORRIS ABRAM. Ms. Jones, I'm a little more optimistic about the problem than you. You said someone else got your scholarship. I have no doubt that is true. In 1960 there were 250,000 black kids in college in this country. By 1980, you know how many there were? -- 1,250,000 black kids in college in this country. More than there were children in college in the whole British Isles.

Things are improved. And from that will come a golden harvest if, as the Chairman pointed out, we don't destroy the system or destroy the country.

Your proposition is an interesting one. You say you deserve preference because you come from a mistreated race. I have to agree with you that you come from a mistreated race. But when you tell me that you deserve a preference, I have to ask you, by what law? You haven't any law that gives you a preference, and that's what the Supreme Court said last week. Now the question is, Can you get a law? Not when 79% of the people in a recent poll last summer say they are against racial preferences, and the majority of blacks. So what you are asking is something that is outside the law and is not going to become a part of the law.

GLENDORA PUTNAM, MASSACHUSETTS SAC. I have heard this morning the civil rights movement blamed for the interpretation of Title VII that said, "No preference shall be given." The interpretation of Title VII that through the years the courts have used in order to eliminate past practices was not the doing of the civil rights movement. It was the doing of the lawyers who asked the court to interpret Title VII to say that no preference shall be given if there has been no discrimination. The courts agreed with that, and they said Congress' intent was that no preference shall be given if there had been no discrimination.

Congress had years to amend that law to say the courts have interpreted it wrong. I grow a little weary of hearing the civil rights movement being blamed for that interpretation. It is not the civil rights movement.

I chaired the Massachusetts Commission Against Discrimination at the time that those decisions came down. We had a similar law. We were interpreting the law that said no preferential treatment shall be given. A battery of U.S. Supreme Court cases came down interpreting that phrase in Title VII. The Massachusetts Supreme Court likewise came down with decisions interpreting our law which said the same thing in the same way the United States Supreme Court had. The point I want to make is, to constantly say the civil rights community has brought about an interpretation of preferential treatment which is not in Title VII is inaccurate.

CLARENCE PENDLETON. Ms. Putnam, I am so guided.

ELINOR MULTER, MAINE SAC. Reviewing a sheet which we received describing the program decisions of the Commission for 1984, and reading the one on redistricting and minorities I noticed that the Commission cautioned that the concept of fair representation for minorities covered by the Act not be defined as proportional representation in the project design. I think that typifies other kinds of projects in the Commission's approach, and my question is, how then do you define unfair representation?

CLARENCE PENDLETON -- The Voting Rights Act of 1982 which amended and extended the 1965 Voting Rights Act defines that. What they are saying in the Voting Rights Act is that there is some question between intent and the effects test. I think that Ms. Putnam said that is a matter for the court.

Recently we have seen the Justice Department challenging the southern primary as they exist as being a real problem in the South about representation. So we're looking at the Act itself to help us with that process and not talk about proportional representation.

Some of us happen to believe in the effects test and some believe in the intent test. My colleague Morris Abram has said that is part of that Commission's diversity, and we intend, when the issue comes up, to debate those. Effects and intent are two legitimate positions to take.

ELINOR MULTER. You are going to issue a report which is going to talk about whether there is or isn't fair representation. What I would like to get a handle on is whether you do or do not have a definition of fair representation.

CLARENCE PENDLETON. I can only say what is in the law. That would be a study that is contracted out, and it would be improper for me to say what the study is going to do before the study is done.

ELINOR MULTER. You surely have to contract out your definition -- what you're looking for...

CLARENCE PENDLETON. I can only repeat for the third time what is in the law.

KIMBERLY CHENEY, VERMONT SAC. Mr. Abram, I notice in the May Commission minutes you are supporting two studies to look at disadvantaged groups and what has caused it, other than racism. It seems to me that you must have a thought-out policy personally; where you would like to see this country go, remedying some of those things you don't see affirmative action solving. Could you share it with us?

MORRIS ABRAM. Well, I certainly would be happy to. First of all, I do not think that this huge gap between black income and white income is indicative of discrimination entirely. For example, white women who get into college earn less en masse than black women who finish college. Black families that have a husband and wife working earn more than white families on the average. There is something wrong with the figures and what is wrong is that between 1960 and 1982, the number of black families that had single-family wage earners had increased from something like 15% to 52% of the population in the central cities. So if I'm going to think about how to deal with that I think one has to grapple as the Urban League, the NAACP, and Eleanor Holmes Norton is doing now, with the problem of the creation of the single family household. That is absolutely the source of much of the disparity and it must be grappled with.

