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NEW MEXICO ADVISORY COMMITTEE
UNITED STATES COMMISSION ON CIVIL RIGHTS
FORUM ON IMMIGRATION REFORM

Albuquerque Convention Center
Santo Domingo Room

Thursday June 25th, 1987

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1 MR. MONTTOYA: First of all we'll get the
2 New Mexico State Advisory Committee to the US Civil
3 Rights Commission Forum. I am Vincent Montoya, the
4 chairman of the State Advisory Committee. I will
5 let our committee members identify themselves and
6 I'll reserve, to my right, the gentleman, until I
7 finish my opening remarks and I'll identify some of
8 those individuals and who is present here from
9 either the Washington staff and what we contemplate
10 to address this afternoon. Starting with Gerald.

11 MR. WILKINSON: I'm Gerald Wilkinson. I'm
12 a member of the State Advisory Committee to the
13 U.S. Civil Rights Commission and I'm Executive
14 Director of the National Indian Youth Counsel.

15 MR. PENA: My name is Gilbert Pena from
16 the Pueblo of Nambe north of here and I'm presently
17 the business manager for the tribe.

18 MR. BACA: My name is Tom Baca. I am
19 presently on the governor's cabinet.

20 MR. HARDING: Robert Harding. I'm an
21 attorney and labor arbitrator.

22 MS. McCABE: My name is Bella Rogers
23 McCabe. I'm from the San Juan County, Shiprock,
24 Farmington area. I'm a private business person.

25 MR. MONTTOYA: Let me expound on the

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1 opening remarks a little bit. Emma Armendariz who
2 is the other member present, originally from Silver
3 City, now in Albuquerque, is out to lunch. We
4 broke a little late, she'll be forthcoming and
5 she'll be participating.

6 The eighth member is Bishop Ramirez who is
7 in San Antonio at this time attending a national
8 conference and wasn't able to attend. The three
9 other members have either declined to continue
10 serving or have, for whatever reason -- there is an
11 11-member panel that composes each State Advisory
12 Committee. The individuals that have resigned from
13 continuing in participation is Lorraine Cutierrez,
14 who is a business woman here in town with Plaza Del
15 Sol. She served on this committee for quite a
16 number of years and she just decided not to
17 continue in that.

18 There is a gentleman by the name of
19 Stanley Lane who is the President of Southwest Bank
20 who was a newly-appointed member of this committee
21 and decided that he doesn't have enough time to
22 devote to it anymore.

23 The last person that had resigned is Mr.
24 Allen who was with the Touche Ross organization
25 that moved from Albuquerque and of course he moved

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1 his family and that resulted in that resignation.
2 There are pending, rechartering procedures that are
3 going on now in Washington where those three
4 members will be appointed, and of course the State
5 Advisory Committee will be rechartered, I'm sure,
6 pending whatever type of appropriation and
7 legislation is forthcoming.

8 Today, to my right is a regional director.
9 We went through a trauma period there for a while
10 where the U.S. Commission on Civil Rights cut back
11 on services and administration because of budgetary
12 problems and we used to be out of the San Antonio
13 office with one of our staff members, John Dulles,
14 who had been with us for quite a while. When the
15 closing of that office happened we ended up in Los
16 Angeles with the western regional director who, to
17 my right, is Phil Montez. He is responsible for 17
18 states out of the newly-composed reorganization.
19 John Dulles is back on the staff and is assisting
20 in New Mexico now on the State Advisory Committee
21 for some time. I'll turn it over to Phil for a few
22 remarks and then I'll proceed.

23 MR. MONTEZ: I didn't have much to say.
24 We are here today to gather some information on the
25 process of the new legislation as relates to the

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1 legalization process related to the new immigration,
2 as I said, legislation. We will be holding
3 hearings in different states such as this. We will
4 be in Los Angeles, Arizona, Texas, New Mexico and
5 others that have the same kind and it's really our
6 appreciation to see the people, especially the
7 officials that have come here to join us today
8 because their task is not easy. So we appreciate
9 you being here. That's about all I have to say.

10 MR. MONTOKA: Thank you, Phil. Continuing.
11 Anybody that wishes to address the State Advisory
12 Committee after the panel presentation, there is a
13 sign-in roster. If you will please indicate on the
14 sign-in roster that you wish to make whatever
15 statements you desire to make to the State Advisory
16 Committee at the end of the panel forums.

17 There are certain restrictions with the
18 State Advisory Committee dealing in receiving input.
19 Number one: Anybody that is making any type of
20 presentation to the State Advisory Committee is
21 prohibited from naming names or individual agencies
22 or firms unless those firms or individuals have had
23 a chance for rebuttal to whatever comments are made
24 about them. So consequently, anybody making any
25 presentation to the State Advisory Committee, I

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1 would urge that we do not mention individuals'
2 names or firms' names as it relates to something
3 that is displeasing to us in whatever form.

4 The other area or the other system that
5 we'll use is that the State Advisory Committee
6 members will of course ask questions of the panel.
7 This is not a give-and-take-type presentation, this
8 is an informing session that is being, as you see,
9 court reported so that we can then in turn submit
10 the information to the U.S. Commission on Civil
11 Rights in gathering the facts and information from
12 the different elements that I'll get into as far as
13 our panel is concerned.

14 We are hopefully addressing three issues
15 today. Number one: In the first panel, Mr. Giugni,
16 who was scheduled to be here, but got subpoenaed to
17 be in a litigation trial that's going on where he
18 is involved or immigration is involved at this time,
19 was unable to be here, from El Paso. He's our
20 district director. He's attended, I guess, a
21 couple of our commission meetings before in Las
22 Cruces and et cetera. So we know him quite well.
23 Mr. Brown, who is in charge of the INS Albuquerque
24 office will be addressing or giving the SAC
25 information on the INS legislation procedures,

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1 where they are at, what problems they are having,
2 what do we contemplate, what do we foresee in the
3 future as far as the law that exists right now and
4 their part of the implementation.

5 Robert Henderson, and I have to apologize
6 to him because the original agenda that went out,
7 and I think the news media this morning, has him as
8 Robert Hernandez, but it's actually Robert
9 Henderson. Mr. Henderson is the deputy director of
10 Catholic Social Services.

11 MR. HENDERSON: Program director for
12 legalization.

13 MR. MONTTOYA: And he is representing Mr.
14 Martinez who had a previous commitment and previous
15 engagement and he will address their involvement in
16 the whole litigation into assisting illegal aliens
17 in becoming certified or legal.

18 Of course Andrew Lopez, he is from the
19 Equal Opportunity Employment Commission, the EEOC.
20 He is representing the deputy director or the
21 director who is in Dallas or --

22 MR. LOPEZ: Albuquerque area.

23 MR. MONTTOYA: But the director is in
24 Dallas, right? Tom?

25 MR. LOPEZ: He's in Dallas.

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1 MR. MONTOKA: They are going for a
2 retraining program or something. Andy will be
3 addressing or Andrew will be addressing the role
4 EEOC sees that they will have to play regarding the
5 new immigration.

6 That's our first panel and with that, I
7 think I want to afford the individuals -- number
8 one, again remind them to sign in if they hope to
9 make presentations but I'd like for all of you to
10 identify yourselves because we do have some
11 congressional representative people and hopefully,
12 we are -- we were expecting and we were told that
13 Commissioner Buckley would be attending this forum
14 and for whatever reason -- but in fact, in my
15 presentation to the U.S. Commission on Civil Rights
16 on June 11th, at their request, indications are
17 that Buckley and Mr. Allen will be attending the
18 forum because of their concern about the new
19 legislation.

20 We also had indications that the
21 Washington staff people would be available and we
22 do have one of the special assistants to the
23 director which is Frank Bessera and also involved
24 in the general counsel area, present with us today.
25 So, if I may, I'll start with you and please

1 identify yourself.

2 MS. RAMSEY: Susan Ramsey with KKOB Radio.

3 MR. BESSERA: Frank Bessera, Special
4 Assistant to the Director, Civil Rights Commission,
5 Washington.

6 MS. MYERS: Karen Myers. I'm the director
7 of Legal Aide Society of Albuquerque.

8 MS. GARCIA: Cheryl Garcia, Senator
9 Domenici's office.

10 MS. MONTAGUE: Patricia Montague, Senator
11 Bingaman's office.

12 Francis (inaudible) Director of LULAC
13 Educational Service Center.

14 MS. BARTLETT: Joanna Bartlett, UNM.

15 MR. BUSLEY: Mark Busley, KOAT.

16 MR. SMITH: Walt Smith, The Associated
17 Press.

18 MR. MOORE: Charlie Moore, Albuquerque
19 Journal.

20 Laurie (inaudible) KUNM radio.

21 MS. LOMAS: Mimi Lomas from Albuquerque,
22 New Mexico.

23 MR. O'LEARY: Al O'Leary with the New
24 Mexico Human Rights Commission.

25 MS. LOGAN: Diane Logan, UNM.

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1 MR. SCOTT: Fred Scott Affirmative Action
2 Office, City of Albuquerque.

3 (Inaudible) Human Rights Office City of
4 Albuquerque.

5 MS. HUDSON: Inez Hudson, Albuquerque
6 Human Rights office.

7 MR. DEAN: Mitch Dean, Albuquerque.

8 MR. DIAZ: John Diaz, Western Division
9 U.S. Commission on Civil Rights.

10 MR. MONTROYA: Of course now we'll turn to
11 our panelists and we can start the presentation.
12 Doug, you are the first one.

13 MR. BROWN: Thank you, Mr. Montoya. The
14 Immigration Reform and Control Act of 1986 is being
15 implemented by the Immigration and Naturalization
16 Service and is already working in the manner to
17 which it was intended. In less than two months
18 into the program, INS has received some 163,000
19 applications for legalization and handed out more
20 than two million applications to persons walking
21 into legalization offices.

22 In New Mexico alone, as of May 5th, 1987,
23 we have processed 1,330 applications for
24 legalization or sometimes referred to as amnesty.

25 Employer sanctions, the crux of the

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1 enforcement legislation, has had the desired effect,
2 with the number of persons attempting illegal
3 crossings into the US southern border dropping more
4 than 40 percent since the passage of the bill.

5 We believe that the major factor in this
6 sharp decline from the record illegal entries last
7 year is the knowledge that illegal aliens will have
8 difficulty finding employment in the United States
9 because of the employer sanctions provisions of the
10 immigration reform act.

11 INS is aggressively implementing its
12 employer education program to ensure that there is
13 a thorough knowledge and understanding of the law
14 and its requirements.

15 Nearly seven million employer handbooks
16 and I-9 forms are currently being mailed to
17 employers, with a target date to have all employers
18 contacted by the middle of July, 1987.

19 The panel has, I believe, a copy of the
20 information that is being distributed out of our
21 Washington office. I would further say that we in
22 New Mexico have been involved in 52 presentations
23 to such employers in handing out the same handbook
24 and information brochures that you have in front of
25 you.

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1 Nationwide there have been more than 2,000
2 such presentations to employers and employee groups.
3 We have also been actively involved in newspaper
4 reporting, full-page articles running in the
5 newspapers, as well as radio and TV. So the
6 coverage, we feel, has been extensive.

7 News of employers sanctions have spread
8 rapidly throughout the business community since the
9 law was passed in November. Trade journal coverage
10 has reached over 1,000,000 subscribers to different
11 trade journals in the United States.

12 The new law does require that employees
13 hired on or after November 7th, 1986, be required
14 to fill out a form to show eligibility to be
15 employed in the United States. This form is
16 commonly referred to as the I-9. We believe that
17 the enforcement provisions of this law will open up
18 some three million new jobs for United States
19 citizens and permanent residents of the United
20 States.

21 If this law comes anywhere close to the
22 projections, it will prove to be of such value that
23 the immediate inconvenience of a small amount of
24 additional paperwork felt by employers, that they
25 must account for when hiring an individual, will be

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1 well worth it. Thank you, sir.

2 MR. MONTAYA: Thank you, Doug. We'll let
3 the whole panel make their presentation and then
4 we'll open it up for State Advisory Committee
5 questions. Mr. Henderson.

6 MR. HENDERSON: Thank you very much.
7 Catholic Social Services of Albuquerque has been
8 involved with immigration refugee work since the
9 early 1960s. The agency is involved with this work
10 in its effort and concern for the strengthening of
11 the family unit.

12 It is the underlying goal and purpose for
13 the agency.

14 I would like to give a short presentation
15 on the process that we are utilizing at this point
16 in time in helping in assisting individuals in the
17 submittal of the application, the documentation
18 necessary to INS.

19 We started the information process back in
20 January of 1987, with a presentation on the various
21 aspects of the law. From January through the
22 beginning of May, we talked to approximately 2,000
23 individuals representing approximately 10,000
24 people because they all had members in their family
25 and the application process is by individual, not

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1 by family unit.

2 Starting with the implementation of the
3 law May 5th, 1987, we continued the process of
4 information clinics to the residents of Albuquerque
5 who are illegal aliens. We have also attempted to
6 get this information to other parts of the
7 Archdiocese of Santa Fe which generally falls in
8 the area of the Northeast quadrant of the state.

9 We are providing this service as a part of
10 the United States Catholic Conference. We are an
11 affiliate of that organization which does have a
12 memorandum of agreement with Immigration and
13 Naturalization Service and we do have a QDE status,
14 that's Qualified Designated Entity, and that allows
15 us to provide assistance to individuals in this
16 application process and does, in certain instances,
17 speed up that process.

18 In handling this tremendous influx of
19 individuals for an agency our size, we have brought
20 on additional individuals. We have now five day
21 workers who are working on a full-time basis
22 assisting in the technical review of applications.
23 We have one case manager, we have three clerical
24 individuals, one administrator and we have right
25 now approximately 20 volunteers who are helping us

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1 with the one-to-one interviewing with applicants in
2 their efforts to collect the proper documentation
3 and fill out the application.

4 We anticipate that we will need many more
5 full-time bilingual volunteers to be able to meet
6 the needs of this population. We are finding that
7 the population does need one-to-one assistance in
8 the filling out of the application and collecting
9 the documentation and putting it into the correct
10 order.

11 We presently have a location at 801
12 Mountain Road, Northeast, in Albuquerque, that is
13 our administrative headquarters and we have a large
14 intake facility at St. Francis Parish Hall in
15 Albuquerque, New Mexico at 801 Arno, Southeast.

16 When we first started the process in the
17 beginning of May, the major effort of the agency
18 was to handle what is called 30-day cases. Those
19 are individuals who have been apprehended by INS or
20 have received a letter to show cause. These
21 individuals do not have the 12-month window but
22 they have only a 30-day window in which to process
23 their application.

24 We are finding that this particular group
25 of individuals which will continue throughout the

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1 12-month period as individuals are apprehended or
2 receive letters to show cause is continuing to be a
3 primary effort of the agency because these
4 individuals only have 30 days to complete the whole
5 operation.

6 We started approximately two weeks ago to
7 handle that backlog of early registrants that we
8 had. We now are holding clinics six days a week.
9 We have clinics starting at 9:00 in the morning,
10 2:00 in the afternoon and 6:00 in the evening where
11 we are meeting with individuals on an individual
12 basis, working with them and filling out the
13 application.

14 At the end of that application, when the
15 volunteer and the individual have determined that
16 they have a completed application, an application
17 goes to the technical reviewer, a case worker, for
18 review of the application before that application
19 is sent to INS Bridge Street office.

20 That is the process as we now have it. We
21 are working on that process almost on a daily basis
22 until we can determine that we have a workable
23 situation. I must say that we have probably done
24 three major revisions of the process as we have
25 determined how best to help the applicants. I

1 think our greatest concern has been in the large
2 number of people whose level of literacy has not
3 allowed them to understand the forms nor understand
4 the process.

5 I would like to go over some of the issues
6 that we feel are of prime concern to our agency in
7 this whole process.

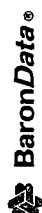
8 Our primary concern in involvement with
9 the process is the strengthening of the family unit.
10 That has been our purpose as an agency in our other
11 programs and it's certainly our purpose here in the
12 legalization process.

13 We find that because of the regulations,
14 there are certain groups that are going to
15 necessarily bear a greater burden of paperwork and
16 expense and possible exclusion from the law which
17 we feel needs to be addressed.

18 One are women who are not working outside
19 the home who probably, as a rule, have come into
20 the country later than their husbands. They have
21 had children here who are US citizens. So you have
22 a situation where the portion of the family is
23 legalization eligible and certain members of the
24 family are not. Very often that is the wife who is
25 not eligible for legalization.



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1 The implication is that we have some
2 individuals having to go back to Mexico and some
3 that will be here illegally.

4 I think another issue that we have seen
5 and we feel needs to be addressed is that the
6 application process is on an individual basis.
7 That means that children who are minors must fill
8 out a separate application though much of the
9 documentation is part of the family unit. That
10 increases the total amount of work that we have to
11 deal with and thus reducing our ability and
12 straining our resources in handling the total
13 population.

14 Another issue that has come to our
15 attention has been the fact that in the reading of
16 the regulations, the misdemeanor, three
17 misdemeanors is a maximum number of misdemeanors
18 allowed, covers quite a variety of petty offenses
19 which are excluding people. Things such as traffic
20 tickets, littering, disorderly conduct. This, we
21 don't feel, was probably the intent of the law to
22 exclude individuals with these situations and at
23 this point in time, since the process is just
24 beginning, we are not certain as to how it will
25 impact on the process as a whole, but it definitely

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1 is a problem that could create a severe hardship on
2 a great number of people.

