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In the Matter of:

THE WEST VIRGINIA ADVISORY COMMITTEE
TO THE UNITED STATES COMMISSION
ON CIVIL RIGHTS:

FORUM ON CIVIL RIGHTS LAWS
and
LEGISLATION

Pages: 1 through 113

Place: Charleston, West Virginia

Date: March 21, 1989

HERITAGE REPORTING CORPORATION

Official Reporters

1220 L Street, N.W., Suite 600

Washington, D.C. 20005

(202) 628-4888

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THE WEST VIRGINIA ADVISORY COMMITTEE
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ON CIVIL RIGHTS:

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LEGISLATION

Senate Judiciary Commission Conference Room
State Capitol Building
Charleston, West Virginia

Tuesday
March 21, 1989

BEFORE: Adam R. Kelly
Presiding Chairman

APPEARANCES:

William B. Allen, Chairman

Panel on State Civil Rights Laws:

Charles G. Brown
State Attorney General

Phyllis Carter
Executive Director, WV HRC

Lloyd Jackson
Chairman

Panel on the at-large vs. single member district system:

Floyd R. Fullen
Attorney at Law

John Overington
Member, House of Delegates

William Wooten
Vice Chairman

Panel on Bigotry and Violence:

Steve Rutledge

Jerry Dale
Sheriff (Pocahontas County)

Bernard Gottlieb
Chairman

West Virginia Advisory Committee:

Mr. Adam Kelly
Ms. Carole Boster
Mr. Robert A. Brunner
Mr. Bernard Gottlieb
Mr. Gregory T. Hinton
Mr. Howard D. Kenney
Ms. Marcia Pops

United States Commission, Washington, D.C.:

Mr. Ki-Taek Chun
Mr. John Binkley
Mr. John Eastern

1 MR. DALE: Sheriff Jerry Dale from Pocahontas
2 County.

3 MR. GOTTLIEB: Bernard Gottlieb from Clarksburg.
4 I am a member of the Commission.

5 MR. HINTON: Gregory Hinton from Fairmont, a
6 member of the Advisory Commission.

7 MR. BINKLEY: John Binkley, of the staff of the
8 Commission from Washington, D.C.

9 MS. POPS: Marcia Pops, Vice Chair, State Advisory
10 Committee.

11 MS. BOSTER: Carole Boster, a member of the
12 Committee.

13 MR. KENNEY: Howard Kenney, from Saint Albans.

14 MR. EASTERN: I'm John Eastern of the Washington
15 Staff Office.

16 CHAIRMAN KELLY: That is Mr. Ki-Taek Chun, who is
17 a member of the Staff, who is passing out the
18 questionnaires.

19 We have been asked our opening speaker to you to
20 extend to you his apologies. He has an appointment which
21 will make it impossible for him to stay for the entire panel
22 this afternoon, although he just looked at the program and
23 said it is an extremely impressive list of speakers and
24 experts in the field, and I agree.

25 On behalf of the Commission I would like very much

1 to express our appreciation to Senator Jackson and his staff
2 and to all members of the Legislature, who have been very
3 kind and very courteous and very helpful to us.

4 Also, to the Executive Office, Governor Caperton,
5 and his assistants, and his enthusiasm in doing something
6 which really is unique.

7 Proclaiming a civil rights day is not something
8 that has been done very often in this country and we are
9 pleased in West Virginia that we are breaking new ground.

10 To open our program, we will hear some remarks by
11 the new Chairman of the United States Commission on Civil
12 Rights, Dr. William B. Allen.

13 Dr. Allen comes to the field of civil rights from
14 the academic field. He is a distinguished professor in his
15 home community of Fairmont, California.

16 He is married and he has two children. He doesn't
17 see much of them because of his duties. He comes to us from
18 California and is on his way to Washington.

19 He made what I call a superb address this morning.
20 I only wish that everyone in West Virginia could have heard
21 his remarks.

22 He is a delightful person. I think the Commission
23 on Civil Rights is extremely fortunate in having a man of
24 his capabilities to head it during this period of
25 difficulties for the Agency.

1 Without further ado, ladies and gentlemen, the
2 distinguished Chairman of the United States Commission on
3 Civil Rights, William B. Allen.

4 Dr. Allen?

5 DR. ALLEN: I see that Adam has denied me the
6 conversational mode of sitting there and chatting with you,
7 which is really all that I desire to do in this brief space
8 that I have.

9 For me it is a special pleasure to be able to
10 visit with members of our state advisory committees around
11 the country and with those respected citizens and
12 participants from their communities who make the difference
13 in the work that we try to carry on at the Commission on
14 Civil Rights.

15 I did make the comment that this is an especially
16 impressive forum. I don't mind saying publicly that this
17 particular State Advisory Committee Meeting impresses me
18 beyond any that I have seen to this point.

19 That doesn't belittle other states. Many of them
20 do wonderful jobs. Their committees are very helpful, but
21 the degree of state involvement, the degree of the
22 involvement of key officers of this State that you see
23 represented here surpasses anything I have experienced in my
24 two years on the Commission.

25 I can only congratulate you for that and invite

1 you to think seriously about what an opportunity you have
2 here in West Virginia.

3 At the Commission on Civil Rights we, of course,
4 have a very simple mandate. It is to advise Congress and
5 the President on the enforcement of our Civil Rights Laws
6 and the needs for the changes in our laws. It is very
7 straightforward.

8 We are not an enforcement agency, we are only
9 indirectly an investigative agency. We are mainly an
10 official governmental think tank.

11 But the problems that we have to think about, as
12 you well know, are as close to the hearts of this country as
13 any problems ever could be.

14 They are those questions that stand, I believe, at
15 the threshold of the serious, the still more serious
16 question, whether we will succeed as a single nation in the
17 end.

18 I have traveled widely in the United States in the
19 last few years on behalf of this Commission. In those
20 travels I have seen repeatedly, Americans reaffirm their
21 confidence in the future of this country.

22 What I passionately long for is the day when that
23 reaffirmation of that confidence will bear fruit through the
24 kinds of efforts that will remove whatever clouds remain in
25 our continuing relationship as fellow citizens.

1 The question that I, perhaps, most frequently ask
2 in my role as Chairman, which I assumed only some six or
3 seven months ago, is where are you taking this commission?
4 What is your vision?

5 It is for me, since I have heard it now so often,
6 becoming increasingly difficult to answer that question.

7 My initial reflex, my initial response, was to
8 say, "I'm not taking this commission anywhere, I am not the
9 Lone Ranger."

10 But we will go somewhere if we decide that we are
11 going to go together, but I am not pretending to be anyone's
12 savior.

13 It strikes me that the whole question of where
14 we're headed is the most important question we have to all
15 answer together that we don't dare put off on the shoulders
16 of any individual.

17 Again, it is time for us to insist upon our mutual
18 priority in this enterprise if we mean to succeed at it.

19 I am therefore, from the offices in Washington,
20 and as I travel around the country, especially sensitive to
21 want to hear what you have to say.

22 Although I cannot be here this afternoon, I want
23 you to know I will be reading every single word of the
24 transcript that you will produce, as I do from every single
25 meeting that is held around this country.

1 You will make a contribution to our work in
2 Washington, D.C., and you will advance the cause of your
3 State Advisory Committee as it continues to try to set an
4 agenda for the future.

5 I thank you for having hosted me today so
6 graciously. My only regret is that my time with you has
7 been so short, but it has been immensely enjoyable.

8 Thank you.

9 MR. KELLY: At this time, I will turn the
10 proceedings over to the Vice-Chairman of the Commission on
11 Civil Rights, Marcia Pops of Morgantown, probation officer
12 for the Circuit Court there, who will proceed to conduct the
13 afternoon proceedings.

14 Marcia?

15 MS. POPS: The United States Commission on Civil
16 Rights is an independent bipartisan fact-finding agency of
17 the executive branch of government.

18 Serving as its eyes and ears are State Advisory
19 Committees, one of which is our West Virginia Committee,
20 which comes to day to collect and study information
21 regarding any possible discrimination or denial of equal
22 protection based upon race, color, national origin,
23 religion, sex, age, or handicaps.

24 Nothing said today should in anyway degrade or
25 defame any individual. Because of time limitations, there

1 may or may not be an opportunity to speak from the floor
2 today.

3 Each of our speakers is being allocated ten
4 minutes and I am really nasty about that so I will be
5 cutting people off when their ten minutes are up.

6 But, we also invite you to write out any concerns
7 you may have and present them to the staff who is here from
8 Washington, D.C., Ki-Taek Chun, and John Binkley; there are
9 a couple of others here, and any of us as the State Advisory
10 Committee.

11 Some of us will be staying after the meeting ends,
12 so we will stay and discuss your concerns with you. And, if
13 we are real good about rushing through our program, then we
14 will try to take something from the floor.

15 But, if you have something you want to present
16 from the floor, it is necessary to get it in writing to
17 Ki-Taek Chun and then it will be brought up here.

18 We will just go on with our program now, because
19 we are going to keep a tight kind of schedule.

20 I see Charlie Brown has arrived. He is going to
21 be our first speaker. He is our State Attorney General.

22 STATE ATTORNEY GENERAL BROWN: Very good. I feel
23 like I am among a lot of friends here.

24 Sharon Mullens, our Deputy Attorney General for
25 Civil Rights is here, and Senator Jackson, Senator Chafin,

1 and former Assistant Attorney General Phyllis Carter; now
2 Director of the Commission, Bernard Gottlieb, Greg Hinton,
3 and all kinds of fine people. We have Howard Kenney.

4 We have a lot of good people here who are working
5 on the common cause that we believe in.

6 Senator Dittmar is here, Chris Quasebarth from our
7 staff is here, Senator Holliday is here. We are doing real
8 well.

9 Steve Rutledge, I see, from the Commission; we've
10 got a lot of people here who are interested in the common
11 goals that we share on Civil Rights.

12 There is Kelly Talbott, excuse me, our Assistant
13 Attorney General, right in front of me here.

14 Anyway, we've got things we're going to do. Donna
15 Quesenberry is going to -- and our Assistant Attorney
16 General, as well -- I'm not sure.

17 We have four lawyers who do civil rights
18 enforcement. We feel we do it very vigorously. Civil
19 rights is very much part of my life.

20 Mr. Commissioner, we are glad you are here from
21 Washington to be here and to learn more about how we are
22 doing things here in West Virginia.

23 We think we are doing a good job. We are proud of
24 what we accomplish. We know we could do a lot better, and
25 that is what we want to be doing.

1 When I took office, the Supreme Court issued it's
2 Allen opinion, which as Howard Kenney well remembers, said
3 that we have got to get out sleeves rolled up and clear that
4 backlog and we really did that. We did it in that first
5 year.

6 Our staff, working with the Commission; working
7 with the hearing examiners appointed by the Supreme Court,
8 cleared about 350 cases in eight months.

9 We basically took care of that backlog. There was
10 a second backlog of cases that had not yet reached the
11 probable cause stage that we are still working on, but that
12 initial probable cause cases were cleared.

13 Since 1986 we have tried 200 more cases. That is
14 a lot. It is a lot of work. We believe in it because we
15 believe that civil rights enforcement is so important to our
16 state.

17 The Supreme Court is said to get the cases set for
18 hearing within 180 days, which we do; have the cases
19 adjudicated within a year, which generally happens.

20 You read still about cases -- There was an article
21 in the paper today about cases that were years old. There
22 are such cases, but those are the old cases.

23 The cases that are current are staying current.
24 We are keeping them done, we are trying to make sure,
25 working with the Commission, that they get done. When it

1 doesn't get done it is the exception; it is not the rule.

2 We try to work on educational efforts. We are
3 putting together a handbook on sexual harassment, The Law
4 and Sexual Harassment, which we have helped develop in the
5 Courts and in the Human Rights Commission, again an
6 important freedom that people enjoy. It isn't just for
7 women. It is for women and it is for men. It is for
8 everybody to be protected in the exercise of the work that
9 they need to do as human beings in the work place and
10 anywhere else that people enjoy the right to life, liberty,
11 and the pursuit of happiness.

12 We need attention from the Legislature. We have
13 got very concerned -- We have got several very concerned
14 Legislatures here; four Senators right here in the front.
15 You are going to hear from Senator Chafin and Senator
16 Jackson, who believe in changes in our law when needed.

17 I feel we need to expand the definition of
18 handicap rights. Handicap rights are, in many instances,
19 the latest frontier; the last frontier in discrimination.

20 I keep reminding audiences that think
21 discrimination couldn't -- I don't need to worry about it,
22 you know. I'm a white male or something and that doesn't
23 bother me but I keep pointing out that anybody can become
24 handicapped any day in a car wreck or a disease, and we
25 don't want anyone or anyone's family, certainly anyone can

1 become handicapped.

2 We want to make sure that those rights apply to
3 all of us. It is our own battle that we are talking about
4 when we talk about handicapped rights, or rights for racial
5 minorities, or for women, or for aged people, or whatever.

6 All those rights affect everyone of us and the
7 quality of the state that we live in. If this isn't a good
8 state for all of us, it is not good state for any of us to
9 live in.

10 I think we need to expand that definition of
11 "handicap". What is a handicapped person from a Court
12 decision that went the other way I think we can get
13 Legislation to change that if the Court doesn't change it
14 itself.

15 I hope people in State agencies will do what I
16 have done in my consumer protection division and put in TDD
17 devices; that is for the deaf so that they can operate on
18 phones. In fact, the businesses, more businesses need to do
19 that, too.

20 The mall down town has done that. We're trying to
21 get more people to do that.

22 We need to work against the growing threat of
23 racial problems on campuses in this state, which seems to
24 have sprung its ugly head recently; work on monitoring the
25 unlawful paramilitary activities.

1 Bernard Gottlieb and many people in the
2 Antidefamation League, as well as many others, worked to
3 secure a bill a couple of years ago. We want to keep that
4 bill going, Mr. Hopkins, and make it work and make it work
5 really, for all of us.

6 We are going to try to do that and we are going
7 pass the laws that we need.

8 We can continue to make West Virginia a better
9 place to live. When I was a student I had the opportunity
10 to work in Mississippi for Charles Evers in a civil rights
11 type arena, when Charles Evers was mayor of Fayette -- In
12 fact, he is still mayor of Fayette -- and really work
13 directly in human rights issues.

14 That is very much a part of me, I feel very
15 honored that you have given me the chance to be your
16 Attorney General and work full time on issues effecting
17 equal justice for all.

18 We have still got a lot to learn. That is why I
19 have a handicapped rights task force; that is why I had,
20 when I started, a civil rights task force.

21 There is a lot more we can do as West Virginians
22 to make it work.

23 Please advise us. Sharon Mullens is front and
24 center here, our Deputy Attorney General for civil rights.
25 Please talk to her or talk to me about how we can do things

1 better, because that is what we are always looking to do.

2 God bless you all.

3 MS. POPS: Thank you, Charlie.

4 Our next speaker is Phyllis Carter, the Executive
5 Director of the West Virginia Human Rights Commission.

6 MS. PHYLLIS CARTER: Before I start and before the
7 Attorney General leaves, I would just like to publicly thank
8 Attorney Charlie Brown and his office for all of the support
9 that they have given to the Human Rights Commission.