Now the second thing is how. I don't know, because here you've got a conflict between liberty and some kind of utility. And all I can say is that the Government ought not to be partisan, and it is pretty clear

looking from my viewpoint, looking at HUD regulations and welfare regulations, they give consent to, all other things being equal, the single family household. I think to give incentive to that which you feel is counterproductive to the child is a mistake.

I also believe that affirmative action should be strictly enforced, and by affirmative action I simply mean exactly what that Federal Court did in Georgia around January. We found in the case of Kilgro v. Bowman Transport that women had not been hired in over-the-road truck haulage positions by an employer who he said was stubborn and pernicious. So having found that, he put him under an affirmative action order, wanted a subjudge to monitor him, and he made it very clear that "you better not come back in here with any further discrimination or I'm going to deal severely." But he said, "I'm not going to impose any timetables or quotas or goals because I'm not going to replace one form of discrimination for another." I dare say, ten years down the road you will find an awful lot of female over-the-road truck drivers without displacing people who have not been guilty of anything.

I believe in unionization. Bayard Rustin has been saying for years that instead of preferential treatment, just organize the lowest paid black workers; their conditions would be improved enormously.

I believe in early childhood education; more funds for it. I believe in schools in which there is no disruption permitted. And I mean it! The idea that you have got to look to see the proportionate impact of discipline as between whites, blacks and Hispanics in the school, and if you don't find it proportionate, there is some discrimination going on, rather than to try to create order in the school, is a destruction of every value of the educational system.

I was for nine years the Chairman of the United Negro College Fund. I would like to see the figures reversed of the kinds of education black children are seeking in those colleges. Six times as many white kids going for mathematics and engineering as blacks. A disproportionate number are going into the social sciences. There has got to be attention paid to these problems. They are serious. But I would have them pay attention to as serious problems, not rhetorical flourishes.

SARAH MURPHY, RHODE ISLAND SAC. I'm Sarah Murphy of the Rhode Island SAC, and I am an Urban Leaguer. I would like to address some of the issues that Commissioner Abram discussed. I understood Commissioner Abram to say that housing is not a civil right. I would like the Commissioner to explain when someone who appears to discriminate in housing is not interfering with his civil rights.

On the issue of diversity, I really believe that diversity is a tenet of democracy and a result of it, and that most of the Commission and our government reflect that diversity. And when the Commissioner said that conscience is vested in the individual and there are no restrictions of conscience in this country, I would suggest that the vestal virgins of conscience of this country is the conscience exercised by the democratic group.

Regarding group right, I would ask the Commissioner when he was reviewing his childhood and these individuals, unkempt, illiterate and unwashed as being undesirable no matter what the color of their skin, as a principle to defend individualism rather than discrimination against groups, I would ask him, How he feels about disenfranchisement and the conditions of the black schools in the South that prompted the Supreme Court decision. I would also ask the Commissioner, How does he feel about religion and prayer in the schools? I would ask our Chairman to make a distinction between equal employment opportunity and affirmative action, and whether he feels equal employment opportunity is mutually exclusive with seniority.

MORRIS ABRAM. Mr. Chairman, when I was a kid in elementary school, there was a woman who came to speak to us, as she did every year, from the Women's Christian Temperance Union, on the evils of alcohol. She was an expert. I want you to know that the questions that you have given me would require another lecture and you would have to convert me into an expert on a lot of the questions. But I will tell you this story. This woman comes this day though, I don't know why she thought third grade children are deluded with alcohol, she had a glass of water and a glass of alcohol. She took an earthworm and dropped it into the glass of water and held it up for everyone to see, and she took it and dropped it into a glass of alcohol and she held it up with a look of self-satisfaction as it died, and asked what it meant. One Georgia Cracker in the back of the room stood up and said, "That proves if you got worms you got to drink whiskey".

I'm not an expert, but I have some feelings. I'm against prayer in the schools I'm against an abortion amendment. I'm against a prayer amendment. You see, I stand now exactly as I stood then with Martin Luther King and Roy Wilkins. I am the same man who on the other hand, Benjamin Hooks said of me and my colleague Jack Bunzel and you, [Clarence Pendleton] you couldn't have found worse people except by looking under Ku Klux Klan robes. Now that's the way the movement has turned.

Now I want to ask you a question. You are in Massachusetts. You know what Louis Farrakhan is. You know that he has said that all whites are devils. You know that he has intruded in this campaign. And you know that this Commission has unanimously asked for disassociation. Have you said anything?