3 I think there is a continuing apprehension
4 on the part of illegal aliens regarding the use of
5 the information gathered in this process and
6 submitted to INS. Much of the coverage in the
7 local and national press has concentrated upon the
8 use of this information by other agencies of the
9 federal government. We feel that there is a
10 good-faith effort within INS that this information
11 will not be shared, but I think that there is
12 continuing apprehension in terms of the population
13 that we're dealing with, that this is going to in
14 fact be used.

15 I think that it's also, from our
16 indications in talking with employers, of great
17 concern to them in their providing of documentation
18 that they did employ individuals during this time
19 period, that this information will be used to
20 prosecute them in terms of back taxes and other
21 areas where they may have not fulfilled the letter
22 of the law.

23 I think those are the major areas that we
24 see as problems at this point in the application
25 process. Many of the problems that we have right

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1 now in terms of the backlog were created by the
2 inevitable delays that were in the publishing of
3 the final regulations. The final regulations were
4 published only a week or so before the
5 implementation of the law. Therefore, much of our
6 work was put on a standstill. This was also, of
7 course, true for INS. We feel that at this point
8 in time, entering the first of July, we are just
9 now being able to gear up our process to handle the
10 large number of people that we will have to deal
11 with.

12 I'd like to end my presentation by saying
13 that we have had an extremely good working
14 relationship with the local Albuquerque office. We
15 continue to have that and we assume that we will in
16 the future. Thank you very much.

17 MR. MONTAYA: Thank you.

18 MR. LOPEZ: I am Andrew Lopez with the
19 Equal Employment Opportunity Commission here in
20 Albuquerque. We are primarily -- I wouldn't say
21 primarily, we have equal responsibility now of
22 enforcing employment discrimination because of race,
23 color, creed and national origin. We've always
24 enforced discrimination against national origin.

25 Citizenship as related to national origin,

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1 there is where the distinction generally will come.

2 The Immigration Reform and Control Act of
3 1986, has a provision 102 that prohibits
4 discrimination on the basis of national origin by
5 employers of four to 14 employees. That prohibits
6 discrimination on the basis of citizenship status,
7 by employers of four or more employees.

8 There is a fine distinction there in that
9 we've always handled discrimination on the basis of
10 national origin, so therefore, INS will be limited
11 to handling cases with employers of four to 14
12 employees. We will handle 15 and above under Title
13 7 of the Civil Rights Act.

14 Under the basis of citizenship, INS will
15 handle the enforcement of anti-discrimination law
16 of employers of four and up employees.

17 The act provides that it is an unfair
18 immigration-related employment practice for a
19 person or other entity to discriminate against any
20 individual with respect to the hiring or
21 recruitment or referral for a fee of the individual
22 for employment or discharging him, the individual,
23 from employment because of such individual's
24 national origin and in the case of a citizen or
25 intended citizen, because of such individual's

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1 citizenship status.

2 For this purpose, a special counsel for
3 immigration-related unfair employment practices in
4 the Department of Justice is charged with enforcing
5 the anti-discrimination provisions.

6 A person who believes that he has been
7 adversely affected by an unfair immigration-related
8 employment practice or an officer of the
9 Immigration and Naturalization Service, may file a
10 charge with the special counsel within 180 days of
11 the alleged unfair practice.

12 Within 120 days after receipt of the
13 charge, the special counsel must investigate and
14 determine whether there is reasonable cause to
15 believe that the charge is true. That is well in
16 keeping with Title 7 of the Civil Rights Act. We
17 go on reasonable cause and so does the portion of
18 the immigration act.

19 On whether to bring a complaint before an
20 administrative law judge. If the Special Counsel
21 has not filed a complaint within 120 days, the
22 individual may file his complaint directly with the
23 administrative law judge. If the administrative
24 law judge determines that a violation has occurred,
25 he must issue an order requiring the person to

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1 cease and desist from unfair immigration-related
2 employment practices. The order may also require
3 the hiring of the individual adversely affected.
4 It may also require back pay and it will also
5 impose a \$1000 penalty for each individual
6 discriminated against. \$2,000 where there is a
7 second violation or more.

8 The administrative law judge order is
9 subject to judicial review in an appropriate
10 circuit court of appeals. If the review is sought,
11 the Special Counsel or the aggrieved individual can
12 seek enforcement of the order to a federal district
13 court.

14 The Office of the Special Counsel that has
15 been established, its address is the Department of
16 Justice, PO Box 65490 Washington, DC, area code
17 20035-5490. You may also call that office at area
18 code 202-653-8121. The office was just recently
19 established, on April the 21st.

20 On April the 14th, 1987, the district
21 court decision interpreting the immigration act on
22 the nondiscrimination provision held that the
23 prohibition of discrimination against intending
24 citizens applied to the illegal alien who would
25 qualify and intended to apply for legalization and

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1 citizenship, even though they had not yet started
2 the application process.

3 So as far as employment goes, even if an
4 individual has not established the legalization
5 process, he is covered. The case that affirmed
6 this was the League of United Latin American
7 Citizens versus Pasadena Independent School
8 District. The case involved, I think this is a
9 very important case, it goes to falsification of
10 records and things of this nature and how they are
11 going to be viewed as far as employment laws are
12 concerned.

13 The case involved an employer who fired
14 several illegal aliens hired prior to November 6th,
15 1986, because they had provided false social
16 security numbers when hired. The judge
17 acknowledged that the employer's policy of
18 terminating persons who provided false information
19 on application forms is justified under normal
20 circumstances, but stated that the extraordinary
21 circumstances of mass illegal immigration, which
22 the immigration reform act seeks to address, may
23 mean that current employment practices will have to
24 be reconciled with new rights established under the
25 act.

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1 These include the right to appeal for
2 citizenship. The right to apply for citizenship to
3 certain illegal aliens. The Court found that the
4 employer's action had the effect of jeopardizing
5 the Plaintiff's rights before they had the
6 opportunity to exercise them. Noting that illegal
7 aliens must produce documentation of their past
8 residence and employment, including false
9 documentation, to qualify for legalization.

10 The judge stated that the act would be
11 manifestly unjust if it encouraged qualified aliens
12 to come forward and reveal their undocumented
13 status only to have the very information serve as
14 grounds for termination by employers.

15 To monitor the potential discriminatory
16 effect of the employer sanctions provisions of the
17 act, the act requires the Controller General to
18 issue a report each year for three years and that
19 report will be conducted -- issued by the Attorney
20 General, the chairman of the Commission on Civil
21 Rights and the Equal Employment Opportunity
22 Commission.

23 As indicated in the nondiscrimination
24 provision of the act, it has been drafted to
25 prevent overlap between the jurisdiction of the

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1 Department of Justice and the EEOC. The office of
2 Special Counsel has jurisdiction, as I was saying
3 earlier, over charges of national origin,
4 discrimination against employers of 14 or more
5 employees who are not covered by Title 7 and over
6 charges of discrimination based on citizenship.

7 The statute specifically prohibits any
8 overlap between charges filed with EEOC and charges
9 filed under Section 102 of the act. A person
10 cannot file a charge under the section of the act
11 based on the same set of facts that have been filed
12 with EEOC under Title 7, unless the EEOC charge is
13 dismissed as without merit or under the scope of
14 Title 7.

15 A similar provision applies to charges
16 originally filed with the Special Counsel. The act
17 also specifies that the authority of the Equal
18 Employment Opportunity Commission to investigate
19 Title 7 charges shall not be affected where
20 specifically prohibited.

21 The act prohibits only discrimination in
22 hiring, recruitment, job referrals from fee-generating
23 agencies and discharge, while in Title 7, it is
24 broader than that. It goes into transfers,
25 benefits, compensation and working conditions.



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1 The act contains one provision that
2 potentially may conflict with Title 7. Although
3 the act prohibits discrimination based on
4 citizenship status, it also states that it is not
5 an unfair immigration-related employment practice
6 to prefer to hire, recruit or refer an individual
7 who is a citizen or national of the United States
8 or an alien if the two individuals are equally
9 qualified. The commission guidelines; that is the
10 Equal Employment Opportunity Commission guidelines,
11 provide that where citizenship requirements have
12 the purpose or effect of discriminating against an
13 individual on the basis of national origin, this
14 would be a prohibited act. So there is a potential
15 apparent conflict in that area, which I'm sure the
16 courts, later on, will probably resolve.

17 We as an agency here in Albuquerque, at
18 this point, have taken some charges, since we
19 started on November the 6th. We haven't had as
20 many as we had expected to have.

21 We look at charges in general categories
22 where a charge is alleged that an employer only
23 looks at an individual of a particular national
24 origin or individuals who look foreign or for
25 verification of their legal employment status.

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1 Charges that an employer scrutinized more
2 closely, in other words some individual feels that
3 he went to apply for employment and he was
4 scrutinized more closely than someone else, would
5 give him a basis for filing a charge with us.

6 If an individual is asked to submit
7 certain documents, particularly documents related
8 to identification, that other individuals are not
9 required to submit, the citizenship documentation,
10 if individuals are made to go to extraordinary
11 lengths to present citizenship verification and
12 other individuals are not made so, these are all
13 areas under which we would probably take a charge
14 of discrimination. Thank you.

15 MR. MONTTOYA: Thank you. Let me, before I
16 let the State Advisory Committee ask the questions,
17 let me make one thing clear because this was a
18 question that was brought to me by one of the
19 reporters. Why is the State Advisory Committee in
20 New Mexico holding the hearings on immigration?
21 Are we worse off than any other state, city or
22 county or whatever it is?

23 No, that is not the case. It just so
24 happened that the State Advisory Committee meeting
25 in New Mexico fell in the realm of the new



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1 immigration law and it was beneficial for us to
2 start conducting the hearings before Texas or
3 California or any of the other states.

4 If you notice, our state or the chairman
5 of our U.S. Commission on Civil Rights is one of
6 the members of the panel and it is our
7 responsibility to gather input and information so
8 that we can disseminate that same information to
9 Congress and the President as it relates to the
10 legislation and the effects it's having on various
11 entities and it so happened New Mexico was ready to
12 start holding their meetings and this is what SAC
13 chose, to proceed in that fashion.

14 This is the first immigration meeting of
15 any of the state advisory committees throughout the
16 nation addressing the new legislation. So
17 consequently it's fairly new, fairly new to
18 everyone, and as we produce years and years down
19 the road, we'll gather more data and more
20 information and hopefully the commission will have
21 additional information from Texas and different
22 parts of the country so that they can then put all
23 this information together and try to make some
24 meaningful sense as far as recommending
25 alternatives to Congress and the President. I

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1 wanted to make that clear. It's not that New
2 Mexico is abusive or we have more problems than
3 anybody else. I'll open it for questioning now.
4 Emma?

5 MS. ARMENDARIZ: I have one question of
6 Mr. Brown. In terms of employer education, on what
7 basis are your employer education seminars provided?
8 Is it on the basis of employers requesting it or do
9 you hold them regularly?

10 MR. BROWN: Most of our employer education
11 seminars have been requested by the State of New
12 Mexico Employment Security Division, although
13 initially when we first started out doing this, our
14 first one was held on February 17th and we
15 contacted the superintendent of the Albuquerque
16 Public Schools and asked her if we could possibly
17 use some of the local cafeterias, the school
18 facilities, so that we could get the word out to
19 the employers and possibly more importantly, the
20 legalization applicants.

21 We had, I think it's ironic, at one such
22 meeting we had upwards of 120 people attending that
23 one seminar in that local high school and there was
24 not one employer in the bunch.

25 So, what we did was, we started out

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1 initially, the State of New Mexico, the Employment
2 Security Division wants to get involved. In fact,
3 they want to take over the verification job for
4 employers, to relieve the employers of that
5 responsibility and as such, they have requested
6 that we go around to different parts of the state
7 and put these on.

8 MS. ARMENDARIZ: Thank you.

9 MR. MONTAYA: Gilbert?

10 MR. PENA: Looking at the law and the
11 problems and everything else, I just see a whole
12 administrative nightmare being created with this.
13 Mr. Henderson, you mentioned earlier that there was
14 a delay in the processing of applications simply
15 because an applicant may have had misdemeanor
16 charges such as traffic violations and littering.
17 Is that true?

18 MR. HENDERSON: We have identified cases
19 where an individual would be disqualified because
20 of the number of misdemeanors.

21 MR. PENA: Does the disqualification take
22 place with INS?

23 MR. HENDERSON: That would be a
24 disqualification on the general criteria. What we
25 would be doing, because we have basically a

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1 counseling function, is to say to that individual:
2 You are not meeting the basis of qualifications.
3 At this point in time we're taking those cases
4 under advisement and looking at that and telling
5 those individuals that they should wait at this
6 point in time, so we're holding those cases.

7 MR. PENA: It would seem to me that that
8 would be discriminatory in nature simply because of
9 those minor violations.

10 MR. BROWN: Mr. Montoya, may I address
11 that?

12 MR. MONTOKA: Yes.

13 MR. BROWN: First of all, I think in order
14 to clarify something possibly that at this point
15 that is not clear: Under this law a misdemeanor
16 has been defined to be anything where a sentence
17 imposed was over five days but less than one year.
18 This would take away those misdemeanors of
19 littering or loitering or whatever that you have
20 seen up to this point. I would also say that there
21 are three such misdemeanors going anywhere from
22 five days to one year allowed under this law.

23 The other thing I might mention is: The
24 local office, any local INS legalization office
25 does not have the authority to deny an application.

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1 We only have the authority and I say the
2 legalization office, has the authority to recommend
3 denial, but denials are done on a regional basis.

4 MR. PENA: The other question I have, Mr.
5 Chairman, is: There has been an upcropping of
6 agencies that are supposed to be set up as
7 certified agencies for the processing of
8 applications. Do you have that problem here in New
9 Mexico? I mean illegally set up?

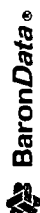
10 MR. BROWN: Who is that addressed to?

11 MR. PENA: Either one of you.

12 MR. BROWN: I would think there was
13 recently a new law passed by the legislature in New
14 Mexico that prohibited the use of unauthorized
15 agencies to represent aliens in immigration matters.
16 This is probably the strongest law in the United
17 States on a state basis and because of that, some
18 of the agencies that perhaps came or popped up
19 originally have maybe not been visible at this time.

20 MR. PENA: Do you extend a grace period or
21 extend a period for the application process if, say,
22 an alien applying for that process is subjected to
23 that? Do you extend them extra time to go through
24 the proper application process or not?

25 MR. BROWN: No, sir. The way the law

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1 reads right now, if they do not apply before May
2 4th, 1988, the application will be closed and no
3 applications will be received after that date.
4 That's the way it is written right now.

5 MR. MONTTOYA: Tom?

6 MR. BACA: Mr. Brown, Mr. Henderson
7 reported that the US Catholic Conference has a
8 strong concern over the strengthening of the family
9 unit. From what I understand, there is some
10 discretion from district to district with respect
11 to the implementation to the split-ups of families,
12 that the law in fact is not very specific in terms
13 of that. Is there in fact that kind of discretion,
14 and if that is so, what is the policy of this
15 particular district?

16 MR. BROWN: There is not that kind of
17 discretion. The law reads that each person must
18 show eligibility in their own right. I might just
19 address that though in terms of the intent of
20 Congress, which I think is what this whole law has
21 to do with and I believe it was not the intent of
22 Congress that would allow a family unit to possibly
23 exist for an illegal alien that does not in turn
24 exist for somebody who has applied for legalization
25 or permanent resident status on the basis of a visa

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1 petition filed perhaps as long as nine years ago
2 and yet their quota number has not been reached.

3 Possibly if the law were written so that
4 the number of visas could have been allocated to
5 bring those two-and-a-half million people who are
6 presently waiting outside of the United States to
7 enter legally, family units, if that many visa
8 numbers were allocated in this, perhaps they would
9 have looked at it differently, but as of the
10 present time they have not done so.

11 MR. MONTTOYA: Thank you. Gerald?

12 MR. WILKINSON: I wanted to ask Mr. Lopez:
13 I'm curious if the EEOC really has sufficient money
14 and personnel to really take on these new duties
15 since it seems to be, in some respects, sort of
16 hopelessly backlogged with the other cases that it
17 has now.

18 MR. LOPEZ: I would say probably EEOC,
19 nationwide -- in some areas, let's say possibly
20 Dallas, maybe Los Angeles and those areas, they may
21 be hard pressed.

22 We are pretty well up to date in our area
23 here and this year, not because we got the extra
24 duties but because we got some extra money from
25 Congress, I don't know, we are going to put in a

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1 few more people in our office that should allow us
2 to keep up. But EEOC-wide, I think that there will
3 be a certain amount of problems, yes.

4 MR. WILKINSON: Thank you.

5 MR. MONTAYA: Emma.

6 MS. ARMENDARIZ: I have a question in
7 reference to the QDEs to Mr. Brown. What criteria
8 is used for designating these entities and secondly,
9 are you using a ratio of some sort in terms of
10 population versus the number of QDEs that would be
11 available?

