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OHIO ADVISORY COMMITTEE
TO THE
U.S. COMMISSION ON CIVIL RIGHTS

CONSULTATION: FOCUS ON AFFIRMATIVE ACTION

COURTYARD MARRIOTT
33 WEST SPRING STREET
COLUMBUS, OHIO

TUESDAY, APRIL 30, 1996

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OHIO ADVISORY COMMITTEE

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GRACE RAMOS, CHAIRPERSON
LEE H. ESPRIT
BRADFORD WILSON
ROBERTA PRESLEY
BARBARA RODEMEYER
LYNWOOD BATTLE
RAYMOND LEVENTHAL
VIRGINIA ORTEGA
JUAN PEREZ
BRIAN CHOI

* * *

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1 TUESDAY MORNING SESSION,

2 APRIL 30, 1996.

3 - - -

4 CHAIRWOMAN RAMOS: THE OHIO ADVISORY
5 COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS SHALL COME
6 TO ORDER. FOR THE BENEFIT OF THOSE IN THE AUDIENCE, I AM
7 GRACE RAMOS, AND I AM THE CHAIRPERSON OF THE OHIO ADVISORY
8 COMMITTEE TO THE UNITED STATES COMMISSION ON CIVIL RIGHTS.

9 ADVISORY COMMITTEES ARE COMPOSED OF INDIVIDUALS
10 WHO SERVE WITHOUT COMPENSATION TO ADVISE THE COMMISSION OF
11 RELEVANT INFORMATION CONCERNING THEIR RESPECTIVE STATES ON
12 MATTERS WITHIN THEIR JURISDICTION OF THE U.S. COMMISSION.

13 THE OTHER MEMBERS OF THE COMMITTEE ARE LEE H.
14 ESPRIT, BRADFORD WILSON, ROBERTA PRESLEY, BARBARA RODEMEYER,
15 LYNNWOOD BATTLE, OF COURSE GRACE RAMOS, AND RAYMOND
16 LEVENTHAL, VIRGINIA ORTEGA, JUAN PEREZ AND BRIAN CHOI, AND
17 WE REPRESENT DIFFERENT AREAS OF THE STATE.

18 THE COMMITTEE ACKNOWLEDGES AND APPRECIATES THE
19 SUPPORT AND ASSISTANCE PROVIDED US BY TODAY'S PRESENTERS.
20 THE COMMITTEE IS HERE TO CONDUCT A CONSULTATION ON
21 AFFIRMATIVE ACTION AND COLLECT OPINIONS AND PERSPECTIVE
22 ABOUT ITS ROLE AS A POLICY TOOL IN CIVIL RIGHTS.

23 THIS NEED IS FOR THE BENEFIT OF THE ADVISORY
24 COMMITTEE TO LEARN THE POSITIONS AND PERSPECTIVES OF THE
25 PRESENTERS ON THE SUBJECT OF AFFIRMATIVE ACTION.

1 THE PROCEEDINGS OF THIS MEETING ARE OPEN TO THE
2 PUBLIC AND BEING RECORDED BY A PUBLIC STENOGRAPHER.

3 INFORMATION OBTAINED AT THIS FORUM WILL BE
4 PRESENTED TO THE U.S. COMMISSION FOR ITS CONSIDERATION. WE
5 HAVE A FULL SCHEDULE OF INDIVIDUALS WHO WILL ADDRESS THE
6 COMMITTEE. THE TIME ALLOTTED FOR EACH PRESENTATION WILL BE
7 STRICTLY ADHERED TO. THIS WILL INCLUDE A FIVE MINUTE
8 PRESENTATION BY EACH PARTICIPANT OF HIS OR HER PAPER
9 FOLLOWED BY QUESTIONS FROM COMMITTEE MEMBERS.

10 TO ACCOMMODATE PERSONS WHO HAVE NOT BEEN
11 INVITED, BUT WHO WISH TO MAKE STATEMENTS TO THE ADVISORY
12 COMMITTEE, AN OPEN SESSION IS SCHEDULED TODAY FOR 5:00 P.M.

13
14 ALTHOUGH SOME OF THE STATEMENTS MADE TODAY MAY
15 BE CONTROVERSIAL WE INTEND TO ENSURE THAT INVITED
16 PARTICIPANTS DO NOT DEFAME OR DEGRADE ANY PERSON OR
17 ORGANIZATION.

18 ANY PERSON OR ORGANIZATION THAT FEELS DEFAMED OR
19 DEGRADED BY STATEMENTS MADE IN THESE PROCEEDINGS SHOULD
20 CONTACT OUR STAFF DURING THE MEETING, SO THAT AN OPPORTUNITY
21 FOR RESPONSE CAN BE MADE.

22 I WANT TO THANK ALL OF THE PARTICIPANTS FOR
23 THEIR WILLINGNESS TO SHARE THEIR VIEWS WITH THE COMMITTEE,
24 IT IS THE COMMITTEE'S HOPE THAT THIS DIALOGUE AND OTHER SUCH
25 FORMS WILL LEAD TO AN IMPROVED CLIMATE OF RACIAL AND ETHNIC

1 TOLERANCE IN OUR NATION.

2 THE RECORD OF THIS MEETING WILL CLOSE ON MAY 10,
3 1996.

4 AND WITH THAT WE'LL START WITH OUR FIRST
5 SPEAKER, MELINDA CARTER FOR THE EQUAL BUSINESS OPPORTUNITY
6 COMMISSION HERE IN COLUMBUS, OHIO. THANK YOU.

7 MS. CARTER: GOOD MORNING, I AM THE
8 ASSISTANT DIRECTOR OF THE EQUAL BUSINESS COMMISSION
9 OPPORTUNITY OFFICE. OUR EXECUTIVE DIRECTOR IS GWENDOLYN
10 ROGERS, WHO COULD NOT BE HERE TO PRESENT OUR INFORMATION TO
11 THE COMMISSION TODAY. I WOULD LIKE TO THANK YOU FOR THE
12 OPPORTUNITY.

13 I'M GOING TO BEGIN WITH A BRIEF HISTORICAL
14 PERSPECTIVE OF OUR ISSUES RELATIVE TO THE EQUAL BUSINESS
15 OPPORTUNITY PROGRAM IN THE CITY.

16 THE CITY OF COLUMBUS HAS A LONG HISTORY OF
17 ENACTING AND IMPLEMENTING AFFIRMATIVE ACTION LEGISLATION
18 POLICY WITH A GOAL OF CREATING A NON-DISCRIMINATORY
19 COMMUNITY FOR ALL ITS CITIZENS.

20 FROM THE EQUAL EMPLOYMENT OPPORTUNITY CODE TO
21 THE EQUAL BUSINESS OPPORTUNITY CODE THE CITY HAS BEEN AT THE
22 FOREFRONT OF ASSURING FAIR EQUITY IN ITS OFFICIAL AND
23 ADMINISTRATIVE AND OPERATIONAL ACTIONS.

24 IN 1975 THE CITY COMMENCED THE FORMAL
25 AFFIRMATIVE ACTION EFFORTS RELATIVE TO CITY CONTRACTORS AND

1 VENDORS VIA ORDINANCE NO. 810-75, WHICH CREATED TITLE 39 OF
2 THE COLUMBUS CITY CODE.

3 INITIALLY THE GOAL OF TITLE 39 WAS TO PROMOTE
4 THE UTILIZATION OF MINORITIES IN EACH JOB CLASSIFICATION
5 BASED UPON THE MINORITY POPULATION WITHIN THE STANDARD
6 METROPOLITAN STATISTICAL AREA.

7 ADDITIONALLY TITLE 39 PROHIBITED DISCRIMINATION
8 BY CONTRACTORS DOING BUSINESS WITH THE CITY IN THEIR
9 INTERNAL HIRING PRACTICES.

10 IN NOVEMBER OF '81, THE CITY OF COLUMBUS ENACTED
11 ORDINANCE 2337-81 WHICH WAS DESIGNED TO THOROUGHLY OVERALL
12 THE CITY'S AFFIRMATIVE ACTION PROGRAM, THE ORDINANCE
13 AMENDING THE CITY'S PROGRAM BY EXPANDING IT TO INCLUDE A
14 REQUIREMENT FOR FEMALE PARTICIPATION AND BY ENUMERATING
15 SPECIFIC MINORITY AND MALE WORK FORCE PARTICIPATION GOALS.

16 FOR EXAMPLE, CONSTRUCTION CONTRACTORS DOING
17 BUSINESS WITH THE CITY WERE REQUIRED TO MAINTAIN A WORK
18 FORCE OF A MINIMUM OF 10.6 PERCENT MINORITY, AND 6.9 FEMALE
19 PARTICIPATION.

20 NON-CONSTRUCTION CONTRACTORS WERE TO MAINTAIN A
21 WORK FORCE WITH AT LEAST 50 MINORITY AND 20 PERCENT FEMALE
22 EMPLOYMENT LEVELS. FURTHER DOLLAR EXPENDITURES IN
23 CONSTRUCTION AND NON-CONSTRUCTION CONTRACTS IN
24 SUBCONTRACTING WORK ESTABLISHED BY THE ORDINANCE AT 10
25 PERCENT MINORITY AND TWO PERCENT FEMALE PARTICIPATION.

1 IN RESPONSE TO THIS LEGISLATIVE EXPANSION OF THE
2 CODE, THE DIVISION OF THE MINORITY AND FEMALE BUSINESS
3 DEVELOPMENT WAS CREATED IN MAY OF 1983.

4 IN JANUARY 1989 ORDINANCE NO. 29-9 WAS ENACTED
5 BY CITY COUNCIL TO INCREASE THE CITY'S CONTRACTING
6 EMPLOYMENT GOALS PERCENTAGES TO 21 PERCENT FOR MINORITY AND
7 10 PERCENT FOR FEMALES FOR NON-CONSTRUCTION CONTRACTS, SUCH
8 AS GOODS AND SERVICES.

9 HOWEVER, ON THE SAME DAY OF THAT ACTION IN
10 JANUARY 1989, THE UNITED STATES SUPREME COURT STRUCK DOWN
11 THE CITY OF RICHMOND, VIRGINIA'S MINORITY UTILIZATION PLAN
12 IN THE CASE OF CROSON, ON THE BASIS THE PROGRAM WAS A
13 VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE 14TH
14 AMENDMENT.

15 THE COURT'S RULING EMPHASIZED RICHMOND HAD
16 FAILED TO DEMONSTRATE A RATIONAL BASIS FOR THE SET ASIDE
17 PROGRAM ENACTED BY THE CITY OF RICHMOND, BECAUSE NO FACTUAL
18 PREDICATE HAD BEEN ESTABLISHED TO JUSTIFY THE PROGRAM.

19 COLUMBUS FOUND THEMSELVES IN THE SAME POSITION,
20 BECAUSE AT THAT POINT WE HAD NO FACTUAL PREDICATE TO
21 ESTABLISH THOSE NUMBERS.

22 AS A RESULT OF CROSON THE CITY OF COLUMBUS
23 CONTRACTING BEGAN A PREDICATE STUDY. THE PREDICATE STUDY
24 WAS FORMALLY PRESENTED, THE RESULTS OF THE PREDICATE STUDY
25 WERE FORMALLY PRESENTED TO THE MEMBERS OF THE CITY COUNCIL

1 AND THE ADMINISTRATION BASED UPON THE CONSULTANT'S ANALYSIS,
2 BOTH ANECDOTAL AND STATISTICAL EVIDENCE INCLUDED PUBLIC
3 HEARINGS, SURVEYS AND TESTIMONY.

4 THE CONCLUSION WAS THAT THE CITY HAD
5 PARTICIPATED IN DISCRIMINATORY PRACTICES, AND THAT AS WELL
6 MARKET PLACE DISCRIMINATION WAS PREVALENT IN THE AREA.

7 THEREFORE TO REMEDY THE FINDINGS OF
8 DISCRIMINATION ON THE BASIS OF THE PREDICATE STUDY AND OTHER
9 EVIDENCE, THE COLUMBUS CITY COUNCIL SUPPORTED -- SPONSORED
10 LEGISLATION REVISING TITLE 39 OF THE COLUMBUS CITY CODE BY
11 ENACTING ORDINANCES 2346-93 THROUGH 2350-93 ON JANUARY 5,
12 1994.