10 I would like for Sharon Mullens to stand, because
11 Sharon has been working in that division for a long time and
12 this is the lady that prosecutes a lot of our cases, and
13 this is the lady that goes up before the West Virginia
14 Supreme Court and has won a lot of cases for the Commission.

15 I am going to talk just a few minutes about what
16 the Human Rights Commission does as it relates to the
17 enforcement of the Human Rights Act, for the State of West
18 Virginia.

19 I am going to give you just a general over-view
20 because, because as I said earlier to Norm and Sharon, I
21 have my experts here and they can certainly answer the
22 nitty-gritty questions that you might have.

23 They told me not to say that but I didn't want to
24 stand here in the lime-light and not share it with them
25 today.

1 Let me start out by saying that the Commission
2 does have enforcement powers. It does do investigations and
3 it does do hearings.

4 I am sure that at one point in time you may have
5 heard about the suspension of hearings on a temporary basis
6 at the Commission, but I am pleased to say that we have
7 started the hearings again, and the Commission is operating
8 with investigations and hearings.

9 The backlog that Charlie referred to earlier: We
10 are working on that backlog.

11 It is going to take us some time. We only have
12 eight investigators and we are keeping current with cases
13 that are coming in to the office now. But, I feel very
14 confident that we are going to be able to eliminate that
15 backlog.

16 The Commission is basically empowered to take and
17 pass upon and adjudicate complaints alleging discrimination.

18 I think the Commission has done an excellent job
19 today. The Commission has taken on a lot of studies; we
20 haven't done any recently but we do intend to continue to do
21 studies.

22 And the Commission participates in numerous
23 investigations. Whenever a complaint is filed with the
24 Commission, the Commission attempts to investigate that
25 complaint within 180 days.

1 Sometimes it takes more than 180 days, but let's
2 be realistic. All complaints aren't the same. Some are
3 more in-depth than others. Some require investigation that
4 is much more in-depth, and sometimes respondents are
5 cooperative and sometimes they are not.

6 If you are involved in this arena, you know that
7 if you come across a respondent who is uncooperative, it is
8 going to take you a long time to get information out of that
9 person.

10 I think the thing to remember is that the people
11 who work at the Commission are committed to doing their job,
12 and they are committed to investigating your complaint or
13 any citizen's complaint fully.

14 The investigation consists of obtaining and
15 reviewing appropriate documentation, interviewing witnesses,
16 and in some cases, actually going on site to the job
17 location.

18 Now, if we have a respondent who doesn't want to
19 cooperate, the Commission has something called "subpoena
20 power", and we can certainly subpoena that information from
21 an unwilling respondent.

22 Even when the respondent doesn't want to respond
23 to our subpoena, we have Sharon in her division, and they
24 will go out and make that respondent give the Commission the
25 information it needs to do its job.

1 Upon completion of the investigation, there is a
2 determination of probable cause and no probable cause.

3 Either there is enough information there to form a
4 reasonable allegation that there has been a violation of
5 West Virginia Human Rights Act, or there has not been a
6 violation.

7 If there has been a violation of the West Virginia
8 Human Rights Act, then the case -- The client is notified,
9 the complaining party is notified, and the case is then sent
10 to our hearing unit to be eventually docketed and set for
11 hearing. This hearing is held before a hearing examiner,
12 who is an attorney.

13 I was really surprised to learn that many of the
14 hearings before the Commission average two days and
15 sometimes longer than two days; so they are really detailed
16 hearings.

17 They are evidentiary hearings; evidence is taken,
18 there is a court reporter present, witnesses are sworn.

19 It is just like in court except you are not in a
20 court room. You are probably in a small meeting room of
21 some kind having a hearing.

22 The hearing examiner makes recommended findings of
23 fact and conclusions of law. Those recommended findings of
24 fact and conclusions of law are sent to both of the parties;
25 the respondent and the complainant.

1 Each side can take exceptions and file those
2 exceptions with the Commission, and then the hearing
3 examiners recommend a decision, findings and fact are given
4 to the Commissioners.

5 The Commissioners review that and they either
6 accept the hearing examiners recommended findings of fact
7 and conclusions of law or they don't.

8 If they don't accept it, they can remand it back
9 to the hearing examiner for another hearing or more
10 clarification on a particular matter, or they can accept the
11 decision.

12 There is always an appeal from a decision of the
13 Human Rights Commission. Once there is a final decision
14 entered by the Commission, that decision can be appealed.

15 Presently, the appeal is directly to the Supreme
16 Court; the West Virginia Supreme Court.

17 What kind of remedies or what kind of relief can
18 the Commission make available to a complaining party who has
19 suffered some discrimination?

20 Presently, the Commission can issue Cease and
21 Desist Orders. These Cease and Desist Orders can contain
22 provisions which will aid in the elimination of future
23 discrimination. It may require a respondent to develop an
24 affirmative action plan, or it may require a sworn affidavit
25 from a responsible officer of the respondent's company that

1 the Commission's order has been implemented and will be
2 implemented in the future.

3 The Commission can also award back pay. That
4 includes fringe benefits and bonuses, and I believe the
5 Commission can award front pay when it appears necessary.

6 Front pay takes place when a person has alleged
7 discrimination in employment and the job that the person was
8 seeking is now filled, and the person will get the next
9 available job.

10 The front pay allows the individual to collect
11 money while he or she is waiting for the next job. Once the
12 job becomes available and is presented to the complainant,
13 then the front pay will cease.

14 The Commission can also make adjustments of
15 seniority. The Commission can also require that the losing
16 party make appropriate training available and that the
17 losing party also expunge the employment records of the
18 complaining party. I think that says a lot.

19 Prior to December 20, 1988, the Commission could
20 award incidental damages to complainants, but on that date
21 the West Virginia Supreme Court, in the case that we
22 commonly refer to as the Bishop Coal case, issued an opinion
23 in which it held that the Commission did not have the
24 authority to issue incidental damages. That was premised on
25 the fact that there is no automatic judicial review of these

1 cases before the circuit court. It is now a direct appeal
2 before the West Virginia Supreme Court, and therefore, the
3 respondents are deprived of the Seventh Amendment right to a
4 jury trial.

5 Sharon filed an excellent petition on behalf of
6 the Commission. That petition was with the Supreme Court.

7 Several other advocacy groups now, The Mountain
8 State Bar Association, which is the black bar association in
9 this state, and I can't think of some of the other groups
10 right off hand. I think the National Lawyer's Guild also
11 joined in and the NAACP; they all filed briefs in support of
12 the petition that Sharon filed with the West Virginia
13 Supreme Court, asking the Court to reconsider this decision.

14 Last, on the 22nd of February, we heard from the
15 West Virginia Supreme Court that they would grant our
16 petition to reconsider this decision that was entered by the
17 Court earlier, on December 20.

18 We thought that was a real victory for us. That
19 means that the Court is willing to go back and take a look
20 at that decision and perhaps right the wrong.

21 We feel very good about that. I think that in the
22 months that I have been with the Commission I have been
23 impressed by the things that have taken place in the past
24 with the Commission and also the future of the Commission.

25 We are the only agency in the State of West

1 Virginia that has as its mandate to protect the civil rights
2 and human rights of citizens of this state.

3 I think the Commission does a good job; I think we
4 will continue to.

5 Again, I want to thank Charlie Brown, and I
6 particularly wanted to thank Sharon's office because
7 sometimes, I don't think people realize how hard that the
8 lawyers work on these cases.

9 But, I know how hard they work because when I was
10 in the Attorney General's office I had one myself. I know
11 how much time it takes to develop these cases and get them
12 ready for hearings.

13 I would also, at this time, like to take a moment
14 to introduce you to members of our staff who are here in the
15 audience.

16 Norma Dale, who is our Compliance Director is
17 here. Norma, will you stand?

18 I see Jackie Heath, he is one of our
19 investigators. I see Glenda Gooden, who is our Legal
20 Manager; our Legal Unit Manager, and my secretary, Edna
21 Martin.

22 I also see Steve Rutledge, who is another
23 investigator with the Commission.

24 I don't want to leave anybody else out, are there
25 any other staff people here?

1 These people have been with the Commission for
2 years.

3 I would like to thank you for your time and
4 attention, and as I have said before, I have go my team
5 here. They know the ins and outs, and if you have any
6 questions, please feel free to ask them.

7 Thank you.

8 MS. POPS: We have some programs and as soon as we
9 finish this section if anyone doesn't have one, we will be
10 sure to pass them around.

11 We have heard now about our State's Civil Rights
12 Laws and the enforcement of those laws.

13 Now we are going to hear from Lloyd Jackson, who
14 is the Chairman of the Senate Judiciary Committee, on the
15 prospects of new civil rights legislation.

16 MR. JACKSON: Thank you very much.

17 It is certainly a pleasure for the Judiciary
18 Committee, that usually is sitting in this room at this
19 time, to have all of you to join us today and be able to
20 dispense with our sometimes waiting matters of government to
21 talk about even more waiting matters and to really hear from
22 the public about what they have to say about particular
23 issues, not so much dealing with specific bills, but on
24 general philosophy about how people feel about issues.

25 Before I go any further though, I would really be

1 missing an opportunity that I ought to take to introduce
2 some of the members of the committee who are here, who have
3 worked long and hard in the area of civil rights.

4 Senator Holliday, would you please stand?

5 I know Senator Chafin is here, too.

6 I couldn't get by without saying that I feel
7 personally, that Bob Holliday is probably without question,
8 of all the Senators -- and I may get in trouble with the
9 other 32 members of the body for saying this -- Without
10 question, is probably the Senator who is most concerned
11 about the rights and the dignity of those people who find
12 themselves -- particularly of less fortunate means -- who
13 find themselves not being treated fairly; whether it be
14 handicapped, whether it be because of race, whether it be
15 because of sexual status, or anything else.

16 Senator Holliday is a kind, compassionate
17 legislature, and I know those people from Fayette, and
18 Greenbrier, and I believe even a small part of Clay County,
19 are fortunate to have Senator Holliday for their Senator.

20 I couldn't say enough things about the fine job
21 that he does for all the people in the State of West
22 Virginia, as he represents them before this body.

23 Senator Chafin, like myself, was a trial lawyer,
24 and I dare say that Senator Chafin has been involved in
25 defending the rights of the citizens of this state; just not

1 criminal rights, but civil rights, and all types of trial
2 throughout the State of West Virginia.

3 We have talked on a lot of occasions. I know that
4 Senator Chafin does as much pro bono or free work as any
5 lawyer, probably, in the state, and I thank him for all of
6 his efforts.

7 Let me tell you, when it comes to championing the
8 rights of what we like to call "the little people" in this
9 committee, Senator Chafin is always one who is on his feet.
10 He doesn't always win, but he is always on his feet ready to
11 champion those people's rights and I certainly thank him for
12 the job he does for our community.

13 The topic of the prospects of new civil rights
14 legislation as I listened this morning to the speeches that
15 were given in the Senate Chamber, make us all understand
16 that civil rights legislation has moved light years from
17 what it was just even two decades ago.

18 What is civil rights legislation? As I listened
19 to the speeches this morning, I heard things like day care,
20 I heard things like medical care, I heard things like the
21 TRIPP Program, I heard things like funding of the Human
22 Rights Commission, and I heard a lot of things being talked
23 about in the nature of civil rights.

24 It really began to dawn on me that the notes that
25 I had put down may not be the most relevant things to talk

1 about here today, but I want to talk a little bit about the
2 future of some of those things and where I see them going.

3 I think we have a governor who is committed today,
4 to the continued effort to improve the funding and the
5 success of the West Virginia Human Rights Commission.

6 I think his selection of the current director that
7 he has is certainly the epitome of that. She is doing a
8 fine job. I am very proud that she is serving the State of
9 West Virginia in this capacity.

10 But, certainly, in the area of that Commission,
11 funding is the prime responsibility. Is that civil rights
12 legislation? Certainly, it is civil rights legislation
13 because the rest of it doesn't mean anything if it doesn't
14 happen.

15 I heard of things to talk today. Like I said, the
16 TRIPP Program, we know about the problems with Medicaid in
17 West Virginia, we know about the problems with proper
18 prenatal care, we know about all the problems with day care,
19 which we passed a pilot program last year that Delegate
20 Brown, who is here with us, helped the last year be done.

21 Are these civil rights matters? If I listened
22 correctly today, these certainly are civil rights matters.
23 They are matters that must be dealt with in this generation
24 of civil rights in this State.

25 Not that the things that have been done in the

1 past aren't important, but they must be dealt with, they
2 must be adequately funded so that the people can go forward
3 with their lives as they ought to be able to do.

4 It is no secret to those of you that are here, but
5 the Governor in this legislature had some very unpopular
6 decisions to make in the first 60 days of his
7 administration.

8 We have made those decisions, as unpopular as they
9 may have been, but let me tell you what is going to happen
10 as a result of that. People who were not receiving proper
11 prenatal care and prenatal care was not being paid for, I
12 know that at the hospital in Huntington they were doing
13 almost all the prenatal care. They had done hundreds of
14 cases and had only been paid for less than a dozen this
15 year. Those bills are going to be paid.

16 If that doesn't do something for the civil rights
17 of those women, particularly, who can't afford prenatal
18 care, then I don't know what does for people in the State of
19 West Virginia at the very lowest of levels where we have to
20 deal with these problems.

21 People who are on Medicaid who can't afford to pay
22 their medical bills otherwise, who are being told, "We won't
23 care for you anymore, you can't be cared for anymore because
24 the State is not paying your bills."

25 Their bills are going to be paid. If that's not

1 civil rights, then I didn't listen correctly out there this
2 morning.

3 The State has an obligation to take care of the
4 least fortunate of its community and that is civil rights.

5 As the Attorney General said, "It goes further
6 than race, it goes further than sex, it goes to what happens
7 to people on a day-to-day basis.

8 The TRIPP Program, unfortunately, was terminated
9 and hopefully will be refunded as we have the money to do
10 that, with the things that the Governor has been able to do
11 in the first six days of this session.

12 The day care project that we passed last year; we
13 had mandated two pilot projects and I don't believe they
14 have been done yet, mostly because the legislature didn't
15 have the money to fund them.

16 Hopefully, in the area of day care where we find,
17 particularly, single mothers who have to deal with this
18 problem of trying to find a job in our society today, that
19 don't have any care for their children. Hopefully, now, we
20 can start dealing with those problems as time goes along.

21 Is this civil rights? As I listened this morning
22 to the speakers this morning, yes, that is what civil rights
23 is all about.

24 There are other areas as well. In the areas of
25 handicapped access, I think the legislature will have to put

1 a particular eye on the facilities bill we are going to pass
2 for the schools; on legislation that they deal with in terms
3 of our parks and public buildings; that handicapped access
4 is made a real adequate and a real front part of those bills
5 that we take care of those as they go.

6 Pay equity, as it was mentioned this morning, this
7 state has funded a study on pay equity. I think it is high
8 time the legislature take a serious look at that.

