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U. S. COMMISSION ON CIVIL RIGHTS

TEXAS ADVISORY COMMITTEE

BRIEFING ON FAIR HOUSING

MAY 10, 1985

ARLINGTON, TEXAS

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Meet.  
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ACENDA

|    |                   |                             |
|----|-------------------|-----------------------------|
| 1  | 9:00- 9:10 a.m.   | Introduction                |
| 2  |                   | Adolfo Canales, Chair       |
| 3  |                   | Texas Advisory Committee    |
| 4  | 9:10- 10:10 a.m.  | Overview of Fair Housing    |
| 5  |                   | Martin E. Sloane, Executive |
| 6  |                   | Vice President National     |
| 7  |                   | Committee Against           |
|    |                   | Discrimination in Housing,  |
|    |                   | Washington, D.C.            |
| 8  | 10:10- 11:00 a.m. | Legislative Proposals       |
| 9  |                   | to Amend Fair Housing Act   |
| 10 |                   | Deborah Snow, Assistant     |
| 11 |                   | Staff Director for Federal  |
| 12 |                   | Civil Rights Evaluation,    |
|    |                   | U.S. Commission on Civil    |
|    |                   | Rights, Washington D.C.     |
| 13 | 11:00- 12:00      | Legal Issues and Recent     |
| 14 |                   | Housing Litigation          |
| 15 |                   | Michael Daniel, Dallas      |
| 16 | 1:30- 2:30 p.m.   | Federal Enforcement         |
| 17 |                   | of Fair Housing             |
| 18 |                   | U.S. Department of          |
| 19 |                   | Housing and Urban           |
|    |                   | Development (HUD)           |
|    |                   | Representatives             |
| 20 | 2:30- 3:30 p.m.   | Local Enforcement of        |
| 21 |                   | Fair Housing                |
| 22 |                   | Jack Herrington, Executive  |
| 23 |                   | Director, Dallas            |
|    |                   | Housing Authority           |
| 24 |                   | Mary Dews                   |
|    |                   | Dallas Tenants'             |
|    |                   | Association                 |
| 25 | 3:30- 4:00        | Leonard Chaires             |

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State Chair, Civil Rights  
Committee for LULAC

4:00- 5:00

SAC Discussion

5:00

Adjourn

1 MR. CANALES: This meeting of the  
2 Texas Advisory Committee to the United States  
3 Commission will now come to order.

4 I'm Adolfo Canales, Chair of the Texas  
5 Advisory Committee. Other members of the Advisory  
6 Committee present with me today are as follows:  
7 Maria Berriozabal from San Antonio, Doctor Denzer  
8 Burke, Doctor Rodolfo De La Garza, Lino Graglia,  
9 Lynn Lipshy, Doctor Manuel Pacheco, Gloria Portela,  
10 Edmund Robb, Milton Tobian, Luis Al Velarde.

11 Staff members of the United States  
12 Commission on Civil Rights present are as follows:  
13 J. Richard Avena, the Director of the Southwestern  
14 Regional Office (sitting to my left); Gloria  
15 Cabrera, Regional Attorney; John Dulles, Deputy  
16 Regional Director; Ernest Gerlach, Civil Rights  
17 Analyst, and Margaret Guzman Robbins, Civil Rights  
18 Analyst.

19 Also with us today are representatives  
20 from Arkansas and Louisiana. The two advisory  
21 committees from those states. From the Arkansas  
22 Advisory Committee today present with us are Elijah  
23 Coleman and Frank Gordon. From the State of  
24 Louisiana we have Doctor Louis Pendleton, the Chair  
25 of the Louisiana State Advisory Committee and I

1 believe Roberta Madden will be with us later.

2 The United States Commission on Civil  
3 Rights is an independent bipartisan, fact-finding  
4 agency established by Congress in 1957 and  
5 re-established in 1983.

6 The Commission's jurisdiction involves the  
7 authority to study and collect information  
8 concerning legal developments constituting  
9 discrimination or a denial of equal protection of  
10 the laws under the Constitution because of race,  
11 color, religion, sex, age, handicapped or national  
12 origin, or in the administration of justice.

13 The Commission has established state  
14 advisory committees in each state and the District  
15 of Columbia to assist in fact-finding,  
16 investigative and clearinghouse functions.

17 These committees are composed of citizens  
18 who serve without compensation and who are familiar  
19 with local and state civil rights problems. The  
20 Committee are the eyes and ears of the Commission  
21 in the states and have as their purpose to advise  
22 the Commission.

23 What I'd like to emphasize at this time is  
24 that this is an informal briefing for members of  
25 the Advisory Committee and not an adversary type of

1 proceeding. Individuals have been invited to come  
2 and share with this Committee information relating  
3 to fair housing, and each person who will  
4 participate will, of course, be doing so  
5 voluntarily.

6 There's one other person I would like to  
7 introduce from Congressman Martin Frost's office.  
8 We have a guest observer, Teresa Daniels.

9 Since this is an open meeting, the press,  
10 radio and television as well as the general public,  
11 of course, are welcome. They are very concerned  
12 that we get all of the information relating to the  
13 topic and advisory committee members for whom this  
14 briefing was organized.

15 You will have an ample opportunity to ask  
16 questions and discuss the issues with the various  
17 presenters. For this reason we are limiting the  
18 questioning of the presenters solely to the staff  
19 and the advisory committee members.

20 The purpose of this meeting is to brief  
21 the Committee and representatives from the other  
22 committees in the Southwestern Region on issues  
23 pertaining to fair housing.

24 To this end, the presenters have been  
25 invited to brief the committee on topics such as

1 the historical development of federal housing, the  
2 civil rights enforcement efforts, at federal and  
3 local levels, legal issues and recent lawsuits,  
4 legislative proposals to amend the Fair Housing Act  
5 and other current issues in fair housing.

6 With that, we'll now commence the meeting.  
7 I believe all of you have an agenda in front of  
8 you, and we'll start with an overview of fair  
9 housing, and at this time I will ask the Regional  
10 Director, Richard Avena, to please review the  
11 operation.

12 MR. AVENA: Thanks, Adolfo.

13 Sometimes I hate to think how long I've  
14 been with this agency, but when I see people like  
15 Marti Sloan who was with the Commission before I  
16 got there in 1967, I think, and Marti was there--  
17 he reminded me of two different occasions, but I've  
18 known Marti and his wife over a period of time that  
19 I worked with this agency and I'm sure that most of  
20 you and many of you have heard of the National  
21 Committee Against Discrimination in Housing.

22 Doctor Weber, who is the former Secretary  
23 of HUD, is the president and Harold Flemming is the  
24 chairman. Another person who is on the board of  
25 the National Committee Against Discrimination in

1 Housing is Samuel J. Simmons who is the person that  
2 was heading the field operations when I came on  
3 board the Commission. I see also a San Antonian on  
4 your board, Jose Garza.

5 It's always good for me to see people like  
6 Marti who have been in this field and working in  
7 the area of civil rights for a long time, and it  
8 was especially good that we were able and fortunate  
9 to get him to come to Arlington to brief the  
10 committees. As many of you are aware of the recent  
11 publicity that fair housing-- some say the lack of  
12 fair housing-- has gotten in the media here in  
13 Texas, and the advisory committees in our region  
14 decided that they wanted to get a briefing, an in-  
15 depth type briefing so that they could consider the  
16 possibility of in the future doing some project in  
17 the area of fair housing.

18 So naturally, we look to the National  
19 Committee Against Discrimination in Housing and to  
20 a person like Marti Sloane who has been in this  
21 area for so long. So it's with great privilege and  
22 pleasure that I introduce to you Martin Sloane.

23 MR. SLOANE: Thank you. You've  
24 reminded me of how long it's been since we've seen  
25 each other, for one thing, and how many years I



1 spent with the Commission. I served two terms as  
2 if I was convicted of something.

3 I remember very well when Dick first came  
4 to the Commission and I thought he was spectacular,  
5 mostly energetic, very, very intelligent, sensitive  
6 to the issues, but I figured he wasn't going to  
7 last. He didn't quite have that bureaucratic  
8 spirit that you need to make it in the federal  
9 government.

10 It's a source of delight and surprise to  
11 me that Dick has been with the Commission for 17  
12 years. My God he made it. I finally got released  
13 from the Commission in 1973 and I've been with the  
14 National Committee Against Discrimination in  
15 Housing since then.

16 I brought along a few copies of our  
17 brochure. For any of you who are interested, they  
18 are up here. As Dick suggested, when I was with  
19 the Commission it was called, I guess, the Old  
20 Commission. We didn't call it that then. It  
21 really wasn't a bad place at all. We had some very  
22 decent people as commissioners and some very good  
23 people on the staff.

24 I had the privilege of working with two  
25 very distinguished chairmen, John Hanna, who was

1 then President of Michigan State University and  
2 Father Peter Lansburg who still is President of the  
3 University of Notre Dame.

4 We also had some distinguished members of  
5 the Commission, people like Erwin Griswold, who was  
6 leader of the Harvard Law School and later  
7 Solicitor General of the United States, Hector  
8 Garcia from Texas.

9 Some people I didn't particularly agree  
10 with, but I still recognize their integrity, their  
11 strong beliefs and they are intelligent people,  
12 like Robert Storey of the Southern Methodist  
13 University Law School, John Madden, Governor of  
14 Virginia, who had been before us with the  
15 Commission under the Reconstructed Segregation  
16 Institute.

17 The Commission had a very good educational  
18 effect. It was nice to see that some people were  
19 still very educated, but that was the old  
20 commission.

21 My assignment today is to give an overview  
22 on fair housing. A lot of what I'm saying, not  
23 entirely, is in this publication Dick assured me  
24 you all had, which I assume you've all read very,  
25 very thoroughly. I don't really assume that at

1 all. Even if you have, I'd like to embellish on  
2 that.

3 I think the first thing to do is to give  
4 you, at least my perception and that of the  
5 organization I work for, of what fair housing means.  
6 There are at least two elements to it. One that's  
7 long been recognized is clearly fair housing and  
8 another one over the last 15 to 20 years that we  
9 increasingly recognize as an essential element.

10 The first element of fair housing is  
11 establishing conditions under which all American  
12 people are able to choose where they want to live  
13 without regard to the arbitrary and irrational fact  
14 such as race, color, religion, sex and national  
15 origin.

16 The second element which is equally  
17 important is having an adequate supply of housing  
18 in the various locations so that the choice that  
19 the first element involves is not merely illusory.  
20 That is, if there isn't housing that you can choose,  
21 then freedom of choice in housing doesn't mean very  
22 much, and that second element to be subdivided as  
23 well.

24 How do you get housing, a supply of  
25 housing, adequate to meet the needs of all

1 Americans, affluent and not so affluent and poor?  
2 Well, you can do it through new construction of  
3 housing. Sometimes you can do it through new  
4 construction of middle income housing which in time  
5 you hope will filter down to less affluent people.  
6 You can do it through construction of  
7 housing specifically designed for a lower income  
8 family, such as public housing, other federally,  
9 and usually it is federally subsidized housing. Or  
10 you can do it through providing people with  
11 additional money earmarked to assist them in  
12 securing existing houses so long as there is an  
13 adequate supply of existing housing.  
14 Now, the second element is the one that  
15 has only been recognized over the last 15 to 20  
16 years. What does it have to do with civil rights?  
17 Let me tell you what it has to do with civil rights.  
18 First of all, let me clear up and stress  
19 one thing. Most poor people in this country are  
20 white Anglos. They are not racial or ethnic  
21 minorities. Most people who are poor are white  
22 Anglos. The reason that concern for lower income  
23 people is of special interest to those in civil  
24 rights is that racial and ethnic minorities are  
25 disproportionately over-represented among those who

1 we call poor or of lower income.

2 And to the extent that lower income people  
3 face housing problems or any other kind of social  
4 and economic problems, racial and ethnic minorities  
5 face them in larger proportions than the rest of  
6 the population. These, then, are the two elements  
7 that are very necessary.

8 What I'd like to do over the next half  
9 hour or so is describe to you where we are now and  
10 where I think we have to go in terms of achieving  
11 fair housing in this broad sense that I just  
12 described. I think before that we ought to discuss  
13 a little bit where we've been.

14 Often over the last ten years or so,  
15 people who are either new to fair housing or young  
16 people come up to me and say: "Gee whiz, what a  
17 surprise." Until 1968, there was no federal fair  
18 housing law.

19 Well, it sort of irritates me and  
20 frequently it makes me feel old and I don't like to  
21 feel old, and second of all, it irritates me  
22 because the surprising thing about the '68 Fair  
23 Housing Law wasn't that it took so long to get it  
24 passed, it was that it was passed at all and even  
25 that late.

17

1           As I'm very familiar with the past history  
2 of discrimination and segregation in housing and  
3 particularly of the role that government at all  
4 levels, especially the federal government, played  
5 in exacerbating and perpetuating the problem.

6           The federal government which is the  
7 mainstay of housing and for a long time the  
8 mainstay of housing discrimination and segregation  
9 in this country. Until the early '30s, the federal  
10 government played absolutely no role in housing or  
11 housing discrimination.

12           Purchase or rental of a housing unit was a  
13 matter that was largely between buyer or renter and  
14 the seller or lessor. Sometimes you had private  
15 mortgage lending institutions involved if it was a  
16 sale and home builders involved. You had real  
17 estate brokers involved and the states were  
18 involved in localities because of the zoning  
19 requirements.

20           The federal government wasn't involved.  
21 It's involvement began with the "Depression," and  
22 the involvement was as much a result of an effort  
23 to do something about the general economic  
24 depression as it was for the good moves over other  
25 people's heads.

1           In a period of six years, starting in 1932,  
2           the federal government through legislation, a  
3           series of legislative enactments, established by  
4           and large a structure of federal involvement in  
5           housing, the agencies and programs that persist to  
6           this day. It was an enormous burst of legislative  
7           activitiy.

8           By and large, all that rebounded to the  
9           benefit of the American people, particularly when  
10          you consider the federal agencies such as the  
11          Federal Housing Administration with its programs in  
12          mortgage insurance and later there was the  
13          Veteran's Administration with its almost identical  
14          program with loan guarantees.

15          First of all, these agencies and their  
16          programs made purchase of housing a heck of a lot  
17          easier than it did before. What it established was  
18          a fixed rate mortgage fully amortized, a low down  
19          payment kind of vehicle for purchasing a house.

20          Whereas one of the major problems causing  
21          so many foreclosures in the early '30s was the  
22          previous way you bought houses, which is a three to  
23          five-year loan where very often you paid off no  
24          principal at all and the bank would have to  
25          actually roll it over after three or five years.

1           You paid interest virtually, and that's  
2           it, and in 1931, '32, the bank suddenly stopped  
3           rolling over the loans and said, "Pay up." What  
4           you had at best was an enormous loan payment.  
5           People couldn't pay up. So the banks took over the  
6           housing. The FHA and VA type of loan which became  
7           the fixture of the home finance industry just  
8           changed that.

9           Now, we're coming into something new with  
10          adjustable rate mortgage because of the crazy times  
11          that we live in. I'm glad to see that fixed rate  
12          mortgages are so rare. What FHA did and VA and  
13          sister agencies, as well, transformed this country  
14          from a nation of home renters to one of home owners.

15          In 1930, there were roughly 40 percent of  
16          all the occupied units in this country owned by the  
17          families who lived in them. By 1980, it was a  
18          little more than two-thirds. I shouldn't say home  
19          owners. We're all home mortgagers, but that's what  
20          FHA and VA did.

21          Unfortunately, these enormous benefits  
22          which came to the American public did not come on  
23          an equal basis. FHA, and later VA, adopted  
24          policies which in effect were quite lonely. It's  
25          called, "racial segregation in housing, but blacks



1 have nothing to speak of.

2 The Commission itself in 1959, found that  
3 of all the FHA and VA assisted houses that had been  
4 built up until that year, 1951, from the beginning  
5 of 1934, less than two percent had been purchased  
6 by racial minorities and nobody can explain that on  
7 the basis of economics at all. It was all strictly  
8 policy.

9 FHA had its few tricks. They insisted--  
10 to make sure that you can't trust these private  
11 builders, they might even want to sell a house to a  
12 black or a Hispanic-- so they insisted on  
13 restricted covenants.

14 They had a whole list of kinds of  
15 restrictive covenants that were supposed to be  
16 there, and one right next to the covenant that  
17 prohibited the maintenance of pigstys within 50  
18 yards of a house, was no blacks, Hispanics, or  
19 Syrians are allowed to live in any of the houses in  
20 a subdivision. That's right next to the  
21 prohibition against pigstys. It was really  
22 terrific.

23 They also made their contribution to  
24 perpetuation, or sometimes establishment of school  
25 segregation. Their underwriting manual warned

1 their employees that they should not insure loans  
2 on houses in areas where the schools were racially  
3 mixed. That would lessen the value.

4 DR. DE LA GARZA: Was that in the FHA  
5 manual where they actually listed blacks and  
6 Syrians? I didn't see that anywhere in that report.  
7 That if I understood, there was a client that the  
8 housing had not been sold to harmonious groups, but  
9 I didn't realize that it was more specific than  
10 that.

11 MR. SLOANE: I think you caught me at  
12 a mistake. It was more specific. There was  
13 generally the warning of inharmonious racial groups,  
14 but the covenant referred to blacks: I think  
15 that's what it referred to.

16 The typical restrictive covenant extended  
17 far beyond blacks. The FHA was concerned in the  
18 covenant, the model covenant that they provided, it  
19 was only applying to the blacks, but they were that  
20 specific.

21 In their manual, the instructions to  
22 the underwriters was only, "Watch out for areas  
23 where there are inharmonious racial groups," which  
24 is a thinly failed euphorism for blacks, but the  
25 model covenant was much more specific than that.

1 DR. DE LA GARZA: You mentioned that  
2 they had descriptions of different facts. I'd like  
3 to know what that means because the term  
4 "Hispanic" is a very new term back then that we  
5 don't-- I want the language used in that.

6 MR. SLOANE: I'm not sure if it's in  
7 here. I'd like--

8 DR. DE LA GARZA: That's what I  
9 thought it was given those--

10 MR. AVENA: In Texas it was  
11 Mexicans.

12 DR. DE LA GARZA: I know that.

13 MR. SLOANE: Well, I know that it  
14 wasn't Hispanic. I can't think of the term. I  
15 think what they did was list every national origin  
16 group that they could think of that included  
17 Hispanics.

18 DR. DE LA GARZA: Is there a way we  
19 could see a copy of that language somewhere?

20 MR. SLOANE: Yeah, I guess I didn't  
21 quote it here. In other places I did. What I'll  
22 do is I'll find it and there's something I wrote  
23 recently which had it in there and I'll send it  
24 down to Dick.

25 Yes.

20  
1 MS. PORTELA: Mr. Sloane, I guess I'm  
2 a little confused and I wondered if you could  
3 clarify something. The language that you described,  
4 however accurately or inaccurately, was in the FHA  
5 model restriction provided to presumably real  
6 estate brokers, homeowners, et cetera. Is that  
7 correct?

8 MR. SLOANE: It was contained in the  
9 manual which had advice to their underwriters and  
10 the underwriters would provide the builders who  
11 were putting up subdivisions with this model  
12 restrictive covenant, which then they would record,  
13 "It ran with the land."

14 MS. PORTELA: My confusion, I guess,  
15 was whether you were speaking of that and you  
16 responded to my question, or whether you were  
17 speaking of actual deeds which contained  
18 restrictive covenants, because I've seen actual  
19 deeds used in the State of Texas which have a very  
20 specific restrictive covenant, many of them  
21 developed around the turn of the century or even  
22 into the 1920's and 1930's, and the word they used  
23 is "colored." And they further specified that a  
24 colored person can reside in a home where the land  
25 runs with these covenants as a domestic.

1 MR. SLOANE: Yes, that's right.

2 MS. PORTELA: You know, they're  
3 extremely detailed in not only the prohibitions but  
4 the, let's say, convenience of limitation upon that  
5 prohibition.

6 MR. SLOANE: Meticulous, the position  
7 is really admirable.

8 MS. PORTELA: Right. Oh, absolutely.  
9 But like Rudy, I have never seen a covenant which  
10 includes, let's say, an ethnic restriction because  
11 of racial nationality.

12 MR. SLOANE: I know in Texas the  
13 covenants that I've seen, including Washington D.  
14 C., they had a whole laundry list of the kind of  
15 racial and ethnic groups that simply should not be  
16 permitted to live there.

17 MR. AVENA: Arthur Gachman was doing  
18 the Rodriguez school finance case in Texas. It has  
19 a lot of this research about some of the  
20 restrictive covenants in Texas. Actually what they  
21 said was Colored, Mexican, and what have you.

22 DR. DE LA GARZA: Yeah. I do not  
23 want to give the impression that I haven't seen  
24 covenants because I have seen items.

25 MR. SLOANE: That's right.

1 DR. DE LA GARZA: But when you use  
2 the term Hispanic, I knew that wasn't right and I  
3 wondered what the language actually was.

4 MR. SLOANE: It was "colored," and  
5 they might have used "Black" as a pejorative term,  
6 because that's what it was back in the middle 30's  
7 and '40's, just "colored." At any rate, we have  
8 some changes coming in the '50's, but the changes  
9 were not generated by either Congress or by the  
10 Executive Branch, certainly not by FHA and VA.

11 The change came from the courts. And the  
12 courts, by and large, all the way through,  
13 including the period since enactment of Title VIII  
14 have been the best source of hope and of progress.  
15 The Supreme Court decision which is famous to  
16 lawyers was the Shelley v. Kraemer which held that  
17 the state courts could not in keeping with the  
18 equal protection clause of the 14th amendment  
19 enforce racially restricted covenants.

20 They have a lovely mark, in fact, of that  
21 opinion also. For some reason, I guess the  
22 plaintiffs, the ones trying to enforce the covenant  
23 against the Shelley's, argued that it was not a  
24 violation of equal protection because the court  
25 would stand equally ready to enforce a similar

1 covenant against whites.

2 It's like arguing past reports that said  
3 equal protection is not achieved to be  
4 indiscriminate in that position of equality,  
5 uttered by Chief Justice Vincent who otherwise was  
6 no friend to civil rights.

7 FHA and VA finally moved to some action.  
8 It took them nearly two years after the cases were  
9 started, but they took action by changing their  
10 policy on restrictive covenants; that, in fact, it  
11 was using to insure loans on properties that  
12 carried restrictive covenants that were filed after  
13 February of 1950. Shelley v. Kraemer came down in  
14 May 1948. That was about the extent of it.

15 I want to mention one other program that's  
16 of special importance in terms of the two elements  
17 I mentioned earlier. It has to do with housing  
18 for the poor. The federal government was not  
19 entirely insensitive to those needs, especially,  
20 back in the '30's when we had a very large number  
21 of people who were temporarily poor.

22 That is, they were poor during the "Great  
23 Depression," but it was a temporary condition. This  
24 was the public housing program, designed in 1937,  
25 and it was one of the New Deal agencies, and the

1 people who came to work for the Public Housing  
2 Administration were among those imaginative,  
3 aggressive and vigorous of any New Deal people who  
4 came down to work on the New Deal.

5 They had a different policy on public  
6 housing. The FHA policy could be characterized,  
7 and I think in accuracy, as separate for whites and  
8 nothing for the blacks. The Public Housing Program  
9 insisted on racial, ethnic. That is, racial and  
10 ethnic minorities would be given their share of  
11 public housing; in fact, their share in adequate  
12 jobs as well, in accordance with their percentage  
13 of the tenant population. What's more, they made  
14 it stick. Public housing was in accordance with  
15 the custom and mores of the time and Equal Housing  
16 Opportunity Program.

17 Unfortunately, I said "in accordance with  
18 the customs and mores of the time." The decisions  
19 on location of public housing projects, tenants and  
20 the polices were made primarily by local public  
21 housing or state agencies. The federal role was to  
22 make sure that they followed the various legal and  
23 state requirements.

24 As far as the Federal Public Housing  
25 Administration's concern with the projects to be



1 located and occupied on a strictly racially or  
 2 ethnically, segregated basis, and I don't know of a  
 3 single public housing authority in the country for  
 4 the first 15 years or the first 10 years, anyway,  
 5 of the Public Housing Program that did not follow  
 6 an imperceptive equal policy. That is, the  
 7 projects were more rigidly segregated, but it was  
 8 equal as well as being separate.

9           Between 1950 and 1962 when President  
 10 Kennedy issued the executive order on all public  
 11 housing, all government agencies supposedly  
 12 followed the policy of neutrality, and, in fact,  
 13 toward the end of the decade in the '50's, they  
 14 instituted a policy of encouraging open occupancy.  
 15 This was particularly true of FHA.

16           When I was with the Commission the first  
 17 time around, I did some traveling and in my naivete  
 18 I tried to find out how that policy of encouraging  
 19 open occupancy by FHA could be implemented, and I  
 20 went to Cleveland on one occasion and a very nice  
 21 guy who was running the FHA insurance office, and I  
 22 said: "You are, of course, aware of the FHA policy  
 23 contained and directed from Mr. such and such that  
 24 directs all FHA insurance offices to encourage open  
 25 occupancy?" And he looked at me blankly and he

1 said, "Oh, yes."

2 I said, "What is your office doing to  
3 encourage open occupancy?" And he was a nice man  
4 and he said, "You really got me there, Mr. Sloane,  
5 because I can't think of a thing that we're doing.  
6 In fact, I wasn't even aware of that," which gave  
7 me a clue as to the relationship between FHA and  
8 Washington and insuring offices around the country.

9 I was out in Phoenix, Arizona, which is  
10 reminiscent of the of the wild, wild west, and I  
11 spoke to the FHA insurance offices over there and  
12 raised the very same question.

13 He stopped me before I got to "What he's  
14 doing?" I said, "Are you aware of this directive?"  
15 He said, "I'm not aware of that directive."

16 I said, "Why not? It was issued on such  
17 and such date and sent out to the field," and he  
18 said, "They send me a lot of this garbage all the  
19 time." He said, "I'm a busy man and I'm trying to  
20 insure loans on houses. I can't be bothered with  
21 the directives, so I don't bother with them and I  
22 can get away with it very easily."

23 A very funny thing happened to me as I'm  
24 reading to the Commission at this time. My last--  
25 the day before I left, a newspaper article came

1 across and it was the Memphis, Tennessee newspaper  
2 that the mayor announced with great pride that the  
3 Public Housing Administration approved 100 units of  
4 public housing, 50 for blacks and 50 for whites.

5 This was years after the Supreme Court  
6 decision of Brown v. Board of Education and much of  
7 the U. S. Court of Appeals decision told them to  
8 look on segregation in public housing as  
9 unconstitutional.

10 So the last thing I did before I left the  
11 Commission was to write a letter for the staff  
12 directors signature asking whether this is true--  
13 and sending it over to the Public Housing  
14 Administration across the street from us-- whether  
15 this is true, and if so, how the Public Housing  
16 Administration can permit deliberate segregation in  
17 light of all of the deliberate decisions.

18 When I left the Commission, I went over to  
19 what was then called the Housing and Home Finance  
20 Agency which was the predecessor of HUD, and I was  
21 supposed to be working on what we laughingly call,  
22 "Fair Housing" over there.

23 My first responsibility when I got to HHFA  
24 was to review a response by the Public Housing  
25 Administration to the letter that I had prepared

1 and it said the story is true. "We have approved  
2 50 units for the whites and 50 for the blacks in  
3 different parts of town, and we also agree with you  
4 on your interpretation of the judicial decisions,  
5 that it is unconstitutional. But we're not about  
6 to change policies that have been going on for the  
7 past quarter century unless Congress or the  
8 President directs us to do that."

9 So I went to my superiors and I said, "We  
10 can't send out a letter like that." He said, "Why  
11 not?" Well, I said, "You're admitting that you are  
12 aiding and abetting and permitting unconstitutional  
13 conduct, and that is unconscionable and you may be  
14 liable to all sorts of things."

15 He said, "Well, what do you suggest?" I  
16 said, "Well, I suggest that you withdraw from those  
17 commitments for the 50 units for blacks and 50  
18 units for the whites and withhold them until such  
19 time as Memphis agrees, that is, on ending its  
20 policies of segregation."

21 And they looked at me blankly and said,  
22 "Gee whiz, Marti, thanks an awful lot. It's really  
23 a pleasure to have you with us," and they sent the  
24 letter anyway.

25 Well, we had President Kennedy's executive

1 order, which I for one had great hopes for. I had  
 2 what I considered the timely honor of drafting it.  
 3 It didn't amount to a hill of beans for two reasons:  
 4 One, it's coverage. When you work it out, it  
 5 amounts to about one percent of the nation's  
 6 housing inventory.

7 The order is directing various federal  
 8 agencies to prevent discrimination in the operation  
 9 of the programs. What the agencies of the Public  
 10 Housing Administration, FHA and VA, omitted was  
 11 housing that was conventionally financed by  
 12 mortgage lending institutions that were very  
 13 strictly regulated and supervised and benefited by  
 14 one of the four federal agencies. That was later  
 15 called the housing and contained nationally  
 16 financed housing.

17 So it covered one percent, and even with  
 18 that one percent, the efforts made by the agencies  
 19 to enforce the order were trivial. My job for a  
 20 while there was one of the reasons I came back to  
 21 the Commission, was trying to urge members on to  
 22 greater efforts in implementing the order. But in  
 23 retrospect, I suffered from the same problem, this  
 24 inertia attitudinal anonymity. I couldn't  
 25 get them to budge off a dime. It is done only

1 because they've always been doing it that way and  
2 there's no reason to change.

3 So the way of implementing the order on  
4 the part of these agencies was strictly limited to  
5 sitting in their offices and waiting for people to  
6 complain and, you know, likely in the event that  
7 they didn't complain-- they got very few complaints--  
8 they would then, what we call, "process the  
9 complaint," which sometimes would take nine months  
10 to a year. Meanwhile, there were people  
11 complaining because they wanted a place to live and  
12 they haven't got the time. So it was not a great  
13 success.

14 Title VI of the Civil Rights Act of 1964  
15 had some tangential relevance to housing and had  
16 the benefit of congressional force to the promise  
17 of equal housing opportunity. In terms of coverage,  
18 it was limited to one-half of one percent of the  
19 nation's housing inventory.

20 1968 was a great year for housing and for  
21 fair housing, and what happened then is very much  
22 related to those two elements of fair housing that  
23 I mentioned earlier. In a period of less than four  
24 months, two branches of the federal government took  
25 three sweeping actions that are unprecedented.