12 MR. BROWN: I think I would say Mr.
13 Henderson probably would have a better knowledge of
14 answering that question than I, although I do know
15 that in order to be designated as a QDE they would
16 have had to make application to the Bureau of
17 Immigration Appeals in Washington, D.C. This is
18 under our office of executive review, Immigration
19 Office of Executive Review and as such, they are
20 the ones who designated the entities to go out and
21 represent people applying for legalization. An
22 application had to be made. I have not gone over
23 or done such an application. Perhaps Mr. Henderson
24 has.

25 MR. HENDERSON: We filled out the

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1 application as an affiliate of the US Catholic
2 Conference so that the parenting of that QDE status
3 is with the US Catholic Conference, which is a
4 national organization.

5 My understanding at this point in time is
6 that there is not a ratio of number of projected
7 applicants in a geographical area to the number of
8 QDEs.

9 We became a QDE because of our affiliation
10 and because of our past experience and work in the
11 area.

12 MR. MONTTOYA: Thank you. Phil, you had a
13 question.

14 MR. MONTEZ: Mr. Brown, just for the
15 record, how specific is the congressional mandate;
16 that is, the law written by Congress? As we know,
17 administrative legislations are established after
18 the regulations are published and so forth. What I
19 am trying to do is clarify the difference between
20 the regulations in Congress. For example: Is
21 Congress specific on the family unit and the
22 misdemeanor or has that come about because of the
23 process of administrative regulation?

24 MR. BROWN: I've got both the
25 congressional record and the federal register here.



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1 As I remember, after reading it initially on the
2 congressional record, that it is addressed as: The
3 applicant must show eligibility to be eligible to
4 have their status legalized and as such, an
5 applicant is not defined as a family unit.

6 MR. MONTEZ: Then INS has set up the
7 regulations and they have become law through
8 publication which is the law you referred to. So
9 then the point of contention with the work Mr.
10 Henderson is doing is to change the administrative
11 regulation, which would be the process?

12 MR. BROWN: That is correct.

13 MR. MONTEZ: I just want that for the
14 record. Because I think people assume that it's
15 the congressional mandate and it's really
16 administrative regulation.

17 MR. BROWN: That is correct. I think it's
18 also important to point out, however, that the
19 districts do have some discretion in terms of:
20 Will we go out and apprehend wives who are
21 housewives or with small children? That is
22 certainly on the very lowest part of our priority
23 status.

24 MR. MONTEZ: Is there an appeal process
25 like when a wife has been rejected and a husband

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1 gets to stay?

2 MR. BROWN: Yes, there is. The appeal has
3 been made. A person whose application for
4 legalization is denied through our regional
5 processing center, their appeal is with the US
6 Court of Appeals.

7 MR. MONTEZ: Which is a very expensive
8 kind of process. I mean I can't even afford to go
9 to the US Court of Appeals and I have a full-time
10 job.

11 MR. MONTOYA: Let me ask one, Gerald.
12 Let's get back to the QDEs. Do we have any
13 information on how many, other than Catholic Social
14 Services or their affiliate, how many other
15 entities have been certified in New Mexico?

16 MR. HENDERSON: There is just two in the
17 State of New Mexico. The Farm Bureau down in Las
18 Cruces and Catholic Social Services.

19 MR. MONTOYA: That have been accepted and
20 verified. Okay. Let's get back to -- As I
21 interpret the law, as of November 6th, of 82, under
22 the legislation, every employer must have a
23 document for every employee that is employed after
24 that time; is that correct?

25 MR. BROWN: That's correct.



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1 MR. MONTOKA: That's every employee
2 regardless of nationality, race, color, creed,
3 everything?

4 MR. BROWN: Every single employee hired
5 after November 6, 1986, will be required to have
6 this form.

7 MR. MONTOKA: Let's get back to the
8 definition of illegal alien as we understand it in
9 New Mexico of talking about Mexican illegal aliens.
10 What happens with other types, Asian or Chinese,
11 Canadian? What is the enforcement directives of
12 INS then?

13 MR. BROWN: I think it's very important
14 that this question be answered. Because of our
15 location, our proximity with our neighbor to the
16 south, we tend to think of illegal aliens as
17 Mexican nationals, perhaps. I would stress to the
18 committee that of the people who have applied for
19 legalization under this new program, have included,
20 Canadian nationals, Japanese nationals, Jordanian,
21 Iranian nationals, French nationals, we could keep
22 going on down the line. Certainly we have more
23 Mexican nationals than any other single nationality
24 but that is because of our proximity with the
25 border.

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1 MR. MONTTOYA: And the employer sanctions
2 and penalties or whatever are identical for any
3 category?

4 MR. BROWN: Absolutely.

5 MR. MONTTOYA: One of my questions was
6 answered in relationship to EEOC. If I recall
7 correctly, when we had our first forum about a year
8 ago, it was taking EEOC about three years to get to
9 a case legally and otherwise because of
10 investigating in the justice department. The
11 justice department really has the enforcement. As
12 I understand under this legislation, of course, you
13 have your Title 7, which could intermingle or
14 whatever. But then your enforcement as far as this
15 legislation is concerned is really with the office
16 of Special Counsel?

17 MR. LOPEZ: That's the enforcement for
18 their citizenship area. But if we can justify it
19 under national origin citizenship, it would process
20 just like any other Title 7 charge and we would
21 have the same authority to go to district court
22 under that as we do in any other part of Title 7.

23 MR. MONTTOYA: If I recall correctly, your
24 Title 7 charges now that you stated that you are up
25 to date, roughly? You still do the investigation,

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1 the justice department is still the enforcement,
2 legal enforcement; is that correct?

3 MR. LOPEZ: Legal enforcement is done in
4 two ways. For private employers it's done through
5 the US District Court by the private counsel or the
6 Equal Employment Opportunity Commission.

7 For local entities such as state, local
8 governments and so on, that goes through the
9 justice department.

10 MR. MONTROYA: You know, what would the
11 ruling be on a sub-contract with a contractor,
12 let's take a construction contractor building a
13 road or paving or whatever it is. Does he fall
14 into the public or private, you know, if he's paid
15 through tax dollars?

16 MR. LOPEZ: Private. He would still be a
17 private contractor.

18 MR. MONTROYA: He would still be the
19 private contractor. So, he would go through the
20 Court process.

21 MR. LOPEZ: Court process with EEOC.

22 MR. MONTROYA: Have we gotten or has the
23 EEOC or INS gotten any complaints in relationship
24 to either -- and I'm not saying intentionally, but
25 mass firings or semi-mass firings on aliens because



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1 of the fact that they are afraid, number one, is
2 that we've tried every effort, law and everything
3 like that, but I-9s are barely coming out right now.
4 We're trying to cope with the educational process
5 and so on and so forth. But have we gotten any
6 complaints of any types of semi-mass firings
7 because firms are afraid of the sanctions, not
8 knowing, you know, the administrative procedure in
9 New Mexico? I'm not saying nationally.

10 MR. LOPEZ: In New Mexico, we haven't had
11 any. There may have been, but we haven't had any
12 like that. We have had somewhere in the
13 documentation, when they have been asked for
14 documentation and some documentation hasn't been
15 forthcoming, they have let someone go.

16 MR. BROWN: We have had many people call
17 our office stating that their employer has asked
18 them for documentation by a certain date and stated
19 to the employee that in fact if they did not have
20 that documentation they were going to let them go.
21 We have instructed those people to have the
22 employers contact our office. In all of the
23 seminars that we have presented, emphasized to the
24 employers that you do not have to fire anyone under
25 this law if they were hired after November 6th,

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1 1986 and they are eligible for legalization, then
2 they have -- all they have to do is put across the
3 I-9 form that they are going to apply under a
4 special rule and they are given automatic
5 authorization until September 1st, and so forth.
6 But we have had people contact us and employers
7 have responded, after they have gone to the
8 employer.

9 MR. MONTTOYA: What are the recommendations
10 from INS as it relates to -- we're not talking
11 about forms, we know the mailing is still getting
12 out. What have you recommended to employers that
13 they keep as far as their records from November 6th?
14 Do they design their own form or based on certain
15 guidelines or what?

16 MR. BROWN: The way the regulations read
17 now, because it has been moved up to July 1st, we
18 are asking employers who have employees hired after
19 November 6th, but before July 1st, they will have
20 until September 1st to have the I-9 form completed.
21 After July 1st, then they have within three working
22 days after the employee is brought on board, to
23 have the I-9 completed.

24 MR. MONTTOYA: Thank you. One other
25 question that I need to ask: I know that INS has



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1 done their best and so has the people involved in
2 the process as far as I know about Albuquerque but
3 let's get now to some of our panelists have held
4 forums at different levels with major employers or
5 employees. What about the farmer, the rancher,
6 let's say in Roy, New Mexico, that hires five, I
7 think the level is five, isn't it? Any employee,
8 but let's say one employee, two employees as a
9 ranch hand in the boonies. He probably hasn't even
10 read the regulations or the law. What are we doing
11 to educate that person that now he must have a
12 documentation indicating that that individual, with
13 a house maid or cook or whatever it is, you know,
14 to ascertain potential audits and reviews?

15 MR. BROWN: Two things: The New Mexico
16 Farm Bureau has requested and we have set up such
17 meetings in Vaughn, Estancia, we have set up
18 meetings in outlying areas and with some county
19 extension agents, primarily, across the state.

20 We have requested also from the Employment
21 Security Division, the State of New Mexico, a list
22 of all employers registered with the state, the
23 specific purpose of which is to send out mailings
24 to them, contact them to make sure they get copies
25 of the I-9 handbook for employers and the



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1 information booklet and in terms of going out to
2 individual ranches, I will tell you Mr. Montoya,
3 that we have right now, two people in the office
4 that would have the ability to do that and it's
5 impossible.

6 MR. MONTOKA: I think what I'm trying to
7 get to is: The process of the education is going
8 to take some time, not only because of resources,
9 staff time and the nature of the problem.

10 MR. BROWN: I might also mention that this,
11 I think, was -- the reason that there is this one-year
12 education period or this one-year citation period
13 after the education period ended, where if INS were
14 to go out to an employer and contact that employer
15 and in fact was not in compliance with a new law,
16 that there would be no sanctions imposed against
17 that employer.

18 MR. MONTOKA: What about an employer,
19 let's say an Indian pueblo, an Indian tribe, the
20 Navajo nation, the Jicarilla, let's say the Inn of
21 the Mountain Gods. What authority does INS, the
22 new law or anything have on the sovereign nation
23 going in to force that entity to have I-9 forms?

24 MR. BROWN: I will state that we have, in
25 the past, had a very close working relationship

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1 with the governors of some of the different pueblos,
2 that there is no exclusion in terms of the law of
3 having the I-9 for Indian nations. I might further
4 state that one of the documents in the handbook
5 that you were given today specifically states on
6 there that tribal documents can be used for both
7 identity and eligibility purposes.

8 I have had one such question from a pueblo
9 west of here and they have indicated that would it
10 be acceptable for a notarized document from the
11 clerk of the tribe stating that this person was
12 eligible, would that be acceptable and I answered
13 that it would.

14 MR. MONTTOYA: I'm questioning the
15 authority that you as an INS investigator can go to
16 the pueblo administration office and audit the I-9s
17 on a sovereign nation.

18 MR. BROWN: I understand.

19 MR. MONTTOYA: That's what I'm saying.

20 MR. BROWN: I tried to circumvent the
21 question.

22 MR. MONTTOYA: I'm not getting that they
23 are going to be.

24 MR. PENA: Under Santa Clara versus
25 Martinez we will grant that individual membership.

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1 MR. MONTOKA: Just for the record, Mr.
2 Brown, I'm not picking on you.

3 MR. BROWN: I understand.

4 MR. MONTOKA: I'm trying to record --

5 MR. BROWN: I don't believe we have such
6 authority.

7 MR. MONTOKA: Thank you. I'll turn it now
8 back to any of the panelists.

9 MR. PENA: I just think that if I was a
10 farmer growing crops down there I'd be in a panic
11 situation because I may not get the same
12 individuals to come and pick crops from one year to
13 the next and it seems to me that there should be
14 some sort of discretion. Is there some sort of
15 discretion as far as that type of activity is
16 concerned?

17 MR. BROWN: You mean in terms of
18 harvesting perishable crops?

19 MR. PENA: Yes.

20 MR. BROWN: The Department of Agriculture
21 came out with a definition of perishable crops and
22 it did include certain things that are perhaps
23 unique maybe to New Mexico. I was very glad to see,
24 however, that all fruits, nuts and vegetables
25 including green chiles were included in those that

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1 are covered under the new law.

2 The provision that we have right now in
3 effect allows for any person who entered the United
4 States illegally as of last Friday, which is the
5 19th of June, they would be eligible to apply for
6 the special agricultural worker program without
7 leaving the United States and going back say to
8 Mexico to have to make their application there.
9 This is a recent change that quite honestly, I read
10 in the newspaper. I have not received anything
11 from our office yet. So I will tell you that the
12 problems that are taking place that we're hearing
13 about such as in Oregon, the strawberry crop is
14 supposedly rotting on the ground in Oregon, I think
15 is a very short-term problem although it's not
16 going to do the people any good this year.

17 I think that problem came about strictly
18 because the people who were involved in the
19 harvesting of the strawberry crop are generally
20 from California and because they applied for
21 legalization in California, and were afraid because
22 of a change of address that they might not get the
23 documents that they needed to show temporary
24 permanent residence in the United States, stayed in
25 California. They did not migrate to Oregon to pick

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1 the crops. There is going to be a short-term
2 problem I think but it will be alleviated,
3 hopefully, after the program is well underway.

4 MR. MONTOKA: Thank you. Mr. Harding, I'm
5 sorry. You had your hand up before me.

6 MR. HARDING: Mr. Brown, I read where
7 there is supposed to be a substantial traffic in
8 black market credentials. Is your office aware of
9 any evidence to substantiate a claim like that?

10 MR. BROWN: Yes, sir, we are.

11 MR. MONTOKA: Any other questions from the
12 panel? Gentlemen, I want to thank you. We will do
13 anything in our power to assist with any problems
14 of alleviating the civil rights aspect of that and
15 informing our commission so that hopefully they can
16 in turn present something to the congressional
17 people and also to the President as it relates to
18 the administration of the act. I know that the act
19 has a three-year review period, if I recall
20 correctly.

21 MR. BROWN: That's correct.

22 MR. MONTOKA: I'm sure annually that both
23 everybody will be monitoring very closely,
24 basically because it's so new right now and we're
25 all just trying to feel our way and find out what

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1 it's going to entail. Thank you, Mr. Brown. Thank
2 Mr. Giugni for me and Mr. Henderson anything that
3 we can do, let us know and Andy, thank you very
4 much.

5 UNIDENTIFIED SPEAKER: May I ask a question
6 as an employer?

7 MR. MONTTOYA: I'm sorry but we will have
8 from 5:00 to 6:00 for audience questions. This is
9 strictly an input-type of forum right now. But why
10 don't you take any of the gentlemen, if they wish
11 to answer and --

12 UNIDENTIFIED SPEAKER: It's very simple.

13 MR. MONTTOYA: Not as a panel, but you can
14 corner them someplace if they wish to answer your
15 questions. Thank you, gentlemen, for your time.
16 I'm sorry. I think that our next panel, we're
17 running a little bit ahead. But if they are
18 present, Mr. Dulles will place their names.

19 (Recess taken)

20 MR. MONTTOYA: The next forum relates to
21 policies and legal issues.

22 Basically we had anticipated or there was
23 indication that Rudy Bessera, who is the associate
24 director of Office of Public Relations to the
25 President would be at our meeting today and would

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1 be part of this forum but other pressing issues in
2 Miami has him down there at this time. So we'll
3 proceed with our panel and I'll start with with you,
4 John and then we'll go to Astrid and then to Sarah
5 Reinhardt.

6 MR. LAWIT: Thank you very much. My name
7 is John Lawit. I'm an attorney in private practice
8 here in Albuquerque. My practice is devoted
9 exclusively to immigration and nationality law
10 matters and I've so dedicated my practice for the
11 last eight years here. Before I begin my formal
12 remarks I would like to clarify my interpretation
13 of the law as it differs from some of the
14 statements that were made by some of the last panel,
15 particularly the definition of misdemeanors.

16 The definition of misdemeanors for this
17 act is found at page 16,209 of the Federal Register
18 of May 1st, 1987. I wanted to read for your
19 clarification the three or four sentence definition.
20 A misdemeanor means "a crime committed in the
21 United States punishable by imprisonment for a term
22 of one year or less, but more than five days,
23 regardless of the term such alien actually served,
24 if any." What that means is: There is no
25 requirement that there be jail time for a

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1 misdemeanor to disqualify someone for eligibility
2 under this law and in fact, I have many clients who
3 are going to be disqualified for driving without a
4 driver's license, who are going to be disqualified
5 for leaving the scene of an accident, as long as
6 eight or 10 years ago. I really think that this
7 particular provision is a very harsh, unnecessary
8 and unjust penalty to be applied across the board
9 to people simply because they maybe committed very
10 minor misdemeanors as long as 10 or 15 years ago.

11 New Mexico state statutes also only
12 provide for offenses to be punishable as
13 misdemeanors. In this state, littering, spitting
14 on the sidewalk, receiving a parking ticket are all
15 misdemeanors and theoretically if the immigration
16 service chose so, people can be disqualified for
17 legalization simply by having been issued three
18 parking citations.