9 I have two children. They both happen to be boys,
10 but I talked to my fellow legislators who happen to have
11 small children who happen to be females as well, and they
12 understand the importance of pay equity, and what it is
13 going to mean in the future to all the people in the State
14 of West Virginia, and that we deal with this issue now and
15 not wait until it comes upon us at a time when we really
16 can't afford for it to happen.

17 Yes, all these areas deal with civil rights just
18 as any other bills that we have passed. We did deal last
19 year with the unlawful paramilitary act of 1987, and that
20 was a struggle, as Mr. Gottlieb knows, not just to pass the
21 bill; that wasn't the problem, the problem was getting a
22 bill that everyone could agree upon.

23 We came up with a bill. It may not be a perfect
24 bill, but at least it is a bill that is working out there
25 and as time goes along we can make the amendments or do

1 whatever is necessary to take care of the bill.

2 All I can say is from the point of legislature,
3 that it seems in this time of economic distress for the
4 State we are trying our best as we can not to dump the tough
5 economic blow on those people in our society who are less
6 able to care for it.

7 It has been a difficult balancing process for that
8 to happen. Much of the money that we have had to raise has
9 been put in a program to pay for medical care to pay for
10 those retired people in the State government who can't
11 afford to take care of themselves without the retirements.

12 They are tough decisions to make, but I know the
13 support groups like this, with your help and continued
14 guidance in the future, this legislature in this state will
15 be better off, better provider of civil rights for the
16 people in the State of West Virginia, that we can continue
17 to move forward with the help of people like Phyllis, and
18 that this State of West Virginia and the leadership of
19 Phyllis, and the Governor that we have in the legislature
20 would not be at least targeted in this country as a place
21 where civil rights is not enforced, but a place where civil
22 rights is truly a prime issue in the state.

23 Thank you very much.

24 MS. POPS: We are going to have some questions
25 from our State Advisory Committee now, and I know, Carol,

1 you wanted to start with Senator Jackson?

2 MS. CAROLE BOSTER: First of all, Senator Jackson,
3 I wanted to tell you that I very much appreciate the remarks
4 that you made and it is very gratifying to hear that all of
5 this is of concern to yourself and the other members of the
6 Judiciary Committee.

7 Recently, Title 8 of the Civil Rights Act of 1968
8 was amended by Congress and now includes coverage for
9 handicapped and for familial status.

10 Can you tell me sir, if there are any drafts of
11 legislation on the state level that would amend the West
12 Virginia Human Rights Act to include the extended coverage
13 for handicap and also for familial status?

14 SENATOR LLOYD JACKSON: I may have to turn to get
15 some help here because these are the people that introduced
16 the legislation. I don't know that all these -- Maybe
17 Phyllis could help me with that one.

18 MS. CARTER: That particular legislation is going
19 to be introduced. We introduced some legislation earlier
20 and it is going to be amended to include those two
21 definitions, but I am very familiar with what you are
22 talking about and in order for this Human Rights Commission
23 to be able to implement the Fair Housing Act, amended in
24 1988, we have got to have a standing definition of handicap
25 and also we have to have a definition of familial status in

1 the Act.

2 Now, familial status will protect those persons
3 who have custody of persons under the age of 18 when they
4 are seeking housing accommodations in the State.

5 I think it is very important that the definition
6 of handicap be expanded because of some limitations that
7 have been put on the Commission as it relates to our ability
8 to represent all types of persons who suffer from various
9 handicaps; persons who are not as severely handicapped as
10 others versus the perceived handicapped.

11 Right now I cannot represent those individuals
12 before the Commission because of a recent Supreme Court
13 Decision, but if we are able to expand the definition of
14 handicap, and I have submitted a definition for you to
15 review, then that will put us in compliance with the Fair
16 Housing Amended Act of 1988, and it will also help us to
17 overcome the affects of the recent Supreme Court Decision
18 that has really put many of our cases in limbo.

19 A lot of people who have come to the Commission
20 for help, it has really left them in limbo.

21 SENATOR JACKSON: Let me say, as we were reviewing
22 our docket today I notice that the Governor had sent up some
23 submitting legislation on the Human Rights Commission.

24 MS. BOSTER: That may be what it is.

25 SENATOR JACKSON: It just came up and I haven't

1 had a chance to read it yet, to tell you the truth. I just
2 noticed it in my last reading of our docket. It was just
3 before I came into the meeting today.

4 So, I know that, at least, if the amendments
5 aren't here, we certainly have the vehicle to do it with
6 now.

7 MS. BOSTER: We would like to say, again, that we
8 certainly appreciate your remarks and we are looking forward
9 to your support.

10 SENATOR JACKSON: I don't think this Committee, or
11 certainly the Chief Executive has any objection to those
12 types of amendments going on.

13 MS. BOSTER: Perhaps I am directing this to the
14 wrong person, but since this was your topic, if you don't
15 mind, I would like to continue to pursue that.

16 Can you tell me if there have been any bills
17 submitted, or if there is any discussion of any bills to be
18 submitted in protection of gay rights in the State of West
19 Virginia?

20 SENATOR JACKSON: All I can tell you is that -- I
21 don't remember every bill that has been submitted, there is
22 hundreds of them. All I can tell you is I don't think there
23 are any that have been submitted that have been before my
24 Committee.

25 That doesn't mean they aren't submitted because I

1 can't possibly know of all the thousands of bills that are
2 submitted up here; all of them.

3 But I don't -- There are none in my committee now.

4 MS. BOSTER: Again, I would certainly like to
5 encourage that should something like that be proposed that
6 the Committee be supported that it is a big problem in the
7 State of West Virginia, and it leaves a group of citizens
8 within the State disenfranchised of their rights.

9 VOICE: May we ask some more questions, Madam
10 Chairman?

11 MS. POPS: Yes. Did you have a question?

12 VOICE: Yes, I would like to ask a question of
13 Ms. Carter, if I might.

14 VOICE: I have a question.

15 MS. CARTER: Okay, if you will write that out for
16 Mr. Chun?

17 VOICE: Thank you.

18 MS. POPS: Okay, John Binkley is the Director of
19 the Eastern Region of the U.S. Commission on Civil Rights.
20 You have the floor.

21 MR. BINKLEY: I would like to ask Ms. Carter how
22 large that backlog of complaints is and how long she
23 anticipates it will take to eliminate it and whether it is
24 entirely -- the key is money or whether it is other
25 problems?

1 MS. CARTER: Well, presently the Commission does
2 have a backlog of cases that concern complaint that were
3 filed prior to 1985 that are in various stages of
4 investigation.

5 We started to tackle that backlog and we hope that
6 within the next year and a half those cases that are still
7 active in that backlog with the Commission will be
8 incorporated into the current case load that the
9 investigators are carrying.

10 At the present time we do not have a backlog of
11 current cases. Our backlog only refers to cases that have
12 been with the Commission for a number of years prior to
13 1985.

14 MR. BINKLEY: Are you getting any assistance from
15 the Attorney General's office like in the past?

16 MS. POPS: We get a lot of assistance from the
17 Attorney General's office. Right now the civil rights
18 division of the Attorney General's office, which is for
19 attorneys, prosecutes 95 percent of the cases that go to a
20 hearing at the Commission.

21 We also have an Assistant Attorney General who is
22 assigned to the Commission itself as their counsel. As the
23 Executive Director, I have an Assistant Attorney General
24 assigned to me to do legal work for me.

25 Also, I am in the process of negotiating with the

1 Attorney General's office for a part-time compliance
2 attorney. I have already interviewed an attorney. I
3 understand today that the Attorney General's office has
4 already made an offer to this particular individual, and if
5 the comes on board, he will putting in 50 percent of his
6 time with our compliance unit, so we are getting a lot of
7 help from the Attorney General's office.

8 MR. BINKLEY: Would you like more?

9 MS. POPS: I will let Sharon answer that.

10 MS. MULLENS: Sure. We'd like more help.

11 One of the things I want to clarify is that
12 additionally, to the four attorneys, which includes myself,
13 with the civil rights division, each new Assistant Attorney
14 General that comes to work at the Attorney General's office,
15 notwithstanding the fact that they are not assigned to the
16 Civil Rights division, has to litigate to Civil Rights
17 complaint where they represent the complainant.

18 So, the Attorney General has committed basically
19 the entire force of his office through the new attorneys
20 that come in to address that, but we desperately need
21 additional funding. I guess I'm not here to talk about the
22 Attorney General's budget, but to enable him to hire more
23 attorneys to commit to this particular division.

24 Right now our division, with the four attorneys,
25 two of whom are on the front row, here. I would like to

1 have them stand because a lot of recognition has been given
2 to me, but Kelly Talbott and Chris Quasebarth assisted me,
3 in fact, volunteered to help us in portions of the rehearing
4 petitions in the Bishop Coal Company case. I
5 don't think I would have been able to pull it off without
6 them, so I definitely want to recognize them.

7 We are handling about 250 cases at the present
8 among four of us. We desperately need more help and I think
9 that is something with regard to other matters that may be
10 addressed not only through the Attorney General's office,
11 but with the additional funding through the Human Rights
12 Commission.

13 MS. POPS: Thank you.

14 We have Mr. Hopkins. He is President of the NAACP
15 in Charleston.

16 MR. HOPKINS: No, no. I am a Political Action
17 Coordinator.

18 MS. POPS: I am sorry, Mr. Hopkins.

19 MR. HOPKINS: My question is with the increased
20 violence on college campuses and universities. We have no
21 one to go to these places to look into this.

22 One time years ago, the Human Rights Commission
23 did this, because they had the say, they had the funding,
24 but since that time every time there has been a decrease in
25 funding to the Human Rights Commission. It was hit very

1 hard.

2 With the Allen Decision, where they have to get
3 out all this backlog of cases, nobody can concentrate on
4 that particular thing right now.

5 I want to know if there is some agency that can
6 take that ball and run with it and do like they did years
7 ago when there were problems in the state anywhere; that
8 somebody from the Human Rights Commission could go and look
9 into these problems.

10 MS. POPS: I will let Phyllis address that in just
11 a minute, but I would like to say that our State Advisory
12 Committee has had several hearings which have touched on
13 that, and a future meeting, which we are going to plan,
14 probably for about the fall, is going to have that as one of
15 its focuses.

16 But, then, of course, we don't litigate, and so I
17 will let Phyllis speak to that.

18 MS. CARTER: As far as that issue is concerned we
19 have a very limited staff at the Commission, and our primary
20 responsibility right now under the Allen Decision is to
21 investigate those complaints that come in every day.

22 Now, if we had a larger staff we might be able to
23 have a response team but right the Commission is not in a
24 position to have a response team.

25 I just spoke with Sharon Mullens and she has

1 informed me that the Attorney General's office is going to
2 be presenting a proposal to the Commission in the next two
3 to three months, in which they are going to propose that a
4 summit meeting be held with the Board of Regents, or
5 whatever is going to replace the Board of Regents, to talk
6 about racial tension on the campuses of the public
7 institutions in this state.

8 MS. POPS: Yes, Carole?

9 MS. BOSTER: Just as a means of providing another
10 resource, the U.S. Department of Justice also has Community
11 Relations Specialists, and if they have adequate staff to do
12 that, they will respond to such situations as we have just
13 described, and the nearest one is in Pittsburgh.

14 I can get that number for you, sir. It is the
15 U.S. Department of Justice.

16 MR. HOPKINS: The Department of Justice?

17 MS. BOSTER: Yes, sir.

18 MR. HOPKINS: Would you get that for me, today?

19 MS. BOSTER: No, sir. I would have to get back to
20 my office in order to get that, but I will most certainly
21 get that for you.

22 MR. HOPKINS: Okay, I will give you my name and
23 address.

24 MS. BOSTER: Yes, sir.

25 MS. POPS: Ki-Taek, we didn't have any other

1 questions cleared from the --

2 MR. HINTON: Madame Chairman?

3 MS. POPS: I am sorry. Greg?

4 MR. HINTON: Senator Jackson, in the event that
5 the Supreme Court --

6 MS. BOSTER: He just stepped out.

7 MS. POPS: Yes, but Senator Chafin --

8 SENATOR CHAFIN: I will try to answer.

9 MR. HINTON: In the event that the Supreme Court
10 does not come back with a reversal in the Bishop Coal
11 Company case, what is the likelihood that what was once the
12 authority Human Rights Commission would be restored by
13 virtue of legislation?

14 SENATOR CHAFIN: Well, I think that the -- I think
15 that as Senator Jackson pointed out, that the Governor and
16 certainly members now of the Senate Judiciary Committee are
17 inclined to take the ball and run with it when Supreme Court
18 action mandates it.

19 I think you can count on us until we look at the
20 record. I had the privilege of serving as the Judiciary
21 Chairman with Senator Holliday here a couple of years ago.

22 We always tried to protect the rights of those
23 unfortunate citizens. We tried to support the Human Rights
24 Commission. We have fought very hard to appeal the death
25 penalty, and I think we will have to fight that battle

1 again.

2 That thing sort of surfaces each time, but we will
3 take the necessary action when it is appropriate.

4 MR. HINTON: Thank you.

5 Also, the present nature of the remedies that are
6 given in a discrimination case is pretty much to make the
7 complainant whole, and put him or her back in the position
8 they would have been had they not been discriminated
9 against, which is sometimes adequate but often times is not,
10 and it seems to me that you being a lawyer, I understand, as
11 well as Senator Jackson, and of course, you are both very
12 acutely aware of the aspect of punitive damages in the civil
13 matter whereby you add additional damages on a wrongdoer.
14 One; to encourage him not to repeat his conduct, and two; to
15 encourage those that haven't done the same thing not to do
16 it.

17 Whether the lack to do it consideration be given
18 with Human Rights legislation within our civil rights law,
19 to perhaps, add that as amendment of damages, or by adding
20 another help of damage -- cause of action, much like on the
21 third level.

22 You might be familiar with the U.S. Supreme Court,
23 now reviewing Runyan versus McCray, considering 42 U.S.C.,
24 1981, was given probative action to individuals for blacks
25 since the civil rights amendment came out in 1966, but what

1 possibility, if any thought could be given to perhaps
2 increasing damages that a victim of discrimination; be it
3 handicap, age, or whatever, could get as a means of
4 discouraging this kind of comment of the future.

5 SENATOR CHAFIN: Well, first of all, I think we
6 would have to work with the Human Rights Commissioner in
7 terms of formulating new legislation.

8 There is current legislation that in any civil
9 action where the action of the person complained against is
10 found to be willful, wanton, and reckless disregard of
11 someone's rights, you now presently have a right to punitive
12 damages.

13 The punitive damages cannot be so great as to be
14 out of proportion with compensatory damages, but if Ms.
15 Carter deems it necessary that we have separate legislation
16 to address that, then I would certainly be disposed to look
17 at that.

18 I think we have a pretty good statute now on civil
19 damages and punitive damages in general.

20 MR. HINTON: But the Human Rights Commission does
21 not speak to that. It is pretty --

22 SENATOR CHAFIN: Well, the Human Rights statute
23 does not speak to those specifically, I wouldn't think, but
24 that is something that I think your director, if she wants
25 to call our attention, I am sure Senator Holliday and I

1 would be happy to take a look at that and move it along.