1           First, in April, Congress passed the  
 2           Federal Fair Housing Law. It was, unfortunately,  
 3           in the wake of the murder of Doctor King and to an  
 4           extent it was an act of compassion and contrition,  
 5           but they passed it anyway. Two months later the  
 6           Supreme Court of the United States issued a  
 7           decision that held that a civil rights law had been  
 8           enacted in 1866 right after the end of the Civil  
 9           War.

10           It was really a national fair housing law.  
 11           "It provides"-- I'll paraphrase a little bit--  
 12           "that all citizens of the United States shall have  
 13           the same rights as white citizens thereof: to  
 14           inherit, purchase, sell, lease or convey real or  
 15           personal property." And since it was passed, it  
 16           assumes the authority of the 13th amendment of  
 17           prohibiting slavery. The Supreme Court said that  
 18           this was a prohibition against all racial  
 19           discrimination in housing, private as well as  
 20           public, no exceptions whatsoever.

21           Now, on August 1st an equally important  
 22           event that occurred, the enactment by Congress of  
 23           the Housing and Urban Development Act of 1968.  
 24           Prior to 1968, public housing had been the mainstay  
 25           program that served to meet the housing needs of

1 lower income families. At its height, it produced  
2 something like 20,000 units of housing a year,  
3 which is almost trivial compared to the need.

4 In 1968, the Public Housing Program was  
5 greatly expanded and Congress passed two new  
6 programs of housing assistance for lower income  
7 families. One was the home ownership called 235,  
8 because that's the section that it appears in, and  
9 the other was a rental housing program for lower  
10 income families called 236.

11 And the two major features of these two  
12 programs is, one, they had the capacity for and did  
13 indeed produce massive numbers of lower income  
14 housing units, something over 600,000 lower income  
15 units in the four years it was allowed to exist;  
16 and the second element, which we have not been able  
17 to go into very much, is that they did not permit  
18 local governments to exclude housing built under  
19 those programs the way public housing did it, and  
20 that meant particularly the suburban governments,  
21 the governments of suburbs in metropolitan areas.  
22 These programs could operate freely.

23 A couple of other good things that were  
24 happening at the same time. First of all, there  
25 had been a movement that had been growing for at



1 least the previous 15 years of private groups that  
2 were concerned about housing discrimination and  
3 wanted to do something about it.

4 For about the first ten years or so, they  
5 were usually volunteers, and they had no laws they  
6 could count on, and they would try to help  
7 individuals who were denied housing, mostly because  
8 of their race, to secure housing by persuasion,  
9 sometimes by picketing. There were no staffs and  
10 they operated as volunteers over a weekend  
11 somewhere.

12 By 1968, these private organizations,  
13 number one, had grown enormously in terms of  
14 numbers and also had managed to secure some  
15 financial support that they now had, though many of  
16 them had professional staffs. They'd become quite  
17 sophisticated in the ways of the housing and home  
18 finance industry and sometimes were becoming quite  
19 influential with local governments as well.

20 But, in addition, states and localities  
21 were passing fair housing laws. It turned out that  
22 in most cases they were much stronger than the law  
23 the Congress passed in 1968. Implementation was  
24 another problem. I'd like to say, by the way, that  
25 our organization did a detailed directory of state

1 and local fair housing agencies and laws under the  
2 contract with the Commission.

3 It's been in the process of editing for  
4 quite some time, but due out to the public within  
5 the next month or so, because they told me that in  
6 October not May. But, at any rate, it could be  
7 useful in that it doesn't merely describe what the  
8 laws contain or the provisions, but also what the  
9 capabilities of these agencies are and what it is  
10 they do.

11 But we couldn't get into how well they do  
12 it, and up until the last four or five years, the  
13 state and local agencies were not really doing a  
14 very effective job. They were not really doing and  
15 enforcing fair housing. These were promising  
16 developments.

17 I mentioned the two elements before that were  
18 needed for fair housing. Legal guarantees that the  
19 choice of housing without regard to race, color,  
20 religion and sex, national origin, and also a  
21 sufficient supply of housing so that people could  
22 really exercise that choice. And the actions in  
23 1968 gave a great promise that those two elements  
24 would be accomplished.

25 I might add that part of the 1968 Housing

1 and Urban Development Act contained a strict  
 2 statement and requirement of Congress, that of  
 3 committing the nation to a ten-year program through  
 4 which 26 million housing units would be produced.  
 5 That's an average of 2.6 million a year and 6  
 6 million of those would be for lower income families.  
 7 That's an average of 600,000 a year.

8 In light of the fact that housing  
 9 production, I think, had not ever even reached two  
 10 million, it just seemed like an overly ambitious  
 11 goal. But also in the past Congress had never  
 12 provided programs or the authorizations for the  
 13 money to get the job done.

14 This time they did, and during the first  
 15 few years of the George Romney Administration,  
 16 which started in 1969, we were actually exceeding  
 17 the goal on an average basis that Congress set  
 18 forth. It looked very promising.

19 Well, how does it work? I think the  
 20 simple answer is not very well. First of all, in  
 21 terms of eliminating housing discrimination, we  
 22 have some proof that it's not working very well.

23 Our organization did a massive nationwide  
 24 investigation of the extent of racial  
 25 discrimination in the sale and rental of housing.

1 Published in 1979, it was called, "The Housing  
2 Market Practice Act." It was done through  
3 investigation of 40 metropolitan areas and a lot of  
4 samples around the country. It was done through  
5 testing.

6 Do you all know what testing is? Let me  
7 tell you. Let's take a simple case. We're looking  
8 for a rental unit. A white person goes in-- a  
9 white family goes in and says, "We're looking for a  
10 two-bedroom unit to provide such and such and such,  
11 I earn such and such and I have such and such  
12 number of children."

13 The manager says, "Of course, we have four  
14 or five units that are soon to be leased. Take a  
15 look. They looked and said: "We'd like to let you  
16 know. We'd like to think about it."

17 Ten minutes later in goes a black family  
18 and says: "We want a two-bedroom unit. My income  
19 is either the same or a little higher up the social  
20 ladder, but my income is even the same or a little  
21 bit more and I have the same number of children."

22 The manager says: "Sorry, no vacancies."  
23 That's the way and the extent of racial  
24 discrimination in housing. It's sure fire and  
25 we've won lawsuits that way very easily. Without

1 testers for testing, how would that black family  
2 know there really were vacancies? This way you  
3 know.

4 Well, HUD did the analysis for a bunch of  
5 social scientists and what they found was the  
6 chances of a black family encountering  
7 discrimination in their efforts to secure rental  
8 housing was 72 percent of the time. They also said  
9 the chance of a black family having discrimination  
10 in the sale of houses was 48 percent. Well, that's  
11 pretty shocking. Then you wonder why is there  
12 disparity and why 72 percent of rental houses and  
13 42 percent in the sale of housing, and we found out  
14 why.

15 Hundreds of people were excluded from the  
16 analysis by racial steering. Do you know what that  
17 means? Does anybody know what that is? As a  
18 matter of fact, they completely skewed their  
19 results, that if a black family went to a broker  
20 and said, "We're looking for a \$50,000 house," and  
21 the broker said, "By all means, come in and sit  
22 down and have a cup of coffee. Have I got houses  
23 for you."

24 He shows him five houses all in black  
25 neighborhoods, and that's steering. It's illegal.

1 HUD says that's favorable. So it was trucked up on  
2 the wrong side. How they could do that, I don't  
3 know, but they did it.

4 At any rate, the situation was very bad in  
5 1979. HUD has done a smaller survey over the last  
6 year and found that nothing has changed as well.

7 In terms of supply of housing, which the '68  
8 Housing and Urban Development Act promised to  
9 produce in great, great numbers and due to the  
10 first four years, it only lasted for four years,  
11 from 1969 to 1973, January of 1973. Secretary  
12 Romney, under orders from the Administration,  
13 terminated all subsidized housing and called for a  
14 moratorium. Public housing was later usually on a  
15 small level.

16 Sections 235 and 236 of the program in  
17 combination produced over 600,000 units in four  
18 years and they were terminated forever. The reason  
19 behind it was really kind of interesting. One of  
20 the investigators, including the Commission,  
21 discovered abuses in the operation of 235 and 236  
22 programs. The abuses were the fault of FHA which  
23 had responsibility for the renting.

24 They had abdicated their responsibility.  
25 We did the report, the Commission did a report on

1 the 235 program and the home ownership was  
2 unbelievable.

3 First of all, lower income people would go  
4 to the FHA and they would say, assuredly, "We don't  
5 deal with you mortgage lenders. Go see a real  
6 estate broker." He goes to see a real estate  
7 broker who shows them existing housing and says, "FHA  
8 approved," of course, most people would think that  
9 the federal government is standing behind this. No,  
10 it wasn't at all. Some of these houses didn't have  
11 furnaces, some had no plumbing facilities.

12 So, their response, I would say ordinarily  
13 that, first of all, let's clean house. I don't  
14 understand where their responsibilities are, and  
15 get the program working properly under this.  
16 There's nothing wrong with the basic structure of  
17 the program. Instead the response is: "Terminate  
18 it. Terminate those programs." So maybe after  
19 that-- but that was the response.

20 The second was really bizarre. Here in  
21 face of the greatest period of the housing  
22 production that we've ever had, particularly for  
23 lower income people, HUD did a study called, "Housing  
24 for the '70's," and found that the combination of  
25 subsidized housing was not serving all families in

1       need. That's right.

2               It was a heck of an improvement over what  
3 we had before. They said the response was, "Well,  
4 that's the problem. We're not serving all families  
5 in need. Let's really beef up these programs so we  
6 do serve all families in need."

7               The response was, "Since we're not serving  
8 more families in need, terminate it so that we can  
9 serve nobody." That didn't make greater sense to  
10 me either, but that's what they did.

11               In time we got a new program of subsidized  
12 housing called Section VIII and after the start-up  
13 period began producing at a fairly substantial and  
14 promising rate, and then it was terminated by the  
15 Reagan Administration.

16               We also had appointed a President's  
17 Commission on Housing back in 1982. It was a very  
18 strange Commission. Usually the Administration  
19 appoints a commission when they want to deal with a  
20 problem and study it, and usually you round up the  
21 usual suspects.

22               They always have got to be bipartisan,  
23 geographically spread and from different walks of  
24 life. Not this one. Maybe from different parts of  
25 the country, but they were all Republicans, every



1 single member of the Commission is Republican, and  
2 all had come out strongly in favor of cutting out  
3 all social welfare programs and leaving only a  
4 safety net.

5 Well, one of the things about housing  
6 programs is houses are expensive and it's a  
7 question of whether you want to spend the money so  
8 people can be housed decently, and here's a  
9 Commission that starts off saying, "How are we  
10 going to cut social welfare programs down to the  
11 safety measures?"

12 Their conclusion and recommendations were  
13 that the problem facing this country in housing is  
14 not one of inadequate supply, but one of  
15 affordability. That's kind of interesting if you  
16 think about it a little bit.

17 The problem is always affordability. Even  
18 back during the Depression, if you could afford a  
19 house, you could go up to the builder and say,  
20 "Build me one," and he would be delighted to do it.

21 So there's always affordability, but what  
22 they had in mind was a replacement for all new  
23 construction programs with housing vouchers. That  
24 is, you give people a voucher which represents  
25 money, a certain amount of money, which will

1 supplement what they can afford to pay, 25 or 30  
2 percent of their income, so they can afford decent  
3 housing.

4 It's not bad so long as, number one,  
5 you're dealing with the housing market area where  
6 there's a vacancy rate of some size. If you're in  
7 an area-- there are a lot of them-- where the  
8 vacancy rates are two percent, one percent, zero it  
9 doesn't seem to make any economic sense at all.

10 You're just pouring money earmarked for  
11 housing. Without adding to the houses built, is  
12 inflating the cost of housing. In areas where you  
13 have vacancy rates of six, seven percent, there are  
14 a lot of those areas. Sure, we've got an existing  
15 housing supply and money could really do the job.

16 Well, it doesn't make too much difference  
17 because the issues are somewhat removed. The  
18 Administration's proposed budget now would call for  
19 a total end of any new assistance for housing of  
20 any sort for this coming year and they promised  
21 more of the same for next year.

22 I don't think that that's going to happen,  
23 but that's what they'd like to happen, and this  
24 housing voucher program, as they say, would be the  
25 answer to everything, is that it be funded at a

1 level that would produce 3,500 units a year. So it  
2 would assist 3,500 families in existing housing.

3 I mentioned earlier that public housing  
4 was limping along at it's peak of 20,000 a year.  
5 We're contributing 3,500 families who would be  
6 assisted nationwide for the entire year. That's  
7 absolutely incredible. There's got to be a ceiling,  
8 at least a compromise of Congress, but this kind of  
9 a policy is just a reflection.

10 It's unprecedented in our history since  
11 the federal government got into housing. That is  
12 to say, once we got the federal government into  
13 housing, we got in to stay. I'm not so sure now.

14 That's the problem with housing supply.  
15 What's gone wrong in fair housing in achieving the  
16 first element of fair housing? That is,  
17 non-discrimination.

18 Well, we had the Jones v. Mayer decision,  
19 which is terrific. There could be no  
20 discrimination, no racial discrimination in housing  
21 by anyone. How do you enforce it? You have to  
22 call and that's the way you enforce it, and we've  
23 got some problems there.

24 First of all, it places the full burden of  
25 securing rights under the 13th amendment under the

1 federal law of discrimination, and that's the wrong  
2 place to have the full burden, particularly if the  
3 housing discrimination wants to place it there. It  
4 doesn't want to attract any litigation.

5 Number one, litigation is expensive and  
6 you can't often get a lawyer who is willing to do  
7 it for nothing or foot the cost, and also it's a  
8 very intimidating thing to take your deposition  
9 under oath and you go to the court with all the  
10 formal cross-examination that you are subjected to  
11 during a deposition, and all you want is a place to  
12 live. By itself it's not a very effective way.

13 We do have the Federal Fair Housing Law  
14 and an enforcement there. It's a very serious  
15 problem. I will not get into that too much because  
16 it gets into legislation to amend that and Debbie  
17 is going to talk about that a little bit later.  
18 But enforcement is limited to three ways:

19 Complaints to HUD, only HUD has no enforcement at  
20 all. The pattern and practice type of lawsuits by  
21 the Justice Department, which at it's best, is a  
22 small staff and thirdly, again, by private  
23 litigation.

24 We had one experience in the HUD  
25 conciliation, but HUD can't enforce it. We had

1 represented somebody who complained to HUD whose  
2 subject wasn't all that important. It was a resort.  
3 A company had sold resort property and it happened  
4 to be a subsidiary of ITT, and they had sent out  
5 advertising that was really offensive, and so this  
6 person complained and we conciliated for three  
7 years.

8 Every time I thought we had agreed to an  
9 agreement, the guy representing Balcom Coast  
10 Company said: "No, no, no, we have to change this  
11 and that," and finally-- I'm a little slow-- I  
12 didn't get the idea, but they didn't intend to  
13 conciliate, just to keep us going until we die.

14 So we dropped the conciliation and filed a  
15 lawsuit. We got the NAACP, the National Urban  
16 League, our own organization, the League of Women  
17 Voters and every civil rights organization you can  
18 think of as plaintiffs and so it was the NAACP, et  
19 al versus ITT.

20 We negotiated for the the third time, and  
21 at that time, ITT was being accused of subverting  
22 foreign governments, it was being accused also of  
23 bribing federal officials in San Diego, and I guess  
24 they thought, "We don't need racial discrimination  
25 on top of that."

1           So within two weeks, we had a much better  
 2           hope to get conciliation. They give us attorney  
 3           fees, too. It was nice. I'm not telling you the  
 4           story to show how terrific litigation is, but  
 5           rather how weak conciliation is if we're not backed  
 6           by the force of law.

7           A couple of other problems with HUD: It  
 8           is given responsibility for administering and  
 9           enforcing, and one thing it could certainly do is  
 10          issue administrative-- I'm sorry-- substitutive  
 11          regulations on Title VIII, and they never did it.  
 12          It took them ten years to finally concede that they  
 13          had no authority to do it.

14          Then, at the very end of the Carter  
 15          Administration, I think it was December of 1980,  
 16          these regulations were issued in proposed form and  
 17          sent up to the Congress. In fact, one of the first  
 18          acts of the Reagan Administration would be to  
 19          withdraw them.

20          It was okay. The interpretive regulations,  
 21          they were issued, but the Federal Fair Housing Law  
 22          has existed for 17 years and HUD has never given  
 23          its expert opinion on it. Somebody did it. It's a  
 24          sorry situation.

25          The courts, if you'll look at the expert

1 agencies, were looking for some guidance to what  
2 this law means. Some actually seized on the  
3 flimsiest kind of a document as representing HUD's  
4 considered expert opinion. On one occasion, a  
5 letter from an assistant regional administrator of  
6 HUD to an assistant general counsel, "Hey, this is  
7 what I think. What do you think?"

8 HUD has spoken. It's the expert opinion  
9 and Title VIII is a great way. Well, it's not  
10 really. HUD hasn't done that. And on top of that,  
11 we are now facing a big battle on collection and  
12 analysis of data on race, ethnicity and sex until  
13 HUD can find out whether its programs are being  
14 carried out in a way that benefits minorities on a  
15 temporary basis.

16 OMB is fighting tooth and nail to get HUD  
17 to drop the data disclosure requirements, and I must  
18 say that with the principles of Secretary Pierce,  
19 he is prepared to fight to the end to maintain that  
20 it be recognized that without data, you don't know  
21 what's going on, but sometimes you have to have  
22 them to use them.

23 We've got the Justice Department. They're  
24 the one enforcement agency of the government. They  
25 can file lawsuits. It's an awfully big country and

1 at best, we have the top 18 lawyers working on fair  
2 housing litigation.

3 It's too big a country to handle that. In  
4 this administration, I'm not sure of the number of  
5 lawyers, but for the first year they filed no cases  
6 at all on fair housing. In the first three years,  
7 I think the total was six.

8 They file more cases now, but they are  
9 almost all cases of no importance whatsoever and  
10 measured by what pattern and practice should be and  
11 the proper use of Justice lawyers. That is, they  
12 offered no possibility of bringing about any kind  
13 of institutional reform in the housing and home  
14 industry, and two, they offered no possibility to  
15 establish any precedence.

16 It's largely busy work and it pains me  
17 because, number one, that is the one arm the  
18 government can enforce; number two, they have  
19 extraordinarily talented lawyers and that's a waste  
20 of a very precious resource.

21 We also have private litigation and we've  
22 got some problems there. The ones I mentioned in  
23 connection with the losses following the Jones v.  
24 Mayer.

25 The big problem is that there are a great,



1 great shortage of lawyers in this country who,  
 2 number one, know a lot about it and care a lot  
 3 about fair housing litigation and an enormous  
 4 shortage of lawyers who are willing to represent  
 5 victims of housing discrimination for nothing.

6 You can get an idea of what that shortage  
 7 amounts to when I tell you that our organization is  
 8 on the edge. At its peak, we had five lawyers for  
 9 litigation on fair housing. It represented by far  
 10 the largest single legal resource for fair housing  
 11 litigation in our country, second only to the  
 12 Justice Department, but we were on the more  
 13 important cases. That's what the resources are  
 14 like.

15 It's not all terribly discouraging. For  
 16 one thing, I mentioned private fair housing  
 17 organizations. There are an increasing number of  
 18 them. We try to coordinate a network of private  
 19 fair housing organizations around the country, and  
 20 there are about 75 of these organizations. They are  
 21 almost all professionally staffed. They are very  
 22 expert in investigative techniques like testing.  
 23 And a few years ago in a great case that the  
 24 Supreme Court decided called Havens Realty  
 25 Corporation v. Hohman, the Supreme Court provided

1 private fair housing organizations the right to  
 2 institute litigation on their own, at least in a  
 3 large number of cases. So that their role now in  
 4 litigation is not limited to assisting victims of  
 5 discrimination and encouraging as a sideline, but  
 6 actually joining in as plaintiffs, and they are  
 7 doing that increasingly.

8 Also the courts, which have always been a  
 9 friend to fair housing, with the issues of fair  
 10 housing, have been awarding very big money damages  
 11 in cases. In one involving-- it's a funny one out  
 12 in Chicago, one of the most segregated places in  
 13 the world-- there was a very exclusive community  
 14 with security guards and the like, and the house  
 15 was up for sale, and there was a family that  
 16 already made an offer to buy it. The asking price  
 17 was \$675,000 and most people thought they will come  
 18 down a little bit.

19 Mr. Phillips said, "You want \$675,000?  
 20 Sure, I'll buy it for \$675,000." There were two  
 21 problems as far as the community was concerned.  
 22 Number one, the Phillips family was black and  
 23 number two, Mr. Phillips had a lot of money, but he  
 24 had made it by running a stream of car washes which  
 25 wasn't quite the kind of social ladder type that

1 they had in mind.

2 So they gave him a little running around  
3 and put him through hoops and he ended up not  
4 getting the house. So he sued and he got the house  
5 through the lawsuit and he got a total of \$300,000  
6 in damages, a combination of compensatory damages  
7 and punitive damages.

8 That's a lot of money and it pretty well paid  
9 for half the house. He had plenty of money.

10 Just recently, I don't know how this  
11 happened precisely, but two black women, air  
12 traffic controllers, I think, wanted to rent an  
13 apartment right near the airfield where they work  
14 and they were turned down because of their race and  
15 they were awarded \$545,000 in damages.

16 Now, one of the ways you can determine  
17 damages, is what can the defendant afford, and this  
18 company apparently had thousands and thousands of  
19 dollars, but that's very nice. It's not typical.  
20 It's more typical in what we had where a family got  
21 a real running around and they were caused a lot of  
22 annoyance and discrimination.

23 They were a racially mixed family and it  
24 was just awful. We got \$15,000 compensatory  
25 damages and \$25,000 in punitive damages, a total of

1       \$40,000, which is more typical. That's a lot of  
2 money, though, and it is very encouraging. If you  
3 commit discrimination, it's going to be expensive.  
4 Maybe you can put a dent in it.

5               One other thing I forgot to mention, as a  
6 method of beefing up-- this is necessary-- state  
7 and local agencies and private fair housing groups  
8 is, as I mentioned earlier, the state and local  
9 agencies until about four or five years ago were  
10 not very effective. I'm not sure of how much they  
11 have improved, but I am sure they have improved  
12 effectively over the last four years, principally  
13 because of a new program that HUD is funding called  
14 the Fair Housing Assistance Program.

15               It's a known fact and it provides much  
16 more resources to state and local agencies. Number  
17 one, to help them process complaints more  
18 effectively and, number two, to stimulate them to a  
19 more constructive and creative thinking about  
20 dealings with systemic problems of housing  
21 locations, conducting testing investigations and  
22 initiating their own lawsuits. This has really  
23 helped a lot.

24               There's a new program which has been  
25 proposed with appropriations of \$10 million which

1 is a drop in a bucket, but still \$10 million by  
 2 fair housing standards is a lot of money, but it  
 3 did three things. Number one, it provided further  
 4 assistance to state and local agencies and, number  
 5 two, it would provide some money for education and  
 6 training to attract the attention of the industry  
 7 and the public at large, and third, it provided a  
 8 lot of money for fair housing organizations,  
 9 private fair housing organizations, for enforcement  
 10 activities including setting up a fair housing  
 11 litigation revolving fund. This is really terrific.

12 We all have our fingers crossed. As we  
 13 said, that's not enough and I'm going to end it in  
 14 a moment. There was a gentleman who used to be  
 15 very closely associated with Charles Averies who  
 16 died a few years ago.

17 He was a great fair housing urban planner,  
 18 a great civil rights advocate and a prolific writer  
 19 and a parliament speaker. I heard Charlie speak a  
 20 number of times. Invariably, he'd end his talk  
 21 with ten points.

22 Charlie was a remarkably smart guy. I'm  
 23 not even as smart as Charlie. I'm not even half as  
 24 smart as Charlie, but I'm going to end with four  
 25 points. There's four things that we have to do.

1 One, which is something Debbie will talk about, we  
2 absolutely have to strength the Fair Housing Law,  
3 and particularly in the enforcement areas as well.  
4 We almost got it done in 1980 through the House of  
5 Representatives and we almost got it through the  
6 Senate. We had a majority, but for some reason we  
7 had to break two filibusters and we only broke one,  
8 and we didn't get what we needed. We needed 60  
9 votes and we got 57. That's the first thing.

10 Secondly, we can't just sit on our hands  
11 waiting fo the Fair Housing Law to be amended and  
12 strengthened. We have to make much more effective  
13 use of the tools and instruments and mechanisms  
14 that are available right now. Particularly, we  
15 have to stir justice to greater action and make use  
16 of the asset they have of many talented lawyers.

17 We have to get HUD off their duff, which  
18 is going to be very, very difficult, having  
19 personal experience with HUD. We've got some other  
20 agencies that aren't carrying out their  
21 responsibilities, particularly agencies that are  
22 regulating mortgage lenders. We sued those four  
23 agencies back in 1976, terrific lawsuits and they  
24 settled it.

25 For a few years I was going between jobs

1 and monitoring clients and bringing about some kind  
2 of changes in the thinking and attitudes and ways  
3 of operating those institutions, and they are  
4 backtracking now and no where is that clearer than  
5 in the collection of race and sex data which they  
6 are eliminating.

7 Thirdly, we absolutely have to harness the  
8 potential resource of private fair housing  
9 litigation. We're ready, willing and able to be  
10 the major force for state and local agencies. The  
11 FHIT program of \$10 million-- that's nothing-- it's  
12 in real trouble. You can tell the members of  
13 Congress until you're blue in the face, "Only 10  
14 million dollars."

15 We're talking about hundreds of millions  
16 of dollars, but it's new money and Congress is not  
17 inclined to appropriate money and it's a new  
18 program, but even if we get that FHIP program or  
19 housing initiative program through, it's only \$10  
20 million and it's only the beginning and it's got to  
21 be enhanced so that we can really harness the  
22 protection resource sitting there like a sleeping  
23 giant.

24 And finally, we have to do something about  
25 housing supply and I'm not either or other on this.

1 I think the housing vouchers utilized with care can  
 2 be very important instruments for enabling people  
 3 to live in decent housing and live in decent  
 4 housing of their choice, but only in those areas  
 5 where you have got a vacancy rate that's sufficient  
 6 so that it can be used without involving the  
 7 economy and the whole area. Well, we've got to  
 8 combine that with strategic use of new construction  
 9 and new construction is somewhat expensive.

10 I do not follow that it is the sum, that  
 11 the only way to go on housing is new construction.  
 12 I think it's part of the thing we have to do. It's  
 13 expensive, but it's a question of whether the  
 14 country sufficiently recognizes the overwhelming  
 15 importance of decent housing for lower income  
 16 people to foot the bill. I think I better stop  
 17 right there. Thank you.

18 MR. CANALES: Now, at this time  
 19 we'll get questions from the committee members and  
 20 staff. If you have any questions, feel free. This  
 21 is an informal session.

22 DR. DE LA GARZA: The data on housing  
 23 discrimination against blacks is relatively and  
 24 recently gathered. Do you have similar kinds of  
 25 data by sub-groups for Hispanic populations and is



1 the pattern similar? That is, over time the  
2 decrees, is it simpler between groups?

3 MR. SLOANE: The only study that has  
4 been done at all of discrimination against  
5 Hispanics which was in Dallas back about four or  
6 five years ago, and what it found was that  
7 dark-skinned Hispanics were subjected to  
8 discrimination, or the chances, in all likelihood,  
9 the percentage is 95 percent.

10 What they seemed to be finding was that it  
11 was the skin color that was a very important factor.  
12 It's not conclusive. We've been wanting to expand  
13 that study beyond blacks to Hispanics and, in fact,  
14 to the female households as well, but the problem  
15 is cost.

16 The housing market passed a survey which  
17 we did. It was a million dollars and that's five,  
18 six years ago. We had inflation there and to  
19 expand it beyond that, the sale, how many sales  
20 they have, according to the social scientists,  
21 refer to a cost and that cost would be astronomical  
22 and would be much more difficult. As you said, you  
23 can't just say "Hispanics." What this guy is  
24 talking about, what area of the country are you  
25 talking about, and the different variations and the

1 different elements involved.

2 Do you know of anything in  
3 particular?

4 DR. DE LA GARZA: No, that's why I  
5 was sort of interested in that. There's been some  
6 work done recently. The housing discrimination  
7 study, that is what I'm engaging in, found that in  
8 1950 to '60, '60 to '70, segregation rates were  
9 going down. Then in Southern California where it  
10 was done just recently found that segregation was  
11 up.

12 We have the first example in desegregation  
13 studies among Mexican origin populations. For the  
14 examination of, I guess, where Mexican-Americans  
15 are now succeeding blacks rather than other groups  
16 and blacks succeeding other groups. The blacks are  
17 moving in and the Mexican origins and other Latin  
18 origins usually are moving in behind blacks.

19 MR. SLOANE: Where, in California?

20 DR. DE LA GARZA: In Southern  
21 California, the Los Angeles area and the  
22 communities around Los Angeles. Mexican-origin  
23 people are now taking over rather than moving out.  
24 It's sort of an interesting development.  
25 Residential segregation in those areas of Los

1 Angeles are now higher, '70 to '80 than they were  
2 60 to '70. They've have gone up.

3 MR. SLOANE: Are you familiar with  
4 the studies of Carl Clayborough?

5 DR. DE LA GARZA: I know the Tolmart\*  
6 index thing?

7 MR. SLOANE: Yeah, the segregation  
8 index.

9 DR. DE LA GARZA: We used that.  
10 That's what I'm referring to.

11 MR. SLOANE: Yeah, from '70 to '80,  
12 where you think there would have been great  
13 advances, there really weren't. What did happen--  
14 let me give you an example: There was black  
15 suburbanization between '70 and '80.

16 Now, Washington isn't typical of anything,  
17 but the one that I'm most familiar with had a lot  
18 of ways to conduct in Washington by the Greers.

19 What they found was that, you know,  
20 Washington D. C. is 75, 76 percent black, but 50  
21 percent-- I'm sorry-- 52 percent out of all the  
22 black residents in the Washington metropolitan area  
23 now live outside of the District of Columbia. Oh,  
24 boy, we're really making progress.