CLARENCE PENDLETON. I concur with you that denial of access to housing is a civil right but production of housing and providing for it is not a civil right. There is no law in this country that says the government must house people. The laws states if there is government housing, there is equal access to it. And the Commission is going to look at the three bills that are being considered this year and we are going to advise Congress with respect to which bill we think does the job in redesigning and reauthorizing the Civil Rights Act of 1968.

With respect to equal employment opportunity and affirmative action, I too believe in affirmative action. It is clear to me that affirmative action means training, recruitment, counseling and information-sharing as much as you can to break down the old-boy network.

In response to Mrs. Jones, I don't believe you take them out of a box and say, go run. What I am saying is that once the chains are taken off and once the box is open, now is the time to get the training, and then one is able to run the race. It goes back to my comment about the South Bronx. Of all the Federal money since 1964 or 1965 poured into the public school system in this country, we have less-qualified teenagers; blacks and whites and greens and yellows are not reading and writing much better.

I believe that equality of opportunity does not mean equality of results. It means that you get trained to run the race. Nothing promises you group results or individual results. There is no set number of doctors. When I was on the faculty of Howard University, one year the school didn't require pictures on the application blanks to the medical and dental schools and they admitted people based on qualifications, and when the freshman class was assembled the first-year classes, you know what happened? Both classes were all white, and they had to run around to get a special Congressional appropriation to admit 25 blacks to each school. A little different from Bakke. Regarding seniority -- I'm ready to uphold that law. A bona fide seniority system in place in public employment and is not there for purpose of discrimination is legal. There is no law that mandates affirmative lay-offs, and I uphold that principle.

SARAH MURPHY. I really don't think you addressed the difference between equal employment opportunity and affirmative action.

CLARENCE PENDLETON. Affirmative action is a way to get the opportunity. That's all I'm really saying. There is no set number. Everybody has a chance to try. Affirmative action prepares you to get ready for the opportunity for which there must be equal access, -- and I support that. I believe that if anybody is discriminated against, as an individual, they need to be made whole, they need to be put in the place they would be in if it were not for that discrimination, inclusive of back pay, seniority, and if some judge awards punitive damages, so be it. I believe that. I do not believe that, as a group, people because of pigmentation or gender, that everybody in that group is affected by the person who brings the case, or gets the award.

BRADFORD E. BROWN. Dr. Abram specifically pointed at me in his discussion of the Supreme Court decision. I want to make very clear what I said. I am not a lawyer nor a constitutional scholar. I am not going to argue whether it was right in terms of the constitution or not. There was a minority of judges who said it was one way, a majority said it was another. A different Supreme Court might have ruled differently.

As a scientist, I bring my own skills to our task as the eyes and ears of the Commission. We see a fear throughout the various communities that we are in dialogue with. That decision coupled with the attitude of the Department of Justice, building on a series of statements that have recently been made, can be interpreted as a license to discriminate on the part of public and private employers in this country.

That fear is real. Whether or not the decision is right, whether as our Chairman said, we should work for a different law, is not the issue that I am addressing. What I am doing is reporting our observation. What we see is a fear as a result of this culmination of events, much the way that those previous Supreme Court decisions literally culminated a whole series of reversals in the struggle for freedom. That is the basic point I am trying to make. Not an argument over the constitutionality of the law which I'm certainly not qualified to make.

I certainly appreciate Dr. Abram's recognition of our sincerity. I recognize his sincerity. I certainly appreciate his story that his consciousness was raised by looking at a mass of relatively unkempt, illiterate workers, both black and white, and realizing only the blacks were segregated. I might say that some of us saw the same groups but we also saw in those groups relatives, friends, individuals, not just groups, and maybe that's why we have a different point of view as we came differently to the raising of our consciousness.

CLARENCE PENDLETON. I gave a speech in Baltimore and a young black man who is now the personnel director for the County of Baltimore said how can we get along without affirmative action. I said you are the personnel officer, and if you believe in fair play you can make certain that there is no more hanky panky in the process. And because of affirmative action, there have been people that have gone to certain levels, and I believe that there is still going to be problems. But there are more people in positions now who understand what that is all about.

I take what you say advisedly. As I move around the country I am going to raise that question with other people. What I am clear about in this case is that I don't want anybody to get confused about a license to discriminate against anybody.