2 MR. HINTON: Does this pretty much interpret by
3 our Court as to make whole as how receptive it is in the
4 filibuster?

5 SENATOR CHAFIN: Yes. Well, good things about
6 forms like this is you all can through these ideas out and
7 we can't think of everything like you all can.

8 If you will bring it to your Director's attention;
9 I haven't had a chance to work with her but I hear really
10 great things about her.

11 We will be happy to, either this session or the
12 next session, to move these things along.

13 Sometimes you have to introduce legislation and
14 ideas the first session; it certainly gets bounced and
15 doesn't pass through, but in the next session or the
16 subsequent sessions, it will fly as they say around here, so
17 good idea.

18 MR. HINTON: One question, I think, is part of my
19 last one; I understand there is a bill now to make Martin
20 King's birthday a holiday, in the State of West Virginia
21 which is parallel with a federal holiday.

22 SENATOR CHAFIN: Parallel with what holiday, sir?

23 MR. HINTON: The federal holiday. And,
24 particularly with --

25 SENATOR CHAFIN: And we have that now, Bob?

1 SENATOR HOLLIDAY: Yes, we do.

2 SENATOR CHAFIN: I will let Senator Holliday
3 answer that since he --

4 SENATOR HOLIDAY: Since I was the original sponsor
5 of the bill, we do have a day set aside to commemorate, you
6 know, the life that Martin Luther Junior King's lived; one
7 against injustice, bigotry, and all those things.

8 At that time I tried to get in a feature that
9 would allow school children to be out on that day.

10 I mean, it is in every sense of the word a holiday
11 for West Virginians, but the school children have not been
12 able to get out.

13 And there is a bill that has moved to the Senate
14 from the House that one of the non-teaching days -- That it
15 would coincide with Martin Luther King, Junior's birthday.

16 I didn't like exactly the way that it had been
17 presented. I think the holiday should be uppermost and
18 supreme with the idealism that it rates above our
19 Washington's and our Jefferson's and other holidays, and it
20 should have been introduced in a different way.

21 But I don't think we should, I guess, complain or
22 try to change the wording. So, it is in the Senate
23 Education Committee, and if it moves out and moves to the
24 floor, I would say the bill should pass and in every sense
25 of the word Martin Luther Junior King's birthday will be

1 fully established in West Virginia.

2 It is now, but the school children just don't get
3 out, and many feel that if they would get out that this
4 would be an educational process that will make them take
5 note of this day and in conjunction with what the teachers
6 teach, these young people would get out and celebrate that
7 day as they do on certain other holidays.

8 MR. HINTON: Now, you say fully established
9 holiday -- if I understand the legislation, it is making
10 that day a non-structural day for school kids, and I am just
11 wondering if their mentality would see it as a non-
12 structural day as they have been accustomed to, as opposed
13 to actually a day commemorating Dr. Martin Luther King.

14 SENATOR HOLLIDAY: Yes, sir. That is the problem
15 in a non-instructional day.

16 If it were worded differently, and it were
17 introduced in a different fashion, I would have much more
18 readily accepted, because I believe in the day and all that
19 Martin Luther Junior King stood for.

20 I think that this is the sheepish way to go about
21 getting it, although once it is established we will have
22 achieved the same goal that we have always had, so sometimes
23 to run a legislature you do things that, you know, politics
24 and everything, to get things done.

25 So there probably has been some strategy put into

1 that. I am sure that the good faith of those that are
2 working for it, that is what their intending.

3 MR. HINTON: To the question, and I listened
4 carefully to what you said the first time, you indicated
5 that if it got to the floor, it is likely to pass.

6 What is the chances of it getting to the floor?

7 SENATOR HOLLIDAY: I think, depending upon the
8 leadership of the education committee. I would say the
9 chances are fairly good. I don't know that this position of
10 chairperson with respect to that, but I would say that the
11 composition to education it is fairly susceptible to
12 accepting the bill as it is passing on the floor.

13 Of course, there won't be anyone, I don't believe,
14 that will vote against it once it makes it. I hope not.

15 Of course, you know, in the committee is where
16 they tear them up.

17 MR. HINTON: Right. The other question I have:
18 To West Virginia University's credit, they have classes
19 canceled on Martin King's birthday.

20 I am aware that Fairmont State College, for
21 example, is in session.

22 Will your bill include all institutions of higher
23 education?

24 SENATOR HOLLIDAY: I believe that this pertains to
25 public schools.

1 MR. HINTON: That is what I thought. I just read
2 it very quickly, and for that reason you might put this into
3 consideration, you know.

4 The fact that West Virginia University is closed
5 for Martin King's birthday and Fairmont State, 20 miles up
6 the road is having classes, it seems that it creates a --

7 SENATOR HOLLIDAY: We have a law that designates
8 that higher education institutions would also observe it,
9 but it may be, again, a matter of strategy that we would
10 rather wait on because if we amend a bill --

11 MR. HINTON: Our Washington Institution is closed
12 that day.

13 SENATOR HOLLIDAY: Right, and if we amend the bill
14 in anyway we will have to go back over to the other house
15 and it stands a chance of having to go in conference.

16 MR. HINTON: You know what you are doing, and the
17 words that Senator Jackson said about you earlier, I trust
18 your judgement.

19 SENATOR HOLLIDAY: Thank you. I think his words
20 were kind. I appreciate it.

21 MS. POPS: Are there anymore -- Carole?

22 MS. BOSTER: Yes, I have a question of Ms. Carter.

23 I have heard this morning from Governor Caperton
24 and also some other remarks about hopes of increased funding
25 for the West Virginia Human Rights Commission. I am

1 certainly hoping that that is true.

2 Can you tell me, other than the position that you
3 just discussed, of I believe a compliance attorney, is there
4 an increase for the Commission in the F Y 89 - 90 budget?

5 MS. CARTER: Yes, the Governor has recommended an
6 increase in the F Y 89 - 90 budget.

7 I have had hearings before the Senate Finance Sub-
8 Committee, and the House Finance Sub-Committee, and those
9 hearings went along very well, so I feel very confident that
10 the recommendation made by the Governor in the Executive
11 Budget Book, as well as the recommendation for supplemental
12 appropriation will go through.

13 MS. BOSTER: Can you tell us the amount of that
14 recommendation and increase?

15 MS. CARTER: The recommendation -- Let's see if I
16 can recall the figure exactly -- for the State's share is
17 \$631,900 -- something like that. I am not sure of the last
18 dollar amounts, but it is six hundred thirty-one thousand
19 nine hundred and some-odd dollars.

20 Last year the agency was approved on the State's
21 share at five hundred and thirty-one thousand and some-odd
22 dollars.

23 I think that is a substantial increase in these
24 days and times with the State's finances being what they
25 are.

1 The agency has also been recommended for
2 supplemental appropriation of -- in round figures, \$75,000,
3 so I am pleased with both of those.

4 MS. BOSTER: That is good to hear.

5 MS. POPS: I would like to thank all our
6 presenters at this time.

7 We are going to move right into our next session.
8 We don't have a break until after the next session, but I
9 did want to pass out programs. Do we have extra programs?

10 If you will raise your hand if you don't -- Did
11 we pass them out at all?

12 If you will raise your hand if you need a program
13 referring to our schedule for this afternoon.

14 Can we have our panelists for the next panel in
15 the first three seats over here, please?

16 With our second panel now, is there any problems
17 hearing? Can you hear me?

18 Bernard, does the sound come through okay?

19 MR. GOTTLIEB: Yes.

20 MS. POPS: If anyone has any problems hearing at
21 any time when the speakers are speaking, please just raise
22 your hand so you don't miss what is being said.

23 We are going to try to stay up here so we don't
24 have the bobbing up and down going on.

25 We will go ahead and start. I assume that

1 everybody has a program now?

2 This second panel is on the at-large versus single
3 member district system of electing state delegates.

4 Our first speaker, who won't be able to stay for
5 the question and answer period, is Floyd Fullen. He is an
6 attorney and a former state delegate. He is giving the
7 background briefing on the at-large versus single member
8 district system, which is about the same as our title.

9 Floyd, would you like to get started?

10 MR. FULLEN: Yes. It is Mr. Overington who can't
11 stay, so what he wanted to do was he wanted to give his, and
12 then I can do the background after he does that.

13 I think -- I have still got the same information
14 on it.

15 MS. POPS: Okay, Mr. Overington, we are going to
16 start with you.

17 John Overington is a member of the House of
18 Delegates, Constitutional Revision Committee, and he is
19 speaking on the single member district system.

20 MR. OVERINGTON: Yes. I appreciate your allowing
21 me to speak first. We are in the middle of an education
22 committee meeting, in which we are taking up some of the
23 Governor's education proposals, so I need to return to that
24 as quickly as possible.

25 Constitutional revision over the last several

1 years has dealt with single member districts. My colleague
2 over to my left at one time had introduced legislation and I
3 had done it as well.

4 That there are several reasons for it, but one of
5 those, I feel, would be that it would allow black voters a
6 greater opportunity to participate in the legislative
7 process.

8 When you lump two, or three, or five, or twelve
9 district together, you dilute the influence of any
10 individual member and you make it harder for them to win an
11 election.

12 In the State of West Virginia we have 14 single
13 delegate districts; I am from one. We have 28 double
14 delegate districts, and we have 14 double delegate districts
15 where we have 28 serving from those districts. We have 12
16 districts that have three or more delegates in them.

17 A total of 58 delegates in the State of West
18 Virginia come from districts that are three or more. In
19 Kanawha, we have a total of 12 members at large.

20 I feel that dilutes the influence and impact of
21 any individual candidate in any individual race.

22 I talked to some people who have dealt with
23 elections and demographics and I feel that, for example, in
24 Kanawha County, where you may have a five percent black
25 population, that there are areas that if the County was

1 divided into single delegate districts, you would have 20 or
2 more percent that would be black.

3 For example, the first district in Kanawha County,
4 South of the river; including Montgomery, it would include
5 Paint Creek, Rand, Chesapeake; is an area that I feel would
6 be 20 percent or more black. I feel that that would give
7 black voters a greater chance to win a seat in the
8 legislature.

9 Another district is district 5, east of the Elk
10 River. That, I think, would be approximately 20 to 25
11 percent.

12 We have no parts of the state where 50 percent of
13 more of the voters would comprise -- would be black that
14 would make up a single delegate district. In the total
15 State we have maybe three percent of the population that is
16 black.

17 By having single delegate districts, it will give
18 blacks a greater chance of winning seats in the legislature.
19 We currently have one member that is black.

20 Delegate Ernie Moore is from the southern part of
21 the state. There was an article in the paper recently, and
22 I would like to quote from that article.

23 "There are black issues in West Virginia, although
24 some of these issues might be considered economic issues",
25 Moore said, "But we should have more of a voice."

1 He may not be running after this next election.
2 When I talked to him is sounded like he has put a number of
3 years and he may be ready to retire. I feel that it is
4 important to have a black to advocate black issues; issues
5 of importance to the black community.

6 We are under-represented in the legislature by
7 blacks according the State population. That is why I have
8 been a strong advocate of having single delegate districts
9 as a way to open up the field.

10 It is not going to guarantee any candidate of any
11 color is going to win, but it is going to make it easier for
12 a black candidate to win, it is going to be a more level
13 playing field, and so, that is why I have been a strong
14 advocate of single delegate districts.

15 Thank you.

16 MS. POPS: Thank you.

17 Since I don't think we are going to run over on
18 this panel because our third speaker has somebody who is
19 going to speak for him, Miriam Fields, who tells me he only
20 has a few minutes prepared.

21 So, if there is anyone from the State Advisory
22 Committee who would like to ask a question now, I think it
23 would be okay.

24 If any one from the audience wants to ask a
25 question of Mr. Overington before he has to leave, if you

1 will send that, again, to Ki-Taek Chun.

2 Greg?

3 MR. HINTON: Mr. Overington, I agree with what you
4 are saying as far as the single districts. I would like to
5 enhance the opportunity of black participation,
6 representation in the State Legislature.

7 At the same time I can see how, if that were
8 successful, it all of having more blacks elected to the
9 legislature, it seems to me, and I am not sure you will
10 agree, that it would also encourage the existing housing
11 patterns of housing discrimination that now permeates our
12 State of West Virginia.

13 MR. OVERINGTON: When I proposed single delegate
14 districts I do it with the idea that some district could be
15 carved out that might have a greater percentage of blacks
16 than doing it on a random basis.

17 MR. HINTON: I understand what you are saying, and
18 the reason why you could carve those out, they have now
19 arrived at that position where they are as a result largely
20 because of discrimination as it relates to housing,
21 employment, and other kinds of things..

22 Otherwise, we wouldn't have black communities if
23 we had had a totally equal society in West Virginia.

24 And if we begin to carve those out, then perhaps
25 we would not be encouraging the blacks to leave those

1 communities -- I mean to stay where they are and perhaps it
2 will encourage the kind of discrimination that occurs in the
3 community firstly.

4 MR. OVERINGTON: My response to that would be:
5 Looking at in a positive way, you might be able to use that
6 if that pattern is being encouraged. You might be able to
7 use that pattern to elect black representatives so that the
8 root cause of the type of encouragement of black
9 communities, being focused in one area would be discouraged,
10 so that you could use that in a positive way to be in a
11 leadership role in the Capital to make sure that there are
12 not policies that discriminate in any manner.

13 MR. HINTON: I understand what you are saying but
14 basically, with all there is involved; is that we ought not
15 discriminate, but it goes on every day, sometimes
16 consciously or unconsciously.

17 But it seems to me it is going to take a white
18 majority that is going to champion those kinds of causes.

19 If we go back to women's suffering, it was men who
20 gave women the right to vote. There was not a woman who
21 voted to give that right to women to vote.

22 I think that you understand that we have got to
23 have white folks voting to eliminate certain kind of things.

24 Perhaps -- I am not opposed at all to the idea,
25 I'm just concerned how it may further encourage a bad

1 pattern of discrimination as has been existing since the
2 State was freed in 1863.

3 MR. OVERINGTON: I would hope that it would not
4 encourage, but it would provide you a tool by electing more
5 blacks to have spokespersons to make sure that it doesn't
6 occur. But, I can see exactly what you are saying.

7 MR. HINTON: You just said something there about
8 "spokesperson" and we have got to come to the realization
9 that -- it is much like the community was happening -- Every
10 time a local city will hire its first black policeman; and
11 you can talk to anybody who has been the first black
12 policeman, or the first county deputy, if and when there is
13 a problem in the black community, he or she is sent there.

14 We begin to realize that problems that black
15 people have are "people problems", and white delegates and
16 white Senators need to be addressed with those issues the
17 same as any black person may or may not.

18 MR. OVERINGTON: Exactly. I would agree, but by
19 saying that having a black spokesperson, the black person
20 that may be more sensitive and more aware of some of the
21 issues than zeroing in specifically on those issues where
22 white Delegates and Senators may not be focusing quite as
23 narrowly on those issues.

24 MR. HINTON: Yes, but would you not, though, if
25 you had the black organizations, you might rely on those

1 folks for the racial issues and be aware of other concerns.
2 That's the danger.