25 However, of the black suburban residents,

1 something like 80 to 85 percent of them lived in  
2 this small well-defined little area in Prince  
3 George County inside the beltway. Outside of the  
4 beltway you don't find them very much at all.

5 What seemed to have happened, in some  
6 places, at least, is that there has been some  
7 movement, but it's largely been an extension of the  
8 ghettos. A lot of the people, however, have moved  
9 in to better houses and that ain't to be sneezed  
10 at. The fact that this doesn't seem to reflect  
11 true freedom of choice is unfortunate, but at least  
12 they're living in better housing even though it's  
13 just an extension of the ghetto.

14 DR. DE LA GARZA: That's the pattern  
15 in Southern California. I was wondering if you had  
16 any data like that in Texas?

17 MS. LIPSHY: Like an index-- for  
18 Hispanics.

19 DR. DE LA GARZA: I'm not a lawyer,  
20 but what exactly is the similarity?

21 MS. LIPSHY: I don't think that I can  
22 explain it, but it is--

23 DR. DE LA GARZA: It's the Colvert  
24 index, using that in the Hispanic population.

25 MR. SLOANE: I don't think-- I don't

1 know of any such thing.

2 MS. LIPSHY: Because they're very--  
3 these figures on the similarities between blacks  
4 and whites over central cites is a very eloquent  
5 table.

6 MR. SLOANE: Yes. It would be  
7 extraordinarily difficult to do because you'd be  
8 dealing with such a much more various kind of  
9 population, different parts of the country,  
10 different kinds of Hispanic groups, different  
11 backgrounds.

12 I imagine, for example, an Hispanic who is  
13 ravened hair, white skinned, Spanish ancestry-- and  
14 they're all over-- would have much less difficulty  
15 securing any housing of his or her choice than a  
16 Hispanic who's ancestry goes back to the Indian  
17 population who was conquered by the Spaniards.

18 You have this in some of the black  
19 populations as well, but I don't think it's quite  
20 as complex.

21 MR. AVENA: The articles in the  
22 Dallas Morning News-- I think it's the one they had  
23 out of Dallas, a Hispanic, which it surprised me  
24 that there was that much discrimination against  
25 Hispanics, but it did bring out the shade or the

1 color of one's pigmentation or one's skin as a  
2 determining factor.

3 MR. COLEMAN: I'm Mr. Elijah Coleman  
4 from Arkansas. One thing that's bothering, at  
5 least, the black population in a city like Pine  
6 Bluff where we have only one black, is the fact  
7 that the professionals, let us say, when they moved  
8 to town, black professionals or other professionals,  
9 be they black or white, they've already determined  
10 where they ought to live and they make sure that  
11 doctors live where most of the doctors live,  
12 lawyers live where most of the lawyers live because  
13 we are all poor.

14 The realtors are trying to sell some of  
15 those houses that were built with the anticipation  
16 of new industry that never showed up, and they  
17 don't give a dern who they sell it to.

18 You know oftentimes there's been three  
19 doctors in town in the houses with the population  
20 of 57,000. There's been three doctors in town a  
21 year before the black community knows that they're  
22 there because they've lived exclusively in--

23 MR. SLOANE: The black doctor?

24 MR. COLEMAN: How's that?

25 MR. SLOANE: The black doctor?

1 MR. COLEMAN: Yes, sure. And I'm  
2 wondering how much is this effective all over the  
3 United States. I mean, the whole thing of  
4 economics who dictates what you will do about  
5 housing. For example, if you have poor white folks  
6 and poor black folks and you got houses that  
7 neither one can afford, the one who gets there  
8 first with the most, gets the houses. I mean is  
9 that a consideration?

10 MR. SLOANE: Well, let me try a  
11 partial answer, and economics is indeed a factor  
12 but by no means explains the continuation of rigid  
13 racial segregation between whites and blacks.

14 Affluent blacks tend to live in affluent  
15 black neighborhoods. Not in an affluent  
16 neighborhoods, generally, and poor blacks live in  
17 poor black and poor whites tend to live in poor  
18 white neighborhoods.

19 MR. COLEMAN: Let's deal with that  
20 and the land. There's a lot of land available  
21 because of the failure of farming. You know,  
22 there's no-- the realtors are trying to sell the  
23 land. They don't give a dern who they sold it to.  
24 I guess what I'm trying to size up in my mind so  
25 that we can eradicate the economy of it all, the

1 economics of it all, the whole thing of the housing  
2 situation would disappear.

3 I'm stuck in a black neighborhood with  
4 everything around me not worth more than five or  
5 six hundred dollars. I got stuck there because I  
6 had to invest in houses in the neighborhood-- well,  
7 the two-mile limit, because the only place I could  
8 borrow money at that time was VA direct. So I have  
9 a \$100,000 home sitting among \$500 houses.

10 I'm a victim of the times because that's  
11 the best I could do, but, you know, if it had been  
12 yesterday, I could be living where the fat lawyer  
13 is with a swimming pool in his front yard. To me,  
14 I just see so much economics in the whole thing  
15 until I'm just wondering how do you do it without  
16 the improvements of economics?

17 The young men, black, who are buying the  
18 \$89,000 home in Pine Bluff now work the Cottonmill  
19 Railroad because they're being laid off now, but  
20 who are they going to sell to next. But that's the  
21 reason they sold these young blacks those homes  
22 because the homes in the white neighborhoods were  
23 for \$89,000 because they were the ones who could  
24 afford to pay the loan.

25 MR. CANALES: Somebody asked a



1 question. Do you have a question relating to what  
2 the gentleman is saying?

3 MS. BERRIOZABAL: Mine is not a  
4 question. It relates to what the gentleman is  
5 saying, and as you were talking about fair housing,  
6 about discrimination in housing, I keep thinking of  
7 something else.

8 It doesn't seem to me that the issue is  
9 who is willing to let who live where, but where the  
10 people are going to seek housing based on their  
11 economics, based on how much money they have. You  
12 go to the apartment or you go to the neighborhood  
13 where you think you will be able to afford it.

14 It's a kind of discrimination that's an  
15 economic discrimination. I don't think anybody is  
16 sitting around saying: "You're black and you're  
17 white," although I'm sure that that still happens.  
18 I am a public official in the area that surrounds  
19 the downtown court and it's older neighborhoods,  
20 and there are really three kinds and I read some of  
21 this material there.

22 One neighborhood can be the historic,  
23 gentilefolk neighborhood that already has houses  
24 selling for \$740,000 and for the end of the decade  
25 will sell for a million, I'm sure. It's right next

1 to downtown, but that one already went.

2 The other one is the one that we call,  
3 "in transition," where there's still very good  
4 housing and where individuals who are perhaps going  
5 to buy their first home look there because there's  
6 a mentality that, "Hey, you know, it's okay to live  
7 there now," and they go and it's too expensive to  
8 have that house, and there's no help for them, and  
9 I'm talking about lower, middle income people. So  
10 what they're doing is they're buying homes that are  
11 not very well built out of the city.

12 They're buying out in the county to where  
13 in ten years you're going to have the barrios in  
14 those areas. Sometimes adequate city services are  
15 available, but those people that would be the  
16 people who would give an injection of vitality to  
17 older neighborhoods where the old are still living  
18 and a lot of poor people are moving out, not by--  
19 they'd like to live closer to downtown or to be in  
20 the city, but finances make it impossible and  
21 they're moving out.

22 And then the third kind of neighborhood is  
23 the one where the Mexicans or Chicanos, blacks,  
24 still live and they're the ones where the housing  
25 is bad and again no money to fix it.

1           So the statement is it's not really a  
2 question, it's really a statement, and I agree very  
3 much with this gentleman, that it's a question of  
4 economics that's causing this and what happens from  
5 a public policy standpoint is that there is no  
6 money to leverage anything with.

7           See, before, if you had money, you had the  
8 235 or the 236 or 230, whatever. The Government  
9 could dictate some policy and direct where people  
10 were going to live. That's gone now. We don't  
11 have any.

12           MR. SLOANE: Let me see if I can  
13 answer you, and perhaps in part, you're right.  
14 Economics is very important. Economics and  
15 discrimination interrelate with one another.  
16 You're absolutely right. If you have people who  
17 don't have a heck of lot of money, then the only  
18 place they can live is in areas where it doesn't  
19 cost a heck of a lot of money to live and those  
20 aren't very nice areas and they tend to be in the  
21 decaying form, which is very unfortunate because  
22 jobs, particularly manufacturing jobs, are way out  
23 in suburban outline areas.

24           They can't get there to take those jobs.  
25 Sometimes they don't even know the jobs exist

1 because they live so far way. So what you need is,  
2 let's increase one's income. That's nice. The  
3 rising tied flows all about us. That's going to  
4 take a long time.

5 Another partial answer is let's provide  
6 some housing with subsidies so that lower income  
7 people will be able to afford and let's locate this  
8 housing in areas so that they can exercise some  
9 semblance of freedom of choice, particularly in  
10 areas that are in close proximity to where the jobs  
11 are.

12 But race comes in there and discrimination  
13 comes in. One of the reasons that it's been so  
14 difficult to provide subsidized housing in largely  
15 white, as well as suburban parts of the  
16 metropolitan areas, is because there is a  
17 perception on the part of communities which is  
18 reflected by your local officials that subsidized  
19 housing means minority housing.

20 In public housing, my guess is that close  
21 to half of the public housing units-- public  
22 housing waiting list-- are racial minorities. It  
23 isn't true of the other subsidized housing programs,  
24 but there is that perception: . If you allow  
25 subsidized housing and it's not just you can get

1 lower income people here, but we're going to get  
2 minorities in here and we don't want that, and so  
3 what you need is you need both.

4 You have to have strict enforcement of  
5 fair housing laws so that there can be freedom of  
6 choice and it can be exercised, and also you need  
7 the housing that people can really choose once  
8 their legal right of freedom of choice in housing  
9 is guaranteed.

10 Without the housing, you're absolutely  
11 right, they can't choose to live in a \$200,000  
12 house when they earn \$8,000 a year. So that kind  
13 of a choice is illusory, but they don't have to  
14 live in the \$200,000 house. They can live in  
15 decent standard housing so long as there is enough  
16 money provided so that they can afford it without,  
17 you know, starving themselves or for other basic  
18 needs.

19 So I'm not disagreeing with you. In fact,  
20 if I understand you correct, maybe I think that's  
21 right, economics plays a very important role, but  
22 it's so closely related with discrimination.

23 That's why I mentioned in a rather cryptic  
24 way that one of the important things about 235 and  
25 236 programs is that local governments could not

1 veto the construction of housing under those  
2 programs.

3 Under public housing they could. Under  
4 every other subsidized housing program it was a  
5 right of local government veto, not for 235 and 236.  
6 That's why we got involved in a lot of litigation  
7 on exercise of land use authority to keep out  
8 housing under the 235 and 236 programs.

9 In the minds of a lot of people, that  
10 means minority housing and we don't want that at  
11 all. They're in a lot of lawsuits, most of them  
12 successful, which challenge those exercises of land  
13 use authority, exclusionary land use authority as  
14 racially discriminatory.

15 MR. CANALES: We're going to have to  
16 limit this to one more question. Doctor.

17 DR. DE LA GARZA: My question was  
18 covered. Thank you very much.

19 MR. CANALES: Feel free to get  
20 yourself a cup of coffee. We'll not have a formal  
21 break due to the time limitation.

22 At this time we will now introduce Ms.  
23 Deborah Snow who will speak to us with respect to  
24 legislative proposals to amend the Fair Housing Act.

25 Deborah Snow is the Assistant Staff

1 Director for the Office of Federal Civil Rights  
2 Evaluation of the United States Commission on Civil  
3 Rights. We're very fortunate to have her.

4 MS. SNOW: In a sense here, I'm  
5 going to be picking up where Marti left off,  
6 talking essentially about Title VIII, the Civil  
7 Rights Act of 1968, the Fair Housing Act and  
8 proposals that have been made to amend it that are  
9 pending or will be pending shortly in the Congress.

10 As indicated in some of the materials in  
11 your packet, civil rights and housing are protected  
12 by several different laws including Title VI and  
13 Section 109, and there's a list there taken from an  
14 earlier report by the Commission. But sort of the  
15 heart of the Civil Rights Act of 1968 is in Title  
16 VIII, and as Marti indicated, Title VIII had some  
17 very important symbolic value in its passage, but  
18 it did not contain a huge coherent strong  
19 enforcement scheme.

20 I generally describe it as a very passive  
21 enforcement scheme. It's quite driven in the sense  
22 that before the Department of Housing and Urban  
23 Development can take action, that is, to receive  
24 complaints and then act.

25 Title VIII enforcement relies heavily on

1 private action which means action by victims of  
2 discrimination or people who believe they're  
3 victims of discrimination.

4 The Justice Department has a limited role.  
5 Again, as Marti indicated, they haven't always been  
6 as active. They haven't put a lot of resources  
7 because of other demands on the Civil Rights  
8 divisions' budget into housing enforcement so that  
9 you have a three-pronged enforcement scheme built  
10 into Title VIII through HUD activity, Justice  
11 Department activity and private action, but in no  
12 case are those prongs strong enough to support a  
13 strong enforcement.

14 I wanted to give you a sense of what the  
15 enforcement situation is with regard to complaints  
16 right now just so that you have a little more  
17 concrete feel for it.

18 Over the last couple of years HUD has been  
19 averaging about 46 hundred Title VIII complaints.  
20 As Marti indicated, under Title VIII HUD can  
21 attempt to conciliate these complaints. In other  
22 words, really sit down with the parties and try to  
23 work out a settlement, and only about 20 percent of  
24 these cases are successfully conciliated. So that  
25 a substantial portion of them are not



1 satisfactorily resolved to the power that HUD has.

2 Of HUD's cases, more than half are  
3 backlogged-- this is by HUD's definition. That  
4 means that the complaints are more than 90 days old  
5 and they're sitting there unresolved.

6 In fact, more than a third of what we call  
7 "old," that means that they're more than 180 days  
8 old and some of them are very old.

9 What this means is that you have an  
10 inventory of old complaints sitting there, most of  
11 which will, under the current scheme, not be  
12 resolved in a satisfactory manner to the  
13 complainants under the current Title VIII  
14 procedures.

15 Title VIII also provides once HUD has not  
16 successfully conciliated a complaint, they're  
17 really are two options that can take place. One is  
18 that nothing happens, that the complainant just  
19 forget it, and the other is that the complainant go  
20 to court, and that's essentially the enforcement  
21 scheme. HUD can refer to the Justice Department  
22 those completed Title VIII investigations where  
23 they believe there is a pattern and practice  
24 violation.

25 Over the last several years HUD has only

1       been referring to three or four pattern or practice  
 2       cases. Now, presumably, those will be cases that  
 3       have a real legal significance and can set some  
 4       legal standards using the courts. Well, they've  
 5       been referring three or four. In the last year HUD  
 6       referred exactly one case to the Justice Department.

7               There have been a lot of controversies of  
 8       stress and strain between HUD and Justice. Justice  
 9       says that HUD sends over old cases that aren't well  
 10      investigated and have to be completely  
 11      reinvestigated and may not raise proper issues.

12              Some of these are bureaucratic politics'  
 13      problems. Some are different standards and  
 14      priorities in the two agencies, but the net result  
 15      of this is that under the current scheme for Title  
 16      VIII enforcement, the pattern of practice  
 17      provisions essentially are meaningless as an  
 18      enforcement technique.

19              Where the Justice Department has  
 20      independent authority for litigation, as Marti was  
 21      suggesting, it's been a very, very limited program.  
 22      Over the last couple of years they've brought their  
 23      case average up to eight and a half cases a year.  
 24      After a drop down in '81 to zero it has been  
 25      picking up.

1           This last year the Justice Department has  
2 brought a lot more cases, but when we say, "a lot  
3 more," we're talking in the range of, I think, 16  
4 to 20 cases and a lot of these have involved  
5 resolving problems of individuals in rental  
6 situations and individual housing apartment units,  
7 and that sort of thing.

8           A number of them, for reasons that are not  
9 at all clear, involve getting injunctions against  
10 racial covenants. Racial covenants were outlawed  
11 by the courts as unenforceable in the courts in  
12 1948, and it's not quite clear why Justice is using  
13 their scarce resources to bring these suits against  
14 racial covenants. And then in the last six to  
15 eight months, the Civil Rights Division has become  
16 increasingly concerned about two new issues.

17           One has to do with housing quotas or  
18 integration maintenance, it's a Starrett City issue  
19 and has involved itself in the Starrett City case  
20 in New York, and then another involves something a  
21 little closer to you all.

22           HUD has begun to monitor very closely and  
23 is looking at the possibility of litigation-- I  
24 mean, Justice-- pardon me-- looking at the  
25 possibility of litigation to avoid, as it has been

1 put, having a moving van replace a school bus in  
2 places like Clarksville where the judge has ordered  
3 that people be moved to try to desegregate  
4 segregated public housing.

5 Overall, then, this enforcement scheme  
6 under Title VIII is extremely ineffective. This is  
7 not just a conclusion that's been reached by the  
8 Commission, though it certainly has been repeated  
9 by the Commission over the years. There's a  
10 widespread agreement on this without regard to  
11 party, without regard to ideological position.

12 When President Reagan made his first State  
13 of the Union address in 1981, he called for a new  
14 fair housing law that would strengthen Title VIII  
15 enforcement. He called for this again in 1983. As  
16 recently ago as-- I guess about two weeks ago--  
17 Secretary Pierce again stated that the commitment  
18 of this administration to new fair housing  
19 enforcement legislation says that the problems with  
20 Title VIII enforcement are fairly well known, and  
21 there is general agreement that Title VIII is about  
22 to be strengthened.

23 One of the interesting problems is that  
24 despite this widespread agreement, there has been  
25 no satisfactory agreement no real agreement on what

1 the new legislation should contain.

2 As Marti indicated, in 1980, civil rights  
3 groups came close to passing through the Congress  
4 new, stronger amendments to Title VIII, but they  
5 failed in the Senate on the filibuster. The  
6 proposal since 1980 have gone exactly no where.

7 What I wanted to talk about this morning,  
8 and I'll try to not get bogged down in a lot of  
9 details about which section of which laws and  
10 things, but the central issues that are being  
11 discussed now that have been discussed in the last  
12 couple of years and are being discussed again now  
13 and being drafted into new legislature that should  
14 be introduced before very long.

15 The players in this area essentially have  
16 been Senator Hatch who is probably, I guess,  
17 largely in his capacity as Chairman of the Senate  
18 Judiciary Committee, subcommittee on the  
19 Constitution, has had a Title VIII amendment, a  
20 bill for a Title VIII amendment that he has  
21 re-introduced now since 1981.

22 He has introduced that again this session  
23 of Congress, but there were no hearings that have  
24 been held or anything. Senator Mathias of Maryland  
25 has been a leading figure in trying to develop fair

1 housing amendments going back into the middle 1970s.  
 2 On the House side, Congressman Edwards and  
 3 Congressman Hamilton Fish of New York have been  
 4 involved in this.

5 So that you have a group of congressional  
 6 players who have been at it now for, gosh, almost  
 7 ten years, trying to come up with amendments to  
 8 Title VIII, and as I mentioned, the Administration  
 9 has committed itself to a bill and in fact developed  
 10 a bill that was introduced a couple of years ago,  
 11 and I want to talk to you a little bit about how  
 12 that's developing now.

13 There are several areas of agreement about  
 14 what's needed to amend Title VIII. One of them has  
 15 to do with strengthening the role of HUD. Whatever  
 16 other changes are made, provide HUD with more  
 17 authority to try to reach settlements in  
 18 discrimination complaints.

19 Depending on which piece of legislation  
 20 you're talking about, the exact terms may differ,  
 21 but everyone who's involved, particularly the  
 22 Administration and Senator Mathias and Congressman  
 23 Fish, all that legislation involves is trying to  
 24 provide HUD with authority to refer individual  
 25 complaints rather than just pattern or practice

1 complaints to initiate investigations.

2 At this point, HUD is not able to initiate  
3 investigations. So discrimination problems just  
4 have to wait until a complaint comes before it.  
5 Strengthening the whole complaint process, to  
6 provide more time to file complaints, to provide  
7 for voluntary binding arbitration to settle  
8 complaints rather than having to move into judicial  
9 procedures, to strengthen the roles of state and  
10 local agencies who have relationships with HUD to  
11 help process HUD's complaints, in some cases, to  
12 provide for legal action. The whole housing issue  
13 is open while the complaint process is going on.

14 The whole cluster of ideas, all of which  
15 have to do with strengthening HUD's role in  
16 enforcement, in administrative enforcement of fair  
17 housing, and there is a fair amount of agreement  
18 that that's necessary and that there are a number  
19 of steps that can be taken to do that.

20 I think there's general agreement among  
21 the parties, and I would include Senator Hatch in  
22 this, that there has got to be a much more coherent  
23 and comprehensive enforcement scheme for fair  
24 housing rather than this sort of a little bit of  
25 private action, a little bit of Justice Department,

1 a little bit of HUD.

2 Now, the different legislation varies here  
3 most sharply as to how those enforcement schemes  
4 should really work, but it is generally agreed that  
5 there needs to be more comprehensive enforcement.  
6 There is, as between the administration and most of  
7 the congressional people who are interested in this  
8 agreement, that Title VIII coverage should be  
9 broadened to provide for some sort of coverage or  
10 protection against discrimination on the basis of  
11 handicapped.

12 Exactly how that's defined and how the  
13 burden of providing accessible housing should be  
14 allocated before there is disagreement, but there  
15 is agreement on broadening coverage in that area.

16 I think there's general agreement that  
17 there should be stronger remedies, particularly in  
18 the areas of civil penalties and removing the  
19 current ceiling on punitive damages.

20 Senator Hatch would keep \$1,000 limit on  
21 that, but all the other people involved are willing  
22 to see that ceiling lifted.

23 It's very clear from statements by  
24 Secretary Pierce that he agrees with the general  
25 principle that I think most students of fair



1 housing enforcement have taken, that the heart of  
2 real compliance with fair housing has got to be  
3 voluntary compliance.

4 As with any other law, there is simply no  
5 way the federal government can run around enforcing  
6 the law everywhere in every jurisdiction in every  
7 situation. The heart of it has got to be  
8 voluntary compliance and the heart of  
9 administrative enforcement has got to be  
10 conciliation, because there's no way you can go  
11 into court on every single one of those 4600  
12 complaints.

13 For those more voluntary mechanisms to  
14 work, there is general agreement that there's got  
15 to be some muscle behind them, whether it is  
16 through-- ultimately as always, through judicial  
17 enforcement, but whether there is an intervening  
18 administrative enforcement mechanism, the goal is  
19 to have maximum voluntary compliance. But  
20 voluntary compliance won't work if there is not  
21 some enforcement mechanism standing behind it.

22 I think that experience has taught that.  
23 There is simply no argument about that aspect of it  
24 within the Administration. Where the areas of  
25 disagreement arise and where the legislative battle,

1 once it is joined will be thought out, have to do  
2 with several issues, some of which are really very  
3 broad and get to underlying issues about what you  
4 think discrimination is and what you think of  
5 America and where you think American society really  
6 is with respect to housing discrimination.

7 The central issue that has been raised has  
8 to do with the enforcement scheme and as we  
9 generally talk about it in somewhat oversimplified  
10 terms, and should it be an administrative  
11 enforcement scheme or a judicial enforcement  
12 scheme? In fact, all the variance have some kind  
13 of administrative role and some kind of judicial  
14 role, but the question is: What should be the  
15 central thrust of enforcement?

16 Should there be essentially reliance on  
17 private action and Justice Department action in the  
18 courts, both as a spurt to encourage voluntary  
19 settlement and as the primary federal enforcement  
20 mechanism? Or, should there be some sort of  
21 administrative process that attempts to settle  
22 these short of going into the courts?

23 There's a long and tangled history of how  
24 specific legislative traditions for administrative  
25 enforcement have developed and I'm not going to get

1 into all that with you, partly because I don't know  
 2 all the details of it and partly because it's  
 3 simply very confusing and I'm not sure that it's  
 4 going to be relevant when new legislation has  
 5 proposed what the specific details of the last bill  
 6 and the bill before that were.

7 The essential issue is whether there  
 8 should be some mechanism to move individual  
 9 complaints that are not successfully conciliated.  
 10 As I suggested, that most of the individual  
 11 complaints that would not be successfully  
 12 conciliated into a process of resolution through an  
 13 administrative law judge system, which is a common  
 14 system in the Federal Government, or whether those  
 15 individuals complaints, as the Administration bill  
 16 would have it, as Senator Hatch's bill would have  
 17 it, would be shifted over to the Justice Department  
 18 for it to follow up through judicial enforcements  
 19 or going into court.

20 The general arguments are, I think the  
 21 Administration and Senator Hatch have been  
 22 concerned not to have more bureaucracy, not to have  
 23 more complex administrative structures piled on top  
 24 of each other, not to have slogans or a popular  
 25 sentiment, was that HUD should not be the judge and

1 the jury and the prosecutor in these cases.

2 So that there needed to be institutional  
3 separation of the decisions that are made about  
4 them. Aside of the argument for administrative  
5 resolutions, it is believed, though you can argue  
6 about it, that administrative resolutions are more  
7 expeditious. It certainly creates less burden on  
8 the federal courts having an administrative  
9 mechanism than to have all your enforcement  
10 activity have to take place through lawsuits.

11 And also an administrative mechanism puts  
12 less burden on victims. There's simply no way,  
13 given the resources of the Justice Department, that  
14 4,000 complaints a year are going to be litigated  
15 by the Justice Department.

16 All that happens is, if all those cases  
17 were referred by HUD as not conciliated, Justice  
18 would have some criteria and pick and choose a very  
19 small number. My guess is it's an extremely small  
20 number, well under 100 and probably under 50 to  
21 litigate.

22 MR. GRAGLIA: Well, in all of these  
23 cases of race discrimination and that is why one  
24 needs so much conciliation and complex mediation in  
25 other procedures if what we're talking about is

1 race discrimination. That is, the question is:  
2 Were these people denied housing on the ground of  
3 race or not, and it ought to be ordinarily apparent  
4 and a clear issue.

5 Is it not the case that the difficulties  
6 are hereon and that other things are mixed up. Mr.  
7 Sloane, for example, injects into his discussion  
8 under the rubric of Civil Rights, the matter of  
9 federal government provides you housing.

10 Well, that obviously is not a matter of  
11 race discrimination. That's a matter of the nature  
12 of the political economic system of countries that  
13 apparently are proposing to be changed, whereby we  
14 don't let housing be a matter of free markets.

15 Now, obviously if we're going by issues  
16 like that, we indeed have some complaints here.  
17 But if the issue is: Are people being denied  
18 housing simply because of race? That's a fairly  
19 simple question. As Mr. Sloane said, the doctor can  
20 pay the \$675,000 and they told him no, because he  
21 was black. They didn't know car washes were such a  
22 reputable business, so I take it, because he's just  
23 black.

24 MS. SNOW: But the doctor had to go  
25 to Court?

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MR. GRAGLIA: Yeah, the doctor collected \$300,000 in punitive damages. That sounds like a terrific incentive. Let that news get out. I suspect that would be an enormous deterrent to be brought, you know, deny housing on the grounds of race.

MS. SNOW: Well, the cases that I'm talking about are cases that involve allegations of denial of access to housing on account of race and national origin. There were 600 complaints that HUD is currently processing. That's what they involve. This does not get into the broader area of whether there is housing, whether the federal government has housing programs or things like that.

There are other separate--

MR. GRAGLIA: And there are difficult factual issues in all these cases, and as they say, you're denied the housing because of race, and that's factually in dispute. It's really difficult, is that it?

MS. SNOW: The people who are charged with discriminating, deny that they are discriminating. As Marti described, a couple of cases he had been involved in or was aware of involved efforts to conciliate these, and in some

1 ways housing cases are among the easiest of all  
2 cases, much easier than employment cases to  
3 conciliate.

4 You have a person who wants a unit. You  
5 have someone who has a lot of units. You stick  
6 someone in a unit. In theory, they should be very  
7 easy to solve, but they're not necessarily easy to  
8 solve as long as the alleged discriminators do not  
9 feel any need to settle the cases.

10 MR. CANALES: Responses, counter  
11 responses?

12 (No responses).

13 MS. SNOW: In addition to the central  
14 issue that has to be worked out in respect to this  
15 legislation, is whether the essential approach of  
16 enforcement should be through the courts on a case-  
17 by-case basis for compliance, or whether there  
18 should be administrative enforcement mechanisms.

19 As I indicated, there is a area of  
20 disagreement about how the burdens of providing  
21 accessible housing for handicapped should be  
22 allocated and that different proposed legislation  
23 has different ways of defining who is handicapped,  
24 who should be protected under Title VIII and also  
25 for which kinds of handicapped should be protected,

1 and also to what extent landlords should have to  
2 make accommodations.

3 Some of the legislation that's been  
4 proposed also would provide Title VIII protection  
5 on the basis of familial status, and essentially  
6 without getting into the language of this, it  
7 protects against people, or families being  
8 discriminated against because they have children.  
9 And there are exceptions here with regards to  
10 housing for the elderly, and so on.

11 The Administration has not accepted this  
12 as an area that should be added to Title VIII.  
13 This is an area, again as Senator Mathias and the  
14 other congressional proponents, feel fairly  
15 strongly about it. It's not an area that Senator  
16 Hatch has demonstrated any interest in. So this is  
17 an issue that's going to be thought out.

18 Another area that Senator Hatch has raised  
19 that the other bills did not raise is the area of  
20 standard of proof, and this is a question that  
21 comes up with all civil rights legislation, and  
22 that is: Should violations depend on proof of  
23 intent to discriminate or should there be a  
24 standard on discriminatory effect?

25 Senator Hatch has made this a key point in



1 his bill. In the interest of time and without  
 2 getting into a long discussion of intent versus  
 3 effect, neither of the other bills has attempted to  
 4 raise this, and I'm not sure anyone else wants to  
 5 get into this other than Senator Hatch.

6 MR. GRAGLIA: Can you give me an  
 7 example of the housing situation? I'd like to know  
 8 how that's relevant. It seems to me that if  
 9 somebody has an apartment apparently available and  
 10 they deny it to a black, we don't need anything  
 11 more. In other words, there would be no further  
 12 questions or difficulties. With the apartment  
 13 available, because it was denied to this person who  
 14 is black, is there any apparent reason, other than  
 15 race, why it was denied? If not, it's a violation.