I am disturbed about the Stuart Marsh case in Flint, Michigan. Following the Detroit case, Stuart Marsh is a white counselor at a high school in Flint, Michigan. He has been on the job 16 years, and the Office of Education made certain that Marsh was fired purely because he was white and there was not an ethnic balance in the counseling force. He was fired; two black people were put in his place; he brought the case and the judge cited our policy decision about quotas in Detroit's police case, in his opinion, because he couldn't do much at the lower court level, but hope that it would help him at the Sixth Circuit. The Mountain States Legal Foundation, by the way, has taken over his legal defense. I think that that is discrimination.

One more point: We talk about Bob Jones University and Ronald Reagan decision about it. Take that as given if you want to, and the Supreme Court reversed it. How do you feel about a foundation in this country that has a tax exemption and only gives scholarships to black students to go to college? Is that the same kind of discrimination? I think that it is. How about the people in Atlanta who say it is alright to discriminate for me but it is not alright to discriminate against me. We can't talk on both side of these laws. Either there is no discrimination and we fight those who discriminate against us, or we go to Congress and say change the law. People now want amended to include Title VIII, 504 and the age discrimination Act. I think we've got a mess. I don't know whether or not Congress is ready to do a number with Title VII. I am not so sure they want to do the same thing.

JOAN WEBSTER, VERMONT SAC. There is so much that I'd like to ask, but I am going to zero in on a very narrow and a very specific question. I am concerned with how this Commission intends to proceed. One of the things that you mentioned, Chairman Pendleton, was the notion of contracting out work, contracting out studies. As a State Advisory Committee member, I thought that was one of the things that we were useful for, providing certain kinds of study first. But I am particularly interested in what process the Commission will use for contracts. How will you solicit bids for doing studies? How will you judge bidders? I must say I am puzzled at the notion that it is possible to contract out an interpretation. As I understand law, it is dynamic, it is not static. There is no law anywhere that is not open to interpretation in a whole variety of ways. And so when you talk about the Commission, contracting out, when what is contracted out cannot be factfinding but must be interpretation, then I am thoroughly confused.

CLARENCE PENDLETON. This is not a new process. The Commission has used the contracting process since 1957. And there are people to whom we send out RFPs once that study design has been completed. What you have on this piece of paper are primarily concepts of the kind of things at which we're looking. Then the final project design comes back to the Commissioners for Commissioner's approval and then that contract is let by the Commission. There have been many many studies contracted out including the social indicator study, and background studies when we did the high tech hearing at San Jose. There were people who worked with staff to do some of the work on the Baltimore project. Every report just about, has had some kind of contract to go out. As a matter of fact, the contract for the Eastern and Southern European study in the last Commission was contracted by some people who had some biases, and there was not enough census data available that we couldn't complete the study last time. So contracting out is done with experts. Again, the staff works with the contractor and brings us back a draft report that we have to work with. This is not anything new.

JOAN WEBSTER. That kind of contracting you are talking about, I assume that you are going to continue them with RFPs?

CLARENCE PENDLETON. Sure, We always have.

JOAN WEBSTER. But those studies were factfinding not interpretation.

CLARENCE PENDLETON. Well it's a matter of factfinding. It is not so much that they interpret. They get the facts and it's a matter of somebody doing the literature review. We haven't got that kind of staff around to do it. It is just about impossible.

As a matter of fact, talk about budget matters: Regional program operations receives almost one-half of the budget of the Commission: the rest of it is for operations in Washington.

JACOB SCHLITT. We thought throughout that the Commission might be able to utilize the SACs...

CLARENCE PENDLETON. Thanks for that point. On the study of civil rights enforcement and vocational rehabilitation, we were trying to join with a selected number of SACs to help us to put together a report that we couldn't do with all the SACs, all 51. You wouldn't want to do the same study with all of them, but a certain number of SACs and the Division of Federal Civil Rights Enforcement looking at the Vocational Rehab Act. That is one project where we want SACs involved. I'm not so sure where the process is now but that is being talked about. There are other areas that we find the SACs a valuable resource even with the contractors. There would be no way that the contractor would go out into an area without contacting the regional person, some of the SAC people, and SAC's know the terrain about where to go. It is not that you do not help us, it is that we do not contract with you to do it. To contract with our own people we could really get into trouble.

DAVID HARRIS, NERO STAFF. I am a staff person, and I would like to preface my remarks with a personal note. All of us here wear several hats. I am currently a Ph.D. candidate in the Sociology Department at Harvard. First, I have a problem with this notion that we should discourage minorities from going into the social sciences, and we should encourage them to go into the so-called professions. I was admitted into Harvard University seven years ago. I was the last black student admitted into Harvard University's Department of Sociology in seven years. I think that we might not be turning out enough minority social scientists in this country. I don't think that the solution to the problem is to direct our students to law school and medical school; particularly since there are so many issues at stake.