19 Fortunately, the immigration service thus
20 far is taking the position that they are not going
21 to disqualify people simply for minor traffic
22 offenses as they say and they look the other way
23 toward those misdemeanors, but they don't look the
24 other way toward trespassing misdemeanors, they
25 don't look the other way, for example, for petty

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1 property crimes, and therefore a combination of
2 traffic citations as well as other petty
3 misdemeanors can and will disqualify people from
4 eligibility for legalization. Again there is no
5 statute of limitations for the time frame within
6 which these crimes were committed, amplifying on
7 that even more was Commissioner Alan Nelson last
8 week from the American Immigration Lawyers
9 Association national convention in Philadelphia
10 where he indicated that the immigration is going to
11 take a literal interpretation of misdemeanor and
12 apply it across the board to disqualify any
13 individual who has been convicted of three or more
14 misdemeanors.

15 Notwithstanding the fact that I think that
16 the immigration service here locally in New Mexico
17 is trying to accommodate individuals who apply for
18 legalization by looking the other way at
19 misdemeanors that they have decided on their own
20 are petty, I don't think constitutionally such an
21 approach to the law is permissible and I think if
22 the statute says "all misdemeanors," it means all
23 misdemeanors, and the answer is to go back to
24 congress and amend this statute or particularly to
25 amend the regulations to give a list of

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1 misdemeanors that will disqualify people that are
2 certainly misdemeanors that are extremely serious,
3 for example, misdemeanors involving crimes
4 involving moral turpitude.

5 These traditionally have been the types of
6 crimes that have made people ineligible for
7 immigration benefits in the United States but
8 crimes not involving moral turpitude traditionally
9 have not, and if I send a client, for example, to a
10 visa appointment at an American consulate abroad
11 and they have been convicted of six DWIs, they will
12 be issued visas to come to the United States. But
13 if they are convicted of three DWIs under this
14 statute they are ineligible for legalization. I
15 can't see why it's permitting agents to allow
16 immigrants in the United States who have committed
17 five and six misdemeanors and then to pick this
18 particular class of individuals and say if you have
19 been convicted of trespassing, leaving the scene of
20 an accident and driving without a driver's license
21 10 years ago, you are not eligible for legalization.

22 I don't believe that this part of law was
23 well thought out. I think that those people that
24 drafted the regulations in the Immigration and
25 Naturalization Service sought to make this

1 particular provision as restrictive as possible and
2 not as liberal as possible, thereby eliminating as
3 many people as could be eliminated from this
4 process.

5 The second point I would like to clarify
6 is concerning the appellate process found at page
7 16,216 in the Federal Register of May 1st, 1987.
8 The appellate process is an extremely difficult one.
9 If a person receives a denial from the legalization
10 center in Dallas, there is an administrative appeal
11 and it's to the United States Immigration and
12 Naturalization Service in Washington, D.C. When
13 the denial comes, a person has 30 days and that
14 includes mail time to reach the board in
15 Washington, D.C. to respond to the denial. 30 days
16 in immigration matters, particularly if the issue
17 revolves around gathering appropriate documentation
18 of activities that may have taken place as long as
19 five years ago, is no time at all.

20 UNIDENTIFIED SPEAKER: What page do we find
21 that?

22 MR. LAWIT: 16,216 in the Federal Register
23 of May 1st, 1987. As a result of this fact, many
24 individuals who are represented, for example, by
25 persons who have little experience in immigration

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1 and nationality laws or even if represented by
2 people with an extreme degree of experience will
3 have a very difficult time complying with the very
4 strict time limitations in this appellate process.
5 There is little if any wiggle room for additional
6 time to prepare briefs and get other affidavits and
7 therefore, the interagency appeal is somewhat
8 illusory in its availability to people that are
9 denied. I know that for example qualified
10 designated entities that are handling thousands of
11 cases are hardly geared up to be able to handle
12 their case load that they have now, let alone to
13 set up an appellate board to help individuals who
14 have been unjustly denied legalization.

15 Given the millions of people that will be
16 applying for benefits under this particular
17 provision of law, it's inconceivable to me that
18 innocent people will not be denied by mistake and
19 therefore the only remedy that they are going to
20 have that will be practical will be to use this
21 appellate process.

22 If the appeal is denied at the
23 administrative level, there is no access provided
24 into the federal district courts. What an
25 individual is left with at that point in time is to

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1 wait to be arrested by the immigration service, go
2 through a deportation hearing where, by regulation,
3 they are precluded from raising the issue of an
4 unlawful denial of legalization and then after they
5 are found deportable from the United States they
6 can then as part of the appeal of the deportation
7 order file in the US Court of Appeals.

8 In New Mexico the Court of Appeals is
9 located in Denver that has jurisdiction over this
10 state and not only does that make that expensive,
11 but as another practical matter, the standard that
12 the Court of Appeals will listen to in an appeal
13 from a denial of a deportation order is only
14 abusive discretion. Therefore, there is no forum
15 to relitigate the issue if a mistake has been made
16 at the appellate level and the only remedy that's
17 left for an individual that finds themselves before
18 the Court of Appeals is to argue that the
19 immigration service went beyond the scope of their
20 parameters in interpreting the facts and materials
21 presented to them.

22 Given the wide latitude and deference
23 that's paid to the immigration service as an
24 administrative agency, that is a very difficult
25 burden for an individual who has been unjustly

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1 denied legalization to carry both in a financial
2 sense and a legal sense.

3 The other point that I wanted to make
4 concerning the availability of information
5 concerning employer sanctions is the fact that it's
6 only in English. I have not seen any Spanish
7 versions of the instructions, I have not seen any
8 in any other languages. As Mr. Brown has testified,
9 there are many people of many nationalities here in
10 New Mexico that are eligible in applying for
11 legalization. How they are to absorb and
12 understand what their responsibilities under the
13 law are means, in many cases, they are going to
14 need an interpreter to read the regulations and
15 materials that have been printed by the immigration
16 and naturalization services. Now I'll get on with
17 my prepared remarks.

18 When the Simpson-Mazole bill first was
19 introduced in Congress several years ago and the
20 press was carrying the stories that it was going to
21 pass, I began to receive a disturbing series of
22 phone calls in my office concerning individuals who
23 had been let go by employers who feared employer
24 sanctions. At that point in time of course the
25 publicity concerning the grandfather clause as well

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1 as the kind of time frames that the act now
2 contains for employers to be educated and to comply
3 with the new law were not available. But as early
4 as four years ago I began to see the pattern and
5 with each successive wave of publicity during each
6 term of Congress as the law became closer and
7 closer to becoming enacted, I saw it picking up
8 more and more. Finally the law did pass in
9 November, 1986, and within days of the passage of
10 the law I began to receive calls from individuals
11 who had been fired from their jobs.

12 They had been fired from jobs in those
13 sectors of the economy of the State of New Mexico
14 that have a high proportion of undocumented
15 individuals working within them. The restaurant
16 industry, the hotel industry and the construction
17 industry were particularly active in letting go of
18 the employees out of fear. The pattern still goes
19 on.

20 I do think in deference to the educational
21 efforts of the immigration service, it certainly
22 has lessened somewhat from where it was before but
23 it is still going on, on an ongoing basis. These
24 days if an individual is fired from a job and they
25 are eligible for legalization, it is nearly

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1 impossible for them to obtain employment until they
2 are able to get some kind of written verification
3 from the immigration service. Usually after filing
4 an application for legalization here at the
5 legalization center.

6 The problem is that most employers do not
7 understand the technical provisions relating to
8 individuals that are eligible for legalization who
9 wish to file an application. Individuals who wish
10 to file an application for legalization when they
11 fill out an I-9 need only denote this fact and they
12 are allowed to continue their employment until
13 September of 1987, where it is expected that they
14 will have submitted their application for
15 legalization and obtained the employment
16 authorization card.

17 Most employers are not aware of this fact.
18 Most employers believe that they must get some sort
19 of written documentation from the Immigration and
20 Naturalization Service before they can allow
21 someone to continue working for them. As a result
22 of this fact, many people who otherwise would be
23 employable or who could seek a new job after being
24 let go from their previous job are unable to do so.

25 This manifests itself in another problem

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1 that occurs because when a person goes to apply for
2 legalization, it is their burden to prove that they
3 will not become a public charge in this country and
4 the most logical way that someone can prove that is
5 to show that they are gainfully employed, yet the
6 very statute which is supposed to provide the
7 source of their relief from their undocumented
8 status at the same time cuts off the financial
9 ability to support themselves here, thereby making
10 their burden that much more difficult when they go
11 before the Immigration and Naturalization Service
12 to apply for legalization.

13 So this is having a very dramatic effect.
14 It's something that I think can only be cured
15 through education. I think that the local office
16 of the Immigration and Naturalization Service is
17 doing an exemplary job in spending lots and lots of
18 man-hours educating as many people as they can.
19 The problem is: They need 10 people out in the
20 field doing that, not one person out in the field
21 doing that, and there are no funds that have been
22 appropriated beyond those that are already being
23 spent for the immigration service, to put on the
24 kind of educational campaign that is necessary.

25 Certainly if they cannot afford to fund

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1 individuals to travel from city to city and state
2 to state, there can be massive public service
3 announcements that can be released nationwide for
4 every radio and TV station. Public service
5 announcements in the newspapers and other means of
6 media that we have in this country to get the word
7 out to people as to what needs to be done.

8 I might also point out that my clientele
9 is not all Mexican. Only 50 percent of my clients
10 are from Mexico. So I have the opportunity to
11 speak with people on a regular basis from all over
12 the world concerning their circumstances and what
13 they have seen and what they are seeing now in
14 their employment. I have yet to receive one call
15 from any non-Hispanic indicating any problem with
16 employment. I have yet to receive any call from a
17 non-Hispanic who had been threatened with
18 termination as a result of the fact that this new
19 law had passed. It seems, at least from what I'm
20 seeing in my practice, that the greatest group of
21 people that are suffering unjustly under this
22 particular provision of the law and unnecessarily
23 under this provision of the law are people from
24 Mexico and Central America and South America.

25 Like I say, I have yet to see any non-Hispani



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1 be complaining about being let go and certainly
2 when I prepare applications that I submit to the
3 immigration service for all people of all
4 nationalities, employment history is taken and I'm
5 just not seeing it with any other group of people.

6 I think that as a practical remedy to this
7 situation, aside from an out and out repeal of the
8 employer sanctions provision of the law, I think
9 certainly a delay until the end of the legalization
10 period would be in order. That would allow
11 employers not to have to fear violating the new law.
12 I think most employers would like to comply but not
13 knowing what to do they are in a panic and as a
14 result, wanting to be law-abiding citizens, they
15 are taking the route that seems most expeditious to
16 purge their staff of individuals who they deem to
17 be unauthorized to continue employment in the
18 country.

19 If the law or implementing regulations
20 were to change, people would have this one-year
21 window to freely apply. Not only would more people
22 come forward, but I think that employers would be
23 more willing to provide the verification that the
24 immigration and nationality act now demands to
25 prove that someone has been physically present in



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1 this country.

2 The act mandates that one of the best
3 sources of documentation that an individual can
4 present is letters and affidavits from employers,
5 yet we have a situation where employers now are
6 very reluctant to provide that kind of
7 documentation for fear of their being discovered as
8 having violated the internal revenue code for many
9 years and the social security act but also running
10 afoul of the employers sanctions provisions.

11 While I may be able to convince employers
12 that the confidentiality provisions that are
13 embodied in the Immigration Reform and Control Act
14 will enforce; that is, that the immigration service
15 will not share this information with other federal
16 agencies. It's a burden beyond me to convince them
17 that the immigration service will not share the
18 information with itself, and that's exactly what
19 the statute demands. But it's very hard to
20 convince employers dealing with many federal
21 bureaucracies that this is even possible. Thank
22 you very much.

23 MR. MONTOKA: Thank you. While I'm here,
24 Sarah, let me apologize to you. The news media had
25 an old agenda and your name and the fact that you

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1 would be a part of the panelists was not included,
2 but you received a letter from us and we welcome
3 you. Why don't you go ahead?

4 MS. REINHARDT: Thank you very much. My
5 name is Sarah Reinhardt. I'm an immigration
6 attorney. I've been practicing for seven years in
7 this field. I recently authored a book on the new
8 immigration law and I'm a member of the American
9 Immigration Lawyers Association and the National
10 Lawyers Scaled Immigration Project. I would like
11 to discuss today a number of different issues that
12 are of concern to me and which I believe may
13 already be causing different problems or may raise
14 problems in the future.

15 I'm sure many of these have been discussed
16 already. But I'd like to just add my point of view.

17 First of all, is the problem of the
18 splitting of families in which, for example, five
19 members of a family may apply for legalization, one
20 of those five will be ineligible for very minor,
21 almost microscopic reasons. There is no redress,
22 there is no way of getting around many of the
23 requirements of the act.

24 For example: Four members may legalize
25 and the father may have made a trip to Mexico in



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1 1984, due to sudden illness or death in the family,
2 return on a B-2 visitors visa and that wage earner
3 or that father of the family will be ineligible and
4 the rest will legalize. That is a problem because
5 among the solutions that I have heard given for
6 that, is that once the other family members
7 legalize they can in turn turn around and
8 eventually legalize that other family member
9 through the preference system. But that is not
10 workable with those immigrants from Mexico.

11 If the family is from Mexico, it will take
12 them seven or eight years, optimally, before they
13 will be able to help that one ineligible family
14 member. As to other countries, in most situations
15 they could help and legalize that one family member
16 optimally in three years and the immigration
17 service and/or the Congress needs to come to grips
18 with the problem of separation of families. They
19 have not yet evolved a policy which will deal with
20 these kinds of problems.

21 Among other problems I see is that the
22 problem of those aliens who are here as a parolee
23 or who are under exclusion proceedings has not been
24 addressed or it has been addressed somewhat in the
25 regulations but in an extremely restrictive fashion.


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1 Therefore, a person from Iraq who came here in 1979,
2 they might in all ways be eligible for legalization
3 but because at the port of entry they immediately
4 ask an immigration officer, "I need to file for
5 political assylum here," they were placed in
6 exclusion proceedings and in many of these cases,
7 because of the restrictive regulations, these
8 people will not be able to qualify.

9 Another issue which I'm concerned about is:
10 That many women who have not been employed outside
11 their homes, will have great difficulty gathering
12 documents and I have heard it expressed that many
13 of these women came later on anyway and when they
14 come in and say they have no documents, there is
15 almost a presumption that they are lying and I'm
16 concerned about it when I hear those ideas
17 expressed and I found it not to be true in my
18 practice and I believe that the studies conducted
19 by Professor Joan Moore of the University of
20 Wisconsin in Milwaukee, a very respected scholar
21 and sociologist who studied the undocumented aliens
22 in Los Angeles four or five years ago, found that
23 it was not true, the fact that many undocumented
24 aliens from Mexico are single males who come up and
25 work alone to send money back to their families.

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1 That is undoubtedly true in many
2 situations, but I have found more often the case
3 that the family is here and has been here for many
4 years and that therefore, this presumption that
5 women homemakers may have come later on when they
6 heard about the amnesty program, that the male
7 workers sent for their women and children, I don't
8 think that's true and I think that the immigration
9 service needs to be sensitive to that fact and
10 needs to respect the fact that many women have
11 stayed home and have been occupied raising children
12 and therefore their documentation is not going to
13 be ideal.

14 I have another concern and that is that in
15 many of the rural areas, they are cut off from
16 information about the program and they face a
17 number of obstacles as far as getting their
18 applications filed. They must travel long
19 distances to find assistance from any of the
20 agencies or from attorneys. They must go back and
21 forth and they must travel into the legalization
22 office for their interview. They must travel back
23 in order to get the final card and so on, and I
24 believe it works a hardship and may in fact impede
25 the number of applicants in rural areas who will



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1 apply.

2 I think that one of the answers to that
3 might be a mail-in application, filing of
4 applications, which does not now exist in this
5 state and I understand that the immigration service
6 may have some legitimate concerns about accepting
7 mail-in applications, as many of the applications
8 I'm sure that they receive are in fact deficient in
9 many respects. However, I think that that can be
10 negotiated and having a mail-in program is up to
11 the discretion of the local legalization office
12 director.

13 I think perhaps a compromise there would
14 be that in the cases of attorneys or designated
15 entities, they may be allowed after they have
16 screened and put together the case in a complete
17 fashion, might be able to submit those by mail.


18 Another concern I have is that on the
19 issue of crimes which John has talked about, one of
20 the other issues there is, for example, driving
21 while intoxicated is a felony in Texas. It is a
22 misdemeanor in New Mexico. Therefore, it's the bad
23 luck of the draw and if you are arrested in Texas,
24 you are going to be ineligible, one time, you will
25 be ineligible because you have committed a felony



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1 under this definition, but if you happen to be
2 across the line in New Mexico and you just have
3 this one arrest, you do not have that problem.

4 In other states misdemeanors have been
5 defined as any crime in which the possible
6 confinement is up to two years and so many of these
7 people in New York and New Jersey who thought they
8 had misdemeanors on their record end up actually
9 having felonies on their record and will also be
10 ineligible. So, it's the unevenness throughout the
11 entire country which is inherently unfair and I
12 think that in formulating the regulations, a better
13 definition of misdemeanor or felony could have been
14 developed and I think what would be preferred would
15 be a definition in which actual time served were
16 perhaps the gauge of whether something was a felony
17 or misdemeanor as, after all, the punishment meted
18 out is probably going to match the crime in that it
19 reflects how odious the behavior was deemed by the
20 court or perhaps that the definition apply only as
21 to those types of crimes, misdemeanors or felonies,
22 which are considered to be those involving moral
23 turpitude, which is what the immigration laws have
24 consistently used as a method of excluding
25 undesirable aliens with criminal records.