16 What is the intent? I know it presents  
 17 problems in many situations, but I don't see why it  
 18 should here.

19 MS. SNOW: I think in particular  
 20 situations you could have policies, say, rental  
 21 policies, that were neutral, that had an effect of  
 22 excluding blacks as a group.

23 MR. GRAGLIA: Such as?

24 MS. SNOW: Well, nothing comes to  
 25 mind at the moment. Marti, are you familiar with--

1 MR. SLOANE: You're right. For  
2 example, there's a project that's proposed for an  
3 area and they need the zoning change, and it's well  
4 known that racial minorities would be living in  
5 this virtually all white community, and the city  
6 council turns down the zoning change.

7 Now, you have to prove that going into  
8 their mind, why did they turn down the zoning  
9 change? Was it because they don't want blacks here?  
10 The result is racial discrimination, usually; but you  
11 also have to have, for example, that on every  
12 previous occasion when the zoning change was  
13 proposed, as there would be residential property  
14 that whites would live in, the city council  
15 routinely approved and that this time they do not.

16 Usually you have to have more evidence,  
17 but it eliminates the problems that plaintiffs  
18 would otherwise face of proving that the motivation  
19 or the purpose or the intent underlying the action  
20 or refusing to act was racial exclusion.

21 MR. GRAGLIA: If the scope of the  
22 problem being entered here, is the case that all  
23 middle class communities prefer not to have low-class  
24 people living in a community, and that's sort of  
25 like gravity. It's a very basic fact of life.

1 When the Jews of Forest Hill in New York, the City  
2 proposed putting low income communities into Forest  
3 Hill, there was a revolution. Many people who were  
4 extremely liberal on every other issue up to that  
5 time.

6 So it's a fact of life that higher economic  
7 class areas resist having the lower economic class  
8 people within. That's the point of having money.  
9 That's why people with money join country clubs so  
10 they can live in higher class surroundings and  
11 avoid the impact of the lower class.

12 Now, what you would do, what this would  
13 amount to, if you say it's just a fact on a high  
14 class community or a middle class community says:  
15 "We reject any changes that would allow low income  
16 groups to live here."

17 Well, the effect of that would almost  
18 surely be to exclude blacks from the county in  
19 nearly all cases, and what you're saying, then,  
20 under the rules of race discrimination, what you'd  
21 be saying is that in this country middle class  
22 people may not have the middle class areas. The  
23 government will by law inject and subsidize low  
24 income people in the middle-class areas.

25 I'm suggesting that's a revolutionary

1 chain in the political economic system of this  
 2 government. See, we're talking about race here.  
 3 Should there be race discrimination? It's very  
 4 easy for us to all agree there shouldn't be, but  
 5 when we expand to notions like this, we're, in  
 6 effect, talking about something very different.

7 MR. SLOANE: We can talk about  
 8 something very different here because you're  
 9 mistaken. But all we're talking about here is,  
 10 regardless of whether you're right or wrong, about  
 11 something ingrained in the American middle class to  
 12 keep out lower income people. Under federal law,  
 13 that's okay so long as you are not deliberately  
 14 excluding racial minorities because they are racial  
 15 minorities, regardless of whether they're poor or  
 16 ethnic. It's only when it's racial that Title VIII  
 17 comes into play. That's all Debbie and I have been  
 18 talking about.

19 By the way now, the other point, and I'm  
 20 not so sure of the real characterization of the  
 21 nature of the American middle class, but under some  
 22 state constitutions, that situation you described  
 23 is normally revolutionary. It is now a part of the  
 24 interpretations of the state constitution. That is,  
 25 economic discrimination by middle class communities

1 and their effort to keep out all except themselves.  
2 It's unconstitutional under the state law, but  
3 that's not what we're talking about here.

4 The difficulty has been showing that the  
5 exclusion is not economic but is at heart racial,  
6 and that's when Title VIII comes into play. It's  
7 very difficult to prove when the standard of proof  
8 is an effect or a result.

9 MR. GRAGLIA: No, it's not. No,  
10 it's not. You can assume a community that has  
11 allowed state zoning changes from low class  
12 projects that for some reason were known to be  
13 white, it's a very unlikely assumption now, but  
14 that was so, and then there was a project that was  
15 known to be black and was denied. That wouldn't  
16 leave any intent, at best. That's race  
17 discrimination. That's like my landlord who said  
18 to the white family, "Yes, we have an apartment,"  
19 and to the black family seconds later, "No, we  
20 don't."

21 We don't have to worry about intent. Just  
22 look at the past and it will be the same in this  
23 situation. The only way you're going to get  
24 anything passed, I can assure you that this area is  
25 more of a civil rights area, this intent idea is

1 going to become a mechanism to require that middle  
2 class people not be able to protect middle class  
3 areas and race will become merely a cover for this,  
4 what I would consider, a substantial revolutionary  
5 change in this country.

6 MS. SNOW: Now, there was a  
7 question over here.

8 DR. DE LA GARZA: I just have an  
9 observation to Lino's comments. One is that if the  
10 facts were so obvious, the legal profession  
11 wouldn't be doing what it does. The facts are  
12 always in dispute and so the question of what is  
13 going on is not quite so clear-cut as you suggest.

14 But I think it may often be, but it's more  
15 often, in my experience-- you're a lawyer, I'm  
16 not-- but as a social scientist who testifies in  
17 legal cases where the obvious facts to me are  
18 contested for years and I don't understand why and  
19 how.

20 But I think the more important point is  
21 that your description of social reality today,  
22 meaning this is just the way it is and to change it  
23 would be evolutionary, and I think that's part of  
24 what's going on here.

25 The fact that you make an historical

1 statement, Lino, they're social societies that are  
 2 changing for a long, long time. Many things that  
 3 are today given were once not given, and I think  
 4 the exercise here is about the conceptionalization  
 5 of the rights of individuals within a changing  
 6 society.

7 So the mere fact that the concern about  
 8 housing rights and whether race and economics are  
 9 entangled, as they obviously are, and I think it  
 10 all too simple to suggest that one may be looked at  
 11 without examining the intervening effect.

12 That doesn't make much sense and there is  
 13 no doubt that it is potentially revolutionary, but  
 14 then again, a more historically correct statement  
 15 would be to say that this is not an ongoing process  
 16 about the nature of American society that began  
 17 some time ago, and it just goes on and on and on.

18 MR. CANALES: We have time for one  
 19 more question at this time. Let me remind you that  
 20 Deborah and Marti Sloan will be here this afternoon  
 21 between 3:30 and 5:00 and we can continue the  
 22 discussion at that time. So please hold your  
 23 questions. She still has some more to say and we  
 24 still have one more speaker.

25 MS. BERRIOZABAL: I have one

1 question and it's just a yes or a no.

2 MR. CANALES: Okay, ma'am.

3 MS. BERRIOZABAL: The Section VIII  
4 complaints, you have cited an example of something.  
5 The reverse could also be a legitimate complaint  
6 and it would be when the zoning of an area is  
7 changed and it has the effect of displacing large  
8 numbers of minorities?

9 MR. SLOANE: Yes, absolutely.

10 MS. BERRIOZABAL: So some of the  
11 complaints you have are those?

12 MS. SNOW: Yes, that's right. And  
13 in relation to Title VIII as well.

14 Let me just wrap up on the legislative  
15 proposals so that we can move on with the program  
16 and I'll be glad to pursue it this afternoon when  
17 there's a little more time for discussion.

18 Just in terms of the status of these  
19 legislative proposals, Senator Hatch has introduced  
20 his bill. The other bills have not been  
21 reintroduced in this Congress. It's my  
22 understanding that some discussions are going on  
23 between the administration, or at least between the  
24 Department of Housing and Urban Development and  
25 Senator Mathias and Congressman Fish and other



1 people associated with that legislation, to see if  
2 there's some way to get a mutual bill. And some of  
3 the issues that I mentioned to you are issues that  
4 they would have to hammer out in order to come up  
5 with a bill that would be unusually satisfactory,  
6 of course, and all sorts of other postures that  
7 might fall out of that in terms of neutrality of  
8 each with respect to each other's bills, and so on.

9 Secretary Pierce said in Baltimore a  
10 couple of weeks ago that he was very hopeful that  
11 some kind of common legislation could come out of  
12 these discussions so that-- not that it's been  
13 introduced at this point, and in what I sense from  
14 talking to people early in the week was that  
15 they're hopeful that something will emerge in the  
16 near future that can be introduced.

17 One of the real problems for moving ahead  
18 with fair housing legislation, in this session of  
19 the Congress, anyway, and not passing but neither  
20 is Congress, is the question of priority, and I  
21 want to mention that in two ways.

22 One of those has to do with the Grove City  
23 legislation where the overturned Grove City  
24 legislation is considered a top priority, and  
25 that's moved into mark-up in the House within the

1 next week, but nothing has really happened in the  
2 Senate.

3 So that's dragging out now pretty much the  
4 way it did in the last session of the last Congress,  
5 and with some of the other issues that are pending  
6 in the Senate, it may be quite a while before that  
7 gets resolved. So the fair housing legislation may  
8 get stacked up behind that, at least through this  
9 session of this Congress.

10 The other is the curious fact that I  
11 suggested at the beginning, that though everyone  
12 who is knowledgeable in this area, all the public  
13 officials who are involved agree that Title VIII  
14 enforcement provisions have got to be strengthened.  
15 There is remarkably little momentum for doing that  
16 and I find this somewhat mystifying.

17 I'm not sure whether this is somehow  
18 played out as just an inside the government issue  
19 and so that there's no public interest in this and  
20 therefore, there's no public demand of Congress to  
21 move on it, and if that's the explanation, or just  
22 what the explanation is, but the legislation has  
23 not moved over the last several years and it's not  
24 quite clear to me, frankly, whether it will again  
25 in this Congress or not.

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Let me just wrap it up with saying where the Commission on Civil Rights is on all this at the moment. In 1983, what some people like to refer to as the "Old Commission" did review the legislation that was pending then and took the position supporting an amendment of those bills that would strengthen, generally taking an administrative approach but also strengthening the judicial remedies.

The present Commission has not reviewed these issues yet. My staff is working on a paper addressing some of these issues that I've mentioned that's a sort of policy paper, an option paper, that will go to the Commissioners either late this summer or very early in the fall, depending on what their schedule is for the remainder of the year, and at that time we expect the Commissioners to take some position on these issues.

In addition, the Commissioners have scheduled a hearing on housing discrimination that will be held sometime in the fall. I think, as was mentioned last night, because of the conference of SAC chairpersons has been shifted, or was supposed to be shifted to June rather than September, there's a little uncertainty about exactly how the

1 Commission is scheduled to come out over the next  
2 six months, but they do plan to pursue some of the  
3 housing issues, I think some of the supply issues  
4 and some of the other issues that Marti raised in  
5 this formal hearing that is presently scheduled for  
6 Washington, probably in September or October.

7 I think I'll just cut it off right there  
8 and then we can pick it up this afternoon for  
9 people who want to pursue it.

10 MR. CANALES: Thank you very much,  
11 Ms. Snow.

12 At this time, we'll also ask Michael  
13 Daniel to please come up here.

14 He will speak to us in regard to the legal  
15 issues and recent housing litigation. He has been  
16 personally involved in some very interesting  
17 litigation in very recent times and he will tell us  
18 about that.

19 MR. DANIEL: Now, I think the case,  
20 the individual case that has aroused the most  
21 interest and the staff seems to be the most  
22 interested in was the case of the Clarksville  
23 Housing Authority where there was some flurry of  
24 national attention, I guess around November or  
25 December of 1983.

1           .    Going to the facts of that case somewhat  
 2 because it is a very typical case, the housing  
 3 authority in Clarksville was a small housing  
 4 authority, 100 units. It had been built in--  
 5 started in the early 1960s. Never any doubt that  
 6 from the very inception it was an overtly  
 7 segregated by race housing authority.

8           The units came-- the 100 units were not  
 9 built all at once, they came in phases, but as they  
 10 came in, a lot of units were built in a white  
 11 community, white tenants were assigned, because of  
 12 their race, to the white complex.

13           The black projects were built in the black  
 14 neighborhoods. Blacks units were assigned to those  
 15 projects because of their race. This is from day  
 16 one. In neighborhoods in a much better  
 17 description-- Clarksville is a fairly small town--  
 18 these projects were probably eight blocks apart.  
 19 One down the middle of the main road of town, which  
 20 the main road also divided the part of the town  
 21 where the whites lived and the part of town where  
 22 the blacks lived. So the distance was a lot  
 23 further than the six to eight blocks,  
 24 geographically.

25           The Housing Authority adopted all the

1 paper work that HUD asked them to adopt on Title VI  
2 involving the required method of tenant selection  
3 and assignment. They sent in most of the reports  
4 that they were supposed to send in, but not all of  
5 them.

6 HUD would come out and inspect, see the  
7 situation, never did anything about it. Our client--  
8 two clients, the client, the precipitator, a lady  
9 named Lucille Young from an old Clarksville family,  
10 had five children and at the time was living in a  
11 dilapidated-- to call it delapidated would be a  
12 compliment-- house.

13 Several of the rooms she couldn't use  
14 because the ceiling leaked so bad. There was no  
15 hot water, no facilities to heat water other than  
16 on the stove. There was no gas heater.

17 In the wintertime, she heated with a wood  
18 stove. She had applied to the Housing Authority  
19 several years before and had never got in. Units  
20 that she and her family would have been eligible  
21 for, came open in the white project, but neither  
22 she nor any other black family got them because  
23 they were black. So you had three-bedroom units in  
24 the white projects being filled with one and two  
25 persons in white households on a continuous basis.

1           Finally, the lawsuit was filed as a  
2 class-action against HUD and against the  
3 Clarksville Housing Authority in a class which was  
4 subsequently certified included, represented,  
5 rather, the applicants for and residents of HUD  
6 assistant housing in 36 East Texas counties.

7           When the Judge certified the class, he  
8 split out as a separate lawsuit, the lawsuit by Ms.  
9 Young against the Clarksville Housing Authority.  
10 The summer of 1983, Ms. Young's landlord went to  
11 her and said: "I'm sorry, you're going to have to  
12 move."

13           "My main problem is that this place is so  
14 bad that you or one of your kids are going to get  
15 hurt and you're going to sue me and one, I don't  
16 want you to get hurt and, two, I don't want you to  
17 sue me. You're going to have to move. You have  
18 got to get out."

19           Ms. Young tried some other possibilities.  
20 With a large family it was very difficult for her.  
21 A large family and a low income, it's very  
22 difficult to try to find any housing. She  
23 attempted to work something out with the Housing  
24 Authority. They were not interested. And now by  
25 this time, HUD had gone out and HUD found the

1 Housing Authority in noncompliance with Title VI.  
2 They were intentionally maintaining racially  
3 identifiable sites by using the race of the tenant  
4 as a basis for selecting which unit they occupied.  
5 HUD had made this finding in 1981. Nothing had  
6 changed in 1983. The projects-- one exception,  
7 basically the projects were still all white and all  
8 black. Earlier in 1981, about the same time, the  
9 City of Clarksville applied for UDAG. One of the  
10 UDAG requirements is that you have to show that the  
11 City has achieved reasonable results in fair  
12 housing.

13 HUD went out and said: "We've got some  
14 problems getting UDAG money since you still have  
15 racially segregated housing projects. And there  
16 were several conferences and HUD would come back  
17 with one understanding of what the deal was going  
18 to be, that they, in fact, were going to  
19 desegregate.

20 Clarksville would have another  
21 understanding, obviously. Finally, it all got  
22 resolved when Clarksville transferred a Mexican-  
23 American family, involuntarily transferred, a  
24 Mexican-American family from the black project to  
25 the white project, declared themselves desegregated



1 and HUD approved the UDAG. Nothing else changed.

2 In the fall of '83, we had to do something.  
3 We went in and asked the Judge for a preliminary  
4 injunction, one, for putting our lady in because  
5 but for her race she would have been in, and also  
6 desegregating the projects.

7 Not very few controversial facts at the  
8 preliminary injunction hearing, the lawyer for the  
9 Housing Authority got up and said: "We agree with  
10 all the facts that the plaintiffs have said, "We  
11 just don't want you to do anything about it,  
12 Judge." No disagreement about the law.

13 It's been pronounced illegal since 1955 to  
14 segregate the housing authority by race, a decision  
15 out of Detroit, basically applying Brown versus  
16 Board of Education, both in terms of liability, but  
17 also in terms of remedy, and all deliberate speed.

18 Certainly there was no question in  
19 anybody's mind that it was wrong, illegal and  
20 unconstitutional.

21 The Judge, the relief we asked for and the  
22 relief he granted was for the Housing Authority to  
23 come up with a transfer plan focusing on  
24 transferring the people who were either overhoused  
25 to one or two persons in the three-bedroom unit or

1 underhoused. Contrary-wise, there were black  
2 families-- yes, sir.

3 MR. GRAGLIA: I think it is  
4 important to keep clear, I take it, you'll agree,  
5 that what is unconstitutional is for the public  
6 authority to engage in racial discrimination in the  
7 operations of the facilities. That is, they may  
8 not deny housing to someone because that person is  
9 black. We agreed on that.

10 MR. DANIEL: Normally, they assign  
11 somebody housing because they're black.

12 MR. GRAGLIA: But then I'd use  
13 consideration in any regard in the operation.  
14 However, it's important to keep-- see, you talk  
15 about maintaining racially identifiable housing.  
16 Now, that's another matter.

17 MR. DANIEL: No, sir. The context  
18 that HUD found violation in, HUD found that they  
19 were maintained racially identifiable sites through  
20 the use of a racially conscious tenant selection,  
21 an assignment policy.

22 MR. GRAGLIA: Right. So it's clear  
23 that the mere fact that one project is all white  
24 and the other is all black is not illegal and it's  
25 not unconstitutional, in and of itself.

1 MR. DANIEL: Well, it depends how he  
2 got there.

3 MR. GRAGLIA: Exactly. I mean, but  
4 I think it's so important, especially for people  
5 who are not lawyers like you and I. We're speaking  
6 to a lot of people here and they're not all  
7 lawyers, fortunately, and I know that it's  
8 difficult for them to understand this and this has  
9 got to be a basic instruction to be clear and  
10 that's got to be clear and basic.

11 It is not illegal or unconstitutional for  
12 the City to have a project that is all black or  
13 that is all white, anymore than it's  
14 unconstitutional for the apartment houses on Park  
15 Avenue to be all white. Who says that's  
16 unconstitutional.

17 Unconstitutional is where I believe they  
18 are all white, and so on. Now, the only thing that  
19 is illegal and unconstitutional under Brown and  
20 illegal under the housing standards is the practice  
21 of race discrimination in the operation of these  
22 facilities. And if those facilities are all white  
23 and all white without racial discrimination being  
24 practiced, they are not illegal or unconstitutional.  
25 You've got to be very clear on that.

1 MR. DANIEL: Well, I think to be  
2 clear on it for the sake of people who are not  
3 lawyers, although I think people who are not  
4 lawyers here are aware of this: If you have a long  
5 standing pattern of all white, one all white  
6 project and one all black project in a community  
7 where the population, its size and percentage of  
8 eligible black applicants, then, in fact, that  
9 separateness may itself be very important proof of  
10 intentional racial discrimination.

11 Isn't that right, Professor?

12 MR. GRAGLIA: It might be. If one  
13 of them happens to be in black neighborhoods where  
14 everything is black there and the other one is in a  
15 white neighborhood with blacks, it may just reflect  
16 the neighborhoods therein. Everything else in that  
17 neighborhood is black, it's to be expected that the  
18 project in that neighborhood be black. It's  
19 certainly to be expected that not many whites would  
20 voluntarily choose that project.

21 DR. DE LA GARZA: But isn't that the  
22 whole point. The question then becomes: How did  
23 one neighborhood happen to become all black, and  
24 that's the whole debate over intent versus effect.  
25 That's why those facts sparkle so clearly for you,

1 you know, and not necessarily are diamonds to  
2 others. How does that-- I mean, that's part of  
3 what this is about.

4 MR. DANIEL: Well, part of what  
5 happened was when we desegregated the housing  
6 authority we also substantially desegregated some  
7 of these neighborhoods. And also I think they  
8 would say throughout the discussion of segregation  
9 of public housing, there is an assumption by people  
10 of every persuasion that it's all going to go one  
11 way.

12 They'll be blacks moving into the white  
13 projects. That it is impossible to get whites to  
14 move into the black project. That, the East Texas  
15 experience has shown, it's absolutely not true.

16 Clarksville, when it did desegregate, has  
17 blacks moving into white projects and whites moving  
18 into black projects. Whites took a little longer.  
19 They had to find white subsidized housing entities,  
20 and they found all this cost was not easy to do so  
21 they went ahead and came back in to the black  
22 projects.

23 In fact, those projects are integrated.  
24 All the projects are integrated and are having some  
25 success with other places and everyone says there

1 is no way. There is no way we'll get witnesses to  
2 resolve these projects, and that is not true.

3 There is a severe need for low income  
4 white housing and given an opportunity the whites  
5 of those who now house low income whites and are  
6 quite likely to accept housing in black  
7 neighborhoods, and predominantly black projects  
8 give an opportunity to do so by a fair tenant  
9 selection and tenant method.

10 Anyway, the Judge gave orders to transfer  
11 the tenants. They went to the Fifth Circuit of  
12 Appeals and although not contesting law or fact,  
13 asked for a stay on the judgment of the  
14 desegregation order for the projects. The Fifth  
15 Circuit denied a stay without an opinion. The  
16 Housing Authority continued to drag their feet.

17 In a hearing in November, again the Judge  
18 emphasized: You are going to desegregate. This is  
19 what I intend to do. I want to hear if there is  
20 going to be any problem. If any hardships come to  
21 me, come to the plaintiff's lawyers. I want to  
22 know, were you absent at the hearing or anything?  
23 This is what we are going to do. We're going to  
24 transfer anything else that we have to transfer.

25 Now, the Clarksville housing never came

1 back with any hardships, never asked for more time,  
2 and what they did was they divided-- transferred  
3 people by lottery instead of asking what the  
4 individual circumstances were and who was willing.

5 To me, though, you could pick names out of  
6 a hat. We think, at least with that effect,  
7 whatever their intent, it had an effect of creating  
8 some unusual circumstances.

9 Finally, after all the moves were done,  
10 projects were integrated. Now, according to all  
11 reports, everybody is very pleased with the  
12 situation out there.

13 Why it took from 1960 to basically 1984  
14 for the Public Housing Authority that was  
15 intentionally segregated, always was intentionally  
16 segregated, that is a creature of HUD that cannot  
17 do without HUD funding, that is constantly being  
18 monitored and inspected by HUD.

19 Why that existed is, I think, a good  
20 illustration of a problem in HUD assisted housing.  
21 Because throughout East Texas this is the same  
22 pattern that HUD has found overt segregation. One  
23 of the rundowns I sent you was on the Pittsburgh  
24 Housing Authority.

25 Pittsburgh was built in the '50s. There

1 on their applications they ask and the question is:  
2 How are you going to satisfy the Public Housing  
3 Administration's racial equity policy?

4 Well, we're going to have one project of  
5 100 units for whites and another project of 60  
6 units for blacks. Blacks are this percentage of  
7 the eligible population. It's on the plans, white  
8 projects, colored projects throughout the older  
9 housing authorities in East Texas. It is an  
10 unquestioned initial major desegregation. Never a  
11 change, never a change in many of these projects.

12 Throughout the process of the relevant  
13 department of the Pittsburgh role, throughout the  
14 class-action lawsuit, I received some documents  
15 from HUD, which it says: That HUD's Title VI  
16 enforcement policy for public housing assumes that  
17 no blacks, no black projects will be integrated.  
18 HUD's Title VI enforcement policy assumes that the  
19 only movement will be blacks moving into the white  
20 projects.

21 As of 1969 and 1970, HUD and the Justice  
22 Department began agreeing that Title VI is not  
23 working for public housing. Throughout the '70's,  
24 HUD and the Justice Department agreed that Title VI,  
25 as it's being enforced by HUD, is not working for



1 public housing. Public housing is still segregated,  
2 overtly segregated.

3 In 1976 or '77, the Justice Department  
4 does this formal survey of various HUD offices,  
5 issues a report with conclusions of which HUD  
6 agrees with, concurs with, that in fact Title VI  
7 is not working and has not worked to desegregate  
8 public housing. In 1979 HUD and the Justice  
9 Department signed an agreement.

10 HUD will adopt new policies to replace the  
11 ones that are not working under Title VI to bring  
12 about desegregation. In 1981, the staff report  
13 comes out at HUD. "No, our policies still aren't  
14 working. We still have segregated housing  
15 authorities. We need new policies."

16 In 1985, we still have the same policies.  
17 We still have the same segregation. Some effort is  
18 underway to change the specific fact situations in  
19 HUD, but nothing on a policy-wide basis.

20 The problem in public housing and other  
21 HUD assisted housing has not been the laws. We've  
22 got all the laws that we can probably stand  
23 disbarring overt segregation by race. We didn't  
24 need anything but the Constitution. We got Title  
25 VI, the Constitution, and we've got Title VIII.

1 The problem has not been the laws. The problem has  
2 been a lack of willingness to bring about  
3 desegregation in housing.

4 The effects of that have been many. One  
5 of the main effects that we see in East Texas is  
6 the federal government's willingness to encourage,  
7 tolerate and approve a lobby for segregated housing  
8 which breeds a pervasive cynicism, not just about a  
9 federal fair housing enforcement effort, but about  
10 the federal civil rights effort in general.

11 Why in the world should the city council,  
12 county government, private employers and private  
13 realtors, private landlords, why should they take  
14 civil rights, particularly civil rights in terms of  
15 housing, seriously with the major federal presence  
16 in most of these towns, other than the post office,  
17 is this federally supported housing authority and  
18 housing projects?

19 In the citizen's mind, it is HUD, and year  
20 after year after year, the federal government,  
21 supposedly this terrible ogre from Washington-- the  
22 lobbying still think the Kennedys run it-- is  
23 putting up with overt, intentional segregation.  
24 Why not be cynical?

25 MR. GRAGLIA: Because they are not

1 putting up with overt intentional segregation.  
2 They are simply putting up with units that are not  
3 integrated--

4 MR. DANIEL: No, sir, I'm not--

5 MR. GRAGLIA: -- not integrated and  
6 desegregated synonymously.

7 MR. DANIEL: No, I'm not using it.  
8 What I'm talking about in East Texas is that we  
9 have in many cases based on HUD's own records and  
10 records in HUD's own files, we're not talking about  
11 merely racial identifiable, we're talking about  
12 racial identifiable that started from day one when  
13 those projects were built either before or after  
14 the passage of the Civil Rights Act, that they're  
15 maintained that way by a conscious policy and  
16 consciously assigned tenants to units on the basis  
17 of race. That's what I mean. I'm not talking--

18 MR. GRAGLIA: That seems like it's  
19 so obviously illegal and so easily identifiable  
20 that it could easily be stopped. Don't you-- let  
21 me ask you this: You speak about Title VI, does  
22 not the order of Judge William Wayne Justice who  
23 asked for-- you asked for, as I recall, an order  
24 that those two projects be made 50 percent white  
25 and 50 percent black with a possible variance of

1 five percent. That was the request of the  
2 plaintiffs' lawyers, as I recall?

3 MR. DANIEL: Yes, sir, and that is  
4 what Judge Justice ordered.

5 MR. GRAGLIA: Now, is that not itself  
6 unconstitutional?

7 MR. DANIEL: Well, no, sir.

8 MR. GRAGLIA: Is that not clearly  
9 the most clear violation of both the Constitution  
10 and Title VI of the 1964 Civil Rights Act that is  
11 available in this area. We have a federal court  
12 that ordered people removed from their houses  
13 involuntarily because of their race.

14 That is striking that in the United  
15 States of America a paid federal official should  
16 order that people will be removed from their homes  
17 and they will either move because of their race and  
18 they will either move to this other federally  
19 subsidized housing or they will leave.

20 See, we are clearly imposing here on the  
21 poor a requirement of law. It's a further burden  
22 on the poor that is certainly not borne by the  
23 nonpoor. There is no federal constitutional or  
24 legal requirement that the nonpoor live in  
25 integrated houses.

1           But that requirement was imposed on the  
 2 poor of Clarksville by a federal judge in violation  
 3 of the constitutional principle that people should  
 4 not be treated on the basis of their race, which is  
 5 exactly what we've done to them, and in violation  
 6 of Title VI that they should not be treated on the  
 7 basis of their race. Was not that the violation  
 8 involved in this case?

9           MR. DANIEL: No, sir. First of all,  
 10 the 50/50 was chosen because the tenant population  
 11 was 50 percent white and 50 percent black. As you  
 12 know, sir, there's a very long line of Supreme  
 13 Court decisions over various court compositions  
 14 ranging from the early courts to the more modern  
 15 courts which say that when you have created-- used  
 16 race to intentionally discriminate and to  
 17 intentionally segregate, it is then that the  
 18 Constitution requires, mandates the same race  
 19 consciousness in the remedy.

20           That to impose a nonrace conscious remedy  
 21 on the situation caused by overt racial  
 22 discrimination and intentional racial  
 23 discrimination, is itself to continue the effect of  
 24 the intentional discrimination. It is, therefore,  
 25 unconstitutional. You must use a race conscious

1 remedy to cure the race conscious wrong.

2 MS. PORTELA: Mr. Daniel, I think  
3 you have correctly summarized the state of the law  
4 or the history of the development of the law prior  
5 to last year, and the last thing I want to do is  
6 have this become an argument among lawyers, God  
7 forbid.

8 But it strikes me as I hear you eloquently  
9 express your position and as I hear Lino equally,  
10 eloquently express his, that at least after the  
11 Supreme Court decision in Stotts there is some  
12 question in an employment context whether without  
13 identifiable victims of discrimination, race  
14 conscious remedies are permissible to remedy the  
15 effects of prior discrimination, and my reaction to  
16 your dialogue is, surely one of the things that  
17 those like you who are fighting for enforcement of  
18 fair housing laws ought to consider very carefully,  
19 is how to avoid the pitfalls of Stotts,  
20 particularly if the Justice Department is  
21 successful in its current efforts in the employment  
22 area to invalidate, void, revoke, whatever phrase  
23 you want to use, consent decrees effecting, let's  
24 say, firefighters or policemen, or whatever, that  
25 in fact take into account race conscious remedies,

1 and it strikes me that you are in a unique position  
2 to in fact identify victims of discrimination.