I would like to raise a question about the use of data. I was somewhat confused by some of the remarks regarding data that we have heard here. On the one hand we were told that 79 percent of those persons in the United States with incomes below \$5,000 are white. I am not sure but I think it was supposed to indicate that things are not quite so bad for minorities -- Hispanics and blacks. On the other hand at different

points data were disaggregated. It's all in how you slice it. What proportion of minorities earn under \$5,000? It is a different question; you get a different answer; you get a much higher percentage.

We may want to disaggregate in terms of comparable worth. We say women earn only 60 percent, but disaggregate and look a little closer we find 70 percent. With further reduction, it's 80 percent. So, at some point we want to disaggregate data and at other points we don't. I would like to know whether or not the Commission will continue to be data-based. And I think in regard to reports, we do have a professional staff; they have the training and background and capability to engage in studies.

I'd also like to make another comment: When the Vice Chairman talks about Asians doing so well, we also know that when you disaggregate the Asian population in this country, as the Commission study did in the study called "The Myth of Asian Success," we find there is a bi-modal population. There are two populations of Asians, some do very well and are very successful, but if you disaggregate and you look at the number of generations and cross-time studies you'll find that it's not universally the case.

Finally, if we're going to continue to approach questions of civil rights based on data then what do you see as the role of the staff, and how do you prove discrimination? How do you know whether or not, in Georgia, that employer has stopped discriminating? How do you know that unless you have some yardstick by which to measure that (i.e., goals and timetables), and what do you accept as proof on his part that he's stopped? You indicated that it would be that he has a lot of women driving trucks. That to me seems to mean that you have some kind of yardstick.

MORRIS ABRAM. On the disaggregation and aggregation of data -- the data I cited came from the opinion of Supreme Court Justice Stewart in Fullilove v. Klutznick. The meaning of the data is very clear, and it goes across the board. When you address a problem of preferences on the basis of race or gender, you are taking a group and preferring that group, whereas people similarly bad off are not preferred, and all Justice Stewart was saying, and all I am saying, is that regardless of the fact that more blacks are disproportionately under \$5,000 a year, the fact is that 80 percent of the people who are under \$5,000 a year are not black and are getting nowhere.

Similarly if you give a preference to a group or groups, you end up, since the Spanish surname is the method by which you referred to Spaniards, in giving Benjamin Cardoza's grandson a preference. He has a Spanish surname. When you speak of Asians, we shouldn't be helping Japanese who are making thousands of dollars a year, but they are entitled to a preference, because the only definition is Asian. The thing is monstrously unfair and imprecise. It is imprecise in respect

to those who are not in the preferred class, but in situations similar. It is unfair in a sense that those who are in the preferred class get the benefit whether they need it not. Do you think Ralph Bunche's daughter really should have a preference as opposed to a coal miner's daughter? There are a lot more coal miners' daughters.

I have spent my life in the courtroom, and I tell you it is not always easy or precise to prove a point in a court of law, but we all live in a society in which questions of discrimination, questions of crime, questions of death, questions of property lines, are litigated. And believe me the results are sometimes results that I want and sometimes that I don't want. This is the proper way of dealing with the issue of discrimination. But, I know the judge in this transport case is a very sensitive man. And if I were to counsel Bowman Transport, I would tell my client you better see that no woman who is as qualified or better qualified is denied a job because that judge will have you in his court with sanctions of contempt upon you, and that is the way the law operates.

CLARENCE PENDLETON. I can only say that statistical parity is no indication. Parity in terms of where goals and timetables -- if you make them or do not make them -is- not a sign that discrimination is eliminated. What affirmative action has done is to balance out the admission force and the work force. But there is nothing to say that that kind of balancing is an elimination of discrimination. I think in some cases it creates a little bit more. As I move around the country these days, I hear black students telling me, "I don't want to keep getting labelled as somebody who was inferior and needed something special to make it. There are those of us who do need a little something special, but I'm not one of those."