13 THIS LEGISLATION WAS HISTORICAL FOR SEVERAL
14 REASONS. FIRST, BECAUSE IT WAS ONE OF THE FIRST IN THE
15 NATION THAT WAS BASED ON A PREDICATE STUDY -- SERIES OF --
16 ACTUALLY A SERIES OF PREDICATE STUDIES, INCLUDING EMPLOYMENT
17 MANAGEMENT AND SUPPLEMENTAL STUDIES COMPLETED IN STRICT
18 ADHERENCE TO THE GUIDELINES OF THE COURT'S DECISION.

19 SECONDLY, BECAUSE THE BODY OF EVIDENCE NOT ONLY
20 CONCLUSIVELY INDICATED THAT AFRICAN-AMERICANS AND FEMALES
21 HAD BEEN DISCRIMINATED AGAINST, BUT THEY HAD BEEN ADVERSELY
22 IMPACTED BY THE DISCRIMINATION FOUND IN THE CITY CONTRACTING
23 PRACTICES.

24 FURTHER, THE FINDINGS IN EVIDENCE OF THE
25 PREDICATE STUDY DEMONSTRATED THAT THESE TWO CLASSES WERE

1 OVERWHELMINGLY VICTIMIZED BY DISCRIMINATION IN THE
2 CONTRACTING ARENAS DUE TO THE FACT ONE PERCENT OF THE
3 CONTRACTS HAD BEEN AWARDED TO MINORITY AND FEMALE VENDORS
4 WITHIN THE 10 YEAR PURVIEW OF THE STUDY.

5 AS A RESULT OF THE PREDICATE STUDY THE CITY OF
6 COLUMBUS, AS I INDICATED, PASSED THE ORDINANCE WITH THE NEW
7 GOALS AND REQUIREMENTS AS SET OUT IN CROSON.

8 THEY ALSO FORMED THE EQUAL BUSINESS OPPORTUNITY
9 COMMISSION OFFICE, WHO HAS A 12 BODY COMMISSION, THAT
10 OVERSEES THE IMPLEMENTATION OF THE PROGRAM.

11 WHAT WE WOULD LIKE IS TO PRESENT OUR PREDICATE
12 STUDY, OUR SUMMARY FOR THE RECORD TODAY, AND I HAVE THIS
13 HERE WITH ME SO THAT THIS COMMISSION CAN FORMALLY ADOPT OR
14 REVIEW OUR FINDINGS OR THE CONSULTANT'S FINDING OF OUR
15 PREDICATE STUDY FOR THE CITY OF COLUMBUS.

16 THANK YOU.

17 CHAIRWOMAN RAMOS: THANK YOU. WE'LL LET
18 JIM START FROM THE CITY OF COLUMBUS ALSO, GO AHEAD AND DO
19 HIS PRESENTATION. JIM, YOU MISSED PART OF IT, BUT IT WAS A
20 STRICT FIVE MINUTE INTRODUCTION AND THEN WE'LL HAVE A
21 QUESTION/ANSWER PERIOD AFTER.

22 MR. STOWE: FIRST OF ALL, GOOD MORNING, I
23 CERTAINLY WANT TO APOLOGIZE FOR RUNNING BEHIND SCHEDULE THIS
24 MORNING, A NUMBER OF THINGS HAVE COME UP AS YOU MIGHT
25 IMAGINE, I DID A NUMBER OF ELECTRONICS NOT TO MY EXPERTISE,

1 BUT I HAVE LEARNED TO GET THROUGH THE BEST WAY I CAN.

2 TO CHAIRWOMAN RAMOS AND MEMBERS OF THE OHIO
3 ADVISORY COMMISSION COMMITTEE TO THE U.S. COMMISSION ON
4 CIVIL RIGHTS, IT IS INDEED A PLEASURE FOR ME TO HAVE THE
5 OPPORTUNITY TO ADDRESS THIS BODY ON BEHALF OF THE COMMUNITY
6 RELATIONS COMMISSION OF THE CITY OF COLUMBUS AS YOU FOCUS ON
7 THIS ISSUE OF AFFIRMATIVE ACTION.

8 I BRING YOU GREETINGS AND BEST WISHES FROM THE
9 COMMISSION'S CO-CHAIRS RANDALL ART, AND LEWIS SMOOT, SR.,
10 AND THE ENTIRE 22 MEMBER COMMISSION.

11 THE MISSION OF THE COMMISSION IS TO PROVIDE
12 LEADERSHIP TOWARD THE BUILDING OF COMMUNITY BY EDUCATING
13 CITIZENS ABOUT CULTURAL DIVERSITY, IDENTIFYING AND RESOLVING
14 COMMUNITY TENSION AND ELIMINATING RACISM AND DISCRIMINATION
15 THROUGH ENFORCING THE CIVIL RIGHTS CODE OF THE CITY OF
16 COLUMBUS.

17 THE COMMISSION FELT THAT THIS WAS AN IMPORTANT
18 ISSUE TO BEING PART OF THE PUBLIC DEBATE. THE COMMISSION
19 OFFICIALLY JOINED IN THE CITY WITH THEIR SUPPORT OF
20 AFFIRMATIVE ACTION BY WAY OF RESOLUTION APRIL 19, 1995.

21 IN THAT RESOLUTION THE COMMISSION PRESENTED THE
22 POSITION OF BEING SUPPORTIVE OF THE PREMISE THAT OPPORTUNITY
23 FOR EQUAL ACCESS TO EMPLOYMENT, EDUCATION, TRANSPORTATION,
24 CONTRACTING AND COMMERCE, IS ESSENTIAL TO ELIMINATING
25 RACISM AND DISCRIMINATION IN THIS CITY AND IN THIS STATE.

1 THE COMMISSION CONTINUED BY STATING ITS
2 COMMITMENT TO OPPOSING ANY ATTEMPTS TO DISMANTLE AFFIRMATIVE
3 ACTION INITIATIVE BYLAWS VIA CONGRESSIONAL AND LEGAL
4 ATTACKS. SUCH AS THOSE CHRONICLED IN THE UNITED STATES
5 SUPREME COURT IDENTIFIED AS ADERAN VERSUS PENYA.

6 THE COMMISSION RESOLVED TO MAKE AFFIRMATIVE
7 ACTION THE FAR REACH THRUST OF ITS EDUCATION OUTREACH TO THE
8 COLUMBUS COMMUNITY TO INCLUDE FORUMS, LECTURES, PANEL
9 DISCUSSIONS AND TOWN MEETINGS.

10 THE COMMISSION BEGAN RIGHT AWAY TO CARRY OUT THE
11 SPIRIT AND INTENT OF THIS RESOLUTION, THE COMMISSION'S
12 STRUGGLE IN IT'S OWN LACK OF COMFORT IN CLEARLY
13 UNDERSTANDING ALL THE ISSUES OF AFFIRMATIVE ACTION AND WAS
14 EXTREMELY CONCERNED ABOUT THE AMOUNT OF MISINFORMATION IN
15 THE PRINTED MEDIA REVOLVING THROUGH THE AIRWAYS OF TALK
16 RADIO AND TELEVISION.

17 IT BECAME APPARENT THAT OUR FIRST STEP NEEDED TO
18 INCLUDE NON-BIAS ACADEMIC PRESENTATION ABOUT THE HISTORY
19 AND EVOLUTION OF AFFIRMATIVE ACTION.

20 IN JUNE OF 1995 I WAS HOST TO PROFESSOR FLOYD
21 WITHERSPOON OF CAPITAL UNIVERSITY LAW SCHOOL, WHO GAVE THE
22 COMMISSION A HISTORICAL PERSPECTIVE ON AFFIRMATIVE ACTION
23 AND WE INVITED THE PUBLIC TO PARTICIPATE IN THIS
24 PRESENTATION.

25 WE ALSO PROVIDED AN OPPORTUNITY FOR THE GENERAL

1 PUBLIC TO PARTICIPATE BY WAY OF A TAPED AIRING OF THE
2 PROGRAM ON THE CITY'S TELEVISION NETWORK. A NUMBER OF
3 POSITIVE COMMENTS AND FEEDBACK WERE OFFERED BY THE
4 COMMUNITY.

5 THE COMMISSION FELT STRONGLY EVEN THOUGH THEY
6 HAD TAKEN A FIRM POSITION ON THIS ISSUE, OUR PURPOSE IN THIS
7 INSTANCE WAS TO OFFER GOOD SOUND OBJECTIVE INFORMATION AND
8 ALLOW THE COMMUNITY TO FORMULATE ITS OWN OPINION ABOUT THIS
9 OFTEN MISUNDERSTOOD ISSUE.

10 THE COMMISSION'S NEXT INSTALLMENT WAS A
11 COMMUNITY DEBATE UTILIZING THE TALENTS OF DR. LOU JACOBS OF
12 THE OHIO STATE UNIVERSITY SCHOOL OF LAW AS MODERATOR WITH A
13 DISTINGUISHED PANEL OF LOCAL ATTORNEYS AND EXPERTS IN THEIR
14 FIELDS ON BOTH SIDES OF THIS ISSUE.

15 THE DEBATE WAS WELL ATTENDED AND VERY LIVELY AND
16 INFORMATIVE. MANY CONTROVERSIAL PERSPECTIVES WERE OFFERED,
17 AND AGAIN ACCESS TO THIS PROGRAM BY THE GENERAL PUBLIC WAS
18 FACILITATED THROUGH GOVERNMENT TELEVISION.

19 WE HAD AN OPPORTUNITY THROUGH LOCAL RADIO TALK
20 PROGRAMS AND THROUGH THE PRINT MEDIA TO GET ADDITIONAL
21 INFORMATION TO THE GENERAL PUBLIC, AGAIN ENCOURAGING THEM TO
22 FURTHER RESEARCH THIS ISSUE AND MAKE UP THEIR OWN MINDS
23 ABOUT THEIR INDIVIDUAL POSITIONS ON THIS TOPIC.

24 WE ARE NOW PURSUING ADDITIONAL OPPORTUNITIES FOR
25 INFORMATION SHARING THROUGH OUR SCHOOL SYSTEM AS PART OF

1 STAFF DEVELOPMENT FOR TEACHERS AND ADMINISTRATORS AND AS
2 CURRICULUM FOR STUDENTS.

3 IN ADDITION, WE, WORKING WITH A NEWLY FORMED
4 EQUAL OPPORTUNITY BUSINESS COMMISSION, HEADED BY GWENDOLYN
5 ROGERS WHO YOU HAVE HEARD FROM. THIS COMMISSION HAS BEEN
6 GIVEN THE OPPORTUNITY TO MONITOR EFFORTS OF THE CITY
7 GOVERNMENT TO BE IN COMPLIANCE WITH RESPECT TO CITY
8 ORDINANCES REQUIRING THE PARTICIPATION OF AFRICAN-AMERICANS
9 AND WOMEN IN THE CONTRACTING OF GOODS AND SERVICES FOR THE
10 CITY OF COLUMBUS.

11 A SIMILAR REQUIREMENT PENDING IN FEDERAL COURT
12 CONCERNING CONSTRUCTION CONTRACTING FOR THE CITY OF COLUMBUS
13 THE COMMISSION MAINTAINS ITS COMMITMENT OF ENSURING SUPPORT
14 FOR THIS ISSUE BY ADDITIONAL INFORMATION, OUTREACH
15 OPPORTUNITIES AND WORKSHOPS WORKING IN CONCERT WITH THE
16 EQUAL BUSINESS OPPORTUNITY COMMISSION. THE COMMISSION WILL
17 ADDRESS THIS IN ITS WRITTEN POSITION PAPER.

18 ANOTHER PERSPECTIVE OF THIS ISSUE. THE DIVISIVE
19 NATURE AND DEBATE OF DIALOGUE SURROUNDING AFFIRMATIVE
20 ACTION, WE BELIEVE IT HAS MORE DESTRUCTIVE POTENTIAL THAN
21 EVEN THE DAMAGING EFFECTS OF DISMOUNTING SOME THE PROGRAMS
22 MIGHT HAVE FOR WOMEN AND MINORITIES.