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1 There are other problems and one of those
2 is that any alien with a deportation after 1982, is
3 statutorily ineligible and these deportations can
4 arise in a variety of contexts and one of those
5 contexts is if a deportation hearing was held in
6 absentia while the alien was not even present, any
7 departure after that kind of a hearing is
8 considered a deportation and there are many, many
9 people I have seen come in to the office who, after
10 1982, had a deportation and this is deemed to have
11 broken their continuous residence and in many cases,
12 it is very unfair because these are people in which
13 the entire family will legalize and they will not
14 because of one deportation after 1982. It is also
15 not waiveable.

16 So there is no way to get around it. What
17 I would suggest or hope that the immigration
18 service might do is: Use a current mechanism which
19 is an I-212 waiver and apply that liberally by
20 saying that if we waive the deportation as a
21 grounds of subsequent criminal prosecution or
22 excludeability and deportability we will also
23 excuse it for purposes of continuous residence.
24 Right now that's not the case. There is no way of
25 getting around it.

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1 I would like to raise another issue and
2 that is, there seems to be some confusion on the
3 public charge issue. In many cases the fact that a
4 child received cash public assistance can be held
5 against the parent to make them excludeable and I
6 think that this is inherently also unfair. When a
7 citizen child, the child is a citizen and has in
8 all respects qualified for that assistance, I don't
9 believe that in implementing these laws, that was
10 meant to be held against the alien parent when they
11 seek legalization.

12 I also want to point out another problem
13 as John did in the appeals process. The appeals
14 process for a denied application is very confusing
15 and it is very lengthy. If you are denied
16 legalization and you believe it is unfair, they
17 cannot use, under the confidentiality provisions,
18 they can use nothing there to institute deportation
19 proceedings and the only manner of reviewing that
20 denial is through the deportation proceedings. The
21 judge cannot hear it but later on through the court
22 system you can raise those issues on appeal.

23 So, you really have no appeal and you
24 almost have to beg or trick the immigration service
25 into "Please put me into proceedings so I can

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1 please appeal this issue." So, I believe it's very
2 confusing and it will drag a case on for years and
3 you will never get review of these issues. Not
4 never, but it would take quite a long time.

5 I'm also concerned with persons that I
6 have spoken to who have been detained by the border
7 patrol or at the check points, where questions were
8 not asked to determine whether or not this person
9 was eligible at all for legalization, and these
10 persons were summarily removed from the country
11 when they in fact were clearly eligible for
12 legalization. Two cases I've seen recently were
13 people who were stopped in May of this year when
14 the program was already under way. So I'm
15 concerned that the word get out to those persons so
16 that it doesn't waste both the immigration's
17 resources and the time of the alien later on in
18 trying to explain these expulsions. I believe that
19 one of the problems is: In the questioning the
20 alien is most often asked, "When was your last
21 entry?" Which might have been last year but that
22 does not disqualify a person who has been here
23 since before 1982, and the persons, based on the
24 fact that their last entry was a year ago, are
25 expelled without further ado.

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1 I have some other concerns and that is in
2 the area of agricultural workers. In many cases
3 women and children have helped their husbands in
4 the fields picking crops. Their names have never
5 appeared on the employer's records. They are very
6 hardpressed to prove that, prove that they are in
7 fact agricultural workers themselves and I believe
8 the immigration workers need to be sensitive to
9 this issue. Also one of the provisions of the act
10 provides that the immigration service will
11 promulgate regulations which will assist an
12 applicant in compelling an employer to produce
13 records that would assist them in making their case.

14 The immigration service has not
15 promulgated these regulations and as we have heard
16 and as I have observed, many employers are very
17 reluctant because especially in the agricultural
18 area they are facing not only possible IRS and
19 social security violations but child labor laws and
20 minimum wage an hour violations and they are
21 extremely reluctant to assist.

22 I think that in addition, there is another
23 area of concern here and that is in the area of
24 employment authorization, which I feel is an area
25 which will become increasingly important. The

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1 immigration service has gradually had increasing
2 authority in this area and of concern to me is the
3 fact that regulations recently published in DFR 274.12
4 there is no provision whereby someone who has
5 married a United States citizen who has filed a
6 visa petition on their behalf and it has been
7 approved, where they can get work authorization at
8 all. Once a person is under docket control, they
9 might be able to get work authorization but the
10 immigration service in many areas does not want to
11 put the spouses of citizens under docket control.
12 It's a waste of time and it is, because these
13 people will soon have a visa in hand so why put
14 them in the system, why process them, because they
15 are soon going to have their residency.

16 But this ignores the fact that in the
17 meantime they cannot work, they are in a terrible
18 position and there is no way that they can obtain
19 employment authorization under the current
20 regulations, and I believe this is an oversight
21 that should be addressed as some of the groups
22 which now get employment authorization are, in my
23 opinion, less deserving than someone who has an
24 approved visa petition, they should be given the
25 right to work.

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1 Secondly, I've heard concerns from lawyers
2 working in other parts of the country, that those
3 who have filed nonfrivolous political assylum
4 applications are consistently denied employment
5 authorization. They should get it under the
6 regulations but apparently in some of the local
7 offices a decision is made as to whether or not it
8 is frivolous or not, not based on acceptable
9 criteria and so, in that area of employment
10 authorization, I think those are two issues that
11 need to be addressed.

12 Then lastly I'd like to say that I have a
13 general concern about the growing trend that I see
14 in removing a lot of authority from the district
15 director in the local office and transferring it to
16 the regional adjudication center or regional
17 processing facility, as it's now called.

18 Initially there were certain remote
19 offices which, because they were remote, did not
20 have a lot of work to do and in order to address
21 backlogs in some of the local offices, many
22 petitions were transferred to these remote
23 adjudication centers.

24 They gradually took on a life of their own
25 and now we see many different applications being



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1 sent there for final adjudication and so, what you
2 do is: You have to deal with a local office who
3 really has no authority in many of these
4 applications to give you a final yes or no or this
5 is deficient and this is why.

6 The regional offices are the ones who are
7 handling that and they have no phone numbers. You
8 cannot get through to them. There is no calling a
9 person up and saying "What was wrong? I don't
10 understand why you sent this back? You said I
11 needed a document, it was right there, didn't you
12 see it?" There is no way of simply solving those
13 problems and I believe that is a trend the
14 increasing authority with the regional centers, the
15 four regional centers that needs to be monitored
16 because I believe it raises serious due process
17 questions in the ability for an alien to present
18 their case and have a fair hearing on their
19 petition.

20 Those conclude my remarks and concerns,
21 and I thank you for your attention to them.

22 MR. MONTTOYA: Thank you.

23 MS. SARDOZ: Thank you, Mr. Chairman. I
24 wish to thank the Western Regional Office of the
25 U.S. Commission on Civil Rights and the New Mexico

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1 Advisory Committee for having extended to me an
2 invitation to attend this meeting today.

3 I believe that the spirit of communication
4 and consultation has particular importance in the
5 enforcement of the new immigration law.

6 Especially because its implementation has
7 international implications. Because of the great
8 movement of persons between Mexico and the United
9 States which occurs in both directions, Mexicans
10 are very conscious of the effects of the
11 implementation of this new Immigration Reform and
12 Control Act of 1986.

13 I believe that in New Mexico the majority
14 of the applicants for adjustment of status are
15 Mexicans. According to numbers given to me, the
16 legalization office in Albuquerque approved around
17 258 applicants during the month of May from which
18 230, around 230 were Mexican. So you can see that
19 because of the closeness and the neighborhood with
20 Mexico, I think we are having an important role
21 here in this part of the United States.

22 The Mexican consulate in the United States,
23 all the Mexican consulates in the United States are
24 monitoring the implementation of the new
25 immigration law and in accordance with

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1 international law and with the consulate convention
2 in force between Mexico and the United States we
3 are providing advice and counsel to Mexican
4 citizens. We have close contact with the
5 immigration office here. They keep us informed and
6 we appreciate that very much.

7 The communication we have with Mexican
8 workers has allowed us to be aware of many of the
9 problems they are facing to adjust their status.
10 These problems range from the disqualification
11 because of misdemeanors as they were mentioning,
12 the reluctance of many employers to issue
13 affidavits, sometimes because of the use of aliases
14 or any other reason and, too, the problems of
15 financial difficulties in the case of large
16 families to cover the fees requested by INS for
17 legalization.

18 These persons are hard-working people,
19 they have enough money to support themselves in a
20 decent manner, but at the particular moment, at
21 this particular moment, they do not have that money
22 for that purpose. So, they are doing their best to
23 get the money to save to use for their standard of
24 living for some time in order to get
25 standardization, and they are not willing or they

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1 do not want or they don't have the right to request
2 public assistance so I think they are in difficulty
3 right now because of that.

4 Also we have contacts with employers and
5 we are aware of the difficulties the employers are
6 also having when they have to dismiss some of the
7 Mexican employees. Just to put you an example,
8 there is a firm who fired most of their employees
9 and after they fired, they put an advertisement
10 through a radio station in Spanish saying, "We have
11 fired all the illegal aliens and now we are needing
12 workers," and this ad is in Spanish so you can see
13 the difficulty they are having.

14 I think it would take a long time to
15 mention all the statistics and studies published by
16 renowned economists and researchers which prove the
17 reality that employment of documented workers is
18 beneficial to the United States economy which, like
19 in many parts of the world, is based on the
20 encouragement of production of goods and services
21 for commerce.

22 Because of their status, many of these
23 undocumented workers are in constant fear and are
24 subject to discrimination and violation of human
25 rights and fundamental freedom.

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1 Unfortunately, it seems that with the
2 Immigration Reform and Control Act of 1986, this is
3 not ending. These are not being put to an end but
4 to the contrary, after an enactment of the law,
5 there have been examples of serious abuses and
6 violations of human rights by some employers and
7 landlords.

8 A new situation of discomfort and mistrust
9 has emerged. The motivation for free enterprises
10 and the willingness to produce goods and services
11 still exists and it will always be in the minds of
12 the people. Therefore, if there is not enough
13 supply of workers to fill the gap of labor which is
14 being created, it is understandable that in order
15 to keep production moving, employers have to find
16 the means to fill their labor demands on time and
17 appropriately.

18 It is also well known that you as citizens
19 do not like to do hard, unskilled labor and in many
20 instances they do prefer to receive unemployment
21 benefits. The lack of information and some
22 information has been distorted concerning the
23 provisions of the law, is leading to fear and
24 confusion and it is evident that this new act is
25 leading to arbitrary conduct on the part of some

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1 employers. There has been information but I think
2 there is the need for more information to employers.

3 I believe that the economic structure of
4 this country, is strong and that progress and
5 development cannot be stopped. Within the framework
6 of that economic structure are the immigrant
7 workers, whether documented or undocumented, and
8 this is a reality. This structure cannot allow
9 absurd violations of personal dignity and human
10 rights of those persons who render valuable
11 services for this country.

12 I believe that the employers sanctions is
13 a very difficult provision within the law and I
14 also believe that the undocumented workers, I'm
15 referring to the Mexican workers, they do render
16 valuable services to the society and to the economy
17 of this country. Thank you very much.

18 MR. MONTOKA: Thank you. Let me advise
19 the audience, because we have some new members that
20 came in, the questions or statements from the
21 audience will be taken after the panels, from 5:00
22 to 6:00. This is an informative forum for the
23 State Advisory Committee and consequently for the
24 U.S. Commission on Civil Rights and the questions
25 will come from the SAC members. Anybody willing or

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1 wanting to make a statement to the State Advisory
2 Committee is urged to give John Dulles your name
3 and sign up and then we'll definitely hear your
4 concerns after the panels have concluded.

5 With that, I'll open it-- the other thing,
6 on statements being made by any individual, the
7 State Advisory Committee of course has a policy, a
8 legal obligation not to authorize name
9 identification, slinging of adverse comments, I
10 guess, to any individual, private, public sector,
11 unless we give those individuals a right to respond
12 to whatever statements are going to be made of them.

13 So consequently if you do have that type
14 of comment, I would ask you not to mention names in
15 your presentations. Anybody from the committee for
16 questions?

17 MR. BACA: My question is probably very
18 academic and probably will sound a little bit
19 elementary to the attorneys, but do you think that
20 we can foresee serious violations to the degree
21 that lawsuits will be filed which question the
22 constitutionality of the Immigration Reform Act?

23 MR. LAWIT: There has already been a
24 lawsuit filed in the southern district of New York
25 to overturn the entire statute and have it repealed

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1 for violation of the proper Senate procedures when
2 it was passed at the last minute on the eve of
3 election.

4 I anticipate, in speaking with my
5 colleagues from around the United States, massive
6 numbers of lawsuits. I have already begun to
7 discuss with my colleagues here the possibility of
8 putting together such lawsuits to challenge certain
9 aspects of the law in New Mexico.

10 I think that this law was so quickly -- at
11 least the implementing regulations were so quickly
12 drawn up that there is fertile grounds for
13 litigation in almost every aspect of the law. I
14 think the immigration service is expecting the
15 litigation and justifiably so. There is a lot of
16 problems with it that need to be rectified and in
17 fact in many cases the very issues that you have
18 been hearing about today are issues because the
19 regulations do not clarify exactly what is expected
20 and exactly what people are supposed to do to
21 qualify under various provisions of the law. So
22 for me, my answer is yes, and it will begin very
23 soon as the decisions begin to come down from the
24 regional adjudication centers for legalization.

25 MS. RIENHARDT: I would agree 100 percent

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1 with what John said, and I think another thing that
2 will give rise to a lot of litigation is the fact
3 that regulations are very restrictive in many
4 respects that I don't think the law ever intended
5 and I think there will be a lot of litigation on
6 many issues.

7 MR. MONTTOYA: Emma.

8 MS. ARMENDARIZ: So far we keep hearing
9 about the employers sanctions and the fact that
10 employees have to provide documentation verifying
11 their stay in the United States and so forth. What
12 do you see to be the situation for the undocumented
13 self-employed, which we do have in the United
14 States and I know personally, you know, here in
15 Albuquerque who, for various reasons, have not
16 declared any taxes, obviously because they are not
17 citizens but they have been gainfully self-employed,
18 and that type of citizen seems to me would be the
19 type of citizen we would want to keep in the United
20 States, yet what recourses do they have?

21 MS. REINHARDT: I've come across those
22 cases, too, and those people do have serious
23 problems. All I can say is that with that issue
24 and many other issues, there are so many of them
25 under the act that I believe many of those people

1 are holding off and waiting to see what the
2 litigation will be and I think many of the most
3 difficult cases are going to be filed at the end
4 and that might also explain why there has been a
5 low turnout at the legalization office as to the
6 number of applications that are submitted as
7 opposed to what they expected. I think the people
8 with those cases are waiting, trying to wait and
9 see.

10 MR. MONTOKA: Thank you. I have a few
11 questions. I think it was a statement from one of
12 the panelists that said there was a charge or fee
13 to the service by INS for the illegal alien to go
14 through the documentation process. Is there?

15 MR. LAWIT: Yes, there is.

16 MR. MONTOKA: What is that fee? Is that a
17 standard fee or is it based on the time that is
18 spent on the individual?

19 MS. REINHARDT: The standard fee is \$185
20 per adult. If the adult files with a dependent
21 child family member -- the child under 18 is \$50
22 and if the family files together as a group there
23 is a \$420 cap on the filing fees.

24 MR. MONTOKA: Is that fee placed by INS or
25 is the fee placed by the QDEs?

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1 MS. REINHARDT: INS.

2 MR. MONTOKA: Is there a fee then from the
3 QDEs?

4 MS. REINHARDT: The QDEs are allowed to
5 charge for their services up to a limit of \$125.
6 Some QDEs I understand do not charge anything and
7 then there are additional caps on what you might
8 charge if you take fingerprints and photographs, as
9 well.

10 MR. MONTOKA: I don't want to disclose any
11 personal fees but let's take it all the way. If I
12 am an illegal alien and I go through the process of
13 INS, paying their fees, and I go through the
14 process and I go through the QDEs and pay their
15 fees, then I'm still in question then I go hire a
16 legal attorney, you know, on an hourly basis and I
17 think that's about \$120 an hour or \$100 or \$75 an
18 hour plus expenses and then if I have to appeal
19 that decision, with INS it might take three years,
20 if I'm in the process of appealing, am I deportable
21 or where am I as an illegal alien?

22 MR. LAWIT: I think without exception all
23 people who are eligible for legalization are
24 deportable aliens. "Deportable" meaning that by
25 law that they are here in an unauthorized status

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1 and if detected could be returned to their country.
2 The legalization process of course is there to
3 remove that taint and put them on the process to
4 full legalization, ultimately the ability to apply
5 for citizenship, should they wish. In terms of
6 fees, I have heard of fees with attorneys as low as
7 \$100 a case all the way up to \$1500 -- all the way
8 up to \$3,000 per individual. I think that the high
9 and low end of that are extreme in both cases but
10 it's certain that the average fee is in excess of a
11 couple hundred dollars.