PHILIP H. HOFF, VERMONT SAC. However you may describe the Commission, whether it is a continuation, or old, or new, or whatever, it is different and the views are different. I think we simply have to accept that. I do. I find myself in some disagreement with Morris Abram, for example. But I think we all recognize that there are differences. I think we should stop spending the time defending our individual views and positions. I think we should stop talking at each other and start talking with each other. I think we ought to spend some time on, for example, What is the Commission's view of the SACs? What is it that you could do to be more supportive of us? What could we do to be more supportive of you? I think you ought to recognize that that little piece that you put out about individual members was, in fact, viewed by most people as a veiled threat. I think it was an unfortunate statement. I think that type of thing ought to stop. We all should start working together. Whatever our differences and points of view, there is a common sense of overall objective. And I think that we ought not to forget that in this whole exercise.

CLARENCE PENDLETON. I think you are right. This is the first SAC meeting that I have been to where I have been in this position. If you want to talk about what we can do together, I think that is important. We worked that out in Denver. We sat down and dialogued about it. I thought it came out well. I stood in the well for three hours last week in El Paso -- it was the Southwestern and the Western Regional SAC people -- and we got to the point where they could help us and we could help them.

In terms of individual members, that is nothing new. That happened twice when I was on the other Commission, and we just reiterated that position.

To get down to the matter about not defending, I think you're right. We've got a point of view; you've got a point of view. There is some agreement and some disagreement. I said before that I am looking for that intersection between whatever it is that you believe and what it is that we believe, and to work on that and to move forward.

SACs are extremely important to the work of the Commission. If they were not important, I do not think that either one of us would be here. I am losing money by being here. And I have been out all month. I have not been able to take care of my own business, because I think that this is an important activity for all of us. You have wanted to spend time with me. And I want to dialogue with you. What is it that we can move forward on? I see you as extremely valuable. How do you say to 800 people, "Go away?" Eight hundred dedicated people who have a lot of expertise, who are volunteering their time, to make sure that the Civil Rights Commission goes on course, and that we do go forward to try to eliminate the legal impediments to opportunity. We know that the Constitution can't stand any discrimination. Neither can the laws. We can't change peoples' minds. We can work like hell to make certain that we do have a more harmonious relationship. I for one, and I can not speak for my colleagues, but I see the SACs as valuable. I want to work with you, and I do not want to be in this acrimonious position, but I will tell you very frankly, that if you put me in it, I can handle myself pretty well in it, but that is not what I want to do.

JACOB SCHLITT. Can we get more specific with regard to what you would like the SACs to do?

CLARENCE PENDLETON. I think we can, thank goodness. I think we need to take a look at where these studies are that we are going to do, to find out where it is that you can give us input to this work that we can pass on to the contractors or to the staff.

There is the whole matter of monitoring: What is it that is really going on in the Federal civil rights domain? It doesn't have to be a study, but you can let us know and we can certainly pass it on to the appropriate agency.

We have a division between civil rights issues and social and economic issues. But I see no reason why, when you raise issues about housing, there is no reason why you can't send that to us and we could send it on to the appropriate Federal agency as an advisory. We can't do anything about it, but I think it is important that, in the course of your work, that if you see that, it could be passed on.

The most important study that we are doing that affects you is the billion plus dollar budget in vocational rehabilitation, and we are trying to find out what the States and localities are doing about civil rights compliance in that particular piece of Federal legislation. That involves an awful lot of money, and involves an awful lot of people.

We want to know what's happening in the voting arena. I don't know whether or not we are ready for it, but the Civil Rights Commission could have a monitoring role in how the Simpson-Mazzoli immigration bill works. Staff figured it would take at least a million dollars to start off with and almost 500 employees to monitor Simpson-Mazzoli. I don't know how you do it, but that would be an additional responsibility.

Another thing is that where you see trendy issues that need some national attention or that need to be cranked into the planning process, let us know. Let us put that down among the list of activities where there might be something that happens in this region and also might happen in some other region. I think that's important to be able to do.

I would like to see us come together as SAC chairs in this year's meeting with the idea of having been a part of the SAC chairs' agenda. See if we can have a workable program with SAC chairs across the country and do what you say we should do to get on with the business and not come in and use it as a platform for something that we can not do anything about. For the two years that I have been at the SAC Chairs meetings, we have never gotten down to the agenda that was agreed on by the SAC Chairs and the regional programs staff. We get side tracked on other issues. And those are just some of the things that I think about.

I would hope that we could share as much as we can. I have been in Boston, and Ms. Putnam has been kind enough to come out to places where I have been. I would like to meet with people when I am in the area. I have been able to do that as I have travelled around the country. Just last week in St. Louis there was a public forum there and various groups were telling the status of civil rights and Frankie Freeman had a dinner for me later on that evening, and I got a chance to meet a lot of the people, and got a chance to share ideas. I think one of the problems is that we don't know each other better. And we could know each other a lot better and you would understand why we do certain kinds of things, and I would just hope that what I am saying to you might give you some idea of how to start on an agenda that we can both work on.