23 THE COMMISSION APPRECIATES THIS OPPORTUNITY TO
24 SHARE WITH YOU, THE OHIO ADVISORY COMMITTEE AND WISH YOU
25 WELL IN YOUR OPPORTUNITY TO REVIEW THIS ISSUE. THANK YOU

1 VERY MUCH.

2 CHAIRWOMAN RAMOS: EXCUSE ME, ALLERGY
3 SEASON IS HERE NOW. SO WHAT WE'LL DO IS -- DO WE HAVE ANY
4 QUESTIONS, DOES ANYONE HAVE ANY QUESTIONS? GOOD, BRADFORD,
5 GO AHEAD.

6 MR. WILSON: FIRST, A COMMENT MR. STOW, I
7 COMMEND YOUR ORGANIZATION FOR BRINGING THE DISCUSSION TO THE
8 PUBLIC, BECAUSE IT SEEMS TO ME THAT PART OF THE
9 CONTROVERSIAL NATURE OF AFFIRMATIVE ACTION TODAY IS ROOTED
10 IN THE FAILURE OF THE PUBLIC TO BE VERY INVOLVED IN THIS
11 ISSUE FOR WHAT NOW AMOUNTS TO A COUPLE OF DECADES.

12 I WOULD LIKE TO ASK MS. CARTER A QUESTION, HAVE
13 THERE BEEN ANY LEGAL CHALLENGES TO THE ORDINANCES THAT WERE
14 PASSED I BELIEVE -- DID YOU SAY 1994?

15 MS. CARTER: THERE HAVE BEEN NO LEGAL
16 CHALLENGES TO THE LAST ORDINANCES THAT WERE PASSED.

17 MR. WILSON: THEY WERE THE ONES BASED ON
18 THE STUDY THAT YOU COMMISSIONED?

19 MS. CARTER: YES. THEY ARE THE ORDINANCES
20 BASED UPON THE PREDICATE STUDY AND ARE IN LINE WITH WHAT THE
21 CROSON DECISION HAS REQUIRED THAT AND WILL NOT CHANGE, BUT
22 THERE IS ONGOING LITIGATION SURROUNDING THE ORIGINAL GOALS
23 THAT WERE SET THAT WERE NOT BASED ON THE PREDICATE STUDY,
24 BUT BASED ON POPULATION AND SOME OTHER ISSUES, AS WELL AS A
25 VARIETY OF ISSUES THAT HAVE NOT YET BEEN DETERMINED.

1 SO THAT IS STILL PENDING IN FEDERAL COURT THAT
2 IS WHY WE ARE NOT MONITORING OR ADMINISTERING THIS PROGRAM
3 WITH REGARD TO CONSTRUCTION. BECAUSE THAT IS THE PORTION IN
4 APPEAL IN FEDERAL COURT AND WE HAVE BEEN AWAITING A DECISION
5 FOR ABOUT A YEAR.

6 MR. WILSON: ONE MORE QUESTION IF I MAY TO
7 MR. STOW, YOU MENTIONED THE ADERAN CASE IN PASSING, I WASN'T
8 SURE ABOUT THE CONTEXT THERE, WERE YOU SUGGESTING THAT YOUR
9 OFFICE DISAGREES WITH THE ADERAN DECISION, OR WISHES TO SAVE
10 AFFIRMATIVE ACTION FROM THE SUPREME COURT OR WHAT WAS THE
11 IMPLICATION THERE?

12 MR. STOWE: THE THOUGHT THERE WAS THAT AS
13 THAT CASE WAS BEING DISCUSSED IT SEEMED TO MANY OF US AS WE
14 WERE OBSERVING THIS MATTER FOR SOME TIME, THE FACT THAT THE
15 CASE WAS EVEN ACCEPTED IN THE SUPREME COURT SENT A SIGNAL,
16 WE FELT, FOR AN ISSUE THAT WE FELT HAD ALREADY BEEN GIVEN
17 DUE NOTICE, DUE CONSIDERATION BY THE COURTS.

18 AND OUR CONCERN WAS AT THAT POINT IN TIME THAT
19 THIS RESOLUTION WAS WRITTEN THE DECISION HAD NOT COME DOWN
20 YET AS TO HOW THEY WERE ACTUALLY GOING TO RULE ON THE CASE,
21 BUT ALL INDICATIONS WERE THAT THERE WAS GOING TO BE SOME
22 RE-ENTRENCHMENT FROM PREVIOUSLY HELD POSITIONS, AND OUR
23 CONCERN WAS VERY CLEAR THAT IF THAT HAPPENED THE KIND OF
24 EFFECTS IT MIGHT HAVE AS IT RIPPLED DOWN THROUGH NOT ONLY
25 FEDERAL GOVERNMENT, BUT ALSO STATE AND LOCAL ISSUES AS WELL.

1 WE TEND TO HAVE ONE THAT FOLLOWS THE OTHER, WHEN
2 THAT OCCURS OUR SENSE WAS AT THAT POINT IN TIME IS WE WANT
3 TO BE CLEAR ON THE RECORD THAT WE'RE REAL CONCERNED THAT
4 THOSE KINDS OF ISSUES WERE NOT BEING CONSIDERED BY THE
5 JUSTICES AND THAT IT WAS IMPORTANT THAT AS THEY BEGAN TO
6 FINALIZE THE DECISION THAT THEY REALLY THOUGHT THROUGH
7 IMPACT, WE WERE NOT REALLY SURE AT THAT POINT IN TIME WHEN
8 THIS WAS WRITTEN THAT THAT WAS ACTUALLY HAPPENING.

9 AS IT TURNS OUT ONE OF THE THINGS WE ARE AWARE
10 OF IS THAT THE RULES THAT APPLY IN CROSON AND RICHMOND WAS
11 THAT IN MANY INSTANCES MINORITIES COULD SUBSTANTIATE THE
12 TESTIMONY, THEY COULD SUBSTANTIATE THE OTHER KIND OF THINGS
13 REQUIRED, HISTORICAL DATA, ET CETERA, REQUIRED BY THE COURT.

14 AS WE SHIFTED THROUGH EVERYTHING IT WAS NOT
15 QUITE AS BAD AS WE FIRST THOUGHT IT WAS AT FIRST GLANCE. SO
16 OUR SENSE AGAIN IS WHAT HAPPENS IS THAT ANYTIME RULINGS
17 OCCUR, IT WAS REAL IMPORTANT NOT ONLY THE CONSTITUTION IS
18 UPHELD, AS IT IS SO IMPORTANT TO DO SO, BUT THE IMPACT ON
19 HOW WE INTERPRET THAT THE LOWER COURT INTERPRETED IS
20 EXTREMELY IMPORTANT. AS IT IS PLACED UPON THE LIVES OF
21 THOSE OF US WHO WOULD NOT BE DIRECTLY IMPACTED, BUT WHO, IN
22 FACT, DO FEEL THE IMPACT, SO THAT THAT WAS THE CONTEXT.

23 CHAIRWOMAN RAMOS: THANK YOU. MR.
24 LEVENTHAL.

25 MR. LEVENTHAL: I'M CONCERNED ABOUT TWO

1 THINGS IN PARTICULAR. NO. 1, IF THE CITY GIVES OUT A
2 CONTRACT LET'S SAY FOR A BUILDING, 20 MILLION DOLLAR
3 BUILDING, AND THERE ARE A LOT OF PEOPLE BIDDING ON THAT
4 BUILDING, IT SEEMS TO ME THAT FINANCIAL STABILITY IS A VERY
5 IMPORTANT ASPECT, BECAUSE IF SOMETHING GOES WRONG AND YOU
6 WANT TO GO BACK TO THE CONTRACTORS, YOU WANT TO MAKE SURE
7 THAT THEY HAVE THE MONEY TO PAY BACK FOR WHAT WENT WRONG OR
8 ADEQUATE INSURANCE.

9 FIRST OF ALL, IS THAT TESTED WHEN MINORITIES
10 COME INTO PLAY, IS THERE FINANCIAL STABILITY CHECKED, SO
11 THAT THEY HAVE EQUAL STABILITY WITH NON-MINORITY FIRMS?
12 THAT'S THE FIRST QUESTION.

13 MS. CARTER: WELL, THERE'S A RIGID
14 CERTIFICATION PROCESS THAT ANYONE THAT IS ALLOWED IN THAT
15 PROTECTED CLASS AS A MINORITY OR FEMALE AS IDENTIFIED IN OUR
16 CODE, THERE'S A VERY EXTREME CERTIFICATION PERIOD OR PROCESS
17 THEY GO THROUGH WHERE THEY CHECK THEIR TAXES, ALL SORTS OF
18 THINGS RELATIVE TO THEIR FINANCIAL STABILITY THAT'S VERY
19 IMPORTANT, SO WE DO CHECK THOSE THINGS.

20 HOWEVER TO COMPARE THEM TO A MAJORITY FIRM IS
21 NOT ALWAYS AN ACCURATE COMPARISON. SOMETIMES THEY ARE NOT
22 IN A POSITION TO DO A CONSTRUCTION JOB THAT'S GOING TO BE
23 200 MILLION DOLLARS, THEY ARE A SMALLER COMPANY.

24 TYPICALLY THESE BUSINESSES -- IN OUR CODE, OUR
25 CODE WOULD NOT ALLOW FOR A CONSTRUCTION COMPANY THAT HAD

1 REVENUES OUTSIDE OF WHAT THE INDUSTRY STANDARD IS, BECAUSE
2 THEY MAY NOT BE ELIGIBLE FOR THE PROGRAM.

3 THERE ARE FINANCIAL RESTRAINTS RELATIVE TO THEIR
4 SIZE AND INCOME, WE DO LOOK AT THAT. ONE THING I CAUTION
5 PEOPLE IS THAT THAT KIND OF REVIEW OF FINANCES OR FINANCIAL
6 STABILITY IS NOT SOMETHING DONE WITH THE MAJORITY COMMUNITY.

7
8 SO ONCE SOMEONE CHOOSES TO DO BUSINESS WITH THE
9 CITY, IF THEY ARE A MAJORITY CONTRACTOR OR THEY ARE A
10 MINORITY WHO CHOOSE NOT TO BE CERTIFIED IN THAT CASE OUR
11 CHOICE IS THE SAME AS FOR MAJORITY, FINANCIAL STABILITY IS
12 NOT CHALLENGED, BUT THE MINORITY COMPANY IS, SO THAT'S
13 SOMETHING I ALWAYS TRY TO POINT OUT, BUT IT IS IMPORTANT.

14 I KNOW THE CITY ATTORNEY, THEY HAVE BONDING
15 REQUIREMENTS THAT SOMETIMES WE SUGGEST THAT ARE TOO LARGE
16 AND TOO INAPPROPRIATE DUE TO THE KIND OF WORK, SO WE TRY --
17 WHAT WE TRY TO DO IN OUR GOAL SETTING PROCESS IS FASHION A
18 PORTION FOR MINORITY AND FEMALES THAT THEY CAN DO, WE
19 RECOGNIZE THAT THEY ARE NOT A MAJORITY.

20 MR. LEVENTHAL: THE SECOND QUESTION, IF
21 THERE HAVE BEEN VIOLATIONS, NOT SAYING IN COLUMBUS, BUT IN
22 OTHER CITIES OF SETTING UP DUMMY CORPORATIONS WITH FIGURE
23 HEADS AT THE TOP, HOW HAS THIS BEEN HANDLED IN COLUMBUS?

24 MS. CARTER: WE MUST SEE BANK STATEMENTS,
25 SIGNATURE CARDS, YOU HAVE TO BE IN BUSINESS FOR THREE

1 MONTHS, THERE ARE ON-SITE VISITS WHAT CAPITAL -- WHAT KIND
2 OF CAPITAL DID YOU HAVE TO START YOUR BUSINESS, IT IS
3 EXTREMELY TEDIOUS, AND WE HAVE PEOPLE THAT WE HAVE DENIED.

4 IN FACT, WE HAVE A CERTIFICATION COMMITTEE OR
5 COMMISSION THAT THEY -- AFTER THE INFORMATION IS GATHERED
6 AND IT'S SUBMITTED, THEY VOTE ON WHETHER THAT PARTY WILL BE
7 CERTIFIED AND THERE HAVE BEEN PEOPLE THAT ARE NOT.