3 Ms. Young certainly fits that bill,  
4 presumably Ms. Wyatt does equally. And so that  
5 rather than a general order saying, let us take 50  
6 percent of the tenants here and 50 percent of the  
7 tenants there and get into some of the problems  
8 that Lino has identified, is it not a more  
9 effective, both legal stragedy and social solution,  
10 to identify actual victims of discrimination and  
11 then proceed to remedy their problems?

12 MR. DANIEL: Ma'am, that's what we  
13 did. Every white tenant and every black tenant in  
14 the Clarksville Housing Authority have been placed  
15 where they were because of their race. The black  
16 tenants have been assigned because of their race to  
17 the black project, the black project because the  
18 racial project had no sidewalks, had no paved  
19 streets; the white project because it was white on  
20 the white part of town, had paved streets, had  
21 paved sidewalks, everybody-- there were no lack of  
22 identifiable individual victims.

23 When a black tenant wasn't moved who  
24 hadn't been placed originally because of their race  
25 and the race of the project, and in housing that is

1 not a problem. We have identifiable, individual  
2 victims. I can give you the name of every victim  
3 of the Clarksville Housing Authority.

4 MS. PORTELA: Well, I understand the  
5 intentional discrimination. I understand the  
6 identification presumably in the assignment. What  
7 I'm concerned about is the identification at the  
8 remedy stage.

9 In other words, I can envision a  
10 possibility where either a black family or a white  
11 family expressed a preference in the assignment  
12 process based on a nonracial factor.

13 For example, my mother lives in project  
14 "X" and I would like to be assigned to that project,  
15 or another relative or proximity perhaps to a job,  
16 or something like that.

17 So that it seems to be again, in terms of  
18 being immune to further legal challenges, that it  
19 behooves you to identify a class of people who will  
20 be relocated, who in fact express no other personal  
21 preference so that you can establish fairly clearly  
22 they ended up where they did only because they were  
23 black or only because they were white.

24 MR. DANIEL: First of all, if you  
25 want to be near the relative and the relative is



1 white or black, then the relative is placed there  
2 and they're going to be placed in a white or black  
3 project. So there's no problem tracing that one  
4 back. The choice, the preference that is being the  
5 most exercised in the public housing that we've  
6 seen is that the whites don't supposedly express a  
7 preference that they want to live in a white  
8 project.

9 I think once you get to a 'desegregated  
10 situation, then, you know, the suspicion goes out:  
11 I want to live next to my mother to help my mother.  
12 I want to live over here on this end of town  
13 because it's closer to my job.

14 I think they're all the same, but it  
15 definitely tells you to get rid of the overt  
16 segregation, the effects of it, you know, those  
17 preferences that I think are all basically  
18 impossible to monitor on a classified basis.

19 MR. ROBB: Mr. Daniel, I apparently  
20 missed your specialty. What is it that you do?

21 MR. DANIEL: I'm a private lawyer  
22 who does civil rights litigation.

23 MR. ROBB: This is your specialty?

24 MR. DANIEL: Civil rights, yes, sir.

25 MR. ROBB: All right. Number two,

1 why is no class-action suit involved in this East  
2 Texas town before the Dallas Morning News exposed  
3 the situation? Did you get an election off of that?

4 MR. DANIEL: Well, in terms of  
5 timing, the class-action suit was brought in  
6 February 1980.

7 MR. ROBB: Was anything done before  
8 the Dallas Morning News published it?

9 MR. DANIEL: Yes, sir. The  
10 class-action suit had been certified in the summer  
11 of 1982. The Justice Department had moved for a  
12 summary judgment and we had answered that. We had  
13 moved for summary judgment. The final briefs were  
14 filed. I think the final briefs were filed at the  
15 end of February of this year and the case is  
16 pending judgment. That's where we are right now.  
17 The morning news pointed out there was at least one  
18 other case that had been tried and gone away with  
19 the Eight Circuit.

20 MS. PORTELA: And just as a  
21 clarification, and it might be helpful for all of  
22 us to have these dates, the date of the Dallas  
23 Morning News article is the week of February 10th  
24 of '85, and it states that Judge Justice's order  
25 was entered in December of '83. So that's almost a

1 15-month lag.

2 DR. DE LA GARZA: But it had not been  
3 implemented?

4 MR. DANIEL: Yes, sir. I'd say the  
5 desegregation in the Clarksville Housing Authority  
6 was basically complete, certainly by spring of the  
7 next year.

8 MR. GRAGLIA: I think there's still  
9 confusion here about how successful by what you  
10 asked for what the Judge ordered in this case. As  
11 you point out, see, our objective here is  
12 integration, discrimination. As you point out, at  
13 least, that's the only object of the laws of the  
14 Constitution. But it's true that in 15 school  
15 cases, the Court has said: It is not enough to  
16 simply order the stopping of racial discrimination.

17 So Judge Justice might have said in  
18 Clarksville, for example, from now on, do not  
19 assign people by race anywhere or reject people on  
20 the basis of race. The Court said that's not  
21 enough. The school cases simply stopped from  
22 prohibiting racial discrimination. That's also  
23 correct of the continuing effects, and what that  
24 meant was, supposedly, try to make the situation as  
25 it would be if there hadn't been the racial

1 discrimination.

2 Now, it was not the remedy that you had to  
3 produce integrated schools, for example. The  
4 Supreme Court held this time after time that there  
5 is nothing wrong with the all white school or the  
6 all black school This is not unconstitutional, or  
7 illegal.

8 Similarly, there was nothing wrong with  
9 the all white or the all black federal or publicly  
10 supported housing project.

11 Now, the question is then: Can you  
12 possibly justify what was ordered in this case as  
13 remedying the violation? That is, if there were no  
14 racial discrimination, would each of those projects  
15 have been 50/50 white/black plus or minus five  
16 percent? There's no reason to think that. That  
17 doesn't occur anywhere. If we were interested in a  
18 remedy, to follow Ms. Portela's point, why didn't  
19 the Judge say this: "From now on Clarksville  
20 Housing Authority, you operate without regard to  
21 race. You do not discriminate."

22 Now, more than that, to correct the  
23 situation of past discrimination, if there are any  
24 victims, we will give everyone in those apartments  
25 in those projects who wants to move a choice. If

1 there's any black who says: "I'm only here  
 2 because," as Mr. Daniel said, "I was assigned by  
 3 race." Suppose he says: "I wasn't assigned by  
 4 race," despite what he said, "I am here because I  
 5 want to live in the black part of town. I prefer  
 6 to live in this project than the other one."

7 There are some people, despite what you  
 8 assert, who don't want to, who weren't assigned by  
 9 race. Why doesn't the Judge say: "Anybody who  
 10 wants to move, can move," and require the authority,  
 11 the Housing Authority to permit these transfers?

12 Now, if there were any victims of racial  
 13 discrimination, that would surely correct it, but  
 14 this is not what the Judge did. The Judge coerced.  
 15 By the force of the state, required people to move  
 16 whether they wanted to or not. In the name of  
 17 remedying or correcting their status as victims, it  
 18 obviously made them victims.

19 MR. DANIEL: Your solution would  
 20 perpetuate racial discrimination and it would  
 21 perpetuate the very harm that you secure, but what  
 22 you envision is individuals volunteering to  
 23 continue to live in a racially segregated setting,  
 24 and you have a black family volunteering to go over  
 25 and be the first, and for some period of time the

1       only black family in an all white project.

2               What your solution envisions is a white  
3 family volunteering to move over to the black  
4 project. It would be the only white family in an  
5 all black project. Those families would be--

6               MR. GRAGLIA     There's lots of black  
7 victims that are all going to move. I thought you  
8 just told me all the blacks--

9               MR. DANIEL:     Number one, I'd say in  
10 this case, I think there were a large number of  
11 blacks that were willing to move, but the whites  
12 didn't feel that they had been the victims of  
13 discrimination against blacks. They weren't the  
14 victims. They were the beneficiary. They had the  
15 nicer project.

16              They had the all white project. There was  
17 no place for them, too. They weren't going to move  
18 voluntarily. So to give the victims relief,  
19 somebody else had to be effected and it was the  
20 beneficiaries of discrimination.

21              MS. PORTELA:   That isn't what the  
22 Judge did.

23              MR. GRAGLIA:    Yes, he did. He  
24 didn't give the blacks a choice of moving. He  
25 didn't say, "You blacks or those who want to move,

1 may."

2 MR. DANIEL: Well, he didn't rule  
3 out the Housing Authority using as its method of  
4 selecting which black tenants were going to be  
5 transferred and then ask for the ones that wanted  
6 to move. The Housing Authority chose to go by the  
7 lottery system.

8 MR. CANALES: All right. We must  
9 move on. We have two more questions.

10 MR. COLEMAN: It looks like I'm  
11 hearing the old '70 routine, that overall question  
12 that Big Brother-- consistently from six years old  
13 through separate schooling mentality. Let us do it.  
14 There are kids that want to come down to the white  
15 school. That's after '54. Let them come. Three  
16 years later, nobody went. To me, that mentality  
17 just-- I mean, it's gone. I mean, we can't do it  
18 that way.

19 It's been proven over and over again. It  
20 just cannot be done that way. Nothing unless the  
21 federal government has moved in and the South has  
22 changed. If you don't believe me, watch the  
23 financial institutions throughout the South where  
24 the black folks deposited money in the saving and  
25 loans association. Complexions have not changed

1 one iota.

2 DR. DE LA GARZA: That's an  
3 observation. I think that addresses another  
4 question. The comment of why would you use 50/50  
5 plus or minus five percent is in fact incorrect.  
6 The whole basis of that particular argument is if  
7 that is what should happen, if everything is equal.  
8 So if you take a statistical method to show if you  
9 put 50 black balls in a bottle and 50 white balls  
10 in the same bottle and shake it and any person in  
11 this room draws 50 out, it's going to be between  
12 the range of 24 and 26 black and white 99 point 99  
13 percent of the time, more or less. That's what  
14 really happens.

15 And so the question as to why would the  
16 Judge make that as an arbitrary remedy, is not at  
17 all an argument. What the answer would be is if  
18 somebody is processing applicants and assigns them  
19 by need in the equal number of places, they're  
20 going to go equal.

21 Now, that would be the statistical  
22 response and I thought of your other statement,  
23 too. I have a statement that is a more serious  
24 question than a problematic one. There are cases  
25 such as Lino discussed, where groups do choose to



1 live together, and that, I think, in fact, I don't  
2 know what the legal consequences are.

3 Let me give you a real simple  
4 illustration, if I may. When I moved to Los Angeles  
5 the public housing projects were Mexican-Americans.

6 They were designed for Mexican-Americans, managed  
7 by Mexican-Americans and they are exclusively  
8 Mexican-Americans. And I think those are kind of  
9 neat things because they maintain the  
10 neighborhood's integrity, they maintain the  
11 cultural integrity. They do some kind of neat  
12 things.

13 It would strike me that there's something  
14 legally wrong with that and I don't know how to  
15 deal with that given that I'm on the other side of  
16 the question, in part, which I'm totally in support  
17 of.

18 What is your reconciliation between those  
19 two positions?

20 MR. DANIEL: If you have a Mexican-American  
21 or a black or a Vietnamese or an Irish project that  
22 is built, maintained and operated on the basis of  
23 the race of the individuals, then you have a  
24 constitutional violation. I myself don't know the  
25 project you're talking about, but in the projects

1 in Texas, the cultural identity that overwhelms  
2 most of these one-race projects is the cultural  
3 identity of the slum dweller.

4 They may be Mexican-American slum dwellers  
5 or they may be Vietnamese slum dwellers; they may  
6 be black slum dwellers, but that is a pervasive  
7 thing, and that is certainly the way it works.  
8 Now, maybe it's a different situation that we're  
9 talking about, but I don't think it is any less  
10 unconstitutional in the sense that its using race  
11 to desegregate people.

12 MR. DE LA GARZA: Is there no  
13 provision--

14 MR. CANALES: Excuse me. We're going  
15 to have two more questions after this one  
16 and then we're going to break for lunch.

17 Mr. Daniel, are you going to be able to be  
18 with us this afternoon?

19 MR. DANIEL: Yes, I will.

20 MR. CANALES: Fine. So he will be  
21 available this afternoon. Thank you.

22 You want to repeat your last question?

23 MR. DANIEL: No, the question is: Is  
24 there a provision for people exercising a choice of  
25 their neighbors? I think that absent, overt,

1 intentional racial discrimination we will still see  
 2 various communities and neighborhoods of  
 3 predominant race. What we won't see is the  
 4 maintaining of that by the power of the State, and  
 5 I think that is a significant difference.

6 MR. VELARDE: I want to ask you a  
 7 question on a long range result of this particular  
 8 decision and I don't see why we had the  
 9 disagreement and argument here. The Judge made his  
 10 decision and if people on both sides didn't like it,  
 11 they can go on to a higher court to get a decision.

12 Here I see that the court took an action  
 13 to remedy a long-standing ill because the people  
 14 that were causing the problem were given a choice  
 15 and they chose not to do anything about it. Okay.

16 Now that this has happened, he had the  
 17 Judge coming and saying: "I'm going to force you  
 18 to move people from here to there and there to  
 19 here," and now that that's happened, is this  
 20 particular report of the housing authority now  
 21 taking applicants and putting them in whatever is  
 22 available according to the size of family and  
 23 income?

24 MR. DANIEL: And placed on the  
 25 waiting list. They better be.

1 MR. VELARDE: That's happened?

2 MR. DANIEL: That's supposed to be  
3 what they're doing.

4 MR. VELARDE: Now, did that decision  
5 only effect on the long run or on the short run,  
6 just that project, or has it had far-reaching  
7 effects to other communities or other projects that  
8 are doing the same thing?

9 MR. DANIEL: Specifically, as a  
10 result of that decision, and I think specifically  
11 as a result of the Fifth Circuit denying the stay,  
12 HUD and the Justice Department decided they better  
13 try and do something about some of these other  
14 projects, not just in East Texas but I suspect  
15 you'll hear later today that they have begun  
16 attempting to cure these problems in other  
17 projects.

18 The reason I think it was important was  
19 because other than the class action that's also  
20 pending, I think HUD and the Justice Department  
21 figured they were going to get bailed out by the  
22 Fifth Circuit and if the Fifth Circuit didn't bail  
23 them out on Clarksville, they had to take a class  
24 action a lot more seriously and also had to take a  
25 little more seriously the problem in other areas.

1 Plus, there are, certainly, now and have been,  
2 people in HUD and in the Justice Department who  
3 have been seriously committed to ending  
4 desegregation in the HUD assisted housing.

5 I think one of the effects of this was to  
6 give these people something else to work with as  
7 compared with what they had been getting to work  
8 with in the past.

9 MR. CANALES: Milton, you haven't had  
10 a chance to ask a question, so we'll let these be  
11 the final two questions, Roberta Madden first and  
12 then Mr. Tobian.

13 MS. MADDEN: Roberta Madden from  
14 Louisiana. Title VIII against the Housing  
15 Authority has been guilty of steering, and I'm not  
16 a lawyer, but that would be illegal, you know, in  
17 regard to what Lino was saying earlier. Is  
18 steering what that housing authority was actually  
19 doing?

20 MR. DANIEL: Steering is sort of in  
21 my mind has the idea of sort of you elbowing  
22 somebody in one direction, sort of giving them  
23 nudges to go in that direction. What the housing  
24 authorities do is, you know, grab you by your shirt  
25 front and take you and lead you over there, and

1 what Clarksville is doing and that's what we see a  
2 lot of these other housing authorities doing.

3 MR. TOBIAN: I don't feel the  
4 need to apologize for not being a lawyer. I find  
5 that I'm able to understand the issues here, I  
6 think even better than some of us do. I had a  
7 conversation with the managing editor of the  
8 newspaper that produced the series in the Dallas  
9 Morning News.

10 It's my understanding that in that series  
11 and in an investment over a two-year period, it was  
12 a project that went on and on. It's genesis was in  
13 East Texas, our local situation, but they decided  
14 to explore the fact, if this is so in our own  
15 backyard, they said, let's go a little bit afield  
16 and see if it is so there as well.

17 And it ended up, and if I understand their  
18 findings correctly, it ended up with their being  
19 convinced that these patterns exist throughout this  
20 nation. It was not limited to East Texas or  
21 Arkansas or anywhere else. So the implications of  
22 the Clarksville case and the situation in the East  
23 Texas counties shows a pervasive, and I think very  
24 cynical avoidance of the enforcement on the part of  
25 those who have had that responsibility.

1           It has been painted crystal clearly and I  
 2 think the education by SAC and the recommendations  
 3 offered here also might be emerging. I think it's  
 4 unconscionable and no amount of legal sovereignty  
 5 could hide the fact. The law has said one thing  
 6 and the facts are, in my opinion, truly convincing  
 7 that the nation has taken a gigantic walk from  
 8 these responsibilities.

9                           MR. DANIEL: Thank you very  
 10 much.

                          MR. CANALES: That will be all  
 11 the questions. We will take a break for lunch and  
 12 then we'll start again and reconvene at 1:30.

13                           Thank you very much, Mr. Daniel.

14                           (Whereupon a lunch break was taken).

15                           MR. CANALES: I call to order  
 16 again. At this time, we're going to go into the  
 17 area of the federal enforcement of fair housing and  
 18 we have three representatives from the United  
 19 States Department of Housing and Urban Development.  
 20 We have with us John Eubanks who is the Director of  
 21 the Desegregation Coordination Office. We have  
 22 Virginia Winker who is the Associate Regional  
 23 Counselor. We have Don Babers who is the Title  
 24 VIII Branch Chief from the Fair Housing Equal  
 25 Opportunity Office.

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First, we'll ask Mr. John Eubanks to address us.

MR. EUBANKS: Thank you. Let me say first that I appreciate the opportunity to be here and having been here most of the morning session, I'll try to make an attempt to touch on things that have not been covered in some detail this morning.

First, I'd like to give you a few comments about ourselves. I'm directing a newly established office called the Desegregation and Coordination Office. This office was established in September of 1984. One of its functions was to give a more comprehensive response to the litigation that had begun some time ago, and it heightened its activities as a result of the Clarksville decision.

Just a little bit about my background. I've been with the Department for more than 15 years. All of that time has been spent in civil rights compliance and enforcements. As you know, our department is responsible for administrative enforcement of Title VIII and the Fair Housing Law and Title VI and other federal regulations.

I should mention that Ms. Winker has been with the Department in excess of 15 years and we won't talk about how long we've been there because



1 somehow when you start deducting and determine our  
2 age. See, I'm only 26. Working for HUD makes me  
3 look like this and Mr. Babers has approximately 15  
4 years or more with the Department.

5 I guess what I'm trying to suggest to you  
6 is that we have some familiarity with the things  
7 that we think you ought to know about and discuss  
8 here, or whatever, and frankly, I started to eat  
9 lunch and go on home. You had heard so much about  
10 HUD this morning from different experts and I said,  
11 "Well, look, maybe we shouldn't go up there," but I  
12 was outvoted again.

13 What I'm going to try to do with my time  
14 is talk about things, post-Clarksville. Mr. Daniel  
15 and other parties have given you things that  
16 transpired prior to Clarksville and so I'll try to  
17 begin there, but to do so I do need to give you a  
18 little background information.

19 Prior to the lawsuit which was filed in  
20 1980 and certainly immediately after the lawsuit in  
21 1980, HUD was conducting compliance reviews,  
22 investigating complaints of discrimination and  
23 doing other civil rights activities not only in the  
24 36 counties named in East Texas, but throughout  
25 what was an eight-state region when I joined the

1 Department, and later a five-state region,  
2 throughout the five-state region.

3 One of the things that the lawsuit  
4 revealed to us, if I may say more graphically,  
5 because I think some of us had surmised as much,  
6 but one of the things that the lawsuit revealed to  
7 us was that while these alleged discriminatory acts  
8 were taking place and maybe a number of our reports  
9 from the civil rights side of it reflected the same,  
10 it was possible that the housing producer hadn't  
11 looked at that phenomenon from the same perspective.

12 And the housing manager, and I don't want  
13 to become complex, but HUD was structured so that  
14 one segment of the Department did the producing of  
15 housing, another segment managed the housing, and  
16 still another segment enforced statutes relating to  
17 civil rights. And sometimes, we learned later, at  
18 least, we weren't doing the most effective job of  
19 coordinating these activities.

20 This was graphically revealed to us in the  
21 lawsuit and in fact in some of our own reports that  
22 we had done prior to the lawsuit and some that we  
23 did subsequent to the lawsuit and prior to the  
24 Clarksville order.

25 What the Clarksville order did to the

1 Department, I believe, is cause it to take a more  
 2 intensive look at the entire process. Immediately  
 3 following the order, Assistant Secretaries from the  
 4 department and Assistant Secretaries being the  
 5 second level of authority in the department,  
 6 including the General Counsel, the Assistant  
 7 Secretary for Housing, Public Housing, and the  
 8 Assistant Secretary of Fair Housing and Equal  
 9 Opportunity, made a personal visit throughout this  
 10 36-county area, or at least in significant parts of  
 11 this 36-county area, to see firsthand what the  
 12 parties were talking about in describing this  
 13 pervasive discrimination.

14           Following this onsite visit in about  
 15 February of 1984, the Secretary issued a memorandum  
 16 that agreed with the Administrator of Region VI in  
 17 Fort Worth, setting out some things that the  
 18 lawsuit and the decision of Clarksville had  
 19 revealed to us and commenting on our own activity.  
 20 The Department of Housing and Urban Development's  
 21 administrative enforcement reviews had found many  
 22 cases of what we call, "apparent noncompliance"  
 23 with Title VI of the Civil Rights Act of 1964.

24           And, in most instances, when we found  
 25 these violations, we executed agreements where the

1 parties agree to correct any deficiencies we found.  
 2 In many instances, the results were minimal, at  
 3 best, sometimes years later.

4 The Secretary seized on the opportunity to  
 5 advise the Regional Administrator that we should  
 6 review all of these activities, and where we had no  
 7 substantive results we should consider alternatives  
 8 to the approaches that we had taken to correct what  
 9 were apparent civil rights violations.

10 That February 28th, 1984 letter  
 11 established, I believe the Secretary described it,  
 12 as a more comprehensive approach to resolving these  
 13 difficult problems. That letter communicated to  
 14 the Regional Administrator that a special task  
 15 force had been established at the Headquarter's  
 16 level made up of these previously named Assistant  
 17 Secretaries of Housing, of Fair Housing and Equal  
 18 Opportunity and of the General Counsel's Office.

19 And all compliance activity in this  
 20 regional jurisdiction would be subject to the  
 21 review of this task force and under the supervision  
 22 of the task force.

23 The idea, in part at least, was to insure  
 24 coordination of the best effort toward resolving  
 25 very sensitive problems. That letter further

1 directing these officials to pursue all means  
2 available to the Department of correcting, not only  
3 civil rights deficiencies, but problematic  
4 deficiencies which tended to create a nexus between  
5 the civil rights problem and the activities that we  
6 were dealing with in the lawsuit.

7 Specifically, the Secretary proposed that  
8 we examine occupancy patterns, for instance, to see  
9 if, in fact, people were inappropriately housed and  
10 again inappropriately housed was to suggest that we  
11 would have to look to see if there were people  
12 in one-bedroom units with need of three-bedroom  
13 units; in three-bedroom units with need for one or  
14 two-bedroom units, and so on.

15 We already had established regulations  
16 controlling these matters and guidelines on how  
17 these matters should be dealt with. The  
18 Department's responsibility was to provide housing  
19 to parties consistent with their needs. Our  
20 further responsibility on the part of the  
21 Department was to continually assess those housing  
22 needs and make appropriate adjustments. Our  
23 information revealed that we hadn't been very  
24 effective in doing this.

25 So one of the activities we set out to try

1 to accomplish was, and I'm not going to try to  
 2 mention these in any particular order, but  
 3 obviously if any civil rights violations existed we  
 4 wanted to correct the violation, but we wanted to  
 5 get on a track which would give us the greatest  
 6 amount of assurance that the violation wouldn't  
 7 occur again.

8 In addition, we wanted to establish a  
 9 strategy where the parties would have the greatest  
 10 opportunity to have input into anything that was  
 11 going on to correct these civil rights violations,  
 12 but again on close examination we found that civil  
 13 rights violations and problematic violations were  
 14 inextricably interwoven and you couldn't in  
 15 isolation deal with civil rights violations and not  
 16 deal with problematic violations, or management  
 17 violations, whatever the case may be.

18 So it became apparent to us that it was  
 19 vital that HUD do a more effective job of  
 20 coordinating these activities while each one of  
 21 these respective departments may have been pledged  
 22 to do the best job it could in the delivery of  
 23 services. Whatever that responsibility might be,  
 24 it was quite difficult in the manner in which we  
 25 were doing it.

1           One of the primary goals, or one of the  
 2 other goals in addition to correcting the civil  
 3 rights violation, is to coordinate these efforts  
 4 more effectively so that whatever solution we came  
 5 up with would be more permanent and close to being  
 6 cautious. We think we've accomplished a number of  
 7 these things and I need to tell you or just suggest  
 8 to you a few ways we've done this.

9           For instance, we've asked the housing  
 10 authorities in many areas, but throughout the 36-  
 11 county areas to give us profiles on the make-up of  
 12 those units and obviously we've asked for these  
 13 profiles based on family size, race of the family,  
 14 unit size. Without these data, it's almost an  
 15 impossible task. We've asked housing authority  
 16 officials to identify overhoused and underhoused  
 17 parties and families.

18           We've asked them to make the movement of  
 19 families as-- well, there's no such thing as--  
 20 well, as least graphic as possible. Let's say that  
 21 we've asked them to consider legitimate hardships,  
 22 medical, work, child care. We've asked them to be  
 23 careful to review that the hardships are legitimate,  
 24 and the idea that I want to be closer to my sister  
 25 or a friend, and so forth, are laudable, but the

1 legitimacy of them may be questioned.

2 We have to go back to our charge, and that  
3 is, to provide safe, sanitary housing, and if we  
4 can accommodate some of them saying without  
5 violation of the law, fine, but then we have some  
6 dichotomy here and sometimes we get this. These  
7 kind of things-- well, how do you asses these needs  
8 and how do you make it less drastic?

9 We said, take the opportunity, for  
10 instance. When you were modernizing units and HUD  
11 is involved in a comprehensive program of  
12 modernizing. When we entered into these contracts  
13 with these 40 ammortization schedules, we maybe  
14 didn't consider as accurately as we should how much  
15 deterioration and repair and upkeep that is going  
16 to take place.

17 We have a comprehensive modernization  
18 program. It requires, in a number of cases,  
19 movement of families to modernize and refurbish  
20 units, and we say it to authorities, "Here's an  
21 ideal time to assess your housing profile, and  
22 since the person has to move anyway, to have the  
23 unit modernized, locate the person in an  
24 appropriate sized unit in this process."

25 Now, other situations where we have new



1 units being built, HUD embarked on an ambitious  
2 program a few years ago-- and I'm sure you read  
3 some of this in the newspaper-- after constructing  
4 housing for the elderly and we called it 202  
5 housing. Again, when new units are built, here's  
6 an excellent opportunity again to appropriately  
7 house people and thereby accommodate more people in  
8 these houses.

9 Sometimes, and HUD still does in some  
10 situations, establish new authorities and obviously  
11 when new authorities are established, we should  
12 look closely at the rules and regulations that  
13 we're guided by and be certain that they are  
14 followed in tenanting these units.

15 Let me give you a few features of what we  
16 found when we looked at some of these houses. Now,  
17 I think you read some of this in the Dallas Morning  
18 News article. I should mention here that the  
19 articles while accurate, was somewhat out of date.  
20 They were well written, well researched, but they  
21 were 14-months, in some cases, late being published  
22 from the time the data was compiled, and  
23 hopefully a little later I can give you some  
24 comments about what has transpired in that interim  
25 period.

1           But one of the features of the things that  
2 we found out there that were reflected in the  
3 article was the phenomenon of elderly units being  
4 occupied by predominantly white tenants and almost  
5 had a constantly a conspicuous absence of nonwhite  
6 and family units being occupied by predominantly  
7 minorities and a conspicuous absence of  
8 non-minorities, except in minority areas you found  
9 family members and elderly members. Now, that's  
10 not a violation of HUD regulations. Elderly people  
11 can choose among elderly units and units of  
12 appropriate size in a family project.

13           Paradoxically, we found an inordinate  
14 number of minority elderly in the traditionally  
15 minority black family units. It is simply a  
16 phenomenon until you look at the details.  
17 When you look at the details of how this came about,  
18 we receive such things and we still receive such  
19 comments as: "Elderly minorities are afraid to  
20 live in high-rise units." Paradoxically, elderly  
21 non-minorities aren't.

22           That's been pervasive information imparted  
23 out there to the tenant and potential tenants. So  
24 not only did we have the task of housing people and  
25 doing it in accordance with the regulations,

1 housing in appropriate size units, but we also had  
2 the task of disspelling rumors.

3 We also had the task of providing safe,  
4 sanitary houses for people who drastically needed  
5 it. We went into many communities where black  
6 people had been almost begged to move out of their  
7 shack into what was described in a lot of  
8 communities as the best housing in the community.

9 Representatives here from urban areas  
10 have one view of public housing and representatives  
11 from rural areas have another view. I should  
12 mention editorially, I guess, that the houses we  
13 are talking about in East Texas, for the most part,  
14 is the best housing in town, but we have people who  
15 consistently refuse to accept these units even the  
16 authorities who were acting in good faith and  
17 conscientiously trying to get people into units  
18 white and black.

19 They had myths and perceptions, and so  
20 forth, that we had to overcome, but the task is  
21 quite different. Now, remember we're working with  
22 data. We build housing units based on what some  
23 demographic expert has told us that it's going to  
24 require. So we were going into the communities and  
25 we would find communities with similar demographic

1 data being similar, but the housing being  
2 dissimilar, the housing supply and housing stock of  
3 supply and the housing patterns. And it's obvious  
4 that we have to try. If we're going to correct the  
5 problem permanently, if we're going to deal with  
6 the problem in terms of permanency, we have to deal  
7 with a broad version, if not deal with one isolated  
8 case of whether this person got in the unit or not.  
9 So the task of our reaching to minority elderly has  
10 been a comprehensive one.