JAMES ALLISON, RHODE ISLAND SAC. Mr. Chairman I am the chairman of the subcommittee that submitted a study to you dealing with the elimination of employment discrimination in the small state of Rhode Island. I would plead with you to move it through the process.

CLARENCE PENDLETON. I think you're right. There has been some delay. This is a common concern in other regions that there hasn't been a sign-off on the SAC proposals to do studies in a timely manner, and I intend to bring that up with the Commission staff people when I am in Washington on Thursday. I give you that promise.

RUTH CHEVION, NEW HAMPSHIRE SAC. I have some differences with Mr. Abram. I think we are both clear on what the issue is. We have differences about who it is who should be patient. I think you know that some people have been discriminated in the past, and you're saying that those who have been discriminated against can wait just a little bit longer. Things will straighten out. After there is no more intentional discrimination, people will slowly come into the professions, will slowly come into the jobs they deserve, if they will only patiently wait.

A lot of us here think that the people who are in those jobs can be patient for a little while, and they can wait a while, so that the people who have been discriminated against get their rights. We have some intellectual differences, but they are intellectual differences, and we can talk about them.

I am very disturbed by some of the factual differences that we have here that indicate to me willful blindness. I am disturbed at hearing that Asian Americans are doing just fine, when I just came this very week from a faculty meeting in New Hampshire where we heard mothers and sponsors of Asian children talking about discrimination against their children in New Hampshire's public schools today: children being left behind grade after grade, children flunking in the public school system today. This is an important factual difference. It is not an intellectual difference. It is not a difference that comes from looking at things carefully and in a meaningful way and coming out with a different conclusion.

I am very disturbed to hear Mr. Abram say that women were not slaves. Slavery was not limited to men. Women in this country for many years, have confronted impossible barriers to employment and to keeping employment. This is not just a slight handicap, it is a severe personal pain.

In the same spirit of moving forward, I would like to ask that the SAC be empowered to continue to bring forward information to prove to you that discrimination exists, that it is hurting individuals, and to tell you where it is and how it hurts. For example, Mr. Abram was hypothesizing himself as the lawyer for Bowman Transport. He was telling the employer to be careful not to discriminate against women

anymore. Putting myself in the position of the employer, I would say to you what can I do that isn't discriminatory? And there's a very simple answer. Create credentials that women do not have, and that's exactly what employers are doing today. Employers will not say that I won't hire you because your a woman; I won't hire you because you don't have eleven years of experience. And of course this woman will probably say, women have been only allowed into law school for ten years, women have only been allowed to be carpenters for ten years. Discrimination today takes new forms. So when you and I disagree on whether there is discrimination, we are not only having intellectual differences, we are having some real factual differences. And I might add in a spirit of conciliation, allow us to funnel to you untrammelled and uncorrected, information about what forms of discrimination is taking place, on what kind of people it is operating and where we find it in our communities.

CLARENCE PENDLETON. I can only say to you that that is what I thought it is all about. I thought I said we want this information to come forward. I think where we have intellectual differences, it is not just that, I think what you are talking about is also a little bit ideological. And I am saying to you again that I am looking for that intersection where we are, and where we can go forward from that point. We want those things to come forward.

Understand that there is just not enough time, not enough of staff, not enough of a lot of things to enable us to respond to each and every issue. There are those on the Commission who believe one way, and those who believe another way, I think it is important that that diversity come forward and that we come out with an agenda where we can go forward. I know we want to take things back, and I want to put them all on the table.

MORRIS ABRAM. I do want to thank Governor Hoff for his remarks which I think are very sensible, but I wanted to make this comment. I came here today to make an entirely different speech, and then I listened very attentively. I hoped I would not hear the same kind of record that I have seen in the correspondence and in the memorials that have come to the Commission from the SACs. I don't think they have been reasoned discourses. I think they have been a repetition of a feeling of the loss of a certain point of view which was thoroughly and totally reflected in the past Commission, and a good deal of anger and hostility about it. I think we would all be very well advised to take Governor Hoff's views and not only pay attention to them, but act upon them.

Now in that spirit, Ms. Chevion, I find a great deal of difficulty taking your record about women and slavery, which was a peculiar institution, so-called, and attributing it to my wife, my mother, my daughter. Now my daughter has been one of the leaders in the feminist movement, and I do not deny the feminist movement its importance, its

contribution to the life and future of the country and to the ennoblement of half of our population. But I certainly don't want to engage in these rhetorical flourishes and I don't think that contributes to the discussion.