3 MR. OVERINGTON: Certainly.

4 MS. POPS: Is there anyone else from the Committee
5 who would like to ask a question or make a statement?

6 MR. HINTON: Would you mind making a copy of the
7 Article for us for us to make a part of our record?

8 I think that is the part that I am looking for.
9 It probably came out about a month ago.

10 MR. OVERINGTON: The one regarding the delegate
11 earning more? Sure, I would be glad to. A legislature
12 calls for involvement in this article?

13 MR. HINTON: I would like to have one mailed to
14 our National office.

15 MR. OVERINGTON: Certainly, I would be glad to
16 leave that.

17 MR. HINTON: But I agree with what you are saying;
18 we need -- You know, they have only one delegate in the
19 whole State of West Virginia. It is really --

20 MR. OVERINGTON: I would hope that you and black
21 groups would help champion that cause so that when it comes
22 up in the legislature as it did two weeks ago we will have
23 enough to have the issue win.

24 We lost two weeks ago on an 11 to 14 vote. So we
25 just needed two people to switch. We could have had that as

1 a Constitutional Amendment to mandate single delegate
2 districts throughout the State of West Virginia.

3 MR. HINTON: Well, there are some of the people
4 who are now serving legislature who are here because of the
5 at-large system. They know they would lose with a single
6 district system.

7 I know where I -- I am from Marion County, and you
8 know the top four vote getters are not always elected. One
9 of the most come from Taylor County. There are some who
10 list themselves at a Fairmont address; however the rest of
11 them is in Taylor County.

12 Because of it they get a lot of votes and they end
13 up winning, when in fact, that's how the system works. So
14 you may have some opposition there, perhaps.

15 MR. OVERINGTON: In addition to the racial aspects
16 by opening the system up to single delegate districts, I
17 think it makes you more responsive when you have one
18 constituency, rather than a group of 12 districts all lumped
19 together where you can shift the blame to somebody else.

20 One of the other things that came up that is not a
21 hundred percent related to this is that the cost of
22 elections. It could be an issue that blacks may not be able
23 to run for multi-districts.

24 When you have 12 people running from Kanawha
25 County, you are talking about an election campaign budget

1 that is going to be much higher than say, where I am from in
2 a single delegate district, so I think it would open up the
3 opportunities for low income people.

4 You would not have to be quite as rich to be able
5 to win a seat, by having a single delegate district.

6 MR. HINTON: There are some districts -- there are
7 some that don't have any black residents whatsoever in West
8 Virginia. I am sure you can pick a few of them readily. It
9 may be because of those areas where some folks might get
10 elected, you know, with an at-large system who may not have
11 that ability.

12 I am not sure, you may want to perhaps look at
13 your bill. Perhaps -- I don't know whether we can have a
14 two prong system in West Virginia, but it seems to me that
15 in those divisions where no black persons whatsoever; but
16 yet they may not have the ability to concede in further
17 elections.

18 That may be somewhere you might want to consider
19 trying to appease those folks, because you are really only
20 talking about maybe 12 counties out of the 55, that perhaps,
21 may have the ability to let black representation if
22 legislation were passed. The other 43 counties, you know,
23 is not an issue.

24 MR. OVERINGTON: This would just, I feel, make it
25 easier. It would be a more level playing field. It is not

1 going to assure that blacks would win, but it would just
2 give them a greater opportunity.

3 MS. POPE: Is there anyone else who --

4 MR. BINKLEY: I am not as familiar with the State
5 of West Virginia as I am Virginia, but related to at-large
6 districts, the ACLU has filed several suits, I think
7 something like 17 in the State of Virginia, and at the
8 present time, the State of Virginia doesn't even go to court
9 anymore; they just work out a negotiation and decide single
10 member districts.

11 I wonder if there are many lawsuits along this
12 line in the State of West Virginia?

13 MR. OVERINGTON: There have been some that have
14 been threatened and I am not aware of any that actually have
15 occurred, but I think some have been threatened, and that in
16 itself has led to single delegate districts or breaking up
17 some of the larger ones.

18 There is less of a legal basis just because our
19 black population is smaller. If we could -- Actually, in
20 the South, I think that we would have a much greater legal
21 basis if we could show that you've got five districts; one
22 of them is 80 percent black and the others are generally
23 white and those are all lumped together to make sure that
24 you would have five white delegates, five white
25 representatives, rather than the normal progression of four

1 and one.

2 I guess that is the basis for lawsuits and single
3 delegate districts being mandated in southern states.

4 MR. HINTON: Have you done any demographics,
5 particularly in areas where black candidates ran a loss?

6 MR. OVERINGTON: No, I haven't done that. That
7 would be an excellent study to do.

8 And also, I have had trouble finding specific
9 demographics by race according to different delegate
10 districts. That information is not available. In some
11 cases you can find it by counties, but county and delegate
12 districts often don't match up.

13 MS. POPS: Is there anyone else from our State
14 Advisory Committee, and do we have any questions at this
15 time from the floor?

16 FORMER DELEGATE: When I was in the House of
17 Delegates, the apportionment bill came forward. We have
18 four delegates in Fayette County. There is such a thing as
19 one man, one vote principle. That is what I believed in,
20 whether you are a woman or a man, that the urban areas where
21 there are more people, they should be represented and my
22 friend, Delegate Overington, speaks of a single district.
23 He speaks of Montgomery.

24 I could say very well that you would have to be in
25 Fayette County and you have to be in Kanawha County. I

1 think all of us would agree that more blacks should be
2 elected, they should be in state office. I don't think
3 there is any question about it.

4 But, I think that to approach it this way goes
5 contrary, and I don't take former Delegate Fullen's
6 ammunition today, I am sure he is going to be saying some of
7 these things, but I voted that Fayette County would have
8 three delegates. People said you're finished in politics.

9 I thought there was more to the fact that every
10 person's vote counted. Then going out here, some member of
11 the Supreme Court said some beans or some corn or something
12 like that voted in.

13 That is not what we need. We need people to vote.
14 So, I wonder -- Our speaker did well with percentages --
15 kept going up about black people.

16 Is this your reason to give black people elective
17 jobs, or are you truly interested in apportioning so that
18 farm blocks and counties by themselves will have the
19 representation in the State legislature?

20 MR. OVERINGTON: Okay, to answer that, there are
21 other reasons as well. I feel that there would be other
22 benefits by having single delegate districts, including, for
23 example, where the cost -- as I mentioned earlier -- the
24 cost of elections going up so high, if you have a more
25 manageable district -- the average delegate district has

1 about 20,000 people in it, and it is easier to establish a
2 relationship, a rapport, if you get to know those 20,000
3 people that it is in Kanawha County where you have got
4 200,000 people.

5 So I think there would be other benefits as well.
6 You would be able to get to know your people better, you
7 would have less expensive races. It may be that some groups
8 would benefit. I'm not sure of any farm block, but it may
9 be that some groups would benefit, but I think the public
10 would benefit by having stronger voices, stronger
11 representatives in those different interests.

12 MS. POPS: I think what I am going to do now is
13 allow Floyd Fullen to speak. I think you have about eight
14 minutes to hear what he has to say.

15 Is that okay? We are not to three o'clock, yet.

16 Floyd Fullen is an attorney at law and a former
17 state delegate and I already announced his topic.

18 MR. FLOYD FULLEN: What my task was today is to
19 lay some background for the information. We are sort of
20 doing it backwards, but I still think that what I am going
21 to do is go ahead and give a background and really not do
22 the pro's and con's, and then if during the questioning if
23 the pro's and con's come up since Mr. Overington has to
24 leave, I can do some of his side or the other. I think it
25 will work out fine.

1 This part of the seminar, as I said, is to do this
2 background. What we are talking about are electing
3 delegates from specific areas. And that there would not be
4 anymore at-large elections such as the one in Kanawha County
5 where there is 12 elected on one ballot.

6 Before we get into the state level, you should
7 know that in 1842, almost 150 years ago, it was deemed that
8 Congressmen had to be elected from single delegate
9 districts. So that has been a federal law for almost 150
10 years.

11 I think any discussion of this idea needs to spend
12 a little bit of time on the roots of our legislature; how we
13 actually got to where we are.

14 I think if you take the State of West Virginia,
15 and the State of Massachusetts, for instance, and compare
16 the way that the local control, the local government has
17 developed, it has a lot to do with the way our legislature
18 is.

19 One of the really important things that made this
20 different was, from my viewpoint, is that the Governor of
21 Virginia was a paid Governor, and the Governor of
22 Massachusetts was not paid by the Crown of England. So,
23 what happened was the Virginia governor didn't have to pay
24 much attention to local issues or local people, and
25 therefore, he established a House of Burgess where they had

1 the meetings and really didn't have to cater much to local;
2 whereas, in Massachusetts, he had to give the local people a
3 lot of authority and a lot of representation so that they
4 could raise money to pay his salary.

5 Even today I think that is still relevant in the
6 approach to how the legislatures are set up.

7 As Mr. Overington said, "The black population of
8 West Virginia is around three or four percent."

9 We only have a very small Spanish speaking, or
10 Spanish surname population in the state.

11 These are the forces that normally drive this
12 activity of single delegate districts as the gentleman
13 mentioned from Virginia. That is usually what makes this
14 happen.

15 So, I believe what the issue in West Virginia
16 really is, it is an economic human rights issue; a more
17 general issue than just civil rights in that context.

18 I think that when you look at the case law and the
19 way the State is set up, you will see how this is more human
20 rights issue, rather than a civil rights issue per se.

21 A typical civil rights issue would be like, in
22 Arkansas, where a county there had 42 percent black, and had
23 white legislatures.

24 The Supreme Court of Arkansas mandated that they
25 have two single delegate districts, which were created when

1 a black person was elected. They appealed that to the
2 Supreme Court of the United States, and the single delegate
3 district was upheld in that situation. So, therefore, he
4 was able to keep his office.

5 For instance, in Harrison County, where I am from,
6 we have about 70,000 population, we have four delegates and
7 they are all selected at-large.

8 In most states, there would be four different
9 districts that would be carved out of the county; some
10 states would do it as Virginia has done, and I may stand
11 corrected, but Virginia has taken a system where if they
12 have a real urban area, they may have one or two people run
13 at-large in this urban area, and then the rest of the county
14 would be divided up in single delegate districts.

15 So, it is possible that you could still have a
16 little bit of a combination.

17 In 1988, two delegates from Tucker County filed a
18 case with our Supreme Court asking about trying to get the
19 Redistricting Act of 1982 declared unconstitutional because
20 Tucker County, which has 8,675, was attached to Preston
21 County which has 30,460, and with this district and
22 population, it made it just practically impossible for
23 someone in Tucker County to be elected, but the Court
24 refused to hear that. They turned that case down.

25 There was a New Jersey case called Karcher versus

1 Daggett in which Justice Stevens indicated that the dilution
2 of the voting strength of a political party may be just as
3 unconstitutional as the dilution of the strength of a racial
4 block.

5 He went on to explain how that you could have
6 something that looks objectively neutral, that has the right
7 percentages, the one man, one vote concept, and all those
8 things, but still not be constitutional.

9 The most famous case recently was an Indiana case
10 called Davis versus Bandemer, and it tested the
11 redistricting of a whole state.

12 What they did was they divided the state up into
13 50 single member districts for the Senate, they had the
14 lower house divided up into seven triple member, nine double
15 member, and 61 single member districts for a total of 100;
16 the same number we have.

17 The question in that was whether or not it was
18 unconstitutional to dilute the vote on a statewide political
19 gerrymandering for a lack of proportional representation
20 that would -- Whether that is an issue or not -- proports to
21 representation.

22 They said that the thing that really has to be
23 decided is if you have a concentrated group of people who
24 actually support the candidate and they are continually
25 frustrated in their attempts to elect that person, that can

1 be ruled unconstitutional.

2 In Kanawha County, which has 12 delegates, one
3 example would give you some idea about what happens in large
4 election.

5 In 1980, there were 35,000 people who voted; 44.5
6 percent supported the leading vote getter in the democrat
7 primary. The lowest vote getter had 18 percent of the
8 people vote for them, 18 percent, and both of those people
9 went on to be elected and serve in the legislature.

10 As Mr. Hinton said, that may be an argument for
11 not having single delegate districts, you know, because of
12 the fact that maybe a small group can get somebody elected,
13 but the overall thrust has been to make sure that the people
14 are represented proportionately.

15 This is one area of the single delegate district
16 that has a two-sided sword, more or less.

17 Another case was the Thornburg case of Attorney
18 General of North Carolina versus Gingles. What they were
19 trying to say was that multi-member delegate districts just
20 violated the U.S. Constitution without having to prove
21 anything. That was turned down, so that is not true that
22 you have to show an actual effect from an historic number of
23 elections. You just can't view one election and decide,
24 yes, that is unconstitutional, it is discriminatory. Their
25 effect is the main issue.

1 In West Virginia -- There are a few cases in West
2 Virginia that are interesting, and before the one-man, one-
3 vote law, our decision of the Supreme Court was passed in
4 1964 -- in 1962. Every county in West Virginia had one
5 vote. Every county had a delegate regardless of what size
6 it was and then as the counties got larger they got extra
7 votes.

8 In 1900 every county in West Virginia had one vote
9 and Kanawha County had six votes. You could still do that
10 if you wanted to by taking what the smallest county's
11 population is and then changing the number of delegates in
12 the house of delegates so that would be a unit.

13 I mean, you could say, like right now with a
14 hundred people, as Mr. Overington said, there is about two -
15 - about -- there is a little bit less than 2 million people,
16 the people that he talked to was around 1.7 or 1.8, so there
17 is like 17,000 to 20,000 people that a delegate would
18 represent.

19 You could make a system where 8,000 people is the
20 number, and if you did that you might have a house of
21 delegates that might have 160 members. That is another way
22 of going about getting the correct balance.

23 But we have sort of stabilized that at 100 and it
24 has been that for quite a while.

25 There was another state decision that said that

1 the house of delegates has the ultimate and the -- It's
2 their responsibility to decide how many delegates there are.
3 They can't change the number without having to change the
4 Constitution, so that is a case of interest if you were
5 going to make it a larger number.

6 One of the other things that you have to look at,
7 and it is a little bit difficult to do it with just
8 listening without a map or something, but there is this
9 hodge-podge of delegate districts as Mr. Overington said.
10 Some have one, some have two, some have three, and the
11 highest number has 12.

12 Where you have a particular unfairness is where
13 you have two counties that are attached together and you
14 have to run in both counties, but still somebody has to win
15 from each county. So, what you have is a person -- each
16 person having to go to the other county to campaign and then
17 hope they get enough votes in the other county so that they
18 can win. That causes a lot of problems.

19 The other problem that we have is a lot of times
20 they will just attach an area of a county to a county and
21 then you might only have four, five, maybe even six
22 precincts at a different county and the chances of that
23 person winning a delegate seat is just very remote. So that
24 has been a problem.