8 MR. PEREZ: I'M INTERESTED IN HOW YOUR
9 STUDY WAS DONE, CAN YOU TELL ME WHAT THE PROCESS WAS?

10 MS. CARTER: WELL, THE PROCESS --

11 MR. PEREZ: IN SUMMARY FORM.

12 MS. CARTER: WELL, FIRST OF ALL THE
13 PROCESS WAS QUITE LENGTHY, IT COST WELL OVER A MILLION
14 DOLLARS. THE CITY HIRED BBC OUT OF DENVER, COLORADO AND
15 ANOTHER ONE OUT OF WASHINGTON, D.C. TO GATHER THE
16 INFORMATION, RELATIVE TO CONTRACTING DATA, WE HELD PUBLIC
17 HEARINGS AND ALL THAT STUFF, ALL THOSE THINGS WITH RESPECT
18 TO HOW MINORITY AND WOMEN HAVE FAIRED IN THE COLUMBUS
19 COMMUNITY AND IN THE MARKETPLACE IN THIS AREA.

20 SO THEY GATHERED THE DATA, THEY DID AN ANALYSIS,
21 THEY SUBMITTED A REPORT, HAD HEARINGS, MINORITIES AND THE
22 COMMUNITY WERE VERY MUCH INVOLVED IN THAT PROCESS AT THAT
23 TIME.

24 ONCE THAT INFORMATION WAS GATHERED IT WAS
25 PRESENTED TO COUNCIL AND AS A RESULT OF THAT -- I'M

1 SUMMARIZING, AS A RESULT OF ALL THOSE THINGS WHICH TOOK WELL
2 OVER -- I THINK IT TOOK TWO AND A HALF YEARS TO COMPLETE,
3 THE NEW ORDINANCES WERE SPONSORED BY COUNCIL AND PASSED.

4 MR. ESPRIT: I JUST WANT TO COMMEND THE
5 COLUMBUS COMMUNITY COMMISSION FOR THE MULTI-DIMENSIONAL
6 APPROACH THAT IT TOOK IN TERMS OF SHARING AWARENESS OF
7 CULTURAL DIVERSITY.

8 AND THE QUESTION I HAVE FOR YOU AS TO WHAT HAS
9 BEEN THE IMPACT, IN YOUR OPINION, OF THAT MULTI-DIMENSIONAL
10 APPROACH TO CULTURAL DIVERSITY AND TOWN MEETINGS AND DEBATE
11 ON LOCAL RADIO AND CURRICULUM AT DEVELOPMENT IN THE SCHOOLS?

12 MR. STOWE: I THINK WE HAVE IMPROVED THE
13 LEVEL AND THE QUALITY OF THE INFORMATION THAT HAS GONE OUT
14 AS A RESULT OF THOSE ACTIVITIES.

15 PEOPLE ARE BEGINNING TO SEE THE WHOLE PICTURE AS
16 OPPOSED TO THE INDIVIDUAL SEGMENTS AND DEPENDING UPON WHO
17 AND WHERE THE SOURCE OF INFORMATION IS COMING FROM, WE FOUND
18 AS MANY DIFFERENT TYPES OF STORIES AND LEVELS OF THE STORY
19 BEING TOLD.

20 ONE OF THE THINGS WE ALSO BECAME AWARE OF IN OUR
21 COMMUNITY, WE BECOME MORE DIVERSE AS A CITY, WE DON'T
22 RECEIVE INFORMATION ALL THE SAME WAY, WE DON'T ACTUALLY
23 DIGEST THAT INFORMATION AT ALL THE SAME WAY EITHER, AND SO
24 ONE OF THE ISSUES WE HAD TO GET INTO VERY QUICKLY WAS HOW DO
25 WE GET THE INTO COMMUNITIES AND HAVE THEM UNDERSTAND WHAT

1 THAT MEANS TO ME, AS OPPOSED TO MEANING TO OTHER
2 INDIVIDUALS.

3 AND I THINK ONE OF THE KEY POINTS WE LEARNED WAS
4 WHEN YOU GET DOWN TO IT AND REALLY UNDERSTAND WHAT IS
5 HAPPENING WITH AFFIRMATIVE ACTION YOU MIGHT HAVE AN
6 OPPORTUNITY IN THIS SETTING, BUT TO REALLY UNDERSTAND WHAT
7 IS TAKING PLACE HERE IS TO REALLY GO BACK AND SEE THE
8 REALITY OF WHAT ALL, WHAT HAS REALLY TAKEN PLACE IN TERMS OF
9 THE PROGRAM ITSELF.

10 IT WAS REMEDIAL IN NATURE, WE WERE TRYING TO FIX
11 A PROBLEM, A PROBLEM THAT EVEN THE MOST ARDENT PERSONS HAD
12 NO PROBLEM IN REALIZING WE HAD A PROBLEM, THE QUESTION IS
13 HOW YOU CAN FIX IT AND WHETHER THE FIXING IS EVEN WORKING.

14 AND WE STARTED TO LOOK AT THE NUMBERS AND THEY
15 SAW WE'RE STILL TALKING ABOUT LESS THAN ONE PERCENT OF ALL
16 THE CONTRACTS BEING OFFERED BY THE FEDERAL GOVERNMENT HAVE
17 GOTTEN DOWN TO THE MINORITY LEVEL OF PARTICIPATION.

18 AND SO ALL THAT WE'VE DONE OVER THE LAST 30
19 YEARS, SINCE THE EARLY '40S AND SINCE 1964 WITH THE CIVIL
20 RIGHTS ACT BEING PASSED, WE STILL HAVE NOT MADE THE PROGRESS
21 THAT PEOPLE THINK WE HAVE MADE RELATIVE TO PARTICIPATION.

22 SO WHEN YOU PRESENT THOSE FACTS IT'S HARD TO
23 ARGUE WITH WE'RE STILL TALKING ABOUT LESS THAN ONE PERCENT
24 OF FOLKS BEING INVOLVED IN HEADING MAJOR CORPORATIONS,
25 PEOPLE OF COLOR AND WOMEN, YOU CAN'T ARGUE WITH THAT

1 INFORMATION.

2 AS PEOPLE BEGIN TO SEE THAT, WE DON'T STILL
3 AGREE ON HOW WE FIX IT YET, WE HAVEN'T GOT THAT FAR YET.

4 YET WHAT HAPPENED IN THIS COMMUNITY IS AT LEAST
5 PEOPLE ARE BEGINNING TO SEE IT IN A MUCH MORE BROADER
6 CONTEXT. SO I THINK IF WE'VE DONE ANYTHING WE'RE GOING TO
7 IMPROVE THE QUALITY OF THE DEBATE, IT'S STILL GOING ON, BUT
8 WE IMPROVED THE QUALITY OF THE DEBATE.

9 CHAIRWOMAN RAMOS: WOULD YOU TELL US
10 EXACTLY WHAT YOUR -- I GUESS LAW RIGHT NOW IS IN THE CITY,
11 WHAT YOUR POLICY IS RELATIVE TO PURCHASING, WHAT EXACTLY
12 DOES YOURS STATE?

13 MS. CARTER: WELL, WE HAVE TITLE 39 -- IN
14 TERMS OF ARE THERE GOALS SET?

15 CHAIRWOMAN RAMOS: WHAT IS YOUR POLICY,
16 BECAUSE YOU SAID THIS PREDICATE STUDY DETERMINED UNDER
17 CROSON, YOU HAVE TO HAVE IT VERY NARROWLY TAILORED AS TO WHO
18 WILL FOLLOW THAT, I'M SAYING WHAT, IN FACT, IS YOUR CITY
19 ORDINANCE, WHAT IS IT EXACTLY?

20 MS. CARTER: WHAT IT DOES IS IT SETS CITY
21 WIDE GOALS, THE CITY HAS GOAL SETTING FOR GOODS AND SERVICES
22 FOR FEMALE AND AFRICAN-AMERICANS, THOSE ARE THE ONLY TWO
23 CLASSES THEY FOUND HAD SUFFERED DISCRIMINATION TO THE
24 EXTENT THAT A RACE BASED REMEDY WAS APPROPRIATE THAT NEUTRAL
25 REMEDIES -- RACE NEUTRAL REMEDIES COULD NOT BE APPLIED,

1 AFRICAN-AMERICANS AND WOMEN, SO OUR CODE ADDRESSES THOSE TWO
2 AS PROTECTED CLASSES.

3 SECONDLY, THE CITY DID SAY AS A RESULT OF THE
4 DISCRIMINATION YOU CAN, IN ORDER TO REMEDY OR TAKE STEPS TO
5 CORRECT THIS THERE NEEDED TO BE SOME GOALS SET IN ORDER FOR
6 THE CITY TO WORK TOWARDS THOSE GOALS FOR INCLUSIVENESS.

7 THE GOALS ARE 7 AND 9 PERCENT GOODS AND
8 SERVICES, PROFESSIONAL SERVICES, MINORITIES AND FEMALES. SO
9 THERE ARE GOALS SET FOR THE CITY, THE CITY IS HOPING TO AIM
10 AT.

11 OUR OFFICE IS DESIGNED TO HELP THE CITY GET TO
12 MEET THOSE GOALS THAT HAVE BEEN ISSUED, AND WE CAN DO THAT
13 IN A VARIETY OF WAYS. OUR GOAL PROVIDES FOR A NUMBER OF
14 OUTREACH EFFORTS, AT THIS POINT TECHNICAL CLEARINGHOUSES,
15 FINANCIAL BONDING ASSISTANCE, CONTRACT RESOLUTION, DISPUTE
16 RESOLUTION MATTERS, WE ALSO HAVE THE ABILITY TO SET SPECIFIC
17 CONTRACT GOALS.

18 THAT IS IF WE -- IF THERE'S A CONTRACT GOING OUT
19 TO BID FOR GOODS AND SERVICES GIVEN CONSIDERATION UNDER
20 PURVIEW OF THE COURT, WE CAN LOOK AT THAT CONTRACT IF THERE
21 IS A MINORITY AND IF A NUMBER OF OTHER FACTORS ARE PRESENT
22 AS DELINEATED IN THE CODE, SUCH AS DOES NOT RESULT IN UNDUE
23 HARDSHIP TO THE MINORITY COMMUNITY THAT AVAILABILITY IS
24 THERE, THE CONTRACT IS TO BE SUBCONTRACTED TO A MINORITY
25 CONTRACTOR, AND A NUMBER OF OTHER FACTORS, WE CAN SET A

1 SPECIFIC CONTRACT GOAL ON THAT CONTRACT.

2 AND UNLESS THE RESPONDENT EITHER MEETS THE GOAL
3 OR PROVIDES A GOOD FAITH REASON WHY THEY CANNOT MEET THE
4 GOALS, WE CAN DISALLOW THAT CONTRACTOR, SO WE DO HAVE THAT
5 ABILITY IN OUR CODE.

6 MS. ORTEGA: SO THAT WHEN YOU SAY MINORITY
7 THAT MEANS AFRICAN-AMERICANS?

8 MS. CARTER: MINORITY MEANS
9 AFRICAN-AMERICAN, AND FEMALE MEANS ALL WOMEN, EXCEPT
10 AFRICAN-AMERICAN WOMEN.

11 MS. ORTEGA: AND SO LATINOS, WHERE DO THEY
12 FIT IN?

13 MS. CARTER: THEY DON'T -- LATINOS AND
14 ASIAN MEN ARE NOT A PART OF THE CODE. AT THIS POINT THERE
15 ARE ONLY AFRICAN-AMERICANS AND WOMEN. THERE HAS BEEN SOME
16 ATTEMPT TO INCLUDE THOSE GROUPS BASED ON SOME FURTHER
17 STUDIES, ANECDOTAL EVIDENCE, I SAY JUST THAT IN LIGHT OF
18 CROSON'S STRICT REQUIREMENTS THERE WAS NO WAY TO INCLUDE
19 THOSE GROUPS AS A PROTECTED CLASS.