12 MR. MONTTOYA: Getting back to litigation
13 in a court of law in district court and of course
14 I'm using the administrative process through INS.
15 On the appeal process, if I'm appealing the
16 decision at whatever level of INS or the
17 administrative process, do I still get an
18 authorization card to continue working or am I
19 deportable or am I put in the holding pen or where
20 am I going? If I hire an attorney and I'm going
21 through the process and I'm objecting to a decision
22 that was made at the Albuquerque office or the
23 district office --

24 MR. LAWIT: The nature of the appellate
25 process is such that once you go through the brief

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1 appellate period before the board in Washington, in
2 order to even raise the question concerning the
3 eligibility for legalization, you have to have
4 already gone through a deportation hearing. You
5 have to have already been found deportable
6 therefore if you lose your appeal, you are gone.
7 You've got one step on the boat, so to speak, and
8 one foot in the courtroom at the same time.

9 MR. MONTTOYA: Yes. I think I'm trying to
10 get, once I go -- after Washington has determined
11 that between myself or let's say Catholic Social
12 Services, the Albuquerque INS office, the Dallas
13 regional office, I guess, and Washington, before
14 you even get into court, where am I in that period
15 of legalization as far as employment is concerned?

16 MS. REINHARDT: There is no provision to
17 give employment authorization for people who are
18 stuck in limbo like that. Once they have taken
19 their administrative appeal of the denial of
20 legalization, they can have employment
21 authorization during that time period, but once
22 they have taken that administrative appeal and they
23 are shopping around trying to get under deportation
24 proceedings in order to have any kind of review and
25 good luck, maybe it will never happen, there is no

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1 independent category under the employment
2 authorization regulations that would allow them
3 work authorization.

4 MR. MONTTOYA: Now getting back to, I guess,
5 some of the immigration problems that I was
6 afforded an opportunity to look at in Texas, the
7 holding pens of INS and so on and so forth, their
8 major holding concept was of course South America,
9 Nicaragua, this type of illegal alien where they
10 would hold the husband and the mother and the child
11 would go to Santa Maria or someplace in limbo there
12 waiting for what the deportation judge was going to
13 do in relationship to the husband and of course I
14 guess in relationship to the whole family.

15 If I recall correctly, the illegal Mexican
16 aliens were put in buses, taken to the border and
17 dumped across the border and that was it. There
18 was no hearing, they didn't go before the judge,
19 the deportation judge or anything like that. How
20 does this tarnish -- we're talking about
21 immigration, one is Mexico the other one is a
22 different type of immigration, all classes of
23 immigration.

24 If INS, in our holding pens and patterns,
25 are following the Nicaragua system that was there



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1 six months ago, now how is this muddying the water,
2 the legal water of the employer sanction
3 legalization process?

4 In other words, they are in a pen, they
5 are waiting for a hearing, a deportation or an INS
6 judge, I guess, that will determine whether they
7 are deportable or they get political assylum or get
8 whatever they get. In the meantime, the wife and
9 children are in some town in limbo or living under
10 some condition.

11 As we get involved in the whole
12 immigration issue, you know, how are those issues
13 then being addressed legally under this legislation?
14 In other words, where are those people, again, in
15 what type of limbo status are they?

16 MR. LAWIT: As a general proposition and
17 by regulation of the immigration service, those
18 individuals who are encountered by the immigration
19 service who can convince the immigration officer
20 that they have a prima fascia case of eligibility
21 for legalization are not being incarcerated. In
22 fact, if they do encounter an immigration officer
23 and the officer does make that determination that
24 they are prima fascia eligible, they are given
25 documentation so that they can remain here to

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1 prepare their applications without any problems.

2 Those people that you are referring to
3 that are in the camps are, by and large,
4 individuals who have been determined not to be
5 eligible for legalization. I think most frequently,
6 new arrivals in the United States or perhaps people
7 convicted of crimes that are coming out of prisons
8 awaiting deportation.

9 Clearly, however, there are a group of
10 agricultural workers who, because they crossed the
11 border all the time, could conceivably find
12 themselves incarcerated after coming in most
13 recently and thereby their ability to prove that
14 they have done the agricultural work would be
15 somewhat diminished, but again they, too, if they
16 can convince an immigration officer of their prima
17 facie eligibility and I don't think the bulk of the
18 people who are applying for legalization are
19 incarcerated at all, in fact I think the
20 immigration service is quite clear that if they can
21 produce any sort of credible documentation or are
22 willing to sign a sworn statement to the effect
23 that they are willing to apply for legalization,
24 they are let go. I hope that addresses your
25 concern.

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1 MR. MONTTOYA: What's the percentage of
2 people that have applied for legalization versus
3 the estimates that we know are in, let's say in New
4 Mexico? For instance out of, you know -- I don't
5 even know what the estimates are of illegal aliens
6 in New Mexico, what percentage has really applied
7 for legalization?

8 MR. LAWIT: I think at this point a minute
9 percentage of people that are eligible. I think I
10 believe what Sarah is saying about the people with
11 the cleanest cases, with the most abundant
12 documentation, are coming forward now and those
13 people that have questionable cases, cases hung up
14 on questions of law or in amount of documentation
15 that they are able to obtain, should and will wait
16 until later on in the process to see how the
17 pattern develops for approvals and denials.

18 MR. MONTTOYA: Have any of the lawyer
19 members encountered any cases of -- of course we
20 all hear of it as far as accusations of importation
21 as far as -- we talk to the fact that there are
22 certain employers or some employers who might not
23 give documentation to relationship to employees
24 because the illegal alien may not want to be
25 prosecuted for income tax evasion or whatever type

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1 of other crime, but then by the same token, has
2 there been employers that probably are paying below
3 the minimum wage that probably in the area of where
4 they have to abide -- let's take for instance
5 construction where you have to abide by the wage an
6 hour act, let's say it's a federal project that the
7 minimum wage is \$10 an hour, \$12 an hour and that
8 employee, whoever he may be, they might be paying
9 him \$3.00, minimum wage an hour, but of course
10 there is very little audit process that everybody
11 is going to go down and look at the employee audit
12 and see if that employee was really paid that
13 standard minimum wage of \$10 or \$12 an hour because
14 that illegal employee isn't going to file and say,
15 "Wait, they only paid me 3.45 an hour."

16 Have we encountered any of that? Of
17 course, I can see now that with INS going in, of
18 course they only have one investigator, going in to
19 check the I-9s and stuff like that, some of that
20 information might have to track with the employment
21 records, you know, with whatever income records are
22 filed or state tax records are filed, but have we
23 encountered employees coming from legalization in
24 that instance where they do not want to prove and
25 the employer doesn't want to prove.

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1 MR. LAWIT: I think Ms. Sardoz has an
2 answer for that.

3 MS. SARDOZ: We have encountered cases
4 like that. Mainly the employers are reluctant to
5 give the affidavits or the information concerning
6 the employee and that's where we are helping the
7 Mexicans in that respect.

8 The employers usually haven't been
9 complying with the wage an hour, that means the
10 minimum rates of wages to be paid or the maximum
11 hours. We have encountered cases where the
12 employees, the workers have been working from 10 to
13 15 hours a day and of course, you know, the work
14 week has to be no longer than 40 hours, so
15 therefore they are violating some of the labor laws
16 and we have encountered those things.

17 MR. MONTAYA: In relationship to
18 documentation, how many cases in discrimination or
19 wage an hour act have any of the attorneys
20 encountered in relationship to, let's say, to
21 legalization?

22 MS. REINHARDT: I don't know if I could
23 give you an estimate of numbers because in many
24 cases, and it is frequent that people have
25 employers who will not cooperate and give them the



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1 documentation. It is very hard. The usual
2 approach of an advocate would be to try to coax it
3 out of the employer and reassure them about the
4 confidentiality provisions. We hardly say, "Why
5 don't you give me this letter. Which law are you
6 breaking? Are you breaking the wage an hour laws
7 or did you fail to deduct social security or what?"

8 So, it's often hard to understand what the
9 employer's concern is. Some of those concerns are
10 because they have broken the law, some of the
11 concerns are really not important, and if we
12 understood those concerns we would be able to talk
13 to them and explain what the law is. But it's very
14 hard to get a handle on those cases. You have your
15 suspicions in most cases as to what is going on.
16 If they have been paid strictly in cash, I suppose
17 probably there haven't been many deductions taken.

18 MR. MONTTOYA: Do we have much of a problem
19 or have we encountered much of a problem on illegal
20 documentation in the cases?

21 MS. REINHARDT: Fraudulent documents?

22 MR. MONTTOYA: Yes.

23 MS. REINHARDT: No, I haven't.

24 MR. MONTTOYA: In New Mexico?

25 MR. LAWIT: I've had several clients bring



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1 me reams of fraudulent documents to prove that they
2 have been here. I hope I've been successful in
3 detecting them prior to submitting the applications.
4 In most cases they are bringing me the fraudulent
5 documentation because they think the other
6 documentation they have brought me is not
7 sufficient and want to carry it one step further.
8 They will come in with, for example, sequentially
9 numbered check stubs to cover five years of
10 employment. Forms indicating that they have been
11 working for a particular company since 1975, and on
12 the bottom of the form it wasn't printed until 1983.
13 I see them. I don't see a lot of it and I think
14 the more common sources of fraudulent documents are
15 coming from state archives, motor vehicle
16 departments have been broken into in New Mexico,
17 many churches in the southern part of state have
18 been broken into and baptismal certifications have
19 been stolen, birth certificate blanks have all been
20 stolen, and much of the theft of these documents
21 has incurred after the enactment of the statute.
22 So I can only suspect that they are finding their
23 way into the process.

24 MR. PENA: What about fraudulent documents
25 from agencies purporting to be legally set up to

1 certify some of these aliens?

2 MR. LAWIT: There are always individuals
3 who will manufacture documents for people to make a
4 quick buck. I have not seen those documents in my
5 office, at least at this stage in the proceedings.
6 I expect I'll be seeing them at the appellate level.
7 Right now when you take your application in to the
8 legalization office, if it appears on its face to
9 be okay, it's sent forward to Dallas where much
10 closer scrutiny is paid. So I have not seen them
11 yet, although I am aware of the fact that there are
12 document vendors here in Albuquerque in active
13 business.

14 MR. PENA: I guess what worries me is the
15 break up of the family, and both of you mentioned
16 that you were members of the lawyers that belong to
17 an association having to do with immigration laws
18 and things of that nature. Is there an effort at
19 the national level to change that portion of the
20 law?

21 MS. REINHARDT: Yes. There are
22 discussions under way at the American Immigration
23 Lawyers Association to try to attack this from a
24 number of different angles. I also understand that
25 immigration itself has asked the -- the program



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1 after it was begun has realized that there are
2 certain problems and is looking internally for ways
3 of addressing those problems. So I believe both
4 entities will address that.

5 I do understand that the Congress, there
6 is a bill pending in order to address the family
7 unity problem, although apparently, many members of
8 Congress feel that this is a problem that should be
9 addressed by INS and they are very reluctant to
10 deal with it legislatively, and right now, there
11 isn't a mechanism other than the INS's discretion
12 that it might exercise in individual cases to allow
13 a person to stay here, that is now currently the
14 only vehicle that can be used and I very much doubt
15 that they will use their discretion to allow a
16 family member, one in a family that is otherwise
17 legal, to stay here for eight years and that they
18 will do that on a mass basis for thousands of
19 people. I can't believe that they would let people
20 in their discretion remain in an undocumented
21 status for eight years. So, it's a problem that
22 must be addressed.

23 MR. MONTROYA: I want to thank the panel
24 for your time and dedication and your time to give
25 us that input and hopefully we'll be mailing it to



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1 you as the commission
2 (Recess taken)

3 MR. MONTAYA: I guess we'll get the panel
4 started again. Our next panel will deal with the
5 impact of employers and what we've done in this
6 instance in setting up this panel its invited
7 members, executive directors or presidents of
8 associations and groups that represent a big
9 element of employers and we've sort of gotten as
10 many on the panel, in fact five members, as we can,
11 to try to give us this information as to what they
12 have done with their associations, what their
13 membership is encountering, what they see at
14 present, what they foresee for the future as a
15 problem or whatever it is with the new immigration
16 law and we'll start with Bob and just go down the
17 line.

18 MR. TINNIN: My name is Bob Tinnin. I am
19 afraid you are going to have to put up with another
20 attorney. I am an attorney, I am here representing
21 the Association of Commerce and Industry. We are
22 their attorneys. I also have had experience with a
23 number of employers as to inquiries which they have
24 submitted concerning compliance, particularly with
25 the sanctions portions and the discrimination



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1 portions of the act. I think it is fair to say at
2 least in New Mexico, contrary to what I have read
3 elsewhere, that there has not been widespread panic
4 among employers concerning the act putting
5 philosophical differences which many employers may
6 have had, particularly the employers sanctions
7 portion of the act and that approach toward an
8 immigration policy originally and the fact that
9 they have now accepted that that is the law, in my
10 view, and from what I have experienced thus far,
11 there does not seem to be any real major problems
12 other than those which relate to concern by
13 employers regarding the burdens which will be
14 placed upon them with regard to record keeping and
15 monitoring and their responsibility for those
16 matters and concerns and confusion because of the
17 lack of education, the education period, primarily.

18 As I'm sure most of the panel is aware,
19 the education period was scheduled to have started
20 quite a long time ago and in fact the final I-9
21 forms and the booklet were only very recently
22 mailed. There are a lot of employers out there who
23 know that this act is there but they still really
24 don't know what they need to do to comply with it
25 and I would suggest that if there is a pattern of



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1 discrimination which is arising at this point in
2 time, it is because those employers are out there
3 trying to avoid violating the act and are indeed
4 doing what is prohibited by the act and that is
5 firing anybody with a foreign accent who looks like
6 they may be an alien and they think they are going
7 to comply with the act this way. Obviously, these
8 are people who have not gone through the proper
9 education.

10 I would also suggest that if we extend the
11 education period, or after a period of time when
12 employers do become familiar with the act, you will
13 find that that person, if one is indeed arising,
14 will somewhat dissipate, hopefully will disappear.
15 With those general remarks I think I could address
16 sort of a laundry list of concerns and they all
17 fall within one of those two sort of concerns that
18 relate to fears of employers, areas where we need
19 education and I think areas where there is a
20 conflict or a potential conflict between the
21 regulations and the law primarily, in my view, and
22 you heard it expressed before, I will express it
23 again.

24 The regulations are not well drafted
25 because there was not enough time. The legislation

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1 was enacted very hurriedly. I think it is unclear
2 in some places, and we're going to find some
3 problems with this legislation as we continue the
4 implementation period.

5 First of all, there is of course a
6 potential conflict between the provisions of the
7 Immigration Reform Act and Title 7 and Section 1981,
8 particularly the act itself. An employer reading
9 the act will see that the act says where you have a
10 citizen and a noncitizen that are equally qualified
11 you may discriminate in favor of the citizen.

12 The act doesn't say and the regulations
13 don't tell you that the EEOC will say that could be
14 a violation of Title 7. I think that is one area
15 where certainly employers need to know that reading
16 something in the act that says it's okay to
17 discriminate, doesn't mean that it's okay under
18 other laws, it's only okay under that law.

19 There is concern I think not only among
20 employers but certainly among the legal profession
21 generally, including the American Bar Association
22 over the lack of subpoena requirements in
23 investigations. We went through this same thing
24 with OSHA and ended up having to get court
25 decisions saying you had to have probable cause and

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1 subpoenas. I don't think under any piece of
2 legislation, no matter what the intended purpose is
3 in the country, we want to get to the point where
4 the government can come any time they want to and
5 look into your private business, they've got to
6 have probable cause to do so, and I think you will
7 probably see litigation in this particular area.

8 The regulations themselves in another area
9 would seem to contradict and perhaps amend the
10 provisions of the act itself. The act provides
11 that an unfair discrimination practice can only go
12 back 180 days from the filing of the charge. The
13 regulations in my view and I think in the view of
14 many others, contradicted that provision by saying
15 that if you file a defective charge, then you can
16 go back 180 days from the date on which the Special
17 Counsel requests information and 45 days from that
18 day.

19 Another area is that obviously because of
20 the education problems and the lack of education,
21 as some of you may know, the Senate Appropriations
22 Committee has already recommended the passage of an
23 amendment in the appropriations bill which would
24 delay the date for employer sanctions to October 1.
25 I think that most employer associations certainly

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1 support that sort of an amendment by regulation.
2 The INS has indicated they are not going to go
3 until September 1, anyway, they are not going to
4 try enforcement I think that the October 1 date
5 would make most employer associations and employers
6 feel much more comfortable because we still need an
7 awful lot of education out there if we are going to
8 avoid problems of noncompliance in the
9 discrimination.
10 There is always a danger that employers
11 attempt to comply, again going to the education,
12 will result in violations of other laws and I look
13 particularly at the fact that as you know, the
14 employer is required to obtain the I-9 information.
15 Again what you are not told in the information you
16 get regarding the immigration act is, that if you
17 take that I-9 information and put it in the
18 employee's personnel file, the EEOC is going to
19 tell you that you are violating Title 7 because you
20 are obtaining information which is not relevant or
21 necessary to the employment relationship concerning
22 a person's national origin. In many cases it would
23 also indicate their race or age or anything else
24 and is only relevant to compliance with the
25 immigration act and employers need to be told and



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1 probably I think they need to be told in the
2 educational information distributed by the INS,
3 that that information needs to be kept in separate
4 files, there are going to be a lot of employers get
5 in trouble with that.