25 If I were to make a suggestion about what I think

1 would be a fair way to do it what I would hope to see would
2 be to have 99 delegates, 33 senators; have three delegate
3 districts coexist inside the senate district so that that
4 senator would have three people that he works with, or she
5 works with. Because right now there is no rhyme or reason.
6 There is some senators that might have two or three delegate
7 district that overlap. There is just no continuity in how
8 this group of people represent people.

9 If I had a choice, that would be a recommendation.

10 For the -- just in closing -- Mr. Overington went
11 over the votes; how it had been, and each time we had had
12 more votes to try to get out of the committee.

13 One of the things I thought was going to make it
14 possible was that there was a lot of interest in initiative
15 and referendum at one point. And all of a sudden initiative
16 and referendum became a dirty word because the right-to-work
17 people decided they wanted to use that as a vehicle to get
18 right-to-work passed.

19 So, all of a sudden the main tool that we had to
20 get this to happen, nobody is willing to support it anymore,
21 so initiative and referendum seem to be dead at this time.

22 Whether or not we go about this as a
23 Constitutional amendment, or court order, or an act of the
24 legislature, or not at all, really depends a lot on what we
25 do and how we try to encourage people to approach this

1 problem.

2 Thank you.

3 MS. POPS: I think we will on with our third
4 speaker because I know Mr. Hopkins has a question of Mr.
5 Overington, but he said he couldn't stay, so we will take
6 the question at the end of that set, okay, Mr. Hopkins?

7 Miriam Fields is representing William Wooten, the
8 Vice Chairman House of Delegates, Constitutional Revision
9 Committee.

10 Can you explain just a little bit about your
11 position, then?

12 MR. FIELDS: I work as more or less staff for
13 Delegate Wooten. I serve as his intern. I am a student at
14 Marshall University.

15 Delegate Wooten had a committee meeting this
16 afternoon, so he was unable to attend. He had to be there,
17 and he expresses his regrets and he has asked me to speak in
18 his place.

19 I am not as prepared as the former two gentlemen,
20 but I want to express a little bit of the concerns over the
21 keeping the multi-member district.

22 From what I have gathered through sitting in
23 committee hearing on the subject when it came up for vote,
24 it was not a civil rights issue. It was a human rights
25 issue, in which the representation of one man per one vote

1 was very important.

2 They felt that if the delegates were elected on a
3 single member district basis, they would not -- they would
4 get a parochialism.

5 For example, in Cabell County, if you have like a
6 small district outside of town where -- or a large district
7 outside of town in a rural area, of which West Virginia is
8 mostly rural, and in town you will have delegates -- many
9 delegate districts and you will have many delegates
10 representing that area rather than being responsible to the
11 entire county as a whole, you will not have representation
12 for those who do not live in town.

13 That was somewhat their basis for that view on
14 parochialism. They feel that as a team, for example, in the
15 southern part of this state, they have several delegates
16 from a district, in Raleigh County, in Summers County, they
17 all work together as a team on issues like the Turnpike
18 Commission, something like that.

19 They have a lot better base working together as a
20 block than they would working in one single district for
21 their own benefit and the benefit of their own district.

22 One vote does not carry as much weight as -- in
23 Kanawha County -- 12 votes, because is responsible to the
24 entire county, and they have a sense of community.

25 When you are responsible to this district, be it a

1 certain race or something, you are responsible to every
2 district as a whole and you must be successful in all those
3 and represent them well or it is not fair.

4 Senator Holliday had stole a little bit of my
5 thunder with the one-man, one-vote theory and the fact that
6 every vote counts and everybody is better represented with
7 the system as it is rather than the single member district.

8 That is about what I had to speak on. Does
9 anybody have any questions?

10 MS. POPS: Thank you. We will start with
11 questions from the State Advisory Committee and then we will
12 go to the floor and I won't forget you, Mr. Hawkins.

13 From the Committee?

14 MR. EASTERN: Let me ask you a question. It is an
15 important subject.

16 How much real interest, beginning about now, how
17 much real interest is there in the members of the
18 legislature; both in the senate and the house to go one way
19 or the other or whether they will change?

20 MR. FULLEN: Well, I think the truth is not very
21 much interest, not very much. And that is what has been our
22 problem is because the way the system is it's been the
23 system, it's been in existence since day one, since the
24 house of Burgess in the good old days.

25 And so what happened is that the reason that I

1 tried to get a Constitutional amendment passed for the last
2 few years is so that the people that were voting on the
3 Constitutional amendment really would be separated quite a
4 bit from the end result which would be in 1992, because of
5 the turn over.

6 What I have been trying to do is get this
7 established as a mandate because I think the chances of the
8 legislature really doing this as a body in 1992, and knowing
9 that a lot of the people that is voting on it are going to
10 lose their seats.

11 It is not very likely to happen, you know, and I
12 think that is the problem.

13 MR. EASTERN: Senator Holliday, I will put you on
14 a spot. You can move off of it if you want to, do you any
15 additional comment in connection with that?

16 I'm trying to be a realist of what I think might
17 take place and what might not take place.

18 SENATOR HOLLIDAY: In 1965 when I voted like I
19 did, I believed that. I believe it today, and I was re-
20 elected with _____ amount of votes that anyone on the
21 ticket, so I think when you stand for what's right, and I'm
22 sure that there are many legislators who do that but I would
23 agree with Delegate Fullen that there is not the interest
24 that people should have in this issue.

25 MR. FULLEN: We don't have the civil rights issues

1 to push the problem, because in Harrison County, no matter
2 how you do a district, I don't think there is anyway a black
3 delegate could get elected if he was just running as a black
4 delegate.

5 I mean, if he was a person that was just in the
6 community and was active and just like everybody else -- you
7 know, was running just as a delegate, you know, he would
8 have just as good a chance to win, or she would, as anybody,
9 but I mean, if somebody was running as a civil rights kind
10 of a candidate where that's what they spoke about and that
11 was their main issue, I don't think that there is anyway
12 that you could draw a district in Harrison County that that
13 kind of a candidate could win on that issue.

14 I'm not saying they wouldn't win totally, but that
15 has been our big problem; the people don't recognize this as
16 being a human rights economic issue where -- I think the
17 problem is, you look at Clarksburg and you look at
18 Charleston, Charleston, Kanawha County has 12 delegates.

19 You look back through who has been in the House of
20 Delegates from Kanawha County, there has been as many as 12
21 people from Charleston in the House of Delegates; there is
22 not anybody from Clendenin, there wouldn't be anybody from
23 the outlying parts of the county. They would all be from
24 the city.

25 The only way that we are going to get that broken

1 up is to have single delegate districts and it is going to
2 take foresight of people to do that.

3 Clarksburg -- Right now there is three delegates
4 from Clarksburg and there is one from Bridgeport, and that
5 is just atypical. If you look at all the -- where all the
6 people are from they are almost all from a major city in
7 that county.

8 MR. FULLEN: I would like to now call upon another
9 rebel who does -- who says and thinks what she wants to.
10 Senator Blatnik, what are your comments on this?

11 SENATOR BLATNIK: I have listened with great
12 interest and I remember the first time I ran, I shared that
13 ticket with the gentleman who was a black dentist in the
14 community.

15 I come from the area of the state that has the
16 highest, I believe, black population. The shame of the
17 state, I guess, is that although that gentleman was a fine
18 gentleman, we have never elected a black, and truthfully, we
19 have very seldom passed the barrier -- do I daresay the word
20 out loud -- we have very seldom gone beyond that boundary.

21 Most of our representation has been of a one-
22 orientation, whether that has been Hancock or Ohio County.

23 I share the dream that one day we will. How we
24 break the barrier, I don't know because I sat in the House
25 of Delegates when we -- the great fantasy -- decided that we

1 were going to reapportion and all the flags of the best of
2 interest came up because the counties were set aside and cut
3 apart to accomodate those that had the power of the vote.

4 So the reality in serving in the legislature says
5 to me that those that turf and those with flags, in those
6 turfs maintain control.

7 The dream I have is that one day I will look upon
8 my self as the first woman coming from that area who was
9 elected. There is two women that preceded me who were
10 appointed.

11 I was the first elected female from the democratic
12 persuasion and from the "unwashed" across the railroad track
13 population. I got the same kind of response as I ran for
14 the Senate.

15 In many areas of the particular community where I
16 live, it was "how dare I" because I come from a different
17 orientation with the dreams of Martin Luther's still very
18 strong.

19 How I come up with a solution for you I don't know
20 but yet I understand the reality of politics and that there
21 is very little interest in changing what is now.

22 In my area, in the representation of the three
23 counties, but yet in the Ohio County area, that even was cut
24 in that reapportionment where strangely or not so strangely,
25 all the working people and the democrats were cut out of the

1 district and they now have a second set of authority
2 districts.

3 I have no solutions for you, I only have a lot of
4 questions --

5 MS. POPS: Floyd, after you speak, I would like to
6 recognize Mr. Hawkins, who is waiting patiently and then we
7 have one more person that is going to talk.

8 MR. FULLEN: I just want to ask Ms. Blatnik a
9 question. You were here in 1982 when they did --

10 MS. BLATNIK: Yes.

11 MR. FULLEN: Is it true that Congressman Staggers
12 said the he wanted single delegate districts in the eastern
13 panhandle and you all did it for him?

14 MS. BLATNIK: Yes.

15 MR. FULLEN: That did happen, right?

16 MS. BLATNIK: It is my perception that that is the
17 way it happened.

18 MR. FULLEN: That is what I understood, also,
19 because that is the only congressional district that really
20 made an effort to do that. It is not totally, because
21 Morgantown is also in his district, but the eastern
22 panhandle?

23 MS. BLATNIK: We are not in his district you must
24 remember. Our district is here.

25 MR. FULLEN: Morgantown is in his, isn't it?

1 MS. BLATNIK: You know, we are Allen Molohan.

2 MR. FULLEN: I know, but I am just saying, but you
3 understood that Congressman Staggers asked that the eastern
4 handle be made into single delegate districts and that
5 happened, right?

6 MS. BLATNIK: That is my understanding. I stand
7 to be -- You know, I was born with a long eraser, but that
8 is my understanding.

9 MS. POPS: Mr. Hopkins, and then we will turn it
10 back --

11 MR. HAWKINS: Well, I really didn't have a
12 question. I talked to Delegate Overington about a couple of
13 weeks ago and we talked for about 40 minutes and I could see
14 that he had a selfish motive because of the fact that he
15 said if he had to campaign all over the whole county it
16 would cost him more money than just a single district.

17 What he was trying to do, he was trying to get
18 some support; some black support. So I just --

19 MR. FULLEN: I don't think that is fair. He is in
20 a single delegate district. It doesn't affect him at all.

21 MR. HAWKINS: Well, he told me he was a single
22 delegate --

23 MR. FULLEN: He is.

24 MR. HAWKINS: That's what he told me.

25 MR. FULLEN: But he is in a single delegate

1 district. This issue has nothing to do with him.

2 MR. HAWKINS: Well, I'll say this then, I just
3 don't think it will help us because I researched the black
4 population in several counties and you can't get elected
5 with four, two, three, one percent of the population. You
6 can't do it. Not in West Virginia.

7 MS. POPS: Let me turn this back to the
8 Commission. Do we have some more comments from our Advisory
9 Committee?

10 Yes, John?

11 MR. EASTERN: I want to, I guess, make an
12 observation to the -- under the legislature here. Did I
13 hear you say that there are some people who have a concern
14 about the status of how people are elected.

15 For example, one way to put it is that
16 proportional representation, as it is called at times, that
17 the majority of those in the legislature just aren't
18 interested. Is that a fair conclusion to draw, a fair
19 assumption?

20 MR. FULLEN: I think the problem is that we have
21 such a small black population and minority population that
22 it is not an issue. I think that is a more fair way of
23 saying it.

24 And, because it doesn't really matter how you
25 divide it up, you still are going to get the same kind of

1 representation. The people that are protecting the turf
2 where they are elected from just don't want to change the
3 rules.

4 As long as nobody can get the Supreme Court or the
5 West Virginia Supreme Court to say that they are doing
6 something that is unconstitutional, they just don't want to
7 change.

8 I think that is fair to say, and that is the
9 result that I have gotten, you know, when I have tried to do
10 it.

11 MS. POPS: Okay, we have a woman; I didn't take
12 her name. Would you introduce yourself?

13 MS. NOGGY: My name is Susan Noggy, and I am
14 speaking on behalf of the --

15 MR. FULLEN: Spell that for us, please.

16 MS. NOGGY: N-o-g-g-y. I am speaking on behalf of
17 the Rambo Coalition. A concern of theirs is on-sight voter
18 registration. I was wondering if it was implemented what
19 affect it would have on the termination of single member
20 districts and at-large districts?

21 MR. FULLEN: The voter registration, I don't
22 think, would have very much to do with it.

23 I think the more -- We want to try to get as many
24 people to vote as we can so that people do have a chance
25 because there is a low percent of people in some areas that

1 vote.

2 Now, it is mostly younger people that don't vote,
3 but West Virginia as a state has a very high voting
4 percentage nationwide.

5 MS. NOGGY: Do you have a percentage on this on
6 the black community or the other minorities as to how their
7 voting is, if they are being reached to be registered or --

8 MR. FULLEN: In our county, I think it is fair to
9 say that most of our black population are mostly republicans
10 and they have functions that we go to.

11 I know I went to one function that the NAACP
12 sponsored, "Meet Your Candidate", and there were forty some
13 candidates who went and there were three of them came, so I
14 don't think there's -- You know, I don't know why that they
15 are not interested, but they aren't.

16 I think that if we can encourage them to be
17 registered and to vote, that would help. But I know that we
18 had a function and there were forty some of us and there
19 were only three of them that came.

20 MR. HINTON: If I could make a comment, I think
21 once that administration, though, would aid in the election
22 of blacks or people interested, it is my sense; having been
23 involved in politics, that the closer the election draws
24 near the interest is heightened by various interest groups
25 and they have pretty much seen themselves as a kind of

1 outcast of the political process, and at sometime in the
2 eleventh hour they begin to believe the system might work
3 and I think it would be some benefit.

4 I think it would be a great benefit, quite
5 frankly.

6 MS. NOGGY: I wanted to make one comment. I am
7 speaking for the Rambo Coalition because the woman that was
8 going to speak wanted to ask the very same question only she
9 was told that it was not germane to the issue. I just
10 wanted to make that comment.

11 MS. POPS: I would like to respond to that. I'm
12 not sure exactly in what context that was said, but I did
13 get a message that there were some groups who wondered why
14 they weren't included on the program, and it is a very
15 simple answer.

16 We are going to run until 4:30 covering the issues
17 we are covering, and in no way does this keep dialogue from
18 going on because, first of all, there is the ability to, at
19 any time, write the U.S. Commission on Civil Rights any
20 concern. And then we have the entire State Advisory
21 Committee which can be approached by any group.

22 We try to have meetings about every three months
23 and to vary our topics, and so it would be very easy to ask
24 that any issue that anybody is concerned with in our
25 audience, that hasn't been gone over today, be made a focal

1 point for a future meeting.

2 We are running almost the right time. There is a
3 gentleman that is to be recognized.

4 MR. STARKS: My name is Steven Starks. I am the
5 publisher and editor of the West Virginia Beacon Digest, the
6 state's only minority newspaper.