RUTH CHEVION. Excuse me. I did not intend rhetorical flourishes. I intended to bring to your attention that there were men and women manacled as slaves in this country, both men and women. That's all that I intended. I wanted to remind the audience that we did not have an institution of male slavery in this country.

MORRIS ABRAM. I didn't understand and I am sorry that I didn't.

I take it that you are a law professor. I find it very difficult to say to you that you should be patient and let some black woman have your job. I find that very difficult to say that to you because she is black.

WILLIAM BURNEY, MAINE SAC. Being a relatively new SAC member, this discussion has been informative for me from the point of view of what the Commission can and can not be doing. In connection with Mr. Pendleton's apparent assumption in the Flint case that common ethnicity means common ideology, my question is, Should there be a common ideology in the school system or among the guidance counselors. Should there have been a balance of numbers? I am just addressing the Flint case that piqued my curiosity a little bit. Would the appropriate course in that case have been to hire three minority counsellors and retain Mr. Marsh? In the Flint case, two more minority councillors were hired, I assume to reflect a balance of numbers which would give you a balance of ideology and some comfort to those parents and students in that school system. Would not a more appropriate course have been to hire three minority counselors?

MORRIS ABRAM. Well, as a matter of law there is no objection to hiring as many people as they want. I will tell you quite frankly that I oppose hiring people qua women, qua blacks, qua Hispanics, qua religion. I end as I began. I think as Daniel Webster said, We should be very careful about that in view of the kind of country we have in which everybody has an equal number of rights. If you have thumbs on the scale for a particular group, we are going to be in deep trouble.

WILLIAM BURNEY. Would you subscribe to the ideology that civil rights law is not the appropriate means to provide compensation for the past? Is there another form and what is that form, because I think there are people here who would like to provide compensation for the past?

MORRIS ABRAM. If you start trying to provide compensation for the past I don't know how you weight it. And I think as the chairman said, It's a zero sum situation. I guess every woman is entitled to some compensation for the past. That is 51 percent of the population. Now,

how much? It is going to be paid by 100 percent of the population. We will have to compensate 12 percent of the population which is Hispanic. To what degree and to what extent, I do not know. And I am sure we would have to compensate the 12 or 15 percent who are black, and regardless of whether or not they own Ebony magazine or own the Citizens Bank in Atlanta, or are Presidents of the Chamber of Commerce in Atlanta, or the Mayor of Atlanta, or the Chairman of the County Commission of Atlanta. But we must be sure that each is compensated because their relatives came from slavery, and I don't know how much the Southern Europeans who claim, and Congress agrees, that they should be treated as a discriminated group, and that includes all the Italians, all the Ukranians, all the ByeloRussians, all the Armenians, all the Turks, all the Greeks, and I guess it includes Mrs. Onassis, or at least Mr. Onassis' children. This really gets to the point, that when you talk about compensation, when you raise the question, it shows how unfair, how impossible the situation that you would like to rectify, can be rectified by law. Other than to be sure that there is no further discrimination.

And let me say this about the Judge's decision in the Bowman Transport case. He not only said, Don't you dare discriminate again. He said I want you to post the training schools where these women who do not have over-the-road experience can be trained. I want you to be very sure that your personnel officer refers people who do not have experience. There is a lot that can be done in the confines of the law. It is not perfect, but it's the best instrument we've got. And the Constitution is not perfect, but it's the best instrument we've got, and perhaps the only instrument that we are likely to get, unless we have a constitutional convention.

JUDITH HOLMES, CONNECTICUT SAC. Traditionally the SACs study issues dealing with Federal civil rights problems. We always had the freedom to hold open meetings or hearings and issue reports. How does the Commission look on that now?

CLARENCE PENDLETON. The same way the old Commission did. The reports you put together are your reports. We are not interested in changing any of that. You say what you want to say. We're talking about a process to make sure that there is legal sufficiency. It has been there all along. It is just a matter of putting those things in a final draft and then to have them printed. Why have them printed if there are mistakes in it, and there are a lot of SAC reports with mistakes in it.

JUDITH HOLMES. Will you still provide support for it?

CLARENCE PENDLETON. No question. None of that changes.

JACOB SCHLITT. I am pleased that we have had this broad discussion.

MORRIS ABRAM. I am delighted that we had it. This is my first opportunity to have a broad discussion.

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