6 I think many employers and employer
7 associations lament the fact that the act itself
8 does not provide for any form of conciliation
9 before the issuance of a complaint and a hearing.

10 I think that the experience under Title 7
11 where there is a statutory conciliation procedure
12 has shown that most cases, even when there is a
13 cause finding and in most cases a hearing can be
14 avoided and full compliance achieved through the
15 use of a conciliation process. I am at a loss to
16 see why that sort of a provision was not placed in
17 the sanctions section, particularly the
18 anti-discrimination portions of the act.

19 One other area where the regulations are
20 attempting to take care of procedures that has
21 caused some problems and some concern is the fact --
22 well, it actually is permitted by the statute. The
23 regulations expanded upon it but the fact that no
24 matter what happens with the Special Counsel, a
25 person who even has a frivolous complaint that is

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1 ultimately found frivolous is entitled to take the
2 case for a full hearing.

3 A lot of employers are very concerned that
4 they are going to have cases with disgruntled
5 employees or perhaps even in the case of a union
6 organizational drive that can be used as a tool to
7 force an employer to cave in to certain demands by
8 showing them it's going to cost them an awful lot
9 to fight it even if there is no merit to a
10 complaint.

11 The time for hearings and preparation for
12 a hearing once the complaint is issued is woefully
13 inadequate. The statute simply says that the
14 hearing shall not be less than five days from the
15 issuance of a complaint, the regulations provide 15
16 days. . I think that any fair-minded person in
17 looking at trying to put together a national origin
18 case needs more than 15 days and certainly in a
19 complex case, from the time you receive the notice
20 that the complaint is issued to the time you have
21 to go to hearing, particularly if you are going to
22 retain counsel, that just simply is not sufficient
23 time. In any court case you get at least 30 days
24 or 20 days to answer before you even get a hearing
25 set.

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1 One more comment. The remedies sections
2 which are in the act sometimes get in my mind very
3 mixed up to where you can come up with rather
4 anomalous results. In a case, for example, where
5 one discharged an alien who was unlawful or who was
6 lawful but he discharged him in violation of the
7 act, if you had another valid reason for
8 discharging that person, the ALJ cannot order
9 reinstatement or back pay but he can invoke all of
10 the other compliance mechanisms in the act, which
11 doesn't seem to make a whole lot of sense to me.

12 Employers who are worried about scrutiny,
13 they are told that they don't have to go beyond the
14 documents themselves. I think many employers are
15 concerned that they really have to try to determine
16 whether a document is false or not but if you go
17 too far and you decide that a document is false so
18 that you are not going to permit someone to work
19 because they haven't provided the proper
20 verification and if it later turns out you are
21 wrong, you are in trouble. That is another
22 anomalous provision which I think is just another
23 example of the the whole list of what I consider to
24 be relatively minor problems in the context of a
25 very, very important broad-sweeping act. There are

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1 problems which can be worked out and I think will
2 be worked out if employers are given time for
3 education and if the regulations are massaged to
4 where they do not have an undue impact, an economic
5 impact, on employers in their compliance efforts.
6 Thank you.

7 MR. MONTOKA: Thank you, Bob. Jack?

8 MR. RUGGS: I'm Jack Ruggs with the New
9 Mexico Restaurant Association and practically all
10 of the concerns that the National Restaurant
11 Association and the state association have is
12 echoed by the previous statement.

13 I came here to describe maybe the feeling
14 of the average restaurant owner on the street and I
15 think he still thinks he's in a honeymoon, he's
16 going to get another 30 day reprieve and he's not
17 addressing these. Confusion, confusion, confusion
18 is our telephone calls. I just had my office
19 manager make a few calls with local restaurants
20 today, just asked management, "Have you got your
21 I-9s?" Eight of them said, "What is an I-9?" Two
22 of them knew that it was supposed to be in the mail
23 and it wasn't there yet. This really concerns me
24 and maybe rattles my cage.

25 Our last April, May and June newsletters

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1 have addressed as best we could, with information
2 from the national restaurant association, the
3 immigration regulations. As all of you know, every
4 restaurant in the State of New Mexico is not a
5 member of ours and I don't know what percentage
6 reads our newsletter but confusion is the answer.

7 One of the horror stories that I have for
8 you is that a friend of mine that couldn't produce
9 a birth certificate was laid off two days until he
10 had one made and he was an Anglo. Until he had his
11 mother find one in Kentucky because they thought
12 that he had to have a birth certificate. He had in
13 his possession a Baptist church record of his birth.
14 Again, confusion.

15 The fear is the penalty clauses and the
16 confusion about the amount and especially the
17 criminal part of the third offense type of proposal.
18 Most of my people, I don't find them that think
19 that this law shouldn't be. They don't feel like
20 they've got the information. We're an industry
21 that has been struggling with the IRS in tip
22 reporting for the last three years with a tip
23 reporting regulation that is hard to fill out and
24 they are just kind of throwing up their hands and
25 saying we've got another one that's going to give

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1 us two or three years to figure out. This one is,
2 I don't think, going to be as tolerant as the IRS
3 has been with their 857 and with that and
4 reemphasizing my support for the previous statement.
5 I stand for questions and I thank you for the
6 invitation.

7 MR. MONTROYA: Ray?

8 MR. DAVENPORT: Thank you, Vince. I'm Ray
9 Davenport with the New Mexico Hotel and Motel
10 Association and Mr. Tinnin is indeed a hard act to
11 follow. He certainly has precision in his comments
12 about the force and effect of the new law and
13 regulations.

14 The National Hotel-Motel Association, I've
15 just come from their annual convention in San
16 Francisco just a few minutes ago, and this was a
17 great topic of concern at that nationwide meeting
18 and it has been here in New Mexico, as well. I
19 guess Congress finally did the best they could
20 about something that's been a long-standing problem
21 in this country and we're trying as best we can to
22 comply with not only the letter but the spirit of
23 the new law and regulations and hopefully assist
24 those desirous of resident status and ultimately
25 citizen status in the United States and certainly

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1 want to do everything we can to understand what's
2 going on and facilitate the implementation in any
3 way that we possibly can.

4 One of our great concerns has been
5 alleviated and that was in the rehire process. The
6 way the regulations stood at first, we would have
7 had to complete the I-9s every time we rehired
8 somebody even though their absence from our
9 premises might have been only a short while.

10 In many cases large hotels with banquet
11 facilities don't keep people on a permanent staff
12 but they sort of come and go and the regulations
13 now have been changed to permit us, as long as we
14 keep an I-9 on file for three years, we can
15 continue to hire and rehire that same person an
16 unlimited number of times within that three-year
17 time period, so that's a concession which has been
18 most helpful to us.

19 Like Mr. Tinnin explains, we too have a
20 grave concern over the inspection of records
21 provision without subpoena and the three-day notice
22 might have sounded generous to a regulation
23 draftsman but I'm not sure that that would work
24 in every case as easily as it is hoped and I have
25 some grave concern in that area.

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1 Like Jack says, we hope that all those
2 concerned with the implementation of this law will
3 continue the education process because I don't
4 think, as Jack has suggested, that it's sunk in yet
5 and I think it will be a long time before it does
6 and I hope that part of that education process will
7 be a go-easy-on-penalty kind of thing until it's
8 totally understood by not only the applicants for
9 resident status but those of us who are employers,
10 as well. I think for the act to be as effective as
11 the Congress hopes it will, to begin to turn the
12 immigration problem around somewhat, I think that
13 is an absolute must that there be a continued heavy
14 emphasis on education.

15 MR. MONTOKA: Thank you.

16 MR. MAXWELL: I'm Lawrence Maxwell. I
17 represent the Associated Contractors of New Mexico.
18 We're the trade association that represents the
19 highway, heavy, municipal utility construction
20 industry in New Mexico.

21 We, too, have some very real concerns
22 about this act. I won't try to repeat the comments
23 that Bob and Jack and Ray have gone into. They do
24 touch into our industry, as well.

25 There is something still further that

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1 impacts upon us and it's a very dangerous crossfire
2 that our industry is caught in, in particular.

3 Under federal legislation, our industry is
4 mandated in federal highway construction and other
5 federal related construction to hire minorities at
6 a certain mandated percentage within certain areas.
7 We are mandated to do that. Now, let's give you a
8 little education in the highway construction
9 business.

10 When you receive the job you are given a
11 notice to proceed, you have a certain stated period
12 of time to get the job done or you have a certain
13 date by which the job must be completed. If you
14 run over that date, then you are given penalties.
15 In other words, from your contract, is deducted a
16 certain amount of money. This is just sort of a
17 rough little way of phrasing it, not the way that
18 my esteemed co-counsel Bob Tinnin would phrase it,
19 but that is essentially what we're talking about.
20 You do not complete your job on time, you are
21 penalized. So consequently there is a premium on
22 performance. A lot of these jobs are out in the
23 middle of nowhere, places where you and I as New
24 Mexicans drive on a daily basis. You need to hire
25 people. When your foreman shows up at the job at

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1 6:00 in the morning and you've got a bunch of
2 trucks out there with asphalt and that stuff has to
3 be laid and laid pretty promptly or else it's
4 wasted, which is an additional cost, you have to
5 have people on the job and sometimes it's a little
6 difficult when you have a foreman who may not
7 understand some things like the fancy law passed in
8 Washington, D.C., to be able to expeditiously hire
9 somebody and make sure that you have somebody who
10 is in fact an American or not an illegal alien.

11 Realistically speaking, it is a hairy,
12 hairy crossfire because if you don't hire enough
13 minorities and let's face it, New Mexico is blessed
14 with a large percentage and mixture of population,
15 but we're heavily populated with Hispanics. There
16 is going to be an assumption and particularly in
17 the southern part of the state, closer to our
18 border, that more Hispanics will be hired,
19 consequently there will be an intense focus
20 probably placed on New Mexico highway contractors
21 on their Hispanic population? Is this fair? I
22 don't know. But certainly the concerns that Bob
23 spoke about with regards to violations of Title 7
24 are very real to our members. It's a concern and
25 the penalty portions when they come back in may not

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1 be a realistic one in the way they address these
2 needs in the highway construction industry.

3 For those kinds of reasons, our members
4 probably are philosophically opposed to having the
5 business industry being the enforcement of a
6 government policy, a policy that may well not be in
7 the best interests of the business community.

8 The paperwork does seem to be a bit of an
9 overkill. We have to keep the records on the
10 employees for any number of reasons and as Bob
11 alluded earlier and in fact pointed out, you put
12 the wrong document in the wrong file, have you
13 invited yourself a case of discrimination? We
14 don't know. We do know that the regulations do not
15 seem to be complete on this. We do know that and
16 what we have recommended to our members, at the
17 minimum, let's get a social security number on the
18 employee, let's check that document and let's take
19 a look at a driver's license, see if we have those
20 types of things. Is this a good-faith effort? We
21 hope so. We are not sure. The regulations really
22 don't tell you what is a good-faith effort. It's a
23 rebuttable presumption that you very well
24 essentially met the determinations and the
25 requirements of the act but it's rebuttable, which

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1 means it's not conclusive, which means you still
2 may have yourself exposed to liability. It's a
3 concern in the industry and I must point out again
4 that is very mobile, of necessity and we're
5 performance oriented and response to hiring needs
6 has to be instantaeous.

7 With this in mind, we have still tried at
8 this time, to provide our members with the current
9 I-9 and with the recommended manners of how to try
10 to comply with the law, but it is something that is
11 a serious concern in the highway industry,
12 particularly when we are mandated to hire a certain
13 percentage of minorities.

14 So, we think that unfortunately this law
15 could possibly have the effect of targeting
16 Hispanics, in particular in the southern part of
17 New Mexico, for an analysis of whether or not they
18 are illegal aliens or nonillegal aliens. It's a
19 very dangerous crossfire.

20 MR. MONTTOYA: Thank you.

21 MR. MOCHO: I'm Peter Mocho, and I am here
22 on behalf of the New Mexico Cattle Growers
23 Association but I also own a feed lot and a feed
24 manufacturing plant south of town and since the
25- agricultural policies in the immigration law have'

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1 not yet been completely spelled out, I've kind of
2 prepared more or less of a philosophical viewpoint
3 on how I perceive the situation to be.

4 We have long had an immigration policy in
5 America. It was a rigid one and had many
6 complications but to those who persevered because
7 the system was basically a just one, the immigrant
8 benefited as well as the nation, which experienced
9 the underrestrained energies of the people who came
10 to build a nation that promised freedom and justice
11 for all. In the neglect of power, past immigration
12 policies since World War II has allowed abuse of
13 the system to the point that it is now a knotty
14 problem in the 1980s. I believe a return to the
15 rigid immigration policies of the past would better
16 serve the nation than this new immigration law.

17 The new law is built on the pretext of
18 preserving jobs for American workers who have
19 economically ascended above the laborers' tasks,
20 commonly referred to as stoop labor and yet these
21 tasks are basic to our comforts and our needs. Our
22 social programs for the needy and underemployed
23 enable the American worker to refuse to collect the
24 garbage, dig the ditches, herd the sheep, harvest
25 the crops, scrub the floors and perform the many

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1 tasks our school teachers proclaim to be
2 undignified work.

3 I say to you that any labor that serves
4 our fellow man is dignified work.

5 These untitled and laborers jobs have
6 always been the starting point for immigrants. The
7 immigrants from this lowly start have gone ahead to
8 become the farmers and ranchers, the merchants and
9 the brokers, the doctors and the lawyers, the
10 industrialists and financiers and even bureaucrats
11 and politicians who realize a fulfillment of their
12 dreams and they are grateful for the freedom and
13 the opportunity.

14 This new law will seriously affect the
15 economy of the nation, particularly in agriculture.
16 Besides, it persecutes the illegal alien, it
17 prosecutes the employer and it blames them both for
18 the problem, when it is totally the ineptitude of
19 government that allowed violations of established
20 immigration policies.

21 Most seriously hurt will be the alien who,
22 having entered the country because of its neglected
23 policies, avail themselves of our frail system to
24 enter illegally into the seemingly unconcerned
25 country, hoping to gain a new start to a better



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1 life.

2 Many of our nation's enterprises will be
3 seriously damaged if this source of labor is cut
4 off. Already the media is reporting the ruined
5 crops in California and Oregon as well as hardships
6 in other areas of commerce who have come to be
7 dependent on alien labor. We have Spanish
8 Americans in our employ, both native-raised as well
9 as alien employees. I am often questioned by them
10 about their hopes for the future. The native-born
11 resent the questioning of their allegiance and with
12 the alien, already many have disappeared,
13 abandoning their jobs and in some case even their
14 families while others are being prayed upon by the
15 unscrupulous opportunists who promise to help them
16 acquire legality under the new law that as yet has
17 not developed all of its regulations.

18 The economic and mental anguish these
19 people suffer as a result of the proposal under the
20 new law denies America's claim of being a caring
21 and compassionate people who believe in the human
22 dignity of mankind.

23 If these people came to the United States
24 as a result of our neglect, if we would enforce the
25 immigration policy, it is the government itself

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1 that should bear the burden of responsibility
2 instead of these sincere people and the employers
3 who provide these jobs.

4 Amnesty for the illegal immigrant to
5 continue his residency here is a price that we are
6 asked to pay for our failed policies and it
7 represents the only just exclusion to the present
8 problems but at the same time it unfairly treats
9 those applicants from foreign countries who have
10 applied for legal immigration permits under the
11 code as allowed in the various countries. My
12 experience in a business that is subject to the
13 wage an hour law has seen the alien to have been
14 paid at least a minimum wage, his social security
15 and other taxes have been deducted through the
16 payroll deduction requirements of the Internal
17 Revenue Service, but I will admit that in a few
18 instances, fly-by-night operators have imposed
19 unjustly on the alien. The increased willingness
20 of foreigners to come to this United States
21 illegally tells us that they believe the
22 opportunities are far more promising than the
23 dangers of employer abuse.

24 Without citing specific instances of
25 imposition in which we still have no experience

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1 against employers, the list of abuses of employers
2 by government generally is growing intolerably.
3 The number of unproductive hours of effort involved
4 in maintaining records for government departments
5 is becoming monumental, adding costs to the goods
6 and services which I personally believe are
7 disproportionate to their work.

8 Under our constitution, a man is innocent
9 until proven guilty. Not so with government
10 agencies. Beginning with the Internal Revenue
11 Service and now including the immigration service
12 with its new authority, who will accuse of an
13 infraction of some rule or regulation and you are
14 guilty before the facts and circumstances are
15 proven. It is always at the employer's expense
16 that he must prove his innocence. When an employer
17 makes a mistake he pays. When the government makes
18 a mistake it's still the employer who pays.

19 Already we employers are spending many
20 hours in research preparing labor and payroll
21 records for the alien employee who is being
22 required to furnish such information to the INS,
23 with the government agencies who have the authority
24 to impose administrative penalties against
25 employers. Just the requirement to prepare such a

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1 report subject to inadvertant error is intimidating.

2 The indecision in the makeup, the
3 Immigration Reform and Control Act, particularly as
4 to the agricultural H2A program is of great concern
5 to many people in agriculture who have
6 traditionally used great numbers of alien employees.

7 Congress intended that the need for
8 agricultural workers would be filled by the special
9 agricultural program and the H2A program and it has
10 still not been completed.