7 I would like to make an observation in that the
8 subject itself that we spent so much time on is really
9 irrelevant to the situation of our state.

10 The figures are so low of the black population
11 that it would be almost, in my observation, to construct a
12 workable solution to this.

13 My recommendation to this is that we should look
14 at attacking the problems that exist and not put so much
15 emphasis on things that will not affect our solution.

16 We should approach this by saying what
17 deficiencies we have in our system now, and why are blacks
18 and other minorities not being elected.

19 I think the legislation that we do have set at
20 this point in most cases are very adequate if they are
21 enforced and legislated upon to give blacks and other
22 minorities the opportunities through their own merits and
23 through example would place more fairness in our elective
24 system.

25 When we constantly have an exclusion of blacks in

1 all segments of West Virginia society, then naturally it is
2 going to flow over into the electoral process.

3 My recommendation is let's look at issues that we
4 already have set in place and enforce this.

5 Many of the legislators receive from me a
6 questionnaire prior to the election pointing to the problems
7 of the Human Rights Commission, Civil Rights for our state,
8 laws set up in place at this point, and I got very
9 sympathetic response back.

10 To this effect, if the statements made by the
11 legislators are indeed more than just pre-election promises,
12 then they recognize a lot of the problems that we have, and
13 that is that too often discrimination, hiring advancement,
14 housing, and other forms of racial unbalance seem to be
15 aqueous when they do go up the ladder to the Human Rights
16 Commission, to the Attorney General's human rights area.

17 When this example is set, then how can we expect
18 the common people and the voters to look at blacks and other
19 minorities for what they can do and not for what they have
20 been through or what they haven't done in the past?

21 I say we should indeed point our direction to the
22 problems that exist and the laws that we have intact now to
23 encourage a practice of fairness in litigating and
24 legislation.

25 Thank you.

1 MS. POPS: Thank you. And now we will come back
2 to our Committee. Howard?

3 MR. KENNEY: I have been sitting and listening and
4 still, at times I get confused every once in a while as to,
5 you know, what one side may be saying to the other, and I
6 think we need to have more discussion and more dialogue
7 about this.

8 I wouldn't write it off as something that would
9 hurt the black community or whatever. I think we need to
10 have more dialogue and this may be a good forum, or either
11 this group later on may later on in the year have another
12 session to just talk about this issue or some other group
13 may want to take it on.

14 I think it is something we need to discuss and
15 look at all of the alternatives and it may be something
16 worthwhile for us to pursue because when Steve talks about,
17 you know, the problem, I may think the problem is the white
18 man out there.

19 We need to get him out of office, okay, and then
20 we start dealing with the problem, so I think we need to
21 kind of pull this in focus a little bit more because I am
22 sure that this may be the first time a lot of people have
23 heard this discussion.

24 So I would recommend that, you know --

25 MS. POPS: Thank you, Howard. I think that is a

1 good conclusion.

2 We are going to have a ten-minute break. We are
3 going to come back at 3:40 and have our panel on bigotry and
4 violence. I know it is getting late but it is really an
5 important panel and I would like to thank our speakers.

6 (Whereupon, a ten minute recess was taken, after
7 which the following proceedings were had.)

8 MR. RUTLEDGE: I thank everybody for coming. We
9 have a work out on our panel, in the fact that a picture is
10 worth a thousand words.

11 We are going to show you a live video from
12 Pocahontas County in West Virginia to show the reason why
13 Sentate Bill 301 was passed two years ago.

14 It was just this week, on the 25th of March in
15 1987, that the former Governor of our State signed the bill
16 as a result of tremendous citizen's pressure.

17 As a result of that pressure Chanel 7, live from
18 Washington, D.C. came down and did an extensive week survey
19 of Pocahontas County and why the national problem of the
20 Neo-Nazi's has come home to roost in West Virginia.

21 This video is a product of the Outcry of Citizens
22 Organization throughout West Virginia that comprised our
23 coalition.

24 We are honored to have many of our members here
25 today as well as throughout the State, but Jerry Dale from

1 Pocahontas County will be the principal speaker following
2 the video to update everybody on what has happened in the
3 two years since this video depicts the farm that got created
4 out in Pocahontas County.

5 During the course of this video, Sheriff will make
6 one interruption to point out particular buildings on the
7 grounds that are currently tax exempt under West Virginia
8 State Law. We will not stop the video but he will point it
9 out.

10 At the conclusion of the video Sheriff Dale will
11 provide an update and of course, be responsive to your
12 questions.

13 Thank you again for the opportunity to share this
14 with you.

15 (Whereupon, a video was played in the Conference
16 Room.)

17 MR. DALE: I would like to talk a little bit about
18 Senate Bill 301, and then kind of finish up with what Dr.
19 Pierce has been doing for the last year or so.

20 MS. POPS: Jerry, I think we are going to
21 reassemble the way we were if that is okay with the
22 Committee?

23 Just because I have to have the nasty rule of
24 being time keeper, let me let Bernard take ten minutes
25 because he was allocated ten minutes and then we can relax

1 and continue with you and Steve Rutledge for the rest of the
2 time if that's okay.

3 MR. GOTTLIEB: I want to thank each of you for
4 having endured a long day.

5 As you look at this television presentation it
6 looks like something that you would see on TV nationally by
7 one of the networks. Unfortunately Sheriff Dale and many of
8 us have been concerned about this situation for many years.

9 In some of our discussions, you sometimes wonder
10 what are you accomplishing; what can you accomplish?

11 All we can say, representing the coalition
12 committee, the Antidefamation League, and other interested
13 leaders; the Attorney General's office, some of the
14 leadership from our legislators, that it was a problem and
15 we should attempt to do something about it.

16 We worked on it for several years and it was
17 exactly two years ago -- and in this room several weeks
18 before that a presentation was made to the Senate Judiciary
19 Committee, and of course, without bringing up bad records,
20 several members of the legislature said that they would
21 never get it out of committee.

22 Fortunately, enough citizens were concerned that
23 it was brought out of the committee. The bill was passed in
24 both the senate and the house, and the Governor later
25 settled and signed the bill.

1 Sheriff Dale is in the position of having to stay
2 on top of it ever since. So, he keeps us informed, that is
3 the Coalition, the Human Rights, the Civil Rights
4 Commission, and many of them are working in that direction.

5 I would like to bring up another subject since it
6 was on the program: We have another problem. Many of us
7 feel that it is even a problem that exists throughout the
8 state. That is vandalism in schools, churches, synagogues,
9 cemeteries, destruction of property.

10 You wonder why don't their parents do something
11 about it if it is youngsters? All of you know that many of
12 the youngsters get into devilment, they destroy property.

13 If they are caught by the law enforcement officers
14 they are reprimanded, call the parents. Unfortunately, the
15 parents are not that concerned, so they might be fined for a
16 misdemeanor. But there is not enough teeth or enforcement
17 to follow through.

18 We are hoping -- not at this session of
19 legislature because I think they have got enough confusion
20 now with only two and one half weeks to go -- of attempting
21 to pass a bill.

22 We have talked to some of the leadership. They
23 are very much interested in this film, but what we are
24 trying to do is to alert those of you that are attending
25 here today of what is taking place, how we have got to be

1 alert and hopefully that we could accomplish something for
2 the betterment of our state, protection of our property,
3 protection of our schools, protection of our place of
4 worship.

5 I fully recognize that as you draw a bill or a
6 suggested bill of legislation, you have got a hundred and
7 one or a hundred and two Monday morning quarterbacks who say
8 why don't they do this and why don't they do that?

9 All we're pledging to those of you is that we will
10 try and formulate a bill with the advice, consent, of the
11 leadership of the Senate and the House and the Attorney
12 General's office, and the Governor's office to possibly
13 accomplish something that will make this state a much better
14 state, a more livable state, and more consideration of their
15 fellow human beings.

16 MS. POPS: Thank you, Howard.

17 Okay, Jerry?

18 MR. DALE: I would like to talk briefly about
19 Senate Bill 301, that was also know as the parimilitary
20 bill.

21 As Steve said, it was signed into law on March 26,
22 1978. This bill prohibits the threat of force to interfere
23 with citizens and the civil rights of West Virginians.

24 It also prohibits any conspiracy to supress, to
25 teach others any techniques to cause property damage, bodily

1 harm, or death.

2 The significance of this law is that it permits
3 law enforcement officials to take action before some type of
4 violence is committed.

5 This group plans to meet with Governor Caperton
6 and his State Police Superintendent in the next month or so
7 and sit down and request that a curriculum in the State
8 Police Academy be addressed; the State Senate Bill 301 and
9 William Pierce's Neo-Nazi groups in West Virginia.

10 Pierce's cosmotheist church in Pocahontas County
11 was once tax exempt. The complete 350 acres, all the
12 residences, the trailers, the outbuildings, and the huge
13 metal building that you saw in the video.

14 Presently, only the large metal building and
15 Pierce's residence is tax exempt.

16 Over the last year and a half Pierce has recruited
17 women to live on the compound. He has been successful in
18 doing that. He has even been successful in one of the women
19 bearing a child as of last December.

20 He has applied for and received an alternative
21 teaching permit whereby he can teach his young people at the
22 compound instead of them being sent to the public school
23 system.

24 Dr. Pierce believes in the mid-1990's there will
25 be a nuclear war in this country that will wipe out about

1 three-fourths of the population.

2 He believes that he and his people, who by that
3 time he will have trained as survivalists, will go
4 underground in the cave network, which is on the property,
5 the 350 acres.

6 They will live there until the atmosphere clears
7 up and he will emerge as territorial governor of eight
8 states.

9 At this point he has learned how to raise rabbits
10 as a fast food source. He has learned how to freeze dry
11 these rabbits. He has also developed a system within the
12 caves where he can have a fresh water supply.

13 If you read the Turner diaries and if you read the
14 Brotherhood of Murder, the books that have been written
15 about William Pierce and the order and the area in nations,
16 you will find that what he is doing in Pocahontas County, in
17 West Virginia, is carrying out the master plan for everything
18 he has written about and done for the last 25 years.

19 In closing, I want to thank you people. As
20 Bernard said, I have been on the front line up there in the
21 mountains and sometimes you feel like you are kind of by
22 yourself. But I look out in the audience and I see people
23 that were right here two years ago fighting in the Capitol,
24 helping us get Senate Bill 301 passed.

25 It wasn't what we wanted but it was better than

1 nothing. It gives us some leverage.

2 Thank you.

3 MS. POPS: Thank you, Jerry.

4 Steve, did you have any comments that you wanted
5 at this time?

6 MR. RUTLEDGE: I open the floor for any questions
7 at this time.

8 MS. POPS: First I have to open it up the Advisory
9 Committee.

10 Can we get you to join us up here?

11 Carole?

12 MS. BOSTER: My question is directed to Sheriff
13 Dale. First of all, I can't help but make the comment and
14 to say how very grateful I am, for West Virginia and as a
15 good citizen, for someone like you in the position of
16 sheriff in Pocohontas County, and that you are, because of
17 where you are and as interested that you are, and I
18 certainly pray to God that you stay safe. What we have seen
19 is very frightening.

20 In reference to Senate Bill 301, is there any
21 provision in that bill or mandatory reporting by law
22 enforcement agencies in the State of West Virginia of these
23 kinds of activities -- and if I may give you an example; my
24 commission in Huntington, I am the Executive Director of the
25 Huntington Human Relations Commission -- and several years

1 ago I sent out information to the West Virginia State Police
2 Department and also to the county sheriff's departments and
3 to our local law enforcement agencies asking that whenever
4 there is a cross burning that it not be put down, or not
5 just categorized as trespassing; that whenever there is a
6 bombing or some kind of terrorist action, that it is just
7 not categorized as destruction of property or vandalism.

8 Until we have that kind of tracking system I think
9 we are not going to impress upon the general public the
10 enormity of the problem and we are not going to have the
11 resources behind it to do that.

12 Can you tell me if there is any provision in
13 Senate Bill 301 for that, and if not, how do you feel about
14 it? Do you think that that is necessary?

15 MR. DALE: The law -- Senate Bill 301 is so broad
16 at this point that you could, technically charge somebody
17 with -- if you could prove conspiracy and intent as it has
18 to do with a cross burning.

19 What we hope to do is meet with the Governor as
20 the State Police Academy trains all city police officers,
21 all state police officers, and all county deputies; and what
22 we hope to do -- We find that there is little being taught
23 in the State Police Academy as it has to do with terrorism,
24 white supremacy groups, ect.

25 As a matter of fact, the State Police Academy in

1 Richmond, Virginia has a large period of its curriculum that
2 is set aside for that. They even have that video tape and
3 they teach that there is a problem and we need to address
4 it.

5 If we can convince the Governor and his State
6 Police Superintendent to make this a part of the curriculum
7 and start understanding what Senate Bill 301 is all about
8 and the potential problem that we have with this group in
9 this state I think we're well on our way.

10 MS. BOSTER: Could you address the question, sir,
11 of whether or not it is at this point requiring a mandatory
12 reporting?

13 MR. RUTLEDGE: I think that the gentleman out
14 there that is well versed as an attorney -- He is shaking
15 his head no -- I think he can properly express himself. He
16 is the son of one of our committee members.

17 RICHARD GOTTLIEB: There is no mandatory reporting
18 requirement as far as --

19 MR. RUTLEDGE: State your name for the record,
20 please, sir.

21 RICHARD GOTTLIEB: My name is Richard Gottlieb.

22 I drafted the bill and there is no mandatory
23 reporting requirement under the bill. There are other model
24 legislations that would require the mandatory reporting of
25 any case crimes such as you outlined, which would be an

1 attack on someone based on their race, religion, et cetera.

2 At that time, we did not propose that because we
3 did not want to submit too many items to the legislature.
4 But I think it is an excellent suggestion and if this
5 committee would want to I would be happy to draft a bill
6 that would -- because I think this has been done in other
7 states.

8 There is a central reporting such as the Human
9 Rights Commissioner, or elsewhere, if there is any incidence
10 of a hate crime throughout the state it would be reported to
11 one central depository.

12 In fact, I think there may even be a federal
13 statute which requires that on a federal level that the FBI
14 oversees. But if this committee or other legislators
15 thought that was something that would make sense in West
16 Virginia, and I agree with you, I think it does make sense,
17 drafting such a bill would not be a problem.

18 Whether the state police and everyone could live
19 up to that, I think in actual -- what Sheriff Dale was
20 suggesting that once they get the training as to what is
21 going on then they will be more sensitive to these incidents
22 and they will be able to make sure that they are reported to
23 whatever central depository is set up.

24 MR. KENNEY: Following up on that, as Sheriff Dale
25 said, it is amazing how long it takes to get a bill passed

1 and after it is passed it is amazing how much ignorance we
2 have of law enforcement officers, or anyone else when a bill
3 is passed.

4 That is the reason why, with the new Governor, and
5 with their organization, that hopefully the later part of
6 April, the first part of May, that a concerted effort would
7 be made by our Commission to work with our Governor, the
8 Superintendent of the State Police, and others.