11 The task of our reaching the white  
12 families has been a major task, to say the least  
13 when we get the parties housed, if we do accomplish  
14 this thing-- and I shouldn't suggest, but I'll give  
15 you some statistical data a little bit later-- but  
16 we think we've made significant progress, and I  
17 don't know what success is, but if I did, I would  
18 probably suggest that we had success stories after  
19 success stories that we told people. But once we  
20 get the people in the houses, we have the task of  
21 educating the housing authority firsthand, in a lot  
22 of cases, of exactly how they should establish a  
23 waiting list.

24 First of all, a community-wide waiting  
25 list is statutory, and some of the features of that

1 waiting list is that the person shall be placed on  
2 that list in accordance and his name shall be time  
3 dated and then he or she shall be offered a unit of  
4 appropriate size in accordance with that.

5 Obviously they have qualifications.

6 One of the problems that the enforcement  
7 part of the Department experienced was the feature  
8 of how we tenanted applicants. The Department  
9 issued regulations called Plan A and Plan B.

10 I don't have time to go into detail, but  
11 I'll just mention that one gave an applicant one  
12 offer and if the applicant rejected that offer for  
13 a reason that was not legitimate, that applicant  
14 went to the bottom of the list.

15 A second plan gave the applicant up to  
16 three offers before that applicant would go to the  
17 bottom of the list.

18 MR. SLOANE: I just wanted to  
19 make a comment, it's called first come, first serve,  
20 but Plan B is really first come, first serve. Plan  
21 B has been ruled unconstitutional by the U. S.  
22 Court of Appeals for the Sixth Circuit as  
23 representing nothing more than freedom of choice.  
24 In fact, the Court called it "discredited freedom  
25 of choice."

1 MR. EUBANKS: I've heard comments  
2 to that effect. I haven't read the order. Thank  
3 you very much for that.

4 But the point that I want to make about  
5 this is we found in fact that Plan B of the whole  
6 tenant process was used at times to circumvent the  
7 intent. That is, to give people an opportunity to  
8 be housed in accordance with the time that they  
9 apply and their housing needs.

10 I think there's a misconception. I know  
11 there's a misconception among housing authority  
12 officials in East Texas, and that misconception is,  
13 we have a responsibility to give people housing  
14 where they want it and I think that's a little bit  
15 beyond what HUD's regulations require.

16 I should mention to you that in this  
17 36-county-- well, first of all, we had to deal with  
18 a means of giving people an opportunity to have  
19 safe, sanitary housing, but maybe not given the  
20 sophistication to circumvent the law or the intent  
21 of the law.

22 So one of the other things that we're  
23 doing and proposing to people now in this tenant  
24 application, is to give those persons an  
25 opportunity to reside in a unit of the size that

1 they require, their family requires, and rejecting  
2 that unit for a reason that's not sufficient. It  
3 goes to the bottom of the list and give other  
4 people an opportunity to be housed.

5 We found many cases wherein this person  
6 would pass up an opportunity and retain his or her  
7 position until such time that they got the unit  
8 that they wanted. We in the Desegregation  
9 Coordination Office have carefully-- well, first of  
10 all, the Desegregation Coordination Office is  
11 typical. It's made up of the representatives from  
12 the Regional Counsel's Office, representatives from  
13 Housing Department and a representative from Fair  
14 Housing and Equal Opportunity. This is purposeful  
15 to insure the coordination of whatever activities  
16 are taking place.

17 In the regional office all activities that  
18 go on are a challenge to these perspective  
19 directors of housing, CPD, legal and FHEO to the  
20 regional administrator who in turn surfaced our  
21 findings, recommendations, and so forth, to the  
22 task force in Washington, which is also made up of  
23 General Counsel, Assistant Secretary for Housing  
24 and their Assistant Secretary for Fair Housing and  
25 Equal Opportunity.

1           As a result of this kind of an approach to  
2 a pervasive problem in East Texas, we have had  
3 phenomenal success, in my judgment, and I think I  
4 can use that term because I've seen the activities  
5 in this region for the past 15 years.

6           I can suggest to you in the past 15 months  
7 we've had phenomenal integration in East Texas by  
8 applying rules that have been in place for some  
9 time. By placing people in appropriately sized  
10 units where possible, where there were racially  
11 identifiable sites of one-race sites, where  
12 possibly placing them across race lines especially  
13 where they were finding other complaints of tenant  
14 non-compliance outstanding against those  
15 authorities, especially where there was litigation,  
16 a history of litigation involved in those parts.

17           We've done this, by first of all,  
18 coordinating our activities within the Department.  
19 One of the things that the Housing Authority seized  
20 on in circumventing the law in some cases was to  
21 play Housing off against Fair Housing and Equal  
22 Opportunity. They'd bounce one off the other.  
23 Play CPD off against the Housing Development.

24           You heard illustrated the case in  
25 Clarksville where housing discrimination was being



1 made, but the city still received funds from  
2 another department at HUD.

3 So we think we've corrected some of these  
4 things. We made a comprehensive assessment in  
5 March of this year and this represented about 12  
6 months of activity while the Desegregation  
7 Coordination Office wasn't established until  
8 September. The Desegregation Coordination  
9 activities started in about December, early January,  
10 the latter part of 1984. So Desegregation  
11 Coordination activities was about a year in  
12 progress.

13 Region VI alone in this 36-county area and  
14 about ten or twelve activities in other states,  
15 including Oklahoma, Louisiana, Arkansas, we had  
16 more than 550 integrated moves as a result of using  
17 problematic rules and regulations to correct  
18 housing, to correct inappropriately housed tenants.  
19 We simply went in and made the assessment in this  
20 town in Texas, and said, "You have five families  
21 living in three-bedroom-- single person families  
22 living in three-bedroom units.

23 In some cases those people are what we  
24 describe as "residuals." They came there with a  
25 family of five, but the family of five is now

1 reduced to one. The children have grown up and  
2 moved out, spouses have expired, or whatever.  
3 Whatever reason, they came in legitimate.

4 Notwithstanding the fact that they came in  
5 legitimate, when you house a single person in a  
6 three or four-bedroom unit, you can die a family  
7 out, and we use this type of persuasion to have  
8 people come to our position of taking an  
9 appropriate one-bedroom unit.

10 Now, some people say, "But I have a  
11 refrigerator and I have more furniture than a  
12 one-bedroom unit would accommodate. I'm sorry.  
13 We didn't consider that a sufficient means of  
14 deciding to keep that person there. It's a most  
15 difficult task. It crossed racial lines. I live  
16 here and the stores are two blocks away. The other  
17 store is four blocks. So we think we've been very  
18 effective in persuading people that this is the  
19 approach to take to these kinds of problems.

20 Our desegregation coordinating efforts  
21 have not been confined to this 36-county area. The  
22 same kind of desegregation coordinating activity  
23 are going along throughout the region. Now, it's  
24 more comprehensive in the 36-county area, for  
25 obvious reasons. It's also taking shape throughout

1 the nation.

2 A desegregation coordination unit is  
3 established in all ten regional offices or is being  
4 established. It's either established or it is  
5 being established throughout the nation. So we  
6 think this approach to dealing with the sensitive  
7 problem of public housing is the correct one.

8 I should mention that I've talked  
9 exclusively about public housing. We still have a  
10 comprehensive task ahead of us in what we call HUD  
11 assisted housing. You've heard terms like 236 and  
12 221D3s and D4s.

13 These are units that are provided certain  
14 strata of people with HUD assistance, but they are  
15 not conventional, low rent public housing, and I'm  
16 afraid that if we took a look we would find some of  
17 the same patterns there, or some similar patterns  
18 where race or ethnicity plays a major part in  
19 determining who gets accommodation.

20 I said I was going to mention just a  
21 couple of things. Let me mention just a few  
22 things that our activities have brought about.  
23 When we started making assessments of these  
24 problems, we realized that this is a monumental  
25 task and while the Desegregation Coordination

1 Office can do some things while HUD can do some  
2 things, the truth is, we need to bring the Housing  
3 Authority in contact with the city officials.

4 We found in many instances that the  
5 problem exists because there were no communications  
6 between the housing authority and the city that it  
7 was established in, and that just shouldn't be.

8 We found that housing authorities weren't  
9 talking relating to other housing authorities. We  
10 found housing authorities not relating to other  
11 facets of HUD. So we took as part of our task this  
12 idea that we want to expand on this idea of  
13 coordination. We think there are many resources  
14 out there. There are state agencies, there are  
15 local agencies that ought to have some impact on  
16 these houses already.

17 So where we've had cases where the people  
18 say, "I don't want to live over there on that site  
19 because there's crime," and towards the middle if  
20 that was a white person saying, "I don't want to  
21 live over there because there's crime," we're  
22 saying to them the housing authority has a  
23 responsibility to coordinate with the cities to  
24 remove the crime, myth or fact. That is a city  
25 problem and it ought to be attacked.

1 I don't want to move over there because  
 2 there's disparity and there was gross disparity in  
 3 some of these situations, and we're saying to CPD:  
 4 You funded these people to do street improvements.  
 5 Have you looked at the city comprehensively? Has  
 6 the city assumed its other resources?

7 So to correct these deficiencies, you  
 8 can't expect a white or a black person to move from  
 9 a superior site to an inferior site voluntarily.  
 10 So we had this passed of removing disparity. I  
 11 don't know how to tell you how comprehensive the  
 12 task is of bringing about equity in public housing,  
 13 and we're still working on how we're going to  
 14 approach assisted housing, but we do feel we made  
 15 some significant strides in the approximate year  
 16 and a half, close to two years since we've been  
 17 actively pursuing this matter

18 MS. LIPSHY: You said that 550,  
 19 approximately 550 new, actual moves had been made  
 20 that were supportive of more integrated public  
 21 housing. Could you put that figure in some kind of  
 22 relative terms?

23 MR. EUBANKS: Of these 36  
 24 counties that we're talking about now, and this is  
 25 not confined to 36 counties. This is 36 counties.

1 About four housing authorities apart in Oklahoma,  
2 two in Arkansas and four or five-- or two in  
3 Louisiana and four or five in other parts of Texas  
4 other than East Texas.

5 The moves that we have made would  
6 approximate two thousand to twenty-five hundred.  
7 So we're talking about overall, two thousand,  
8 twenty-five hundred moves in this period of time,  
9 and among those, 500 have been integrated, and let  
10 me do a little bit of expanding on that.

11 Integrated means and the thing that we are  
12 proudest of is that these black sites that people  
13 said white people would never move to have white  
14 tenants.

15 So when I say "integrated," I'm talking  
16 about sites that were one race and they are no  
17 longer involved in that. Then there were other  
18 sites where you had one black person at a white  
19 site and there hadn't been but one for years. One  
20 Hispanic in a white site. There hadn't been but  
21 one for years. When we got other people to go  
22 there, we called that an integrated move.

23 MS. LIPSHY: How many units,  
24 approximately, ball park are we talking about that  
25 these 550 integrated moves had an impact on?

1 MR. EUBANKS: I don't have that  
 2 information before me and I'm afraid to guess. I  
 3 can tell you we have 62 housing authorities. Now,  
 4 granted, housing authorities in East Texas are  
 5 small and I have all those figures, but I don't  
 6 have them with me. I don't know how many units.

7 Let me suggest this to you: Of the 62  
 8 housing authorities, 33 of them were found in  
 9 tentative non-compliance. So we're talking about  
 10 33 housing authorities, and if I had to guess, I  
 11 guess the average would be, say, 100 units, and  
 12 that might be over 125 units per authority. So you  
 13 might be talking about 6,000 units, 5,000 units.  
 14 But that is a very crude guess. Please don't quote  
 15 me on that.

16 MR. CANALES: If there are no  
 17 further questions, at this time we will proceed  
 18 with Mr. Don Babers.

19 MR. BABERS: Thank you. And if I may  
 20 at this time, I want to continue to elaborate in  
 21 terms of the compliance activities of HUD.

22 As stated earlier by Mr. Eubanks which he  
 23 touched on the deseg unit, I would like to go a  
 24 little more in terms of our other compliance  
 25 responsibilities.

1 Compliance responsibilities are totally or  
2 primarily labeled within the regional office in  
3 terms of support. We do have field offices that  
4 have a EO responsibility and they are set up within  
5 the FHEO division. They play a key role in terms  
6 of making the support role to our regional office  
7 function.

8 Their responsibilities primarily included  
9 reviewing and monitoring the programs, Title VI and  
10 the field offices of public housing, et cetera. However  
11 they do link very closely with the regional office  
12 and generate a lot of our activities in terms of  
13 complaints, reviews, and what have you.

14 I would like to briefly touch on the  
15 various program areas within the office of Fair  
16 Housing and Equal Opportunity in terms of the  
17 compliance division. They named Title VI the Title  
18 VI branch, primarily with the responsibility for  
19 administering the Title VI Act of '64, as well as  
20 we have the Title VIII branch, which I'm Branch  
21 Chief, and we also have the unique branch and the  
22 systemic branch which I'll go into a little bit  
23 later, in terms of the systemic branch has no  
24 responsibility of overlapping Title VIII as well as  
25 Title VI and the current role in the deseg unit as



1 well.

2 In terms of complaints, per se, I will not  
3 attempt to go into the complaint process per se,  
4 but I will touch on the primary responsibilities in  
5 terms of the Civil Rights Act as it relates to  
6 Title VI and in the dealing of 11063 Discrimination  
7 in the Use of Federal Funds, which is primarily  
8 tied into what we have dealt with in terms of  
9 public housing.

10 Title VIII primarily is governed by the Fair  
11 Housing Act and we're primarily involved in  
12 investigation and conciliation efforts. As has  
13 been pointed out earlier this morning in terms of  
14 our activities, under Section 810 a person may file  
15 a complaint with the Secretary, and it is at this  
16 point that we become involved.

17 We do not go out and solicit, but at the  
18 point that the person files a complaint is when our  
19 office becomes involved.

20 I would like to point out a significant  
21 thing that was mentioned this morning in terms of  
22 the number of complaints declining. Certainly, if  
23 you would look at our number in terms of the last  
24 three or four years, there has been a decline in  
25 the number of complaints. However, I don't think

1 this is any indication that discrimination is going  
2 away.

3 I think it has become a little bit more  
4 sophisticated, a little more subtle, but yet still  
5 last year alone in Region VI, our complaint  
6 workload, I believe, was somewhere in the  
7 neighborhood of around 350 complaints. Again, it's  
8 pointed out in terms of the complaints that are  
9 actually determined to resolve.

10 It was a low percentage in terms of 350.  
11 However, we are working to strengthen our efforts  
12 in that regards. I would like to mention something  
13 that is being done in terms of 808E which gives us  
14 the authority to educate and work with state and  
15 local agencies. It was touched on in regards to  
16 the Fair Housing Assistance Program. We're looking  
17 at this program very favorably in terms of  
18 extending our responsibilities.

19 You must realize they play a very primary  
20 role and one that can assist us very much at what  
21 we're doing. We have made consertive efforts to  
22 work with various state and local organizations in  
23 terms of trying to bring them up to equivalency and  
24 we've had somewhat of a difficult time.

25 The numbers are deceiving again, and many

1 localities in states when they look at the  
 2 statistics in terms of decreasing number of  
 3 complaints seem to have an idea that there is no  
 4 need for this type of coverage, where I tend to  
 5 disagree with that because there are still plenty  
 6 of complaints out there.

7 At this time, I'm going to pass it over to  
 8 Virginia Winker who is going to kind of go a little  
 9 bit more in detail in terms of our systemic  
 10 complaint process as well as some of the other  
 11 legal things that overlap into the compliance area,  
 12 and Mrs. Winker.

13 MR. ROBB: Let me ask you one  
 14 thing here. Out of 23 hundred something complaints,  
 15 is that for the five-state area?

16 MR. EUBANKS: Yes, it was.

17 MR. ROBB: How many housing  
 18 authorities in that five-state area?

19 MR. EUBANKS: 840 something  
 20 housing authorities in the five-state area. But  
 21 you should be aware that these are Title VIII  
 22 complaints. For the most part, they are complaints  
 23 against private owners, not for public housing  
 24 units.

25 MS. WINKER: I wanted to spend

1 my time telling you about the legal role in fair  
2 housing and equal opportunity efforts because it  
3 has decreased drastically over the last few years.  
4 We defend lawsuits and we've had plenty of those  
5 lately, but we have an affirmative legal  
6 responsibility also.

7 In 1980 when the systemic branches were  
8 set up in Title VIII-- systemic to us is just  
9 another name for pattern and practice-- but when  
10 the systemic branches were set up, there was a move  
11 by the General Counsel to increase the involvement  
12 of the lawyers with FHEO. We wanted to do that for  
13 several different reasons.

14 One, we wanted to help the FHEO Division  
15 be more effective and develop stronger cases that  
16 were litigation worthy and we also wanted to assist  
17 in subpoena enforcement where we had respondents.

18 For many of us this was a new area of  
19 operation and we set up a network of the attorneys  
20 all over the nation, a coordinator and not to re-invent  
21 the wheel, if it had been a gimmick in Boston, Fort  
22 Worth could use it, too.

23 Since the Young versus Pierce litigation  
24 has been in the courtroom and Title VI has gotten  
25 as much attention as it has, the lawyers have been

1 moving into Title VI also, and last month a similar  
2 network for the lawyers to deal with Title VI.

3 I can say that with the organization of  
4 the National Public Housing Desegregation Task  
5 Force, we're looking into several areas to beef up  
6 what we're doing ourselves and, that is, to do  
7 better with Title VI complaint reviews and to look  
8 at what really is a violation of Title VI.

9 To come up with a voluntary compliance  
10 agreement that is effective in its form to the  
11 individual authority and not to effectuate  
12 desegregation and compliance with Title VI.

13 All these efforts are ongoing and they're  
14 ongoing both at the national level and the regional  
15 level and they're going on in the regional level  
16 all over the country.

17 John mentioned that there are task forces  
18 in place in all of our regions and there are in the  
19 Atlanta region, there is a Desegregation  
20 Coordinating Office and it began last October and  
21 they started with the State of Georgia.

22 I cannot emphasize the amount of detail  
23 and the amount of meticulous work that goes into  
24 dealing with each housing authority because I have  
25 been around a fairly long time and I am seeing a

1 chain of dealing with an individual case and in  
2 dealing with individual efforts singly and not  
3 across the board.

4 Each plan that goes to Washington has  
5 gone through meticulous examination on the regional  
6 level, but it goes through meticulous examination  
7 on the national level, too, and a national working  
8 group in fact knows that Buella Johnson lives in  
9 Unit 157 and she's black and she's in a four-  
10 bedroom unit or a one-bedroom unit and she needs a  
11 four-bedroom unit and Hazel Phipps is over here in  
12 a four-bedroom unit and she really needs a  
13 one-bedroom unit.

14 The outreach efforts that are in  
15 different housing authorities each housing  
16 authority has already undertaken or taken under  
17 consideration, and so that the decisions that are  
18 made about housing authorities are made on an  
19 individual basis. I might add that those decisions  
20 that are made about our housing authorities in this  
21 region are not unique to this region. That the  
22 Washington Task Force is currently making those  
23 decisions about every housing authority to  
24 establish their non-compliance in the country. All  
25 of those efforts or findings go to Washington now.

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MR. GRAGLIA: What is your standard for racially identifiable sites?

MS. WINKER: The reason I smile is because we have been working very hard on defining what it is. It is not a racially identifiable site and I know that you have been picking on that all day long because I've been listening to you. How it has to be more than that, and I've heard it described as the effect of desegregation or the effect of segregation, plus, and that plus is the intent very often when you find racially identifiable sites and you look at the methods of tenancy and how those people got there you find your intent, and it really is a matter of looking hard enough and long enough to find it. To find your victims is not difficult. They are there. I won't go so far as to--

MR. GRAGLIA: Who is the victim?

MS. WINKER: The victim is oftentimes the tenants-- I mean, the applicant who has sat on the waiting list for two years because a site wasn't available at the black site for them to move into, but there were site units available at the white site.

1           It is easier when you have a complainant  
2           come forward, and we did have one in Whitewright,  
3           Texas who came forward and we gave a Title VI and  
4           systemic review and we successfully conciliated.  
5           The man wanted a unit. A unit was available in the  
6           white site. There were no units available in the  
7           black site. It never dawned on the chairman of  
8           that housing authority that he would be interested  
9           in that white site, so it wasn't offered to him.  
10          Sometimes it is more subtle than that, sometimes it  
11          is not as blatant as that, but it happens. People  
12          will sit on waiting lists a lot of times waiting  
13          forever and there are units available for them if  
14          they carry out their methods of administration  
15          correctly.

16                   MR. GRAGLIA:    Again, I don't  
17                   know why we worry about intent, whatever that might  
18                   be, whatever possible difference intent might make.

19                   MS. WINKER:    We worry about  
20                   intent because the Justice Department worries about  
21                   intent, to be very plain about it.

22                   MR. GRAGLIA:    Now, when you  
23                   think about it, is it just a cover-up or is it an  
24                   unjustified action? It simply is if this action is  
25                   to be justified to explain in unreasonable terms.



1 If it can't, you say racial discrimination is  
2 intended.

3 That really is the only realistic matter  
4 that is apparently involved, but what you describe  
5 is simple racial discrimination. Apartments are  
6 available that blacks are not given. There's no  
7 problem with that, but there's a tendency of racial  
8 discrimination that in fact what is happening is  
9 it's causing integration. See, we're imposing on  
10 the poor of this nation one more burden, namely  
11 they're going to live in integrated houses.

12 MS. WINKER: I want to say one  
13 thing about the method that HUD has been using.  
14 The overhoused and underhoused moves that have been  
15 made form the basis under which the moves have been  
16 made, and are based not only upon regulations that  
17 they will be appropriately housed, but in the  
18 individual lease, there are provisions that if they  
19 are inappropriately housed, they will agree to move.  
20 Those 550 integrated moves or those 2,500 moves  
21 that we have made have been based upon overhoused  
22 and underhoused situations, and that's pitiful  
23 because that's really the way we were administering  
24 our problematic rules, and that's what John is  
25 meaning when he says they go hand in hand.

1           You don't have a problematic violation  
2           that you can get to the racial violations with the  
3           problematic correction. Those moves are made under  
4           the leases and you can call it forced maintenance,  
5           but there is a legal provision for those moves,  
6           every one of them. Not the Clarksville situation.  
7           I'm not talking about that.

8           DR. DE LA GARZA: Could you elaborate  
9           on that statement? That the fact that black  
10          tenants are not only living in those cases that you  
11          described, racially maintained units, but they are  
12          also living in units that are smaller than those  
13          units to which they have a right by rotation.

14          MS. WINKER: Or larger.

15          DR. DE LA GARZA: So then, you have  
16          blacks living-- the first part is, that those who  
17          are black are living in units who have been placed  
18          because they are black and those units are smaller  
19          than those to which they have a right.

20          MS. WINKER: Sometimes.

21          DR. DE LA GARZA: It is a double  
22          violation of their right, in that case.

23          MS. WINKER: But it's not 100 percent  
24          true. They may be in units larger.

25          DR. DE LA GARZA: That was my next

1 question.

2 MS. WINKER: The overhoused and  
3 underhoused gave us a mechanism to make integrated  
4 moves. We had a legal basis because we had the  
5 people in housing that was inappropriately sized,  
6 for whatever reason.

7 DR. DE LA GARZA: I understand that,  
8 but let me stop right there.

9 The first question is: There are numbers  
10 of people who are put into units because they were  
11 black and some of these people categorically are in  
12 smaller units with those to which they have a right,  
13 categorically, is that correct?

14 MS. WINKER: Let me explain it to you  
15 this way. If you have a lot of elderly whites  
16 living in three and four-bedroom units in the white  
17 site, they may have been put there because it was  
18 available, they may have been put there years ago  
19 and they've lived there until the families all  
20 moved away. This happens a lot.

21 There is no housing available when the black  
22 family comes that needs a three-bedroom unit. They  
23 may have a two-bedroom unit, so they'll be put in  
24 the two bedroom unit. By making these moves and  
25 putting the lady in the four-bedroom unit in a one-

1 bedroom unit where she belongs, she's freed up the  
2 three-bedroom unit and you can move the black  
3 family over in appropriately housed units.

4 DR. DE LA GARZA: I understand.

5 MS. WINKER: A lot of it is not  
6 overt, if that's what you're driving at.

7 DR. DE LA GARZA: The first category,  
8 I think you said, yes, there are black families  
9 that live in black units because they are black and  
10 these units are smaller to which they have a right.

11 MS. WINKER: They are smaller.

12 DR. DE LA GARZA: I think you said  
13 yes to that.

14 MS. WINKER: There are some, yes.

15 DR. DE LA GARZA: Now, my second  
16 question is: Clearly there must be some blacks  
17 living in units bigger than those to which they  
18 have a right?

19 MS. WINKER: That's correct.

20 DR. DE LA GARZA: Now, my question  
21 is: Was it because there might be those who would  
22 say, "See, blacks are actually benefiting from this  
23 exercise." My question to you is: What would be  
24 the proportion of blacks in Category A? That is,  
25 those who are in units undersized versus blacks in

1 Category B, those that are in units that are  
2 oversized, in comparison to the proportion of  
3 whites in Category A and B, respectively?

4 MR. EUBANKS: I can tell you this,  
5 and I can only give you two or, obviously, one  
6 firsthand experience, and that being Region VI, but  
7 in our task force meetings at Headquarters, we have  
8 these-- we try to have them once a month-- the  
9 State of Texas, the Region VI, which includes Texas  
10 and Region IV in Georgia, have met together and we  
11 have very similar data. Almost universally,  
12 minorities are in undersized units. Non-minorities  
13 are in oversized units. That's not clear-cut and  
14 complete and always the case, but generally that's  
15 what you find.

16 DR. DE LA GARZA: And if that's the  
17 case and if there was originally a universal force,  
18 not obscuring or pulling those units that you have,  
19 that blacks or minorities in those categories have  
20 suffered two kinds of violations. One, is the  
21 racial discrimination violation and the other one  
22 is the over population of housing units violation.  
23 It's not in every case, but most of the time, is  
24 that correct?

25 MR. EUBANKS: That's your statement.

1 You can draw whatever conclusion--

2 DR. DE LA GARZA: No, I'm asking if  
3 that's a logical conclusion--

4 MR. EUBANKS: Well, I'm saying,  
5 that's your statement and I'll accept it. All I'm  
6 suggesting is this is what our facts gave us, you  
7 know.

8 MR. CANALES: Because of the time,  
9 we'll have to move on unless there are other  
10 questions.

11 Gloria.

12 MS. PORTELA: A practical question:  
13 Given the fact that your agency has been pillering,  
14 to put it mildly, in the last couple of years or so,  
15 given the publicity arising out of Clarksville and  
16 the other cases, what kind of a reception are you  
17 getting nowadays from the local housing authorities,  
18 tenant groups and other entities that you deal with?

19 I can imagine that when you say: "I'm  
20 from HUD and I'm here to help you," at least one  
21 door gets slammed in your face.

22 MR. EUBANKS: I'm sorry, that's not  
23 the case.

24 MS. PORTELA: I'm curious to know  
25 what the response, I guess, has been?

1 MR. EUBANKS: As a matter of fact,  
 2 night before last, I was called at home. I happen  
 3 to live here in Arlington, and the operator said:  
 4 "This is Texarkana," and the person called me and  
 5 said: "John, I'm on my phone at home and you are  
 6 on yours at home, let's talk man to man." Well, he  
 7 wanted me to tell him and he told me, "I'll do  
 8 whatever you tell me because I want to do right."  
 9 That's what was key to me. A number of these  
 10 people want to do right.

11 Now, they have been faced with things like--  
 12 I don't know where they get the idea, it's not  
 13 necessary. HUD is really not serious. The  
 14 Government is not serious. But now I think they  
 15 know we're serious.

16 What he wanted me to do was tell him my  
 17 opinion. I don't give my opinion. I give him the  
 18 results of my facts and I let him draw his own  
 19 conclusion. He's as intelligent as I am, at least.  
 20 So contrary to people's beliefs, we are very well  
 21 received because we think we do our business in a  
 22 professional manner. We go out there and say:  
 23 These are the regulations. This is not what I feel.  
 24 This is a regulation. This is a contract that you  
 25 signed 25 years ago.

1           So I'm not telling you what my philisophical  
2 position is, and as a result, it was very well  
3 received. We were on our way to Texarkana. We  
4 stopped at four different communities. Every one  
5 of them kept us longer than we anticipated because  
6 they want to have this dialogue. Our problem now  
7 is staff, you know, to get there.

8           MS. PORTELA: I'm not sure why  
9 you inferred this because I didn't imply it in any  
10 way in my question. I'm not assuming that people  
11 aren't listening to you. I guess what I was really  
12 asking is: Given your very public experience, how  
13 is your credibility? In other words, I wasn't  
14 entering the question with a preconception, but the  
15 point remains that we've heard evidence,  
16 information, from the three of you and from other  
17 people today about some of the perceived and real  
18 ineffectiveness in enforcing the laws.

19           And so my question really is: Now that  
20 you've decided to get tough or perhaps that you  
21 have the weapons to be tough, how effective do you  
22 think you can be, both in the short term and in the  
23 long term? That's really my question, and you have  
24 answered it, I think, partially, but I guess I  
25 would like to hear a little more elaboration on



1 that.

2 MR. EUBANKS: Well, in the short  
3 term, we have the typical restraints. As an  
4 example, the Desegregation Coordinating Office has  
5 five professionals. That factors out to one per  
6 state. That's a fact of life. We have to deal  
7 with it. We have to telephone a lot more than we  
8 have these face-to-face meetings. So the short  
9 term is hampered somewhat by this, but again, since  
10 I have no set of criteria to measure the success by,  
11 I can only compare with what I've seen in the past  
12 15 years, and if I had to make that comparison, I'd  
13 say phenomenal.

14 A number of people reading the newspaper  
15 articles are calling to us and saying: We have one  
16 race units, one-race sites. What can we do? We  
17 have to tell them sometimes that we can't get there.  
18 So the potential long range is unlimited. What the  
19 people realize right now is that maybe we are going  
20 to carry out our own rules and if you are, we want  
21 to be the first to get on board. So that's the  
22 kind of response we get.

23 MR. CANALES: Thank you very  
24 much, Mr. Eubanks, Mr. Babers and Ms. Winker.

25 At this time we'll now move on to-- we're

1 a little bit behind schedule-- to the area of local  
2 enforcement of fair housing with Mr. Ed Herrington  
3 and Mary Dews. If they will please come up.