11 Also as a key element of IRCA, Congress
12 mandated criminal sanctions against employers who
13 hire illegal aliens. It seems to many of us that
14 the central focus is on the sanctions and not the
15 solution to the needs of the workers and employers.

16 We are disturbed by some of the things we
17 hear in the proposed regulations presented by the
18 Department of Agriculture who have suggested that
19 only temporary agricultural workers be allowed and
20 those are workers who are here serving less than 12
21 months at a time. This definition would preclude
22 most of New Mexico agricultural industries whose
23 primary agricultural efforts is the production of
24 cattle, sheep, dairy and certain horticultural
25 industries whose husbandry require year-long labor

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1 efforts. The suggestion would destroy the system
2 that has been in place for many years and will
3 defeat the system Congress intended when they
4 passed the IRCA.

5 It is truly an injustice on employers to
6 be responsible for the implementation and reporting
7 requirements. They will not in the long run
8 replace or correct the failed government policies
9 which the IRCA of 1986 proposes to accomplish.

10 Our costs in money, while significant, is
11 not as great as the misuse of employers' time and
12 talent away from his business obligations to attend
13 to some government regulations that affords him no
14 benefit.

15 I speak primarily for small businesses who
16 have no need for nor can they justify large legal
17 staffs just to deal with these mandates by
18 government. Thank you for allowing me to comment
19 on the matter.

20 MR. MONTAYA: Thank you, Pete. I will now
21 go to questions from the panel. Are there any
22 questions? I have just a couple. Jack, your
23 industry, and you made a statement -- what
24 percentage, and I'm not talking in numbers, let's
25 put it that way, of the restaurants are registered

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1 with your association? Because I can see the small
2 restaurant that isn't a member or whatever it is,
3 they only get information from the news media or
4 whatever.

5 MR. RUGGS: About 28 percent of the
6 restaurants in New Mexico are members of ours.
7 That is confusing in the fact that we call Furr's
8 Cafeteria one member and they have 13 operations.
9 McDonalds are one member. If I'm testifying in
10 Santa Fe, I say we represent 60 to 70 percent of
11 the food prepared in New Mexico, because a lot of
12 bigger operators are --

13 MR. MONTTOYA: I'm just talking individual
14 entities, whether it be five employees or 100
15 employees. About 28 percent?

16 MR. RUGGS: Yes.

17 MR. MONTTOYA: Roughly?

18 MR. RUGGS: Yes, roughly.

19 MR. MONTTOYA: Ray, in your area also you
20 have the membership of the hotel-motel, right?

21 MR. DAVENPORT: We represent about half
22 the hotel rooms in New Mexico but that's made up of
23 about 25 percent of the business entities.

24 MR. MONTTOYA: Okay. I know a little bit
25 more about your operation. Let me get back because

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1 you have a lot of other reporting requirements that
2 are required through the wage an hour act. If it's
3 a federal project not only numbers and
4 participation of minorities, but also wages, this
5 type of deal. In administering or implementing
6 this act, side-stepping the fact that you are
7 scattered all over the state in rural areas where
8 you do have to hire what's available in that area,
9 a lot of people don't move with the job unless it's
10 a big job and they are superintendents and above,
11 other than the local labor, comes usually from the
12 local area depending on the local project.

13 On the audit part of it, you know, the
14 separation of documents so that INS has the
15 subpoena power or investigative power, I guess, to
16 go to the employer documents to ascertain the I-9s
17 are there and documentation is there versus the
18 employer file where you keep social security and
19 stuff like that, all other pertinent data. What
20 problem is it to fill out all these forms? What
21 problems are your people going to have in the
22 outlying areas if your central office is in, say,
23 Albuquerque or Santa Fe or Las Cruces and you are
24 hiring in Reserve or someplace else?

25 MR. MAXWELL: Vince, our association

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1 represents probably, of the highway work done in
2 New Mexico, utility, municipal utility and
3 industrial type work, which would be your dams and
4 things like that, probably 90 percent of the
5 employers and as you've pointed out, our members
6 work all over the state and when you set up a place
7 to hire, you're not stocking it like you would the
8 home office. You are not having filing cabinets
9 which have all the various forms and procedures,
10 and you're not stocking it with the type of an
11 individual who is going to be in the main office
12 that you might walk into, your personnel office.
13 You're stocking it with a project superintendent, a
14 project manager. Somebody who's probably risen
15 through the ranks and hopefully, for the company's
16 concern, is a little bit of street smart with
17 regards to building and running a highway operation.

18 Consequently, you are going to have
19 probably an application for employment at that
20 office and you're going to have to keep on file
21 these employment applications, obviously for the
22 other requirements on the job. So, you're not
23 going to be setting it up in a dual file, let's say
24 a jacket like I have here, with another file that
25 says "INS" on it. You are going to be setting up a

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1 form or some type of a folder that's going to have
2 all the information on one individual. Frankly, we
3 have recommended to our members, don't get the INS
4 on somebody unless you are going to offer them a
5 job, because about the only way you can keep from
6 hopefully stumbling on a discrimination charge for
7 not hiring, is if you didn't request that so that
8 you can't have that in there where it got crossmixed
9 with the form.

10 So you hope that somebody, in his desire
11 to meet the requirements, doesn't get something
12 crosswise there. So, in that regard, if you
13 collect the papers, then you've got to hope that it
14 gets back to the main office where all the papers
15 have to be stored, are in the proper file. I have
16 more faith that Santa Claus will be here on
17 December 25th than that happening. This is the
18 real world we're talking about.

19 I look out in the audience, I don't know
20 what all these people do for a living, but that's
21 the way it is. You've got to just hope to God that
22 the files in the project get back there and the
23 most important documents that the contractor is
24 going to get back first are going to be those that
25 actually pertain to the construction of the job

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1 because that's where their livelihood comes from,
2 on meeting those requirements and you hope that the
3 personnel files get back also.

4 MR. MONTOKA: Thank you. Have any of you
5 within your membership, on the concerns of your
6 members in relationship to the sanctions, without
7 the guidelines of thorough orientation, let's put
8 it that way, have any of you been involved or have
9 any of them had to lay off, you know, groups of
10 employees just for the fact they are not taking the
11 chance of after November 6th, being sanctioned for
12 whatever reason? Have any of you been contacted by
13 any of your groups in relationship to that?

14 MR. MOCHO: The sanctions are not
15 effective until after September, anyway.

16 MR. MONTOKA: What I was saying, Pete, is:
17 Some employers might be afraid they don't have all
18 those rules and regulations and I'm just wondering
19 if we've had, I don't say one or two but I mean
20 sort of mass firings of a group because we don't
21 know what they are going to come down on us with.
22 We know the law is here, we know we have to have an
23 I-9 on anybody after November 6th. We don't even
24 have the rules and regulations. What do we do?

25 MR. TINNIN: The problem is, I think most

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1 of the people you have here, if they received a
2 call from somebody they would have told them they
3 wouldn't have to do that, it's the people who don't
4 feel they have anybody to call, who is not a member
5 of an association, a small employer, in many cases
6 a fly-by-night employer who is liable to
7 discriminate, who has been paying below the minimum
8 wages. You read nationally this is happening but I
9 don't think any of us here would have the
10 experience.

11 MR. MONTOKA: Because of the association.

12 MR. RUGGS: I have had calls and they've
13 described their situation where the only answer was
14 eventually that they are going to have to lay this
15 person off. As far as them calling me back and
16 saying this guy was illegal and I laid him off,
17 after I explained the rules and through the
18 conversation, I knew they had an illegal that they
19 were going to have to dispose of. I have had three
20 or four calls in the last two months that that was
21 going to be the ultimate answer but I haven't known
22 that that happened, no.

23 MR. MOCHO: I'd like to point out another
24 situation that can be problematic. In our
25 organization, summertime is a very lax time and we

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1 always have to terminate a few jobs.

2 Our position in the past has always been

3 that the last hired is the first fired but this

4 year, we altered that a little bit because we had a

5 few employees who could not afford us any type of

6 documentation so we laid them off first and I'm

7 already getting repercussions. They are calling

8 counsel and everything else trying to bring a

9 discrimination suit against me. What is a fellow

10 supposed to do? I took what I thought was the most

11 reasonable out when we cut back on our work force.

12 MR. BESSERA: Gentlemen, in hearing what

13 you are saying today, one of the things that

14 obviously comes out is the education aspect of this.

15 We had Mr. Brown earlier this morning or earlier

16 this afternoon and he indicated that the INS has

17 had groups come in where they have tried to let the

18 employers know exactly what these, particularly in

19 your situation, employer sanctions are all about

20 and as you all know there is a grace period during

21 which you are not going to be given a fine or

22 warning. There will be a warning period, basically

23 is what we're talking about, which is about six

24 months after the implementation of the Domenici

25 Amendment, which is October 1st, 1987, and we



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1 talked about September. I know that's come up.
2 That's what the INS is talking about but
3 the reality of life is what Congress decides is
4 going to be the date. Keeping that in mind, have
5 any of you taken advantage of this at this point
6 and had them come over and talk to your members?
7 One of you I understand just came back from a
8 national convention and I don't know whether or not
9 they were there and talked to you about it because
10 I think this is very important. All of you don't
11 represent everyone but I think you represent a good
12 amount of individuals that in turn can let other
13 people know exactly what's going on. As you well
14 pointed out, there is a lot of confusion and major
15 problems at this point -- I'm just interested in
16 seeing whether or not any of you or all of you have
17 had the opportunity to get the INS to come over and
18 explain to your association members and fellow
19 employers what's going on as far as the bill is
20 concerned.

21 MR. MONTROYA: Pete?

22 MR. MOCHO: The New Mexico Cattle Growers
23 Association, at our quarterly meeting in Ruidoso on
24 April the 4th and 5th, had a person from the INS
25 out of El Paso to come and talk to us about the



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1 immigration problems and at that time apparently
2 the only thing that had been developed was the
3 employer sanctions, because she spent over an hour
4 of the time talking about what the penalties were
5 going to be if we violated the laws and our
6 membership left there thoroughly disgusted.

7 MR. MONTOKA: Thank you. Bob?

8 MR. TINNIN: The Association of Commerce
9 and Industry has been very active in having
10 orientation meetings on the subject and to go a
11 little but further, I know in my own firm, we had a
12 seminar for our clients, as employers, to inform
13 them of their obligations.

14 One of the primary problems is in this
15 sort of rush judgment to get this act into effect,
16 you are trying to educate somebody on something
17 that doesn't exist. We haven't got the regulations
18 finalized yet so it's hard to tell people what
19 their ultimate obligations are going to be under
20 the regulations. Until you know, I think it's very
21 important -- the point has been made by Mr. Ruggs
22 that there are people out there that are putting
23 off compliance with the act I think one of the
24 things is that they are not really putting off
25 compliance with the act, I think there is mass



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1 confusion, it's hard to tell people what the final
2 regulations are going to be.

3 If we would wait until the final
4 regulations come out and say, okay, here is what
5 you are going to have to comply with, we all know
6 what it is now and you've got six months, I think
7 you would find -- and tell people we are going to
8 rigorously enforce it after six months and put on a
9 very broad informational campaign, I think you
10 would find pretty broad compliance at the end of
11 that six-month period.

12 MR. BESSERA: Coming from Washington, I
13 can tell you this, that everything you are saying
14 is true. We have a tendency to confuse everyone
15 but ourselves and we never see anything that goes
16 passed the beltway, as to whether or not people
17 really understand it and since you you've talked
18 about this, the deadlines have been changed three
19 times already.

20 Your comments are well taken because we in
21 turn meet on a weekly basis in Washington with a
22 task force made up of your national organizations
23 and in turn meet with the INS, is what you are
24 telling me now is something I can continuously
25 bring up to them as to what you are telling us here,



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1 so I think it's very important.

2 MR. MAXWELL: Frank, from our association's
3 standpoint, we have attempted to get out the
4 information on what we know about right now but for
5 most of our members, it really is a situation of we
6 hate to call them the blind, but it's the blind
7 leading the blind or the uninformed trying to lead
8 the uninformed and blind. We simply don't know
9 what the final rules are and we're just, for lack
10 of a better way of phrasing it, we're trying to
11 cover our asses on what we don't even know the
12 thing that's going to rip the skin off.

13 MR. RUGGS: A comment to Frank's question.
14 We haven't actually set up a seminar. We have your
15 phone number here in town and have consulted with
16 you as well as our national association that had a
17 lot of input at the national level to prepare our
18 newsletters so in a way, our restaurant people
19 don't get together monthly and even our quarterly
20 board meetings doesn't get to the people but yes,
21 we use you and have seen the changes and lived
22 through them and corrected one issue from the other
23 from information your --

24 MR. BESSERA: Just so you won't get
25 confused, I'm with the US Commission on Civil



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1 Rights nationally and I will be monitoring on a
2 national scope. So with all due respects to INS,
3 don't link me with a that particular agency.

4 MR. RUGGS: I'm sorry.

5 MR. MONTOKA: Ray? I know you have had
6 some training forums.

7 MR. DAVENPORT: I think we ought to
8 formalize some training for our board people and I
9 have a meeting scheduled in Taos next month and
10 I'll take this occasion to see if I can't get a
11 seminar together and let that be the focus of our
12 board meeting.

13 MR. MONTOKA: On the audience, we are
14 asking questions or giving comments from 5:00 to
15 6:00. This is for the advisory committee but we'll
16 be pretty quick and you can talk to us. I want to
17 recognize Mark Douglas who is the Executive
18 Director of the Association of Commerce and
19 Industry and of course, also recognize Mr.
20 Rodriguez, Ed, who is with the Albuquerque Hispanic
21 Chamber of Commerce and both of them have held
22 forums for their membership. Right?

23 UNIDENTIFIED SPEAKER: Excuse me. We were
24 just discussing that and we held two forums, one in
25 Albuquerque and one in Las Cruces. Ed held one

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1 here in Albuquerque and at the two forums we held
2 we had a total of 80, 85 people. We had about 60.
3 You have to understand that New Mexico has some
4 34,000 businesses, 90 percent of them employ 19 or
5 less individuals. We are truly a small business
6 state and getting information out and word to these
7 people is tough.

8 MR. MONTOKA: I want to thank all of you.
9 I want to thank the panelists and all this record
10 will be available to the participants as we submit
11 it to the US Commission on Civil Rights. We'll
12 take a five-minute break and then we'll let the
13 audience or any members that have signed up, make
14 their presentation and comments.

15 (Recess)

16 MR. MONTOKA: Do we have anybody from the
17 audience that --

18 MR. DULLES: We have an individual that
19 we've just spoken to at some length and I think
20 we're going to be able to give him some answer and
21 resolve it. I appreciate him coming down from
22 Grants. He's got a serious problem but Mr. Brown
23 has committed himself to assisting and I'm going to
24 follow up, Mr. Chairman.

25 MR. MONTOKA: Thank you. Anybody? Okay.

1 Well, any more statements from anybody? That's it
2 as far as the forum is concerned and I thank the
3 SAC committee. Ms. McCabe, wanted to --

4 MS. LOVATO: I just wanted to make one
5 comment.

6 MR. MONTOKA: What's your name?

7 MS. LOVATO: Francesca Lovato. About
8 misdemeanor offenses and in addition to what all
9 the other people have said about misdemeanor
10 offenses what I'm finding is: That especially
11 Spanish-speaking applicants for amnesty have failed,
12 while they have been here, to understand the
13 importance of traffic violations and DWI charges so
14 that they do have some misdemeanors. Compounding
15 their lack of understanding that these are serious
16 to us and maybe they are not serious in their own
17 country of origin, they have failed to have legal
18 representation, is what they have told me.

19 They have gone to court, they have failed
20 to go to court sometimes or if they have gone to
21 court they have failed to have legal representation.
22 Therefore they have gone to court, they have pled
23 guilty because they felt that it was better to
24 plead guilty, pay a small fine and go home and work
25 rather than go through the traditional system of

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1 which they have no understanding.

2 So, to have one of the requirements be
3 that they have only three misdemeanors is unfair to
4 them because of the reasons that I have gone
5 through.

6 MR. MONTAYA: Okay. Thank you. One of
7 our SAC members and of course through us this
8 morning was brought the question to our attention
9 which I was not aware of it and Washington also,
10 that our commission, the civil rights commission
11 and some of our staff members have been trying to
12 conduct or hold, I guess, immigration forum
13 meetings on Indian reservations and chairman
14 McDonald has refused their entry, I understand.

15 We, as SAC members to those individuals,
16 do not know about any of that involvement and of
17 course we have, in our committee now, we have three
18 members that are of Indian decent and as far as we
19 know they have not been contacted either and I want
20 to clear that record because we have not, as the
21 State Advisory Committee, been involved in any of
22 those arrangements, whether it be in Arizona or New
23 Mexico. That's the end of the forum. Thank you
24 for participation and for being here.

25 (The hearing was concluded at 4:45 p.m.)

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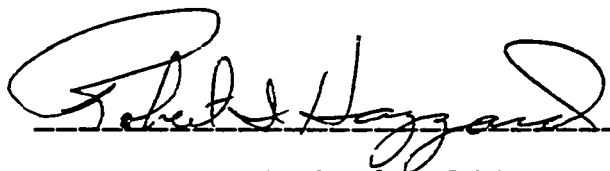
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DATED this 6th day of July, 1987.

ROBERT I. HAGGARD, CSR



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