20 MR. STOWE: SO LET ME OFFER ALSO IF I
21 MIGHT, A LITTLE FURTHER PIECE ON THIS. WHEN I MENTIONED A
22 MINUTE AGO ABOUT COMMUNICATION AND NOT ALWAYS RECEIVING IT
23 THE SAME WAY, WHAT WE LEARNED IN THE PROCESS WAS THE ACTIVE
24 ROLE OF COMING AND TESTIFYING IN PUBLIC AND DEMONSTRATING
25 ONE'S ABILITY TO COMMUNICATE HIS OR HER ISSUE WAS NOT

1 SOMETHING REALLY SKILLED AVAILABLE AND WE FOUND IN THE
2 HISPANIC COMMUNITY, IN THE ASIAN COMMUNITY IN THIS CITY AND
3 SO WHEN THE CALL WENT OUT TO COME AND BE APART OF THIS
4 PROCESS MANY DID NOT RESPOND IN THE OTHER MINORITY
5 COMMUNITIES.

6 WHAT WE DID NOT UNDERSTAND WAS THAT THERE WAS A
7 VERY SPECIFIC WAY OF COMMUNICATING WITH THAT COMMUNITY THAT
8 WE DID NOT UTILIZE IN OUR PROCESS, TO PUT AN ARTICLE OR AN
9 ANNOUNCEMENT IN OUR DAILY NEWSPAPER, TO GO BY WAY OF RADIO
10 AND TELEVISION ANNOUNCEMENTS DID NOT REALLY AFFECT THOSE
11 COMMUNITIES.

12 MANY OF THEM HAD A SPECIFIC NEWSLETTER WRITTEN
13 BY A SPECIFIC PERSON FOR WHICH THOSE COMMUNITIES REALLY
14 BROUGHT INTO, WHEN THESE PEOPLE SAID IT YOU ACT.

15 AND SO WHAT HAPPENED WAS WE DID NOT KNOW AND
16 HAVE REALLY KNOWLEDGE OF THOSE COMMUNICATION CHAINS.

17 AS A RESULT LEARNING ABOUT THAT PROCESS, IT WAS
18 AFTER THE FACT MIND YOU, THERE HAS BEEN A COMMITMENT ON
19 BEHALF OF THE CITY TO BEGIN THE SAME KIND OF ANALYSIS MISS
20 CARTER TALKED ABOUT IN LOOKING AT THE OTHER COMMUNITIES.

21 SO IT'S NOT SOMETHING THAT WAS LEFT AND NEVER TO
22 BE HEARD OF AGAIN. THERE ARE EFFORTS UNDER WAY TO BEGIN TO
23 INCLUDE MORE PERSONS IN THIS PROCESS.

24 BUT AGAIN I WOULD JUST AGAIN COMMEND TO THIS
25 COMMITTEE AS YOU LOOK AT OTHER CITIES ACROSS OUR STATE THAT

1 IS ONE THING THAT REALLY NEEDS TO BE LOOKED AT CAREFULLY,
2 BECAUSE AGAIN IF THOSE COMMUNITIES ARE NOT EXERCISED IN
3 THEIR ABILITY TO PARTICIPATE IN THIS POLITICAL DEBATE --
4 PUBLIC DEBATE THAT THERE WILL BE NEW RULES AND REGULATIONS
5 OF TWO DECISIONS OUT OF THE GAME, UNLESS THEY ARE ABLE TO
6 SHOW THOSE KINDS OF ANECDOTAL REASONS AND HISTORICAL DATA
7 THAT PROVES THAT THEY HAVE HAD DISCRIMINATION OCCUR IN THEIR
8 PAST PRACTICES WITH CONTRACTING AND SO FORTH WITH THE CITY.

9 SO IT'S EXTREMELY IMPORTANT WORD GETS OUT AND
10 PEOPLE ARE AWARE OF THAT KIND OF CONDITION.

11 MS. ORTEGA: SO DOES YOUR COMMUNITY
12 RELATIONS COMMISSION HAVE LATINOS AS MEMBERS?

13 MR. STOWE: YES, IT DOES.

14 MS. ORTEGA: ON STAFF?

15 MR. STOWE: NOT ON STAFF, WE ARE A SMALL
16 STAFF, OUR COMMISSION HAS BEEN IN NOW SINCE 1992, I CAME ON
17 BOARD THE LATTER PART OF 1993, TECHNICALLY WE HAVE BEEN IN
18 BUSINESS AS IT WERE FOR ABOUT A YEAR AND A HALF.

19 CHAIRWOMAN RAMOS: OKAY. ONE LAST
20 QUESTION OVER HERE.

21 MR. WILSON: VERY LAST QUESTION FOR EITHER
22 OF YOU. OF COURSE THERE ARE FEDERAL AND I IMAGINE STATE
23 LAWS THAT PROHIBIT DISCRIMINATION, IN THE AREAS YOU ALL
24 INVESTIGATE, WHY DO YOU NOT THINK IT'S SUFFICIENT SIMPLY TO,
25 FOR EXAMPLE, IN YOUR OFFICE DEMOTE ITSELF TO MAKING SURE

1 THAT ANY PERSON, ANY PERSON WHOSE BEEN DISCRIMINATED AGAINST
2 BECAUSE OF HIS RACE OR SEX GETS JUSTICE? WHY IS THAT NOT
3 SUFFICIENT?

4 WHY DO YOU FEEL IT'S NECESSARY TO HAVE RACE
5 BASED AND GENDER BASED AND GOALS AND TIME TABLES AND WHAT
6 NOT?

7 MS. CARTER: I THINK IT'S ESSENTIAL
8 BECAUSE JUST AS WHEN YOU SAY YOU MAKE SURE IF ANY ONE IS
9 DISCRIMINATED AGAINST AND JUSTICE FILED, I MEAN THERE'S A
10 LOT OF WAYS YOU LOOK AT JUSTICE AND HOW IT CAN BE ACHIEVED.
11 A LOT OF TIMES PEOPLE IN THE BUSINESS FIELD OR EVEN IN NEWS
12 RELEASES MAY NOT HAVE THE RESOURCES, THEY MIGHT NOT HAVE A
13 LOT OF THINGS TO SUPPORT, TO DEFEND THEMSELVES WITH RESPECT
14 TO DISCRIMINATORY PRACTICES IMPACTING OUR LIVES.

15 WHAT WE GET IS A LOT OF PEOPLE HAVE BEEN
16 VICTIMIZED AND HAVE NO AVENUE TO GET SOME REMEDIATION. WE
17 ARE NOT ALWAYS TALKING ABOUT IN TERMS OF PAYMENT, BUT TO
18 ALLOW THEM TO GO OUT AND DO BUSINESS.

19 IF WE HAVE A BUSINESS SUFFERING DISCRIMINATION
20 AS A RESULT OF PRACTICES IN THE CITY, I DON'T KNOW THAT BY
21 INSTITUTING LEGAL ACTION OR GOING TO COURT IS GOING TO DO
22 ANY GOOD, WHERE FIVE YEARS DOWN THE ROAD THAT'S DONE AND
23 THEY ARE OUT OF BUSINESS.

24 I THINK THE APPROPRIATE MANNER IS TO TRY TO
25 ENCOURAGE INCLUSIVENESS FOR ALL PEOPLE TO BROADEN THE SCOPE.

1 SO THAT YOU DON'T HAVE PEOPLE DEPENDING ON THE JUSTICE
2 SYSTEM THAT MAY NOT IMMEDIATELY ADDRESS THEIR NEEDS. AND I
3 AM NOT SAYING THE JUSTICE SYSTEMS ALWAYS FAILS, I'M A LAWYER
4 I DON'T THINK THAT, BUT IT DOES NOT ALWAYS WORK FOR
5 EVERYONE, WHEN YOU'RE TALKING ABOUT A BUSINESS TRYING TO
6 KEEP THEIR DOORS OPEN, THE REMEDY IS SAYING GO OUT AND SUE
7 SOMEBODY TO CORRECT THAT, I GO OUT AND TELL THEM DON'T DO IT
8 AGAIN AND THEY ARE OUT OF BUSINESS IN SIX MONTHS DOES NOT
9 SEEM LIKE IT WORKS.

10 MR. STOWE: PRESIDENT JOHNSON SAID BACK IN
11 HIS SPEECH TO HOWARD UNIVERSITY IN 1965, YOU DO NOT TAKE A
12 PERSON WHO FOR YEARS HAS BEEN HOBbled BY CHAINS AND LIBERATE
13 HIM, BRING HIM TO THE STARTING LINE AND THEN SAY YOU ARE
14 FREE TO COMPETE WITH ALL OTHERS AND STILL JUSTLY BELIEVE
15 YOU'VE BEEN COMPLETELY FAIR.

16 I THINK IT COMES OUT OF THAT CONTEXT THAT WE
17 HAVE TO HAVE OTHER WAYS OF LOOKING AT SOME OF THESE
18 OPPORTUNITIES THAT EXIST FOR ALL PEOPLE ACROSS THIS COUNTRY,
19 AND CERTAINLY IN THE STATE OHIO, TO FAIRLY HAVE ACCESS TO
20 ALL THAT WE HAVE TO OFFER AS A STATE.

21 WE NEED TO BE CREATIVE IN DOING THAT, WE NEED TO
22 REVIEW WHAT'S BEEN DONE IN THE PAST AND FINE TUNE, BUT IN
23 ALL INSTANCES WE'VE GOT TO FIND WAYS TO HAVE EVERYBODY TO
24 HAVE THE OPPORTUNITY TO BE THE BEST THEY CAN POSSIBLY BE IN
25 THE STATE, AND THAT OUGHT TO BE THE GOAL FOR EVERYONE.

1 CHAIRWOMAN RAMOS: THANK YOU VERY MUCH.
2 WE REALLY APPRECIATE YOUR TAKING THE TIME OUT AND WE LOOK
3 FORWARD TO SEEING WHAT YOUR PAPER HAS, I KNOW THIS IS JUST A
4 SUMMARY, AND WE WISH YOU THE BEST.

5 I WANT TO THANK ALL OF OUR SPEAKERS. I THINK
6 SOME OF THEM CAME THROUGH DRIVING RAIN, WE WANT TO WELCOME
7 YOU, MS. PAUL TO THIS MEETING AND YOU'RE FROM BOWLING GREEN
8 STATE UNIVERSITY, RIGHT?

9 MS. PAUL: YES. THANK YOU FOR INVITING
10 ME, I'M PROFESSOR OF POLITICAL SCIENCE AND PHILOSOPHY AND
11 I'VE HAD A LONG STANDING INTEREST OVER THE LAST 8 OR 9 YEARS
12 IN DISCRIMINATION LAW.

13 SO I HOPE NOT TO PUT YOU ALL TO SLEEP, MY MAIN
14 EMPHASIS WILL BE ON THE RECENT LEGAL DEVELOPMENTS AND
15 PARTICULARLY IN OHIO, BUT BEFORE I TALK ABOUT OHIO, I WOULD
16 LIKE TO DISCUSS SOME RECENT DEVELOPMENTS THAT HAVE BEEN
17 ELUDED TO ALREADY IN YOUR EARLIER SESSION.

18 AS MOST OF YOU KNOW THE SUPREME COURT DECIDED IN
19 A DECISION LAST JUNE, ADERAN VERSUS MENIAN, WHICH WILL HAVE
20 ENORMOUS IMPLICATION THROUGHOUT THE COUNTRY IN THE
21 AFFIRMATIVE ACTION PROGRAMS, UNIVERSITY, BUSINESSES, AND
22 GOVERNMENT AGENCIES, AND ALSO OF COURSE WITH SET ASIDES,
23 WHICH IS SPECIFICALLY WHAT ADERAN ADDRESSED.

24 AND YOU PROBABLY ALSO KNOW THAT GOING TO THE
25 BAKKE DECISION IN 1978, WHICH CONCERNED A WHITE STUDENT WHO

1 WAS DENIED ADMISSION TO THE UNIVERSITY OF CALIFORNIA DAVIS
2 MEDICAL SCHOOL, WHILE MINORITY STUDENTS WITH LESSER
3 CREDENTIALS WERE ADMITTED, THE SUPREME COURT HAS BEEN IN
4 UTTER CONFLICT WITH ITSELF AND SOME JUSTICES SEEM AT ODDS
5 WITH THEMSELVES OVER AFFIRMATIVE ACTION DECISIONS.