4 Okay. We have Mary Dews who is the  
5 coordinator of mediation for the Dallas Tenants'  
6 Association and Mr. Herrington of course, is the  
7 Executive Director of the Dallas Housing Authority.

8 Mr. Herrington does not have a prepared  
9 statement, but he is available to answer any  
10 questions that we might have. He is the Director  
11 of the Dallas Housing Authority.

12 MS. LIPSHY: What would you  
13 consider to be your greatest need?

14 MR. HERRINGTON: The most  
15 critical problem we have is to get funding to  
16 modernize and straighten out all of our run-down  
17 public housing units, and I'd say that's our most  
18 critical problem.

19 We have a number of units that are vacant  
20 because we are carrying out some rather massive  
21 programs of modernization and we leave units vacant.  
22 Normally these become vacant through attrition. We  
23 simply don't fill the units when we know we have a  
24 modernization program going, and at this time I  
25 didn't bring those figures. I'm sorry I didn't

1 bring them.

2 We probably have 300 or 400 units in that  
3 category for that reason, but in one section of our  
4 city, we have 3500 units located, and of those 3500  
5 units, about 1200 of them are vacant, vandalized  
6 and would take great sums of money to be repaired.

7 MR. ROBB: Out of your total  
8 number of units--

9 MR. HERRINGTON: We have about  
10 7500 units

11 DR. PENDLETON: Of that number,  
12 what percentage would you say are fully integrated?

13 MR. HERRINGTON: We have two  
14 projects for families that are better integrated  
15 than any of the others. One of those is a pretty  
16 good distribution of the breakdown of the others.

17 DR. PENDLETON: Would you put a  
18 name to them?

19 MR. HERRINGTON: Yes, sir.

20 Excuse me just a minute. The Cedar Springs  
21 Place Project is the one that is one of the best  
22 integrated of all of our apartment developments.  
23 We have 147 black occupants in that project, 67  
24 white, 2 Indian, 92 Hispanic and 67 Asian and  
25 Pacific Islanders and for a total of 375 units.

1           The Little Mexico Project has 1 white  
2 family, 39 blacks, 49 Hispanic, 12 Asian for 101  
3 units. Typically, in totals-- let me give you the  
4 totals that we have in these units and this  
5 includes everything, the elderly, the Turn-key III,  
6 which is the home ownership opportunity in all of  
7 those-- we have 847 white, 4,364 black, 7 Indian,  
8 289 Hispanic, 168 Asian, 13 other for a total of  
9 5,688 families.

10           MR. GRAGLIA: Well, you got a  
11 system with some 5,000 something units and 4,000  
12 and something of the tenants are black?

13           MR. HERRINGTON: Yes.

14           MR. GRAGLIA: So integration  
15 really seems to be hardly the question.

16           MR. HERRINGTON: I would say  
17 that the racial pattern for much of the public  
18 housing is not dissimilar from ours. I think we  
19 have some problems in Dallas that are more acute  
20 than many housing authorities over the country.

21           MR. GRAGLIA: I think that  
22 makes integration concerns almost developed. Have  
23 you been led to believe by anyone that you should  
24 act to this integrated solution solely to the  
25 extent that's that's possible?

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MR. HERRINGTON: Yes, sir.

MR. GRAGLIA: Who led you to believe that?

MR. HERRINGTON: Well, I've been in the program myself for years and am committed to that objective, and as well as understanding the regulations, we do make our attempt to accomplish that.

MR. GRAGLIA: What do you understand the regulations to be, H-U-D, HUD regulations?

MR. HERRINGTON: Yes, sir.

MR. GRAGLIA: What do you understand them to be?

MR. HERRINGTON: Well, as we implemented in Dallas, you know, you can review different-- have different views of it, but the way that we attempt to accomplish this is that we accept application without referring, of course, to race or anything of that nature, and then when we have a unit available, we offer that to-- that is racially, let's say, that is predominantly one race-- the person who is at the top of the list for applicants, if that person is of a dissimilar race, they are made the offer of the one unit before

1 anyone else.

2 In the top group of applicants that we have,  
3 the racial composition of the applicants that have  
4 gone through the process are given the opportunity  
5 for housing in that unit first. If they reject  
6 that, then they are given a second chance, and for  
7 whatever next project that we have, and if they  
8 reject that, they can go to the bottom of the list,  
9 and we go through that process again.

10 MR. GRAGLIA: For instance, the  
11 project that is basically black and the person at  
12 the top of the list is black, that person will be  
13 offered the first opening?

14 MR. HERRINGTON: They are  
15 offered the opening-- let's say we have two  
16 projects, one white occupancy and one black that  
17 came up at the same time, and we had a vacancy in  
18 the white project and one in the black project, we  
19 would offer them occupancy in the white project.  
20 If they rejected that and if there were no other--  
21 if we had another white project with a vacancy,  
22 they'd be offered that.

23 MR. GRAGLIA: In other words,  
24 you deal with people on the basis of race--

25 MR. HERRINGTON: Yes, sir.

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MR. GRAGLIA: -- in order to  
require or bring about --

MR. HERRINGTON: Yes, sir.

MR. GRAGLIA: You feel that's a  
government requirement?

MR. HERRINGTON: I don't know  
that it's required in the sense that we are doing  
it, but I think that the objective of the  
Government is to accomplish a racially integrated  
program if that's possible to do.

MR. PORTELA: Lino, let me just  
interject that figure, unless I both heard wrong--  
unless I both read wrong and heard wrong, the facts  
in the Dallas Morning News indicate that 63 percent  
of public housing is occupied by whites and I think  
both Mr. Sloane and Ms. Snow this morning gave  
percentages either at that level or higher. So  
that your assumption that Dallas' 80 percent plus  
minority population is typical, is probably not  
correct.

DR. DE LA GARZA: And in many  
areas where it might be correct there are other  
minorities besides blacks.

MR. HERRINGTON: If I might,  
could I speak to the Dallas Morning News issue. I

1 think that's one reason why we're invited because  
 2 it was in Dallas that this review was made. First  
 3 of all, let me say that from our perspective and  
 4 from our communication with the newspaper, it was  
 5 that we thought that it did a service to the  
 6 country, that series. We feel like that it exposed  
 7 some things that were just blatant misuse of  
 8 authority.

9 On the other hand, there were some aspects  
 10 of that that we felt were overdrawn and  
 11 inappropriate and not really-- they missed the mark  
 12 a bit. I'm a little disappointed in some of it.  
 13 It doesn't take away from the fact that the need is  
 14 critical, or that there's disparity in the  
 15 distribution of race at all about what I'm saying  
 16 and I don't mean to imply that at all, but in the  
 17 case of Dallas where there were some statements  
 18 made about the elderly versus the family units, I  
 19 think they missed the mark there a bit.

20 Because, if you will look at what  
 21 happened, the last units that were built in Dallas  
 22 where family units were built in the 1950's, and  
 23 then there was gap of some 16 years before any  
 24 other units were built, the units that were built  
 25 then, at that point, we did have some Turnkey III



1 units that were built. They were built in a black  
2 section of our community near Bishop College. Then,  
3 from that point forward, all of the rest of the  
4 units that have been built were elderly.

5 Now, at the time that first occurred,  
6 there were no elderly units in Dallas. It became a  
7 new opportunity. There was no restriction, I think,  
8 that would force anyone necessarily to have chosen  
9 to build elderly instead of family, but because  
10 there was none and because that opportunity was now  
11 available, Dallas did what other cities did-- I was  
12 not located there at the time-- but others did,  
13 they built elderly units.

14 Then, as we moved into the '70s, it became  
15 so popular nationally that you couldn't build  
16 anything but elderly. They quit allocating funds  
17 for family units, and we have had a gap now of  
18 years where nothing has been available for low  
19 income family units and we are at the stage in  
20 Dallas where practically we're not hurting for  
21 elderly units. We're in pretty good shape.

22 Let me finish with one other point on this.  
23 What happened along with that that we or our  
24 policies of integration came into being, where no  
25 longer could we have segregated projects. That

1 happened in the '60s and that was done away with,  
2 and then about the time the elderly projects were  
3 developed, it became necessary that any units  
4 developed were filled basically in white areas.

5           You couldn't build public housing in  
6 non-white areas and it was not from some bad  
7 motivation. It was for a reason. The assumption  
8 was that would help bring about integration. It  
9 might, if these were family units, I'm not at all  
10 sure. I can't tell you that it wouldn't because we  
11 have not had the experience of building new family  
12 units somewhere, and I do think maybe families  
13 might be interested in going into an area that was  
14 different than their race, but the elderly with  
15 their ties to the church and family and  
16 neighborhood, we have found just will not accept  
17 housing in-- well, I won't say none. Of course, we  
18 have some race integration there, I believe, but it  
19 is very minor. And I just think that the issue,  
20 with all they wrote, they failed to make that and I  
21 think that was a very valid and important point  
22 that was left out of that series.

23                   MR. ROBB: I want to ask you  
24 about Section VIII, it says-- you do have a program--

25                   MR. HERRINGTON: Yes, sir.

1 MR. ROBB: -- what size is the  
2 Section VIII--

3 MR. HERRINGTON: The numbers,  
4 it's about 3500 units, if that. I got it somewhere  
5 here.

6 MR. ROBB: Do you monitor that  
7 directly, or do you operate that program, or is it--

8 MR. HERRINGTON: No, sir, we  
9 handle that program.

10 MR. ROBB: How do you monitor  
11 your Section VIII program to assure that it is in  
12 compliance with the objectives that you are talking  
13 about?

14 MR. HERRINGTON: Well, in terms  
15 of our responsibility for that program, it is that  
16 no landlord shall discriminate on the basis of  
17 race, creed, color, national origin, sex, what have  
18 you, and if we have any indication of anything of  
19 that nature, then we certainly would-- and I don't  
20 recall that we've had a case of that, but we would  
21 take appropriate action. I would say we'd call HUD  
22 and bring it into compliance and go after it.

23 Our responsibility is to issue certificates  
24 of eligibility for people that are eligible and  
25 they, of course, can go anywhere in the community

1 that they can find housing that fits within the  
2 rent levels that HUD has set that are willing to  
3 work with us on the program, and then we have a  
4 responsibility to see that the units are standard  
5 and that the rent levels are appropriate, not  
6 necessarily just the level that HUD has set, but  
7 appropriate in terms of other housing of similar  
8 types.

9 And that's about the extent of our  
10 responsibility. As it relates to the issue of  
11 integration, our responsibilities there are simply  
12 to assure that there is no discriminatory action  
13 being carried out.

14 MR. ROBB: Do you find that your  
15 Section VIII program has aided in integrating  
16 neighborhoods?

17 MR. HERRINGTON: I think it has,  
18 to some extent. I don't think-- I mean, it's not--

19 MR. ROBB: These sites are  
20 pretty much scattered throughout the--

21 MR. HERRINGTON: Yes, sir. I  
22 think it has helped some.

23 MS. PORTELA: How would you  
24 assess the performance in the area of maintaining  
25 units at what you call "standard," or what was

1 called earlier as "safe and sanitary"?

2 MR. HARRINGTON: Our public  
3 housing units?

4 MS. PORTELA: Yes.

5 MR. HERRINGTON: Well, as I  
6 said, I've been in Dallas for six years. When I  
7 came, I told the Board of Commissioners that we had  
8 the worst public housing in the nation, and that  
9 there may be even large cities with larger number  
10 of units than ours that would have in numbers more  
11 than we had at the time I came, that were in  
12 disparity and horrible shape, but all of our some  
13 6,000 units designed for families were a disaster.  
14 They were just awful. We have struggled and fought  
15 to get every dime we can get to get those  
16 straightened out. I might tell you, incidentally,  
17 race was not the factor.

18 We went to the sites that we thought were  
19 the worst with our efforts first, but they happened  
20 to be the ones that were substantially occupied by  
21 the black families. In fact, the two projects that  
22 we have integrated are the only two that we have  
23 yet to actually get any major work underway in.

24 So we have been carrying out a massive  
25 program of modernization and we've been, with HUD's

1 help, rather successful in getting money. We have,  
2 with a combination, some creative ideas and  
3 activities and controversial activities, but  
4 nevertheless been able to get the funding to take  
5 care of about half of our public housing units, all  
6 of those but those 3500 units in West Dallas that  
7 are located in one spot there.

8 We don't have all of it done, but we have  
9 it underway. In West Dallas, we have 3500 units.  
10 Well, in round figures, 1500 units of that were  
11 built for black occupancy, 1500 units for white  
12 occupancy, 500 for Hispanic. And that's the way  
13 those were developed.

14 If you look at them physically, even  
15 though it covers one square mile, it's the largest  
16 concentration of two-level public housing family  
17 units in the United States. And if you look at it--  
18 maps of it, you will see that not only was the  
19 racial composition established segregated, but also  
20 the road map where it did not lend itself to racial  
21 immigration, and certainly not the flow you'd  
22 ordinarily expect. So we have this whole process  
23 to try to unravel at this point. We're very deeply  
24 committed to getting all of this straightened out.

25 MR. CANALES: I believe Al had a

1 question.

2 MR. VELARDE: I have a series of  
3 questions, one right after the other one.

4 MR. CANALES: Try to limit it to  
5 two, if you can.

6 MR. VELARDE: Let me put about  
7 five things into one question.

8 As DHA Director, you say you answer for  
9 certain things to HUD. What is your relationship  
10 with your housing board? What is their  
11 responsibility as far as getting you funding for  
12 maintenance, or does that belong to the City? What  
13 is the City's relationship with the city council,  
14 and what is the make-up of your Board as far as  
15 representation from that community that you serve?

16 MR. HERRINGTON: Well, let me--  
17 first of all, if I misled anybody, I'm responsible  
18 to the Board of Commissioners. I'm not responsible  
19 to HUD. We do have a relationship with HUD because  
20 a large portion of our funding comes from HUD, but  
21 I'm responsible to a five-member board of  
22 commissioners that established a policy for the  
23 authority and I'm the one responsible for carrying  
24 out the policies.

25 Our board is composed-- we have three

1 white members on the board, a black member and a  
2 Hispanic. That has been rather traditional, I  
3 understand, for the Board of Commissioners. I've  
4 been there six years and that's held throughout the  
5 six-year period that I've been here. We're into, I  
6 guess in that period of time, at least our third  
7 Board of Commissioners, maybe not quite three, but  
8 more than two in the period I've been there.

9 Our relationship with the City, we have  
10 been successful in getting some funding for some of  
11 our modernization needs through the Community  
12 Development Program. We've made requests and  
13 continue to from them and we get some funding for  
14 part of this from them for those kinds of things.  
15 They have provided funds and we worked on this for  
16 security forces that are funded by the City, most  
17 of it out of the Community Development Program.

18 We have one kind of small police center  
19 that we're hoping to see expanded in the West  
20 Dallas community. There are security forces, the  
21 kind of forces that look after the airport, and  
22 this kind of thing. They're not true police  
23 officers, but they have guns and that kind of  
24 business.

25 The City has been very supportive of our



1 efforts. We think this relationship with the city  
2 council that lobbied on our behalf, and what have  
3 you, to try to help us get funding, and that sort  
4 of thing. We have, I feel like, a very good  
5 relationship with the City Government.

6 I don't know if I covered all the  
7 questions.

8 MR. VELARDE: One part you  
9 missed. You told me the make-up of your  
10 Commission, Board of Commission, three, one and one.  
11 How many of these five are representative from the  
12 community that you serve?

13 MR. HERRINGTON: Oh, none of  
14 them are tenants, if that's what your question is.  
15 None are tenants. We have our Chairman, Mr. David  
16 Fox. He is recently retired. Bob Jacobs,  
17 developer of operations of our housing development.  
18 Our vice chairman is Mr. Martinez. Martinez, he's  
19 an architect in Dallas. Then we have Ms. Mattie  
20 Nash. She is a black lady who lives very near the  
21 West Dallas development. I think many of the  
22 residents almost see her as a tenant participant.

23 Mr. Martinez grew up in that same general  
24 vicinity. We have Mr. John Showcall who is an  
25 investor, private investor. Mr. Bill Ferrill, an

1 insurance executive. That is our board. A very  
2 dedicated and committed board.

3 MR. VELARDE: Do you pick these  
4 or are these assigned by the city council?

5 MR. HERRINGTON: The mayor  
6 appoints the Board of Commissioners.

7 MR. CANALES: I might add that  
8 Mattie Nash has been a long, long time activist in  
9 West Dallas and knows the situaton very, very well.

10 MR. ROBB: If all of your  
11 dealings with them are favorable, do you have the  
12 names for them at this time?

13 MR. HERRINGTON: Yes, sir, we  
14 certainly do. There is a great need, you know,  
15 with this committee to do anything by way of-- and  
16 it's not just in Dallas, but it's national. The  
17 thing that I think in this country that there is  
18 such a tremendous need for-- a growing need that's  
19 not being met, is the disparity of the gap between  
20 those that have low incomes. I feel that there is  
21 a tremendous gap in that area for those people  
22 whose income is just a tad too high to be eligible  
23 for assisted housing and yet is so low that they  
24 really can't go out and find a decent home  
25 somewhere to live. And that gap, I think, has

1 widened in the last few years and is the one area  
2 that's not being addressed at all. It is just  
3 critical.

4 And, I do feel that if we could begin to  
5 address that so that people could move up, what it  
6 does for them, their opportunities that they have  
7 for themselves, I think, has tremendously improved,  
8 and then it leaves opportunities, I think, for  
9 further expansion at the low income end of the  
10 situation.

11 DR. DE LA GARZA: To the  
12 Southwest, it has been perceived that black  
13 neighborhoods have the intended black concerns, and  
14 your description of the residents in Dallas brought  
15 to mind the problem that occurred in Denver and I  
16 wonder if it's occurred here. That is, a  
17 relatively large number of neither black nor  
18 Mexican origin people but of Asian people.

19  
20 In Denver that caused a great stir because  
21 U. S. Immigration concern brought in Asians,  
22 Vietnamese particularly, and in effect gave them  
23 priority over public housing over Mexican-American  
24 families that had been long seeking.

25 I would think that given the proportion of

1 people in this area I'm surprised of the large  
2 number of Asians. And so Mexican-Americans are  
3 sort of concerned about HUD as being Eastern black,  
4 and now the rights of the Asians here. Is there  
5 something about that going on here? Is that--

6 MR. HERRINGTON: I'm really guessing,  
7 I don't know exactly. I think your feeling about  
8 this is accurate, particularly as it relates to  
9 white families. I know in terms of envisioning  
10 public housing as black, and I think that's  
11 unfortunate, but I think it is true.

12 I believe if we could somehow or another  
13 begin to develop a better mix of race in there it  
14 would do so much more really for everyone and for  
15 the housing authority. I think the whole view of  
16 what we do has improved greatly. But it's been  
17 strange to me that we've had no real reaction,  
18 negative reaction at all to what has transpired  
19 here.

20 DR. DE LA GARZA: Let me ask the  
21 question a little differently: Were there special  
22 efforts to accommodate the housing needs of the  
23 Vietnamese and other refugees from Southeast Asia  
24 such that that displaced Mexican origin, Black  
25 origin and Anglo families on the housing issues?

1 MR. HERRINGTON: No, not displaced.  
2 From that standpoint, no, there was no  
3 displacement, but there were priority  
4 considerations given to them. That is, in the  
5 terms of as they came in, there were no Asians, and  
6 you have described our procedure.

7 They would get a priority over the others  
8 because of that and really this has all developed  
9 within the last three or four years. The numbers  
10 that we have, it's been rather rampant, but there  
11 has been no-- and that we haven't made efforts to  
12 have interpreters, people that could help with  
13 that. That's been some special effort, but beyond  
14 that, nothing, nor any negative reaction.

15 MR. CANALES: We have one final  
16 question. Milton.

17 MR. TOBIAN: Dallas' mix is changing  
18 rather quickly. We now have 40,000 Chinese in the  
19 Dallas area and \$30,000 Southeast Asians from  
20 Vietnam, Chinese from China or Thais.

21 Besides, I was sort of surprised to see the  
22 numbers of your clientele and the housing authority  
23 still so heavily identify 80 percent as black  
24 still. Can you characterize or are these the  
25 only-- the same ones on the waiting list?

1 MR. HERRINGTON: I can't tell you  
 2 accurately, but my guess is that it's substantially  
 3 black, and I think if it were effective, the thing  
 4 we were just talking about, I think there is kind  
 5 of an overall feeling that we provide housing for  
 6 black people.

7 I know that it's-- I think there is sort of  
 8 that notion and that's the only explanation I could  
 9 give for it. I wish that there was a way and  
 10 perhaps there is. Perhaps if we could give more  
 11 attention to advertising, sort of the nature of our  
 12 development, that's one we can work on. I hadn't  
 13 thought of that aspect, but that's possible.

14 MR. TOBIAN: You have also indicated  
 15 that in recent times the only construction, new  
 16 construction you have done is for the elderly. I  
 17 have been through a number of those units and if  
 18 you were to take the residents and the elderly  
 19 housing out of it-- I'm talking about families who  
 20 tend to characterize percentage-wise your ethnic  
 21 mix within the Dallas, Fort Worth area.

22 MR. HERRINGTON: Well, it would even  
 23 grow a little more black percentage. We have more  
 24 white. Percentage-wise, we have a couple of our  
 25 elderly developments that are substantially white.

1           Now, we have a better-- not a real horrible  
2 mix in our elderly development, but it's still  
3 overwhelmingly one race or the other-- but we have  
4 percentage-wise more white in the elderly units  
5 than we do in the family units.

6           MR. TOBIAN:     How long do you think  
7 it will take before you get your rehab done?

8           MR. HERRINGTON:   We're committed to  
9 finish that in five years. Well, I said that a  
10 year ago, so I better say four years. The truth is,  
11 we won't get through in that period of time, but  
12 that's our goal and we do have a plan for this. We  
13 do have \$18 million towards the West Dallas  
14 improvements needed, and we hope to go after  
15 additional monies, plus to carry this out, and I  
16 fully expect us to be well into it within the next  
17 four years.

18          MR. CANALES:     Okay. We'll have to  
19 move on and I will ask Mary Dews to come up.

20          MS. DEWS:       First of all, I would  
21 like to say it is indeed an honor to be here. I am  
22 with the Dallas Tenants' Association and we pretty  
23 much hear all the housing needs in Dallas, Dallas  
24 County, Tarrant County also.

25                 We are a private, non-profit organization.

1 We pretty much survive on membership fees and  
2 private donations. We do have a serious problem  
3 here pertaining to housing when it comes to low  
4 income people in Dallas and Dallas County and  
5 Tarrant County.

6 I have been listening to quite a few  
7 people talk on the issue of housing. I would like  
8 to express to you at this time not only am I a  
9 member of the Tenants' Association or a staff  
10 person at the Tenants' Association, but I have  
11 lived in subsidized housing before in Dallas in an  
12 all black area.

13 One of the major problems that we do have  
14 here is, and not only by experiencing it, but also  
15 is still going on with the Tenants' Association  
16 based on the calls that we do receive daily, is  
17 that blacks are not told, number one, about the  
18 existing housing in other areas, the white areas.

19 When you talk about the project, you are  
20 pretty much in Dallas looking at an all black area  
21 or all black tenants. When you talk about the  
22 high-rise pertaining to the projects, the projects  
23 are in a white area. You're looking at the  
24 majority of the people there being white.

25 The high-rise in the black areas, you're



201  
1 looking at pretty much all black families there,  
2 senior citizens. One issue somewhat disturbed me:  
3 When tenants go to the Dallas Housing Authority,  
4 when they do apply for the Section VIII there,  
5 which is different from the Section VIII with the  
6 HUD program, because you can go to the apartment  
7 site and apply. This is not told and I'm not  
8 speculating on this. This is fact.

9 They do have a briefing session at the  
10 Dallas Housing Authority to each Section VIII  
11 tenant or potential public housing tenant, and the  
12 programs that exist under the HUD program is just  
13 not mentioned to the black families for a fact. I  
14 know that.

15 This is a real emotional issue with me and  
16 so I hope you bear with me. Because we stop and we  
17 look at this issue as being an issue that has gone  
18 on for years and years and not just in Dallas,  
19 Texas, but all over, and it's really time to get  
20 serious about people having a place to stay and  
21 stop just having meetings like we're having now and  
22 really doing something about it.

23 I talk to tenants daily. They want to  
24 move out of the so-called remodeled program of the  
25 projects of Dallas Housing Authority. These are

1 families that have been there for 15 years, but  
2 they call and they say they didn't know anything  
3 else was available for them, maybe like the  
4 suburban areas.

5 I would like to sort of touch on the  
6 newspaper article of one family that had repeatedly  
7 went to the Dallas Housing Authority for housing,  
8 the Washingtons. She had indeed applied there, she  
9 and her family, and had to wait for over a year  
10 before she was given housing.

11 She did move to the suburban area, which  
12 they did have a HUD Section VIII housing there.  
13 They were unable to get any of the subsidy units  
14 there. Because of that problem, she lost her job  
15 and they did come back to Dallas.

16 After coming back to Dallas, they did  
17 contact the Dallas Tenants' Association. We in  
18 turn began to assist Ms. Washington and her family,  
19 and at this point in time she is in one of the  
20 subsidy units, not by choice, mind you. She's  
21 there simply because she had no other place to go.  
22 She wanted to move back to the suburb and there is  
23 a Section VIII housing unit-- well, some Section  
24 VIII housing units under HUD in that area.

25 From time to time, I have to sit down and

1 discuss with tenants issues like: Where did you  
 2 want to live if you had a chance, a choice, and  
 3 this is pretty much all we're questioning or asking  
 4 at this time is to just have fair housing open for  
 5 all. Don't deal with it on the basis of people of  
 6 color. If a person comes to apply, let that  
 7 individual be able to apply at that particular  
 8 unit.

9           And some blacks are going to units right  
 10 today in Dallas, the suburban areas and the  
 11 Section VIII HUD properties will not allow them to  
 12 fill out applications there. Some of the tenants  
 13 or people being told that are black, all black,  
 14 "That people never move from here. They're told,  
 15 "The only time we have vacancies is when someone  
 16 dies, or, "We have a five to ten-year waiting  
 17 list." Now, that did come up last week, a ten-year  
 18 waiting list.

19           One manager also stated and mentioned a  
 20 person with the HUD office in Fort Worth stating  
 21 that they knew that they were not accepting  
 22 applications. They had stopped excepting  
 23 applications for over two years. One particular  
 24 manager stated that: "I've never seen this many of  
 25 you all come in at one time before."

1           We're talking about all non-black managers  
2 here, all non-black managers, and we're talking  
3 about all black potential tenants.

4           You know when we go out into the working  
5 world, or when we go shopping, if it's not in the  
6 slum area or the so-called ghetto, we see white  
7 people. You know, we see non-blacks.

8           Is it fair for blacks to be forced, and  
9 really it's not a choice issue here. In Dallas a  
10 lot of blacks are being forced to live in the slum  
11 area and they're qualified to live in some of the  
12 other subsidy units, and that's a fact.

13           There are a lot of blacks that want to  
14 move to the suburban areas. They're not afraid.  
15 There are a lot of elderly blacks that do want to  
16 live in highrise, be it suburban or Dallas County.  
17 And I'd like to re-emphasize that I talk to these  
18 people daily, not only at the office, but when I go  
19 home. If the people, number one, at the Dallas  
20 Housing Authority would make an honest attempt,  
21 number one, when they do bring the tenants, let  
22 them know what else is available.

23           HUD has a list that has been around for a  
24 long time with a list of Section VIII, 236, or  
25 programs that are listed. But it's like a-- it's a

1 private list. Black families do not know. The  
2 majority do not know about this list. One lady was  
3 asked when she went to apply at one of the  
4 apartments: "Who gave you that list?" or "Who told  
5 you about our apartment here?" As if it should  
6 have been something that was hush-hush when it  
7 comes to black people.

8 The only thing that I want, because I  
9 still qualify for the subsidy program, but based on  
10 the way it's set up where you have to live because  
11 you're black, I chose to get off the program and  
12 pretty much try and make it the best way that I  
13 can. But there are a lot of families that will not  
14 make that choice, and I don't really think we have  
15 to or need to make that choice if we would become  
16 sincere about housing and how it affects people.

17 I know I heard some people talk around the  
18 table, the panel, about economics. You know, if we  
19 were able to go or move to some suburban areas, we  
20 would have more money because there are some  
21 mothers that qualify for some of the subsidy units  
22 that have to go 30 miles each day to work and they  
23 have subsidy units there.

24 They don't mind and the elderly do not  
25 mind coming from the suburban area back to

1 Oakcliff or South Dallas or their church homes.  
2 They have expressed this to me.

3 So when we talk about who don't want and  
4 the ones that want to move, I have a choice, let's  
5 deal with it on those basis. Let's not have people  
6 from agencies attempting to speak for the people  
7 that the program serves and say, "the height,"  
8 being afraid of heights, because for each one black  
9 senior citizen that you can get and if you state  
10 that they have a fear of heights, I assure you I  
11 can get two, if not more.

12 For each black that anyone can get here in  
13 Dallas, Dallas County stating that they have a  
14 problem moving to the surburbs, I can get more than  
15 two people that state that I would be willing to  
16 move to the surburbs, and we could deal with the  
17 issue of having available housing, maybe in the  
18 project if the programs are dealt with on the basis  
19 of being equal. And, as I stated, this is a very  
20 emotional issue with me and if there are any  
21 questions at this time, please feel free to ask.

22 DR. DE LA GARZA: I'm not real  
23 sure what you meant when you said that in your  
24 experience black families are not told about the  
25 HUD Section VIII.

1 MS. DEWS: That's correct, not  
 2 all. There may be some out there, but I haven't  
 3 met any, and on the average, within a week's time,  
 4 I deal with over 50 families, black families. I  
 5 deal with all calls, I mean, there are whites,  
 6 Hispanics and others, but I'm speaking about the  
 7 black families.

8 On the average of a week, I deal with over  
 9 50 people that need housing and 50 people that's in  
 10 the project from time to time that's stating that  
 11 they want to get out of the project, but they don't  
 12 know any place else to go. They feel the project  
 13 is it. It's really like they're here in Dallas and  
 14 it's like the place where they would have to live  
 15 is over 1,000 miles away if they wanted an option,  
 16 you know, as far as living. But they are not told.  
 17 No, they're not.