9 The Human Rights Commission has also said that
10 they would try and follow through at the training academy to
11 familiarize the law enforcement officers of what the law is,
12 what can be done, what they should be on the look out for.

13 Because that is the only way we are going to keep
14 up on top of it, because when each incident happens,
15 everybody thinks, "Well, it's only in our community and
16 we'll push it under the rug and forget about it."

17 What we have got to do is be on the alert. More
18 important you will find a pattern that in certain cities or
19 counties you have got a lot more patterns than the local
20 officials want to admit; therefore, we have got to go on in
21 a state like this.

22 MS. BOSTER: For instance -- if I may follow up
23 with a remark on that -- in the Huntington area there for
24 quite a while there were swastikas and KKK being painting on
25 the concrete abutment of the highways.

1 In contacting the different West Virginia
2 Departments because it was within their jurisdiction, we
3 were told that, for instance, the Department of Highways
4 whenever they see swastikas or KKK painted on some kind of
5 abutment, they go in and they clean up or they paint over it
6 or whatever, and that is never reported anywhere.

7 If there is a group that has moved into an area,
8 they are very deeply entrenched before most people are even
9 aware of it. That is frightening.

10 MR. DALE: To follow up on that; as I said before,
11 there is a whole lot more interest and concern from law
12 enforcement official outside of West Virginia than there are
13 here.

14 MR. HINTON: Why do you think we are not getting
15 the concern here in West Virginia, then?

16 MR. DALE: I'm not real sure.

17 MR. HINTON: It's not in our back yard. I've
18 considered it a problem being black and I'm sure is a person
19 were Jewish he would consider it to, you know, be a problem.

20 WASPS in Pendleton County, do they consider Pierce
21 to be a problem?

22 MR. DALE: The people in Pocahontas County have
23 some of the same attitudes that a lot of people in West
24 Virginia have, you know, as long as you don't tread on me
25 I'm going to leave you alone.

1 That is what Pierce had depended upon where ever
2 he has been. He has kind of moved in and got control of
3 things before anything happened.

4 It was just luck that we found him as soon as we
5 did and found out what they were all about.

6 I think that if you talk to the general person,
7 the average person on the street about William Pierce and
8 the Area in Nations, that they really won't understand where
9 they are coming from and are not concerned about it at this
10 point.

11 MR. HINTON: But on the other hand, Sheriff,
12 everybody in your county knew your stand and when you ran
13 for reelection you got a larger vote --

14 I think that the fact that the Sheriff stood up
15 recognized it and tried to inform the public --
16 unfortunately, the public too many times are lackadaisical
17 about it.

18 I think that if you give them the facts, usually
19 they will respond the way we feel they should, and I think
20 that is why we have got to keep on top of it.

21 MS. POPS: John?

22 MR. EASTERN: Chairman, I would like to go back to
23 the subject of reporting these incidents, and for the
24 record, there is no federal law requiring this.

25 The member of the House from Connecticut or Rhode

1 Island -- maybe Mr. Chun can help recall this for me, or any
2 of those in attendance -- has submitted legislation at the
3 federal level and it has not been successful so far.

4 If you are familiar with the subject at all you
5 will realize that in as large a distance, at least some law
6 enforcement officer -- perhaps Sheriff Dale excepted -- that
7 it is difficult to identify these and categorize these
8 things to report.

9 As a matter of fact, a representative of the FBI
10 was testifying before the U.S. Congress that this would be
11 difficult to do, but many of us still like that the course
12 should be there for a man to do it.

13 At the present time Maryland and Pennsylvania have
14 laws requiring the reporting and getting some criteria and
15 guidelines to local and state officers to report to the
16 state level these incidents.

17 We can get you copies of that legislation. In
18 fact, the Pennsylvania Advisory Committee can take quite a
19 bit of credit for getting that law passed in the State of
20 Pennsylvania and to a certain extent --

21 So we can push for that and each of you can work
22 with your delegates, I mean your U.S. Delegation to Congress
23 to push for the legislation there to do this nationally.

24 That is the logical result; do it nationally
25 because as you are probably also familiar ADL and other

1 organizations keep these records but they don't have any
2 real hard data and when if there is a rash of incidents that
3 might occur in West Virginia or Kentucky or Illinios,
4 somebody says, "Are these on an increase?"

5 People say, "Well, I think so, but I'm not sure."

6 The community relations service of the Justice
7 Department keeps some records but there is no good, hard
8 data and we need to start somewhere.

9 I wanted to bring that to your attention, and I
10 might add -- this is almost like de je vous -- I went to a
11 meeting in the western part of the United States a few
12 months ago and a State Advisory Committee member from
13 Wyoming brought a video tape very similar to this of the
14 purchase of a farm by some neo-nazi, or a group of that
15 nature -- I'm not sure the exact group that did it -- but
16 this brings to our attention the need to have -- to hook
17 into the network of information that is available in the
18 United States.

19 I'm sure that you're familiar with the Southern
20 Poverty Law Senator's Reports, and if you're not, we'll get
21 you the names of that so that you can get on the mailing
22 list.

23 There is an organization in Baltimore, Maryland;
24 headquarters in Baltimore, Maryland, called the National
25 Institute for the Study of Bigotry and Violence, Ki-Taek?

1 MR. KI-TAEK CHUN: Yes, that's it.

2 MR. EASTERN: So there are organizations with full
3 time staffs that are working on this.

4 I don't know to what extent the people in Wyoming
5 are aware of what is going on in West Virginia in Pocahontas
6 County.

7 It is an obligation that all must undertake, to
8 pursue to share this information.

9 MS. POPS: We are going to be taking some comments
10 from the floor but I need to tell those of you who weren't
11 here earlier that those comments need to come up to Ki-Taek
12 Chun and then he will bring them up here.

13 This is just a procedure of the Civil Rights
14 Advisory Committee.

15 So we will continue up here, but if any of you
16 have something you would like to air from the floor, please
17 write your name and just a brief description of what it is
18 and then we will be sharing with you some speaking time.

19 More from up here?

20 MR. HINTON: Sheriff Dale, why do you think, if
21 you have any idea, that Pierce picked West Virginia in
22 general and Pocahontas County in particular for their
23 compound?

24 MR. DALE: Okay, first of all, his base station
25 was in Arlington, Virginia. He needed a place to where he

1 could be fairly close to Arlington; where he could travel
2 back and forth.

3 Secondly, he needed a place that was remote. He
4 probably wanted to move into an area that had a small black
5 minority population.

6 One of the important pieces of criteria, I think,
7 is the fact that the property that he purchased had to have
8 limestone caves underneath of it.

9 I know that sounds pretty --

10 MR. HINTON: That's the water supply?

11 MR. DALE: The water supply and the fact that he
12 actually believed there will be a nuclear war and his people
13 will go underground and live.

14 The last thing, I think, is the fact that the
15 State of West Virginia, at the time that he purchased the
16 property, did not have any type of paramilitary law or bill.

17 MR. HINTON: It was probably pretty cheap to
18 purchase, too, I imagine.

19 MR. DALE: Well, 350 acres for \$95,000 cash.

20 MR. HINTON: Are the members of the compound
21 easily identifiable by the folks of Pocahontas County? Do
22 you know who they are?

23 MR. DALE: Not really. The county depends heavily
24 upon tourism. We have a million tourists there a year, so
25 it is not unusual to see strangers in the community at all

1 times.

2 Two of the women that he has recently recruited
3 are nationals; one of them is from West Germany and one of
4 them is from Hungary, and of course, when they go into town
5 and they speak with anybody they are pretty readily
6 recognized.

7 Other than that not too much --

8 MR. HINTON: The reason why I asked that question,
9 I am wondering -- you indicated the residents of the county
10 aren't really that interested about their being there, or
11 concerned because they haven't affected them.

12 I am just wondering from a standpoint as far as
13 solving any kind of crimes or vandalism, that you may have
14 cooperation of any persons, business people that would come
15 in and be identified, then perhaps they could keep some kind
16 of object where their finger prints could be obtained.

17 I noticed there were two merchants on the video
18 tape who -- one guy said, "Well, they're not bothering me."

19 I am wondering if you could get some kind of
20 cooperation, particularly a means of identifying who they
21 are.

22 MR. DALE: We are doing that to some degree. Of
23 course, I can't talk about it extensively because of the
24 danger. But we watch them almost on a daily basis, we have
25 aircraft that we watch them from almost on a weekly basis

1 and check people coming and going and try to identify who
2 they are.

3 Their numbers vary from -- on a regular basis --
4 of 12 to 14 people that live there. Pierce lives there
5 about 90 percent of the time.

6 We have had as many as 200 people there one Labor
7 Day.

8 MR. HINTON: I am wondering too, Steve, what can
9 we do? I noticed the video tape available on the back of
10 the update.

11 It seems to me I was aware of some of the
12 problems. I knew they had them but I didn't know the
13 extent of what it was.

14 In listening to Sheriff indicate there is no real
15 concern by other police agencies in West Virginia, I think
16 if more folks became aware of what is in our state -- as a
17 matter of fact, I am appaled to know that that is existing
18 and there is such a pool of apathy.

19 What do you think can be done to create a greater
20 concern by the folks of Pocahontas County in particular, the
21 state and the agencies involved?

22 MR. EASTERN: I think the least problem,
23 ironically, is in Pocahontas County right now, I mean in ,
24 terms of awareness.

25 Sheriff Dale has been to every 4-H Club and every

1 other civic organization in the county twice over and he
2 continues to do it regularly with these type of videos and
3 public explanations.

4 What more can you ask of one individual who is the
5 county sheriff?

6 All the people in the audience, all the people who
7 are on the Commission here who go back their respective
8 constituencies, their families and all that, who would like
9 to have a representative of the Coalition to either show
10 this video or give some update on a community level.

11 That would be one way right within our circle. If
12 you can use extra copies of this or reproduce them
13 yourselves to give out to your local churches or
14 communities. That is another additional.

15 This is new off the press. It is not two years
16 old. This is the up-date.

17 In addition, we have stated our public agenda
18 which is within the next month and a half.

19 Once the legislative session is finished we will
20 be demanding a meeting with the Governor, with the State
21 Police Superintendent, and with the Attorney General,
22 insisting that the education of all our law enforcement
23 officers at our excellently funded training facility at
24 Institute be implemented on this question.

25 There is no reason Virginia should have this as a

1 priority training item and we don't.

2 But that partly will mean we would like letters of
3 support to be sent to the Governor's office and the State
4 Superintendent's office at some point. That your local
5 legislator that you might know of, let them know that this
6 is on the burner.

7 Beyond that, I am sure that other people have
8 additional suggestions, but we are clearly trying to meet
9 our responsibilities by keeping the fact that this is still
10 here and that the bill was only the beginning, not the
11 ending. That is about as specific an answer as I can give
12 you right now.

13 MR. RUTLEDGE: I want to thank Sheriff Dale. If
14 you would, check with the assessor of your county to see if
15 the property is assessed accurately at -- consistent with the
16 property in Pocahontas County.

17 It is my sentiments that many properties in West
18 Virginia are assessed very low as far as tax purposes. I'm
19 not sure, but you might take a look at that. They might
20 increase the assessment and therefore, make him pay a little
21 more out the nose for owning the property there.

22 MR. EASTERN: May I ask what the nearest town is
23 to this location?

24 MR. DALE: Marlinton. M-a-r-l-i-n-t-o-n,
25 Marlinton.

1 MS. POPS: Did you want to say something? Please
2 identify yourself.

3 MELISSA SMITH: I am Melissa Smith. I am from
4 Charleston and I was just making notation that in downtown
5 Charleston on the central lower end of Capitol street I saw
6 the swastika with skins written around it, over it, under
7 it, everywhere, indicating the presence of something whether
8 or not it was in jest or for real, it was there and fairly
9 visible.

10 MS. POPS: Is this anything that you are aware of
11 Steve?

12 MR. RUTLEDGE: I don't have any concrete data on
13 it, though, but the reports that I have been getting are
14 that it may not be organized but there -- it is beginning in
15 the high schools in the city to be little sub-groupings that
16 shave their heads and have seen some of the videos and other
17 things where insignia becomes important.

18 It may not be the fully-blown indoctrination of
19 the type of person that Pierce is, but it amounts to the
20 same thing.

21 It is going to increase the racial conflict in the
22 high schools and it is going to be very --

23 All I can say that I have heard that a surge has
24 come in the high schools and that may be the source of it,
25 but it's a delicate question, too, because there have been

1 know in some high schools in other states where there is two
2 groups of shaved heads and one turns out to be anti-racist
3 and one is racist. It gets very complicated. You have
4 really got to investigate it and it gets very easy to
5 stereo-type.

6 I have seen those markings on Capitol Street.
7 They are relatively new.

8 And they are definately important to be watched
9 and it is important if you get any insights into the problem
10 to let the appropriate people know about them.

11 MELISSA SMITH: Is there any training program from
12 the Human Rights Commission or any other organization to go
13 to schools, specifically the high schools at this point?
14 Any information to expose the source of this type of
15 grafitti or whatever you would call it.

16 MR. RUTLEDGE: Very little. There are individual
17 teachers that may take it, but --

18 MELISSA SMITH: But, nothing?

19 MR. RUTLEDGE: Right. The combination of funding
20 and the fact that it needs to be put on the back on the
21 front burner, which is related to the funding.

22 I am not sure which comes first. If you put it
23 back on the front burner maybe you will get some more
24 funding, or if you get more funding, maybe --

25 But it's a noticable absence and hopefully this

1 testimony today will generate some public discussion on some
2 of the radio stations and some of the news media people got
3 to know, and when Sheriff Dale goes home he knows he is not
4 alone.

5 If anybody thinks this problem is in Pocahontas
6 County alone is obviously delusionary because it is now
7 spread to Wyoming, and we saw what happened in Idaho.

8 We have taken certain preventative measures, here,
9 to get on top of that and you are spotting that and
10 mentioning the thing on Capitol Street is totally relevant.

11 Carole, what you said is if we get the city to
12 white-wash the brick and they don't afford it as a racial
13 graffiti type thing, then it loses its impact in terms of
14 what happens three months from now if somebody else white-
15 washes the wall, so the discussion is very relevant in terms
16 of how you manage this, but we have a long way to go.

17 MS. POPS: I would like to thank our speakers. It
18 has been a long day and everybody is hot again, and this was
19 certainly an excellent end to our day.

20 Thank you.

21 (Whereupon, at 4:35 p.m., the meeting was
22 concluded.)

REPORTER'S CERTIFICATE

CASE TITLE: THE WEST VIRGINIA ADVISORY COMMITTEE
TO THE UNITED STATES COMMISSION
ON CIVIL RIGHTS:

FORUM ON CIVIL RIGHTS LAWS
and
LEGISLATION

HEARING DATE: Tuesday, March 21, 1989

LOCATION: State Capitol Building
Charleston, West Virginia

I hereby certify that the proceedings and evidence herein are contained fully and accurately on the tapes and notes reported by me at the above styled matter and that this is a true and correct transcript.

Date: March 26, 1989


MIDGE BILLANTI
COURT REPORTER