6 BAKKE HAD SIX OPINIONS WRITTEN, AND NONE OF THEM
7 COMMANDED A MAJORITY OF THE JUSTICES AND THAT'S REALLY BEEN
8 THE HISTORY. THERE HAVE ONLY BEEN A COUPLE OF AFFIRMATIVE
9 ACTION CASES, MAYBE MORE THAN 2, 3 OR 4 WHERE THERE HAS BEEN
10 A MAJORITY AND ADELAN IS ONE OF THE -- BEEN VERY
11 CONTROVERSIAL.

12 IN 1989 THE SUPREME COURT CONSERVATIVES STRUCK
13 THEIR FIRST BLOW WITH THE CROSON CASE, AND AS YOU HEARD IN
14 THE EARLIER SESSIONS THAT WIDE IMPLICATIONS IN CITIES AND
15 STATES AND COUNTIES THROUGHOUT THE COUNTRY ALSO MADE THE
16 FORTUNE OF CONSULTANTS AS YOU HEARD WITH MANY DOLLAR
17 PAYMENTS.

18 CITIES ARE IN A VERY IRONIC SITUATION, I THINK
19 THEY HAVE TO GO OUT AND PAY TO HAVE SOMEONE THAT THEY
20 DISCRIMINATED, USUALLY PEOPLE WANT TO SAY WE DIDN'T
21 DISCRIMINATE, WE'RE NOT DISCRIMINATORS, BUT THE CROSON PUTS
22 IT IN THIS BIZARRE SITUATION ALMOST HAVING TO SET THEMSELVES
23 UP FOR LAWSUITS. THEY HAVE TO INVESTIGATE THEMSELVES AND
24 CHASTISE THEMSELVES AS DISCRIMINATORS, SO IT'S A VERY ODD
25 SITUATION.

1 IN ADERAN, THE LARGE MAJORITY ESTABLISHED STRICT
2 SCRUTINY TESTS FOR ALL PROGRAMS, THIS IS BROADER THAN SET
3 ASIDE. ALL PROGRAMS THAT MAKE RACIAL CLASSIFICATIONS, AND I
4 THINK THIS IS REALLY EMBLEMATIC OF HOW CONCERNED EVEN THE
5 MORE LIBERAL JUDGES HAVE BEEN ABOUT AFFIRMATIVE ACTION FROM
6 ITS INCEPTION THE EQUAL PROTECTION CLAUSE OF THE 14TH
7 AMENDMENT AND IT MEANS A GREAT DEAL IN OUR TRADITION AS YOU
8 KNOW.

9 AND EVEN LIBERAL JUDGES ALL ALONG HAVE SAID
10 THESE PROGRAMS HAVE TO BE TEMPORARY, THEY HAVE TO BE
11 SCRUTINIZED CAREFULLY, THE LEVEL OF SCRUTINY HAS ALWAYS BEEN
12 SUBJECT TO DEBATE, AND I THINK IT'S BECAUSE CLASSIFYING
13 PEOPLE BY RACE IS SOMETHING THAT'S MORALLY VERY TOUCHY FOR
14 MOST AMERICANS.

15 AND UP UNTIL THE EEOC AND THE EXECUTIVE ORDER OF
16 PRESIDENT JOHNSON, THE CIVIL RIGHTS GROUPS THEMSELVES JUST
17 ABHORRED CLASSIFICATION BY RACE. ONE OF THE THINGS THEY
18 WERE AGAINST WAS HAVING PICTURES OF PEOPLE WHEN YOU APPLY
19 FOR A JOB YOU HAVE TO PUT YOUR PICTURE THERE, SO YOU ARE
20 RACIALLY IDENTIFIABLE, THAT'S ONE OF THE THINGS THEY
21 OPPOSED, BUT VERY QUICKLY WE HAVE TO COUNT BY RACE IF WE
22 PURSUE AN AFFIRMATIVE ACTION PROGRAM.

23 I HAVE TO RACE THROUGH THIS, BEFORE I GET TO
24 OHIO. QUICKLY THERE'S A CASE AGAINST THE UNIVERSITY OF
25 TEXAS CALLED HOPEWOOD VERSUS THE UNIVERSITY OF TEXAS, OR

1 HOPWOOD VERSUS THE UNIVERSITY OF TEXAS.

2 THIS WAS DECIDED AFTER ADERAN, AND I THINK IT'S
3 A GOOD INDICANT OF THINGS TO COME. THE JUDGES THERE LOOKED
4 AT THIS WAS A WHITE POTENTIAL LAW SCHOOL STUDENT WHO WAS
5 DENIED ADMISSION WHILE MINORITY BLACKS AND MEXICAN-AMERICANS
6 WERE ADMITTED TO THE UNIVERSITY OF TEXAS LAW SCHOOL WITH
7 SUBSTANTIALLY LOWER SCORES ON THE LAW SCHOOL ADMISSION TEST
8 AND LOWER GRADES.

9 SO THE COURT THERE EXAMINED EVERY TINY LITTLE
10 DETAIL, AND ARGUMENTS THAT WOULD HAVE JUST PASSED THROUGH
11 VERY EASILY BEFORE THAT SHOWED WHERE THE LAW SCHOOL ARGUED
12 THEY HAD HAD A HISTORY OF PAST DISCRIMINATION, THE SCHOOL
13 SYSTEM HAD A HISTORY OF PAST DISCRIMINATION, THE JUDGES JUST
14 PICKED APART EVERY ONE OF THOSE ARGUMENTS AND APPLIED THE
15 STRICT SCRUTINY TEST AND SAID, COMPELLING STATE INTEREST IS
16 NOT DIVERSITY, IT CAN'T BE MULTI-CULTURALISM OR PROMOTING
17 ROLE MODELS THE ONLY THING YOU CAN DO IS REMEDY PAST
18 DISCRIMINATION OF THE PARTICULAR INSTITUTION TEXAS, WHICH IT
19 WAS ARGUING THE WHOLE HISTORY OF SEGREGATED SCHOOLS IN
20 TEXAS THAT ARGUMENT WAS BLOWN OUT OF THE WATER BY THE
21 JUDGES, BECAUSE THEY SAID THAT THEY DID NOT FIND A
22 COMPELLING ISSUE, THEY DIDN'T LOOK AT THE SECOND PART OF
23 SCRUTINIES, WHICH IS YOUR REMEDY NARROWLY TAILORED TO FIX
24 THE DISCRIMINATION YOU ACTUALLY CAUSED.

25 IF THEY HAD GOTTEN THROUGH TO IT, IT WOULD HAVE

1 BEEN ANOTHER 50 PAGES OF PARCELING EVERY ARGUMENT AND
2 LOOKING AT IT WITH A GREAT DEAL OF SKEPTICISM.

3 THIS WAS THE SIGNAL THE SUPREME COURT SET OUT,
4 THAT WE'RE NOT JUST ACCEPTING STATISTICS OF DISPARITY ANY
5 MORE OF HOW MANY MINORITIES ARE IN THE POPULATION AND HOW
6 MANY ARE IN THE WORK FORCE OR UNIVERSITY. WE WANT TO GET
7 BACK TO THIS IDEA OF INTENTIONAL DISCRIMINATION, AND IT'S
8 THE HOPWOOD CASE IS A VERY CLEAR INDICANT AND IT'S GOING TO
9 BE APPEALED TO THE SUPREME COURT.

10 IN OHIO THERE HAS ALSO BEEN A CASE THAT IS VERY
11 INTERESTING, AND WAS SETTLED BEFORE IT WAS DECIDED BY THE
12 FEDERAL DISTRICT COURT, THIS IS THE CASE AFFECTING THE
13 UNIVERSITY, OHIO STATE UNIVERSITY, WHICH WAS SUED BY A
14 CONTRACTOR, PAINTING CONTRACTOR BECAUSE HE HAD BEEN DENIED
15 PERMISSION TO BID FOR CONTRACTS, BECAUSE THE UNIVERSITY HAD
16 INSTITUTED A 100 PERCENT SET ASIDE FOR A MINORITY
17 CONTRACTOR.

18 AND EVEN BEFORE ADERAN, A HUNDRED PERCENT SET
19 ASIDE WOULD HAVE BEEN IN DEEP TROUBLE, AFTER ADERAN THE
20 JUDGE GAVE A VERY CLEAR INDICATION TO THE UNIVERSITY THAT
21 THERE WAS NO WAY THAT THIS PROGRAM WAS TO BE APPROVED AND
22 THEY SETTLED IT, IT COST \$368,000.

23 I THINK AS A RESULT THESE SUITS ARE NOT GOING TO
24 GO AWAY, WHAT THEY MANAGE TO DO IS TO SACRIFICE THE HUNDRED
25 PERCENT PAINTING SET ASIDE, BUT PRESERVE THE REST OF THE SET

1 ASIDE PROGRAM, BOTH IN THE UNIVERSITY AND THE STATE AT A
2 COST OF \$368,000 TO GET THIS PAINTING CONTRACT TO DESIST,
3 BUT I THINK THE PUBLIC LEGAL FOUNDATIONS THAT ARE PURSUING
4 THESE CASES, THE HOPWOOD CASE IN TEXAS, AND HENRY PAINTING
5 IN OHIO ARE NOT GOING TO GO AWAY, THEY INTEND TO PURSUE
6 THESE THINGS ACTIVELY AND THEY HAVE TO GO PIECE-MEAL, ONE
7 PART OF A PROGRAM AFTER ANOTHER.

8 THEY'LL DO IT UNTIL THE STATES BACK OFF OR GO
9 BANKRUPT PAYING THESE DAMAGE AWARDS. SO I THINK ADERAN HAS
10 WIDE AFFECTS. I'M SURE I SPOKE MORE THAN FIVE MINUTES AND I
11 APOLOGIZE.

12 CHAIRWOMAN RAMOS: DO WE HAVE SOME
13 QUESTIONS? THAT'S ALL RIGHT. NO ONE HAS ANY QUESTIONS.

14 MR. CHOI: YOU POINTED AT A VERY -- RIGHT
15 AT THAT CORE OF A PROBLEM WE ARE EXPERIENCING TODAY, A
16 TREND, THE PREVIOUS SESSION WE HAD DISCUSSED HOW MUCH
17 COMMUNICATING OTHER RELEVANT GROUPS AND HIERARCHY OF OUR
18 COMMUNITY AND OF OUR SOCIETY AND THEN BUILD OUR FORCE, IF WE
19 ACT CORRECTLY WHAT CAN WE DO ABOUT THESE TRENDS?

20 MS. PAUL: WELL, IT'S -- BEING A POLITICAL
21 SCIENTIST IT'S BEEN INTERESTING TO OBSERVE THE STATUS OF
22 AFFIRMATIVE ACTION. PRIOR TO 1994, THERE WAS SORT OF A
23 CONSENSUS NOT REALLY TO TALK ABOUT AFFIRMATIVE ACTION, MUCH
24 PARTICULARLY WHERE I COME FROM IN UNIVERSITIES WHERE THESE
25 THINGS, THEY GET OUT IN THE OPEN AND BECOME VERY

1 CONTENTIOUS.

2 I RECALL A COUPLE YEARS AGO A GEORGETOWN LAW
3 STUDENT WAS WORKING IN ADMISSIONS AND HE STOLE A PAPER ABOUT
4 DISPARITIES BETWEEN MINORITIES AND WHITES AUGMENTED AT THE
5 SCHOOL, AND PUBLISHED IT IN THE SCHOOL PAPER.

6 THIS WAS A SCANDAL THROUGHOUT THE COUNTRY AND
7 THAT WAS THE ATMOSPHERE, ANYBODY WHO REALLY WANTED TO TALK
8 ABOUT THESE PROGRAMS AND ESPECIALLY TALK ABOUT THEM IN GREAT
9 DETAIL WHERE THE FACTS WERE BROUGHT OUT. AND METHODOLOGY OF
10 ADMISSIONS AND SELECTIONS FOR BUSINESS WERE TALKED ABOUT OUT
11 IN THE OPEN.

12 IT WAS JUST IMPOSSIBLE, AND I THINK IN
13 PARTICULAR TIMING IS EVERYTHING, AND TWO CALIFORNIA
14 PROFESSORS NO ONE REALLY HEARD OF CAME UP WITH THIS
15 CALIFORNIA CIVIL RIGHTS INITIATIVE, WHICH WILL DISQUALIFY
16 FOR THE BALLOT IN CALIFORNIA, THAT JUST SEEMED TO OPEN A
17 FLOOD GATE AND GOVERNOR WILSON JUMPED ON A GOOD THING AND
18 PROMULGATED AN EXECUTIVE ORDER TO ABOLISH AFFIRMATIVE ACTION
19 IN THE AGENCY.