18 DR. DE LA GARZA: Mr.  
 19 Herrington, is that a program that your office is  
 20 responsible for?

21 MR. HERRINGTON: Well, first,  
 22 for the the Section VIII program, the blacks seem  
 23 to be aware of it. Because of our program, nine  
 24 percent under the Section VIII program are white  
 25 and 87 percent are black and 4 percent are

1 Hispanic. So it isn't as though they're not aware  
2 of the program.

3 There is a problem, there's no question  
4 about that. When it comes to the mobility issue of  
5 being able to move from one city to another under  
6 programs. That is an issue that is being addressed  
7 by some. I know at this time, particularly, and  
8 we've made some efforts to try to open that  
9 somewhat, but there is at this point no way that,  
10 say, an applicant from Dallas can go to Carrollton  
11 or Grand Prairie or somewhere else with that  
12 certificate, and that part is valid.

13 You know, if someone applies for public  
14 housing, I doubt that someone sits down and says:  
15 "Look, here's a Section VIII program and what's  
16 available there." As a practical thing, our  
17 Section VIII program, I believe at this point, is  
18 totally leased up. So that it's just the turnover  
19 of units that we have to make available  
20 opportunities.

21 So there are times when we even advertised  
22 in the paper when we have some units available and  
23 there are other times when those are used that we  
24 don't. So, you know, I can't speak in terms of a  
25 specific. When we get into that, there's usually



1 more information than the generalized statement  
2 that you may hear somewhere.

3 DR. DE LA GARZA: Obviously, you  
4 two aren't talking about the same thing because if  
5 you have an 80 something percent black occupancy,  
6 she says blacks won't know about this. Is there  
7 some other-- I don't know much about public  
8 housing. I think I'm probably going to learn a lot  
9 about this over the next few months-- but is there  
10 something wrong? Is there another program that  
11 you're talking about?

12 MS. DEWS: There is a  
13 distinction. It's the HUD. HUD has a Section VIII  
14 and also Dallas Housing Authority has a Section  
15 VIII, but I think it would be sort of a practice.  
16 I mean, we're talking about housing here and it  
17 would seem as if Dallas Housing Authority would at  
18 least be concerned enough to let the tenants know,  
19 when they do take the time in their briefing, in  
20 their training, preparing them for housing, to let  
21 them know that there's other housing, too,  
22 available for you.

23 You can pay the same money. The Dallas  
24 Housing Authority knows the program exists, and so  
25 why not. Also in this briefing, let the people

1 know, the tenants that are there, that eventually  
2 if you want to move out of the project, we do have  
3 this list here that can be part of the packet with  
4 Section VIII under HUD, also the 236 and BMIR  
5 Program that you would qualify for.

6 And this may be, not may be, it is a big  
7 reason why low income blacks are staying in black  
8 areas because they do not know that other  
9 properties exist for them, and this is one of the  
10 major reasons that black areas under Dallas Housing  
11 Authority is staying black because they're not told  
12 about the existing housing in other places and that  
13 they could move there in areas where it's not a  
14 slum area and pay the same money and be closer to  
15 their jobs, not driving 30 miles a day.

16 And if their car breaks down, they may  
17 lose their job, and then you're talking about a  
18 possibility of facing eviction if they can't pay  
19 their rent and they're in the project. So my major  
20 point here is Dallas Housing Authority, in my  
21 opinion, has a responsibility also to let the  
22 tenants know to come to them, not only about  
23 putting it in the paper, as if one low income  
24 mother can sit down and take the time to read a  
25 paper to find out that this program has been

1 closed, or is open now, and you can come in and  
2 apply.

3 That's something that you just can't-- I  
4 feel that you just can't force on a low income  
5 person, as far as, you know, reading the paper and  
6 finding out the availability of housing for low  
7 income people.

8 MR. VELARDE: You made a  
9 statement when you first started out that you were  
10 tired of coming to meetings and seeing no results.  
11 I think that both of you need to sit down and talk  
12 to each other. I see that there's a lack of  
13 communication here. If the housing authority has  
14 to spend money to advertise for units that are  
15 vacant when all you have to do is pick up the damn  
16 phone and talk to each other.

17 I also feel that your tenant association  
18 was very concerned that people should know that  
19 there are other units other than black. You also  
20 have a responsibility to educate those 50 people  
21 you talk to every day.

22 So apparently there's a breakdown in  
23 communication between you two, and if HUD is  
24 involved in a different program, there's a  
25 breakdown in communication there, and talking to

1 each other isn't going to hurt anything. If  
2 nothing else, it will bring about results.

3 MS. DEWS: Well, we do exactly  
4 that, sir. When they come to the Dallas Tenants'  
5 Association, they do find out about the other  
6 existing programs that exist, and this is when I  
7 find out that they have not been told by the Dallas  
8 Housing Authority.

9 So they are educated on what their rights  
10 are, basically. That's one of the functions that  
11 we do serve here in Dallas and Dallas County and  
12 also Tarrant County, is educating tenants on what  
13 their rights are. So they do find out when they  
14 come to our office that the other programs do  
15 exist.

16 MR. VELARDE: This was another  
17 reason, Mr. Chairman, that I asked Mr. Herrington  
18 what was the mission of their particular board of  
19 directors, because apparently if there is no one  
20 there representing the community or who has the  
21 problem, that the community is not going to get to  
22 the people who are setting the policy.

23 MR. CANALES: Well, I'm sure  
24 that you spoke with NASH representatives.

25 MS. DEWS: No, sir, not right

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now.

MR. HERRINGTON: Let me speak to the issue of informing or dealing with the residents and the opportunity for communicating there. We have had a resident association in every one of our developments. The Dallas Housing Authority is the one that generated and developed those resident associations. They each have a president of the resident association. The staff of the authority meet with the members of those individuals project associations monthly.

In addition to that, the presidents of those associations for all the developments, the elderly like to meet in one place, the family units the other and then occasionally they mix because they feel they have some diverse differences. So there are two other meetings each month when they're not mixed together with staff and the presidents of those resident associations.

We send to the presidents of the resident association the same material that goes to the Board of Commissioners for the agenda items at our meeting each time that we meet.

On our agenda there is an opportunity for anyone to speak to any issue that they wish to that

1 comes up at the meeting and then there's a place at  
2 the end of the meeting for anyone to speak and be  
3 heard on any matter that's not on the agenda. Our  
4 staff deals daily with people in the different  
5 developments with the tenant association. We have  
6 communication. Ms. Dews knows our office well and  
7 is frequently in our office. So the opportunity to  
8 communicate, there is not any absence in this.

9 The issues of whether how much information  
10 you give, but we do make an attempt to make people  
11 aware of what's going on. I can't tell you that  
12 everybody that walks in gets a full view of every  
13 program in town. I don't know. We do have our  
14 basic responsibility for the ones we administer and  
15 we do try to make that clear.

16 MR. CANALES: Okay. We have the  
17 last two questions, Mr. Tobian was first.

18 MR. TOBIAN: Are there two  
19 housing authorities in the County of Dallas, a city  
20 housing authority and a county housing authority?

21 MR. HERRINGTON: No, sir.

22 MR. TOBIAN: Could you enlighten  
23 me as to what she is referring to when she-- this  
24 is Ms. Dews-- is referring to when she makes  
25 mention of two Section VIII existing programs?

1 MR. HERRINGTON: I think maybe,  
 2 you know, there are a number of Section VIII  
 3 projects that are privately owned or non-profit  
 4 organizations that own and operate those that are  
 5 totally independent of anything the Dallas Housing  
 6 Authority does. There are some privately-owned  
 7 Section VIII programs. There's the 236 and a  
 8 number of other programs she mentioned that are  
 9 also available and, of course, we have no  
 10 jurisdiction. Now, the Dallas Housing Authority  
 11 has no jurisdiction. Perhaps that's part of it.  
 12 The Dallas Housing Authority administers basically  
 13 two programs, the Public Housing Program and the  
 14 Section VIII existing program, and we have some  
 15 Section VIII new construction.

16 MR. TOBIAN: Turnkeys?

17 MR. HERRINGTON: We do have  
 18 Turn-key III's. We also have, which we've been  
 19 pleased to-- we've been able to sell a number of  
 20 those within the last couple of years, we've sold  
 21 about 100 and-- better than 120 of those units out  
 22 of about 350 units. So we're quite proud of our  
 23 record there.

24 MS. LIPSHY: Mr. Herrington,  
 25 have you ever received a request from the Dallas

1 Tenants' Association or from your own tenants to  
2 provide your tenants or applicants for tenancy with  
3 information on other options?

4 MR. HERRINGTON: We've talked  
5 about this from to time, yes, ma'am, and we have  
6 some information that we do make available. We do  
7 explain the program, which may not be as fully done  
8 as some would like, but as I say, our principle  
9 task is to address the issues we have and at the  
10 time we have them.

11 Sometimes it's not too helpful to talk  
12 about Section VIII existing program if you don't  
13 have any units that you can allocate. Sometimes,  
14 you know, you can confuse things sometimes, and  
15 again, I'm not trying to be defensive on it, but  
16 our effort is to be open and we may miss in some  
17 cases and we may not do it as well as we should.

18 MS. LIPSHY: Do you ever direct  
19 in briefings, or whatever, do you ever direct your  
20 tenants or your applicants for tenancy, do you ever  
21 direct them to the Tenants' Association for further  
22 information should they need it?

23 MR. HERRINGTON: I can't really  
24 speak to that. I would guess that Mary would know  
25 better than me, but I don't know. I really don't



1 know, but we've had so much communication between  
2 us, I'd be surprised that that-- and certainly-- as  
3 a matter of fact, I know the times we have  
4 something we cannot satisfy, we have done that. I  
5 know myself that that's happened. Whether it is  
6 done at will or as often, is not known to me,  
7 probably it isn't. I don't know.

8 MR. CANALES: If there's no  
9 further questions, we'd like to thank our two  
10 guests. Thank you very much for coming here today.

11 We have a non-agenda item at this time.  
12 It's not on the official agenda. We have present  
13 today Mr. Leonard Chaires. He's the former  
14 regional director for fair housing of HUD, Housing  
15 and Urban Development, and he is the present State  
16 Chair of the Civil Rights Committee for LULAC, and  
17 he would like to make a brief five-minute  
18 presentation to us.

19 MR. CHAIRES: I appreciate the  
20 opportunity to be here. I'd like to just call some  
21 bullets to your attention because that's about all  
22 I have time for. One, the 1964 Civil Rights Act is  
23 being weakened and actually is not as effective as  
24 it could be.

25 One of the reasons is that the data base

1 that HUD was able to use is now lifted and you  
2 can't get that data base. The Fair Housing Law of  
3 1968 is also being weakened and it's being weakened  
4 in several different ways. One way is that the  
5 staff funds, the travel funds in the agency in this  
6 particular region have been cut and the travel  
7 resources have been cut.

8 Having been the former regional director  
9 of Fair Housing and Equal Opportunity, I started  
10 out with a budget of \$156,000 and the year that I  
11 retired the budget was down to \$113,000, and had I  
12 stayed one more year, that budget was projected to  
13 be \$57,000.

14 That doesn't sound like much of a cut, you  
15 know, to many people, but you can't do the job with  
16 a third of your budget, and that cut corresponds to  
17 the people that you had also. It went from 56 to  
18 40 down to 35 and now, I think, it's down to around  
19 25 people.

20 Affirmative action plans are also being  
21 weakened in the carrying out of the HUD program.  
22 Now, the key words to remember are "intent" versus  
23 "effect." Effect says that you can actually go out  
24 and make a case and try to resolve a Title VIII  
25 complaint in a voluntary fashion. Intent means you

1 really have to prove the case, if you will,  
2 according to law.

3 Right now the Fair Housing Law does not  
4 call for an intent and neither does the Title VI or  
5 the Civil Rights Act of 1964. However, there are  
6 administrative procedures that are being pushed on  
7 supervisors, myself part of being resigned, to  
8 prove intent, which is a greater burden of proof,  
9 and this is being done without the law requiring  
10 it. Okay.

11 Now, a lot of people speak of amending the  
12 Fair Housing Law which some people say would  
13 strengthen the law. It will strengthen it.  
14 Legally, you'll have to prove intent, but what this  
15 really means is that it will serve less people  
16 because most of the people won't have the dollars  
17 to take their case into Federal District Court or  
18 State Court.

19 Now, I already mentioned the Public  
20 Housing Program and a lot of emphasis is being  
21 placed on East Texas where there has been a large  
22 black population. However, there is an outstanding  
23 consent decree order on South Texas relating to the  
24 public local housing authority there. The same  
25 problem exists for the Hispanics.

1 I mention that because the reason that we  
2 could not service that when I was there was just a  
3 flat lack of staff and travel funds.

4 Now, the other thing that is happening is  
5 that the Fair Housing Equal Opportunity Program is  
6 being fragmented to the point that it's being made  
7 useless and you have involved the Justice  
8 Department, which supposedly takes systemic  
9 complaint cases investigated in different regions  
10 after they're reviewed by headquarters, and they're  
11 supposed to investigate them for what is known as,  
12 "pattern and practice type complaints." It's not  
13 happening.

14 Two years prior to my retiring we  
15 submitted 40, 50, 60 cases, not one of the cases  
16 were actually investigated by the Justice  
17 Department. So that programmed in a systemic  
18 complaint investigation process while it had a lot  
19 of merits in trying to prove intent as a build-up  
20 of cases to show that it would be worth it. It's  
21 not worth it because nothing is happening here.

22 Now, I did mention manpower, decreasing  
23 travel funds. That's a sign of the time in terms  
24 of the budget cuts, but I suggest to you that if  
25 you have a law on the books and you don't want to

1 administer that law, then you pass an amendment to  
2 get rid of that law. You don't do it by  
3 administrative-- or cutting the budget or staff.

4 Public relations activities versus action  
5 activities. You get a lot of rhetoric and you get  
6 a lot of rhetoric when you involve builders,  
7 developers and real estate people and politicians,  
8 whether it be in the city, the county, or the state  
9 and at the federal level.

10 And what you get is a lot of words. "Yes,  
11 we're against discrimination." However, for the  
12 other side, they count them, "However, we won't let  
13 them be as effective as they can because they won't  
14 have the resources to get the job done."

15 I believe we mentioned here about the  
16 Section VIII existing program. There are two  
17 separate different programs. I'm surprised it was  
18 not really mentioned what the difference was and  
19 I'm glad that Mr. Herrington mentioned that there  
20 is a private sector out there.

21 We have what is known, or had what is  
22 known, as the first fair housing marketing plan  
23 concept where you actually have a program to  
24 promote renting up of units to minorities; however,  
25 it's a day late and a dollar short.

1           They have an informal process at the  
 2 beginning of each project that is being developed,  
 3 where these projects are actually rented up before  
 4 the Fair Housing Marketing Plan actually gets into  
 5 play. So that's an ineffective program.

6           The perception enforcement versus  
 7 voluntary effort. Voluntary effort fine, if it was  
 8 working; however, it's not working effectively to  
 9 serve the people. The enforcement is not working  
 10 because their staff and budget cuts are making it  
 11 less viable to serve the community needs.

12           I'll close because I don't want to abuse  
 13 my time here, by saying that the growth in  
 14 population is continuing and you have a larger  
 15 segment of the population falling in the category  
 16 of low and moderate income persons, but you don't  
 17 have a corresponding increase in terms of the  
 18 housing being constructed to house the low and  
 19 moderate income people.

20           You have a program in HUD called the  
 21 Community Development Block Grant Program. That  
 22 program has associated with it a housing plan, a  
 23 housing assistance plan. Part of that housing  
 24 assistance plan calls for developing large family  
 25 units. I suggest to you that 98 percent of the

1 cities that administer the Community Development  
 2 Block Grant Program have not met that requirement,  
 3 consequently they're out of compliance with the  
 4 Department. If you don't have the resources in  
 5 order to go out and get that, and neither the data.

6 The UDAG Program, coupled with the  
 7 Community Development Block Grant Program, was  
 8 supposed to provide job opportunities and business  
 9 opportunities for low and moderate income people  
 10 and the disadvantaged segment of the population,  
 11 minorities-- Black, Hispanic, Oriental, et cetera.

12 It's not happening and the data is not  
 13 being captured. I guess what I'd like to just end  
 14 with is saying that discrimination is well alive  
 15 and thriving while we're talking.

16 People are criticizing the Dallas  
 17 newspaper article that was published, however, they  
 18 did serve a purpose, and that, in fact, as a result  
 19 of those newspaper articles, the one good thing  
 20 that is going to happen is that Henry B. Gonzales  
 21 together with the congressmen in the metroplex  
 22 area, Martin Frost, C. Bartlett and John Bryant and  
 23 Mr. Arney and also Jim Wright, will have some  
 24 hearings on housing and the Fair Housing Law.

25 I, just so you know where I'm coming from,

1 have personally filed a complaint with the Office  
2 of Investigation against HUD for the way that the  
3 Assistant Secretary for Fair Housing and Equal  
4 Opportunity is not carrying out his mandate of  
5 enforcing the Fair Housing Law.

6 I have documented the different items and  
7 hope that this will be picked up at the hearing  
8 that will be held, hopefully in the general  
9 metroplex area that meets in Washington. And that  
10 we hope, you know, that people like yourself who  
11 have an interest in this area will provide some  
12 kind of a news release, if you will, from time to  
13 time to organizations such as the League of United  
14 Latin American Citizens, for which I am Chair of  
15 the Civil Rights Committee.

16 We would love to have some information  
17 feedback in terms of what your concerns are,  
18 especially that relate to this meeting. Sometimes  
19 you might need data that we could furnish you.  
20 Thank you.

21 MR. CANALES: Let me ask you one  
22 question: First of all, with respect to  
23 information to this committee or not, but I'm sure  
24 the office can provide you with some information,  
25 is that right?



1                   And secondly, I heard a rumor and it's  
2                   only that the hearings that you're talking about  
3                   have been placed on a backburner. Is this true or  
4                   not?

5                   MR. CHAIRES: No. I talked to  
6                   Henry B. Gonzales not more than two weeks ago and  
7                   he assured me that this would take place, maybe not  
8                   in Dallas, but it would take place soon because  
9                   I've been alerted, you know, to provide some  
10                  testimony.

11                  MR. CANALES: Thank you. Doctor  
12                  Pendleton.

13                  DR. PENDLETON: I just wanted to  
14                  make an observation, Mr. Chairman, and commend you  
15                  and the Committee and the Texas staff for your  
16                  choice of speakers today. I've been enlightened  
17                  greatly. I would think if we were doing this over  
18                  and I was allowed to make a recommendation, I would  
19                  have recommended that our speaker who just finished  
20                  to be the leader of this program because he would  
21                  have set the tone of the entire day and some of the  
22                  members who had to leave early could have heard  
23                  him.

24                  I think, from what I can gather, based on  
25                  what he just said, that some of what was said today

1 by some of the HUD officials may or may not be the  
2 case. I just wanted to make that observation.

3 MR. CANALES: Any more  
4 observations or questions at this time?

5 DR. DE LA GARZA: I forgot.  
6 What was that thing about the court order in South  
7 Texas?

8 MR. CHAIRES: Okay. They found  
9 the Justice Department issued a consent decree  
10 order and it had to do with the local housing  
11 authority. It was not a legal case such as Mike  
12 Daniel, and incidentally, I think that minorities  
13 in Texas owe a debt of gratitude, you know, to Mike  
14 Daniel and his law firm for filing that case in  
15 William Wayne Justice's Court.

16 But in South Texas there is a consent  
17 decree that still stands which basically says, or  
18 words to the effect of, that there are problems in  
19 relation to housing and there are problems in  
20 relation to business opportunities and a whole  
21 sundry area.

22 MR. TOBIAN: What geographical  
23 area is this?

24 MR. CHAIRES: I would say that  
25 he would have drawn the line, you know, from

1 Houston down through Waco across and connected with  
2 El Paso, everything south of that line would  
3 probably be the area.

4 MR. CANALES: Let me ask you:  
5 Do you have a copy of it?

6 MR. CHAIRES: No, I don't. I  
7 wish I did.

8 Within the preaching of the Department,  
9 there are areas that are stretched beyond the  
10 imagination and that not all that is being said, if  
11 you just listen to one point of view, would you get  
12 the benefit of exercising your other side. I think  
13 it would be good to have a panel.

14 Thank you very much. I do appreciate the  
15 opportunity to be here.

16 MR. DULLES: We did a study of  
17 the community development long-range program in  
18 Arkansas which began for large community members of  
19 others who are involved in that. We found,  
20 because you raised it, that's why I'm adding to it,  
21 that in Arkansas, I believe, there had been not one  
22 dollar in that entire unit involved in that program  
23 than the minority contractors in the entire State  
24 of Arkansas.

25 And in Louisiana I think we found there

1 had been some in the southern part of the state,  
2 but none in the northern part of the state. I just  
3 wondered, has it become too far apart and could  
4 there have been any initiatives made or any  
5 evidence made to try to correct or change that so  
6 that minority contractors could participate--

7 MR. CHAIRES: Yes. We requested  
8 an office, an investigation audit to review the  
9 minority business program and the minority banking  
10 program because I thought that the figures were  
11 inflated. I thought that they were duplicating  
12 numbers along the way.

13 MR. DULLES: It's hard to  
14 inflate a zero.

15 MR. CHAIRES: That's what it  
16 turned out to be, but what you have is that people  
17 were relating to just grabbing numbers out of the  
18 sky and putting them down and it was very hard to  
19 verify because these numbers were not coming from  
20 the localities themselves, and it was hard to  
21 justify, you know, some of this.

22 I might just call to one's attention,  
23 because there's some interest here, to think in  
24 terms-- I didn't want to get into a-- I had a  
25 laundry list of things-- but some things you have

1 to be aware of.

2 Co-enforcement that is being enforced in  
3 many cities have problems, okay. They enforce  
4 without having the corresponding funds to help the  
5 lower moderate income people. You have redlining  
6 or you have banks, financial institutions still not  
7 allowing money to go into certain areas.

8 You have displacement and you have  
9 justification where you have improved facility  
10 where the people that live there no longer can  
11 afford to live there.

12 You have the difficulty of implementing  
13 the Community Re-investment Act. Nothing has taken  
14 place on that thing in terms of you have the  
15 military which sometimes has in terms of, if you  
16 will, setting aside an area, you know, where nobody  
17 can rent there, and that usually excludes  
18 minorities sometimes.

19 You have a lot of state and local agencies  
20 that are tied in by politics that says you can own  
21 "X" number of cases per year. Okay. An example,  
22 the State of New Mexico, the most complaints  
23 they've ever done is maybe 12 to 15 range  
24 complaints. The City of Fort Worth, they just got  
25 the publicity for doing their complaint processing,

1 no more than five cases, you know, over the last  
2 five years.

3 It's a public relation gimmick, and what  
4 it tends to do is take away authority from the  
5 federal agency who should have equal responsibility  
6 and the effort, you know, to say: "Let's stop it  
7 once and for all," rather than having some  
8 politician say, "Hey, we only want just a cover-up  
9 job, enough to get us by and to get some money from  
10 HUD." And incidentally, that money is only for two  
11 years, and after that, what you have is even a  
12 lower effort than you had before.

13 I heard someone say they had 350  
14 complaints. We used to do an excess of 800  
15 complaints a year. The main thing is to go out and  
16 develop communication with community leaders. You  
17 can't do it if they don't have staff or travel  
18 funds.

19 Thank you.

20 MR. CANALES: Thank you very  
21 much, Mr. Chaires.

22 We do have some time left if the Committee  
23 so wishes for further discussion among ourselves.  
24 Debbie Snow is still here and if you wish to  
25 discuss anything, the floor is open for anything

1 you'd like to bring up, if anything.

2 DR. DE LA GARZA: What do you  
3 see our agenda being for our next meeting?

4 MR. CANALES: At that time,  
5 hopefully we'll have more materials and we'll make  
6 a final decision as to what we plan to work on. So  
7 we hope to have a very thorough planning meeting at  
8 that time.

9 MR. AVENA: Remember in Texas  
10 you have the concept that has been tentatively  
11 approved. This was during the previous advisory  
12 committee on higher education and that is still in  
13 Washington.

14 MR. CANALES: Well, hopefully  
15 we'll hear something by the January--

16 MR. AVENA: We have heard that  
17 it was approved pending what, the revisions?

18 MS. ROBBINS: No, we can  
19 resubmit it.

20 MR. AVENA: Oh, resubmit it,  
21 yeah.

22 MR. CANALES: Well, I think at  
23 our June meeting we should go ahead and look into  
24 that at that time.

25 MS. SNOW: I just wanted to

1 mention apropro of the Dallas Morning News series,  
2 that in addition to the inquiries that were made by  
3 Congressman Gonzales and the other members of the  
4 Texas delegation, the Commission also wrote to  
5 Secretary Pierce and he has written back saying  
6 he's informed a task force to respond to every  
7 point in the series and that he would provide that  
8 response to the Commission, and it's my  
9 understanding that at that point of which those  
10 hearings are to take place is when the Secretary is  
11 in a position to respond to allegations, and the  
12 last word we had from the HUD staff was that would  
13 be in another few weeks.

14 MR. CANALES: Any further  
15 discussion?

16 DR. DE LA GARZA: What do we do  
17 now having done this?

18 MR. CANALES: Well, I think we  
19 should think about it between now and the June  
20 meeting. One of the things we were going to  
21 consider was whether or not Congressman Gonzales  
22 would hold extensive hearings in this area, and  
23 that would maybe have some effect on what we might  
24 do because we don't want to duplicate the effort of  
25 that committee. It would be very extensive



1       evidently, and would be nationwide, but those are  
2       things that we'll consider in our next meeting.

3                       MR. AVENA: I'm not sure that  
4       all of you are aware, but about two weeks ago we  
5       got a call from our acting general counsel and he  
6       was very interested and excited about this  
7       particular meeting and encouraged us to have it  
8       transcribed. We were just going to tape it.  
9       Because they want to use it in some way in  
10      preparation for the national commission hearing on  
11      fair housing.

12                      So that's one thing that definitely is  
13      going to be used, all the information that has been  
14      had here.

15                      MR. TOBIAN: I'm just sort of  
16      sorting out mentally what we have heard in the last  
17      few hours. My computer tells me that substantive  
18      changes in law are probably going to be very  
19      difficult to come by and that really we're going to  
20      identify that closely, but the enforcement  
21      mechanism, or even the will to enforce is really  
22      sort of what we have identified as being that which  
23      has been most neglected in that the regulations and  
24      law does in fact exist and has perhaps all along.  
25      That it has been honored by ignoring them.

1           My experience tells me that there are a  
2           number of ways to gut an issue, to gut a bill, that  
3           I measure on public policy and one of them is to  
4           pass it and then not make any money available to  
5           doing whatever it has to say, and the other is to  
6           rob it or deprive it of any enforcement capability.  
7           Where it says, "please," or "if you ever get around  
8           to it, we'll do it this way," without any  
9           requirements to entail, and that will kill a  
10          measure as dead as a doornail.

11           Another is to overlook it, to load it up  
12          so much that it's unworkable, and I don't really  
13          think that that applies, you know, in this  
14          particular case, but the enforcement mechanism  
15          seems to be the leverage part of this that we ought  
16          to focus in on because I think that's where it's  
17          at. If we get an enforcement pattern that could  
18          follow at least the principles of what has happened  
19          up there in Clarksville, you will see a different  
20          set of numbers and a different feeling about the  
21          whole thing.

22           My colleague over there asked a question  
23          of a HUD official: How can they possibly lay claim  
24          to any credibility after their track record and  
25          they claim they have some, but I'm not sure?

1 MR. VELARDE: There was another  
 2 thing that I kept jotting down and listening to all  
 3 of this and that, is the fact that there is a  
 4 larger demand for housing than there is adequate  
 5 housing and it seems to be that the manna from  
 6 heaven that comes from Washington is drying up.  
 7 Yet we hear somebody like Leonard that tells us  
 8 that there are other programs there that apparently  
 9 the officials who can put them into operation  
 10 aren't doing so.

11 I think you mentioned UDAG Community  
 12 Development money, and all that, and I was on the  
 13 Community Development Resource Committee for the  
 14 City of El Paso for six years, and I've seen a lot  
 15 of good happen with Community Development money,  
 16 replacement housing, rehab, that type of thing.  
 17 But at the same time, I think that Leonard is being  
 18 very truthful in telling us that what you get down  
 19 the road depends on your performance now, and if  
 20 you have zero performance, there's not going to be  
 21 anything for you to get in the future.

22 So certainly enforcement is important, but  
 23 we hear that more and more people are falling  
 24 within that area of qualification, yet there's no  
 25 place to put them, and you're going to put them,

1 it's very inadequate and then it becomes a whole  
2 question of who has more money to be able to  
3 compete for the very limited housing.

4 The other thing that Leonard and I were  
5 talking about and is a concern and I think Leonard  
6 again brought it up, is there is an element in the  
7 population that is in that grey area. They don't  
8 qualify for something above them, but they also  
9 don't qualify for something under them.

10 They just make a little bit too much to  
11 not qualify for programs below them, but they live  
12 on just enough where they don't qualify for  
13 something better, and certainly that particular  
14 segment of the population is going to continue to  
15 grow and we have to look at how we can perhaps have  
16 our people in Washington, or whoever has to set the  
17 rules, look at these things.

18 There's no increase or decrease in any of  
19 these things. There are rigid rules and people are  
20 getting hurt. I think it's going to get worse  
21 before it gets any better.

22 MR. CANALES: Okay. Thank you.

23 Are there any other observations or comments?

24 Thank you very much. We thank our guests.  
25 Meeting is adjourned.

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THE STATE OF TEXAS )  
 )  
COUNTY OF BEXAR )

I, Brenda Elkins, Court Reporter  
and Notary Public in and for Bexar County, Texas,  
hereby certify that I reported the proceedings of  
the U.S. Commission on Civil Rights, Texas Advisory  
Committee for the Southwest District, held on the  
10th day of May, A.D. 1985, In the Matter of a  
Briefing on Fair Housing, and that the foregoing  
236 pages contain and constitute a true and correct  
transcript of my shorthand notes taken in the above  
cause.

TO WHICH I CERTIFY on this the  
19th day of July, A.D. 1985.

Brenda Elkins

BRENDA ELKINS  
Court Reporter

and

Notary Public in and for  
Bexar County, Texas.