20 AND AS YOU KNOW THE REGENTS RECENTLY DECIDED
21 LAST SUMMER TO END AFFIRMATIVE ACTION IN ADMISSIONS IN THE
22 UNIVERSITY OF BERKLEY IN CALIFORNIA. SO I THINK THERE'S A
23 SYNERGY OPERATING IN HOW THESE POLITICAL EVENTS -- AND
24 CALIFORNIA IS KIND OF A BELL WEATHER STATE, WHEN THEY DO
25 SOMETHING IT RIPPLES LIKE THE TAX INITIATIVE THROUGHOUT THE

1 COUNTRY AND THAT'S WHAT'S HAPPENED HERE.

2 IN OVER HALF THE STATES THERE'S BEEN LAWS
3 SUBMITTED TO CURTAIL OR END AFFIRMATIVE ACTION AND LAWS ON
4 THE OTHER SIDE, BILLS PROPOSED ON THE OTHER SIDE, TOO.

5 SO I THINK THERE'S A SYNERGY BETWEEN POLITICIANS
6 AND WHAT'S HAPPENED IN COURTS. I THINK IT'S A GOOD THING.
7 I THINK WE NEED TO TALK ABOUT THESE THINGS OUT IN THE OPEN
8 NOW, WHERE BEFORE UNIVERSITIES AND THEIR ADMISSIONS
9 DEPARTMENTS WERE CLOSED TO LET ANYBODY KNOW HOW THEY WERE,
10 HOW THEY WERE MANAGING THEIR AFFIRMATIVE ACTION PERHAPS.
11 AND I THINK A POLICY NEEDS TO BE ABLE TO WITHSTAND THE LIGHT
12 OF DAY AND A DEMOCRACY OR IT WON'T SURVIVE.

13 AND I THINK IT'S HAD A MUCH HEALTHIER DEBATE
14 THAN WHAT'S HAPPENING NOW THAN THE CLIMATE THAT EXISTED
15 BEFORE. SO I CERTAINLY DON'T WANT TO GO BACK TO THAT AND I
16 THINK IT'S ONE IF YOU FEEL THAT YOU'RE HAVING THESE
17 DISCUSSIONS NOW, IT'S A VERY TIMELY OCCASION, I THINK.

18 MR. LEVENTHAL: YOU'RE INVOLVED IN
19 PHILOSOPHY, SO I SUPPOSE I COULD START BY QUOTING SOCRATES
20 WHO SAID DEFINE YOUR TERMS, AND THIS IS WHAT I WOULD LIKE TO
21 ASK CONCERNING AFFIRMATIVE ACTION, HOW DO WE REALLY DEFINE
22 THE PROBLEM THAT WE'RE TALKING ABOUT?

23 THERE ARE SO MANY DIFFERENT PHASES OF THE SET
24 ASIDE, THE CONTRACTS, THERE'S SCHOOL ADMISSIONS, AND ONE
25 PROBLEM WE HAVE NOT TOUCHED UPON BUT PROBABLY WILL LATER ON

1 IS THE WAGE DISPARITY BETWEEN MINORITY WOMEN AND MEN IN THE
2 WORKPLACE, WHICH I DON'T KNOW, IS MAYBE 30 PERCENT, 35
3 PERCENT, WHATEVER IT IS.

4 AND NONE OF US SEEM TO BE CONCERNED ABOUT THAT,
5 AFFIRMATIVE ACTION IS SUCH A COMPREHENSIVE FIELD, SOMETIMES
6 I WONDER IF WE REALLY KNOW WHAT WE'RE TALKING ABOUT.

7 AND I'M JUST WONDERING WHETHER SOME STUDIES
8 COULD BE MADE IN COLLEGES OR OTHER PLACES, WHAT ARE THE
9 PRESSING PROBLEMS? THESE LEGAL SOLUTIONS ARE REALLY NOT
10 SOLUTIONS, YOU QUOTED A COUPLE OF COURT CASES, THEY HAVEN'T
11 REALLY SOLVED ANYTHING DEFINITELY.

12 SO I'D LIKE TO ASK YOU HOW DO YOU FEEL ABOUT
13 APPROACHING THIS PROBLEM FROM THE STANDPOINT OF DEFINING THE
14 TERMS OF AFFIRMATIVE ACTION, WHAT'S THE MOST IMPORTANT
15 ASPECT OF IT? I KNOW IT'S A TOUGH QUESTION, I KNOW.

16 MS. PAUL: I UNDERSTAND YOUR QUANDRY, I
17 HAVE WRITTEN IN MY LIFE ON MANY, MANY DIFFERENT TOPICS, MANY
18 LEGAL TOPICS ON PROPERTY RIGHTS AND TAKING ISSUES THAT WOULD
19 MAKE YOUR BRAIN EXPLODE, BUT THIS IS THE WORSE, AND EVERY
20 TIME I'M ASKED TO WRITE ABOUT IT, BUT I HATE DOING IT, IT'S
21 LIKE DROWNING IN A QUAGMIRE OF ARGUMENTS, ESPECIALLY IF YOU
22 TRY TO MAKE SENSE OUT OF THE SUPREME COURT CASE AND LOWER
23 COURT CASES, IT'S VIRTUALLY CHAOTIC TO MAKE ANY KIND OF
24 COHERENT STORY.

25 I THINK IT HELPS IF YOU GO OVER THE HISTORY OF

1 WHERE AFFIRMATIVE ACTION CAME FROM. AND I TRIED TO DO THAT
2 BRIEFLY IN MY PAPER WHERE AFFIRMATIVE ACTION CAME FROM THAT
3 HELPED SORT IT OUT A BIT.

4 BUT I THINK IT WAS VERY CLEAR IF YOU LOOK BACK
5 AT THE TRANSCRIPTS OF THE CONGRESSIONAL HEARINGS AND DEBATES
6 ON THE CIVIL RIGHTS ACT IN 1964 THAT THE INTENTION WAS NOT
7 TO CLASSIFY BY RACE, IT WAS THE OPPOSITE.

8 IT WAS TO TREAT EVERYBODY AS MARTIN LUTHER KING
9 SAID, FOR THE CONTENT OF YOUR CHARACTER, RATHER THAN THE
10 COLOR OF YOUR SKIN.

11 AND IF YOU READ THE CIVIL RIGHTS ACT,
12 PARTICULARLY TITLE 7, WHICH DEALT WITH EMPLOYMENT
13 DISCRIMINATION, VIRTUALLY EVERYTHING THAT WAS PUT IN THERE
14 TO PREVENT AFFIRMATIVE ACTION TURNING INTO PREFERENCES OR
15 HAVING THE GOVERNMENT REQUIRE BUSINESSES TO COUNT PEOPLE BY
16 RACE AND TO HIRE BY QUOTA, ALL OF THOSE PROVISIONS ARE THE
17 CLEAREST LEGISLATIVE LANGUAGE I'VE EVER READ.

18 WHERE WITHIN A YEAR OR TWO AFTER THE PASSAGE OF
19 THE ACT COMPLETELY REVERSED BY, BY MOSTLY THE EEOC, WHICH A
20 THOUGHT THAT IF ALL THE CIVIL RIGHTS ACT LET THEM DO WAS
21 MAKE SURE THAT BUSINESSES FROM NOW ON DON'T DISCRIMINATE,
22 THEN THAT WASN'T GOING TO GET ANYWHERE, IT WOULD BE TOO
23 SLOW.

24 THE CIVIL RIGHTS ACT SAYS WE'RE STARTING FROM
25 NOW, I THINK IT'S -- IT WAS FULLY ENFORCED IN 1968 ONWARD,

1 WE'RE NOT RETROSPECTIVE. WE ARE NOT GOING TO INVESTIGATE
2 WHAT YOU DID IN THE PAST, IT'S PROSPECTIVE.

3 BUT ALL OF THAT AND ALL OF THE PROVISIONS THAT
4 WERE INTRODUCED TO PRESERVE THE IDEA OF INDIVIDUAL QUALITY,
5 RATHER THAN GROUP QUALITY WERE ERODED AND THE COURTS,
6 INCLUDING THE SUPREME COURT WENT ALONG WITH IT.

7 SOME OF THEIR LANGUAGE WHEN CONFRONTED WITH THE
8 ACTUAL LANGUAGE IN THE CIVIL RIGHTS ACT AND THEY HAVE TO SAY
9 HOW THEIR DECISION IS THE COMPLETE REVERSE OF THAT. THEY
10 COME UP WITH JUST THE ABSOLUTE FLIMSIEST DECISION I'VE EVER
11 SEEN IN COURT DECISIONS.

12 SO THAT'S SOME INDICATION OF WHERE SOME OF IT
13 CAME FROM, BUT I THINK FOR ME THE PART OF AFFIRMATIVE ACTION
14 THAT MAKES SENSE AND IS CONSISTENT WITH THE EQUAL PROTECTION
15 CLAUSE OF THE CONSTITUTION, AND MORE IMPORTANTLY WITH OUR
16 SENSE OF INDIVIDUAL RIGHTS THAT THIS COUNTRY WAS FOUNDED
17 UPON, IS CASTING A WIDER NET MAKING SURE THAT WE'RE
18 INCLUSIVE, AND HAVING REMEDIAL PROGRAMS IF THEY ARE
19 NECESSARY TO MAKE SURE THAT MINORITIES CAN COMPETE.

20 THE FELLOW WHO SPOKE TO YOU THIS MORNING QUOTED
21 A PASSAGE FROM LYNDON JOHNSON, WHICH IS QUOTED VIRTUALLY BY
22 EVERYBODY WHO WRITES THESE THINGS. THAT WAS 1965, WHEN ARE
23 WE GOING TO SAY, OKAY, LET'S SEE IF WE CAN -- WE'RE AT THE
24 POINT WHERE WE CAN HAVE A FAIR RACE, AND MY INCLINATION IS
25 TO JUST HAVE A GRADUAL PHASE OUT OF AFFIRMATIVE ACTION AS

1 PREFERENCES.

2 I THINK IF YOU LOOK AT GENERATIONALLY, THE WORLD
3 WAR II GENERATION IS STARTING FADING FROM THE SCENE, AND
4 PEOPLE IN MY AGE, I'M IN MY 40'S, BARELY HAVE ANY PERSONAL
5 EXPERIENCE IN DISCRIMINATION, UNLESS THEY GREW UP IN THE
6 SOUTH.

7 I MEAN YOUNGER KIDS KNOW NOTHING ABOUT THIS
8 UNLESS THEY READ IT IN TEXTBOOKS, WHAT THEY SEE IS THEIR
9 FRIENDS WHO ARE MIDDLE CLASS SITTING NEXT TO THEM IN CLASS
10 WHO HAVE LOWER SAT AND LOWER GRADES ARE GETTING INTO ELITE
11 SCHOOLS, AND THEY ARE NOT -- IT'S CAUSING AN ENORMOUS AMOUNT
12 OF RESENTMENT I THINK A FEW YEARS AGO YOU SEE THESE RACIAL
13 INCIDENTS CROPPING UP ON CAMPUS.

14 PARTICULARLY WHERE FRATERNITIES ARE RACIALLY
15 INSENSITIVE AND GOING AROUND IN KU KLUX KLAN OUTFITS, I
16 THINK AS A SOCIETY THERE'S A GENERATION HERE AND FAIRNESS
17 AND QUALITY MAKES SENSE TO EVERYBODY BY PENALIZING PEOPLE
18 AND BENEFITTING OTHERS WHEN THEY DON'T REALLY UNDERSTAND
19 WHERE THEY CAME FROM AND THEY DON'T FEEL THAT THEY ARE
20 RESPONSIBLE FOR ANY OF IT IS SOMETHING THAT THAT'S WHY I
21 CALLED THIS AFFIRMATIVE ACTION 21ST CENTURY AND I JUST DON'T
22 THINK IT'S GOING TO BE DIVISIVE AND MUCH MORE DIVISIVE IN
23 THE NEXT 10 YEARS THAN HAS BEEN SO FAR.

24 MS. ORTEGA: YOU HEARD EARLIER WHERE THE
25 CITY OF COLUMBUS WHERE LATINOS WERE NOT DEFINED AS A

1 MINORITY, WHAT HAS BEEN IN THE STATE OF OHIO AND MORE
2 SPECIFICALLY WITH YOUR EXPERIENCE AT BOWLING GREEN STATE
3 UNIVERSITY, NORTHWEST OHIO, WHERE THERE ARE SIGNIFICANT
4 NUMBERS OF LATINOS IN SOME COMMUNITIES, EVEN 20 PERCENT OF
5 THE POPULATION LATINOS, WHAT HAS BEEN YOUR EXPERIENCE WITH
6 RESPECT TO LATINOS BEING INCLUDED IN THE DEBATE OR EVEN IN
7 THE WHOLE PROCESS?

8 MS. PAUL: I REALLY DON'T KNOW WHAT THE --
9 I CAN'T ANSWER THAT, ONE THING THAT I DIDN'T REALLY HAVE
10 TIME FOR IN INTRODUCTORY REMARKS WAS THE ATTEMPT BY THE
11 STATE OF OHIO, WHICH I'M SURE YOU'RE FAMILIAR WITH IN AT THE
12 END OF MARCH, THE GOVERNOR HANDED OUT AN EXECUTIVE ORDER TO
13 EXPAND SET ASIDE PROGRAMS TO TRY TO SAVE IT AFTER ADERAN,
14 AND THIS WAS VERY CONTROVERSIAL, BECAUSE THE GROUPS THAT HAD
15 BEEN IN THE PROGRAM ORIGINALLY DIDN'T WANT IT TO BE
16 EXPANDED, WOMEN, DISABLED, SOCIALLY AND ECONOMICALLY
17 DISADVANTAGED PEOPLE WERE INCLUDED IN THIS PROGRAM.

18 AND I DON'T THINK IT'S GOING TO WORK, BECAUSE
19 THE PROGRAM THAT THE GOVERNOR SUGGESTED IS BASED ON A SMALL
20 BUSINESS ADMINISTRATION'S ADA PROGRAM THAT WAS THE FOCUS OF
21 ADERAN.

22 SO I THINK THE WAY I WOULD ANSWER YOUR QUESTION
23 IS I THINK IT'S OUTDATED TO ASK ARE LATINOS GOING TO BE
24 INCLUDED IN THESE PROGRAMS, THE WAY THINGS ARE GOING I DON'T
25 THINK THESE PROGRAMS ARE GOING TO BE AROUND FOR MUCH LONGER.

1 MS. ORTEGA: I DIDN'T ASK ARE THEY GOING
2 TO, I WANT TO KNOW WHAT YOUR EXPERIENCE HAS BEEN.

3 MS. PAUL: I REALLY DON'T KNOW. TOLEDO'S
4 GOVERNMENT IS SO CHAOTIC ANYWAY.

5 MR. BATTLE: I'M GOING TO PUT YOU ON THE
6 SPOT, DR. PAUL, IF NOT THIS, WHAT? YOU MENTIONED CASTING
7 THE BROADER NET AND THAT IT WASN'T INTENDED TO BE ANYTHING
8 BUT TEMPORARY, BUT HERE WE ARE, REALITY WOULD HAVE IT WE'RE
9 LIVING IN THE PRESENT, IN 1996, WHAT ABOUT -- AND THE
10 PROBABILITY OF QUALITY OF RESULT, VERSUS QUALITY OF
11 OPPORTUNITY CONTINUES TO BE A NAGGING ISSUE, PUT US -- BRING
12 US INTO REALITY IN 1996, WOULD YOU?

13 MS. PAUL: YEAH, I THINK YOU'VE ASKED AN
14 EXCELLENT QUESTION. MY GUESS IS IF ALL OF THESE PROGRAMS
15 WERE ABOLISHED OVERNIGHT, WHICH IS NOT GOING TO HAPPEN, THAT
16 THERE IS STILL A TREMENDOUS WEALTH OF GOOD WILL AMONG THE
17 AMERICAN POPULATION.

18 I DON'T THINK ACTIVE DISCRIMINATION WILL BE
19 RAMPANT THROUGHOUT THE COUNTRY, I DON'T THINK THAT'S GOING
20 TO HAPPEN.

21 I DON'T THINK BUSINESSES ARE GOING TO RETRENCH
22 FROM HIRING MINORITIES, THERE HAVE BEEN RECENT POLLS OF
23 CORPORATE HEADS, THREE-QUARTERS OF THEM SAID IF THERE WAS
24 NOT ANY AFFIRMATIVE ACTION PROGRAMS WE WOULD STILL CAST THE
25 WIDER NET, WE WOULD STILL ENCOURAGE OUR PEOPLE TO HIRE

1 MINORITIES.

2 I THINK IF YOU GO BACK TO THE '80S WHEN EVERY
3 ONE WAS QUITE UPSET ABOUT RACE AND COMPANIES NOT ENFORCING
4 AFFIRMATIVE ACTION AND NOT ACTIVELY OPPOSING AFFIRMATIVE
5 ACTION, THE BUSINESS COMMUNITY HAS BEEN SOLD ON IT AS A
6 BUSINESS PROPOSITION.

7 I THINK THE REACTION WAS EXPLOSIVE TO THE
8 REGENTS IN AFFIRMATIVE ACTION IN CALIFORNIA, BUT THE
9 PRESIDENT, WHICH I THINK IS THE CHANCELLOR ACTUALLY OF THE
10 UNIVERSITY OF CALIFORNIA AND BERKLEY CAME UP WITH A PROGRAM,
11 HE SAID WE WILL GO OUT AND IDENTIFY BRIGHT MINORITY STUDENTS
12 WHEN THEY ARE STILL IN SECONDARY SCHOOL AND ELEMENTARY
13 SCHOOL AND WE ARE GOING TO RAISE MONIES, LIKE 60 MILLION
14 DOLLARS FOR EDUCATIONAL PROGRAMS TO TRAIN THESE KIDS TO
15 BRING THEM UP TO THE POINT WHERE BY THE TIME THEY ARE READY
16 FOR ADMISSION TO THE UNIVERSITY THEY CAN -- THEY ARE AT THE
17 STARTING GATE OF THE RACE ON AN EQUAL BASIS.

18 AND I THINK IF WE CONCENTRATE ON DOING THAT,
19 RATHER THAN COUNTING NOSES BY RACE, AND IT'S OFFENSIVE TO ME
20 WHEN I READ THERE'S A BLACK WOMAN THIS, A WHITE WOMAN, A
21 LATINO, A MEXICAN, AND I CAN SEE WHERE JUSTICE SCALIA IN
22 ADERAN IN THE CONCURRING OPINION SAID, LOOK, WE'RE ALL
23 AMERICANS AND WE HAVE FORGOTTEN THAT AND WE NEED TO GO BACK
24 TO THAT AND I THINK HE'S RIGHT.

25 I THINK THE QUALITY OF OPPORTUNITY IS A

1 PRINCIPAL WE ALL UNDERSTAND, BECAUSE IT'S BASED ON FAIRNESS
2 WE CAN EXPLAIN TO PEOPLE.

3 QUALITY OF RESULTS ON THE OTHER HAND IS A VERY
4 DANGEROUS CONCEPT AND I THINK WHEN -- I KNOW I'M BEING LONG
5 WINDED HERE, BUT I THINK WE HAVE TO LOOK AT WHERE WE WERE IN
6 1965, AND WHERE WE ARE NOW.

7 AND IT STRUCK ME ONE DAY WHEN I WAS WATCHING A
8 TENNIS MATCH, WHICH I DO A LOT OF, IT WAS FROM GLENNA AND
9 THE VICE PRESIDENT OF COCA COLA GAVE THE WINNER HIS
10 EXORBITANT PRIZE MONEY, AND THIS WAS A BLACK MAN.

11 AND I REMEMBER ARTHUR ASHE WOULD TALK ABOUT WHEN
12 HE FIRST STARTED HIS CAREER, WHICH WAS IN THE '60S, GOING IN
13 THE SOUTH AND THEY WOULDN'T LET HIM COMPETE AT THESE
14 TOURNAMENTS THAT WERE HELD AT EXCLUSIVE WHITE CLUBS, HE
15 COULDN'T EAT WITH THE OTHER PLAYERS, HE COULDN'T STAY IN THE
16 SAME HOTEL, SO WE HAVE COME AN ENORMOUS DISTANCE.

17 I KNOW IT'S HARD TO SEE THAT WHEN THERE'S STILL
18 DISCRIMINATION AND DISPARITY IN LIVING STANDARDS AND
19 EDUCATION IN THE COUNTRY, BUT A SOCIAL REVOLUTION HAS NOT
20 COME OVERNIGHT AND WE REALLY -- IF YOU LOOK AT WOMEN, I WAS
21 THE ONLY WOMAN IN MY GRADUATING CLASS AT HARVARD. NOW, IT'S
22 NOTHING, OVER HALF OF THEM ARE WOMEN.

23 IF YOU LOOK AT PROFESSIONAL SCHOOLS AND MEDICAL
24 SCHOOLS IT'S THE SAME THING, 40/50 PERCENT WOMEN. SO
25 THERE'S BEEN A TREMENDOUS REVOLUTION THAT'S GONE ON. ITS

1 HARD REALLY TO GET A PERSPECTIVE ON IT WHEN YOU'RE MIRED IN
2 DAY TO DAY INEQUITIES.

3 CHAIRWOMAN RAMOS: I WANT TO THANK YOU FOR
4 COMING. I THINK THAT'S ONE OF THE REASONS WE'RE HERE IS TO
5 HEAR ALL THE DIFFERENT PERSPECTIVES, AND SEE WHAT CAN
6 HAPPEN, THE TIMES HAVE CHANGED, DEMOGRAPHICS HAVE CHANGED, I
7 THINK IT'S INTERESTING YOUR LABOR FORCE WILL COME FROM
8 WHAT'S AVAILABLE, SO IF THEY WANT TO DISCRIMINATE THEY WILL
9 BE THE LOSERS IN THE END.

10 BUT I JUST THINK THAT THIS IS WHAT IT'S ALL
11 ABOUT, LOOK AT WHAT HAPPENS IN THE STATE OF OHIO. WE THANK
12 YOU VERY MUCH FOR COMING.

13 AT THIS POINT WE WILL TAKE A LITTLE SHORT
14 MINUTE, AT 11:00 WE WILL COME.

15

- - -

16 (THEREUPON A BRIEF RECESS WAS TAKEN.)

17

- - -

18 CHAIRWOMAN RAMOS: WE'LL BEGIN OUR NEXT
19 PHASE OF OUR SPEAKERS AND WE'VE GOT ARZELL NELSON -- IT'S
20 SAM THOMAS. HE'S COME DOWN FROM CLEVELAND SO I GUESS YOU
21 HAD A NICE TRIP DOWN TOO, RIGHT?

22 MR. THOMAS: IT WAS NOT A VERY PLEASANT
23 TRIP. THE ELEMENTS AND MY SCHEDULE DIDN'T MAKE IT A VERY
24 PLEASURABLE DRIVE. I MUST HAVE LEFT CLEVELAND THIS MORNING
25 ABOUT 3:00 A.M., IT WAS RAINING LIKE CATS AND DOGS AND I GOT

1 IN ABOUT 5:30, AND I WAS WIRED BECAUSE OF SO MUCH COFFEE AND
2 I DID MANAGE TO FALL ASLEEP FOR ABOUT TWO HOURS, HOUR AND A
3 HALF, AND IT FELT LIKE I HAD SLEPT A LONG TIME.

4 AND I WAS SURPRISED THE FACT IT WAS ONLY 7:30.
5 I COULDN'T SLEEP ANY LONGER, I GUESS I WAS EXCITED ABOUT
6 BEING HERE WITH YOU.

7 CHAIRWOMAN RAMOS: THAT'S GOOD, SAM, GO
8 AHEAD AND HAVE YOUR PRESENTATION AND WE'LL HAVE A QUESTION
9 AND ANSWER PERIOD. I APPRECIATE YOUR BEING DOWN HERE.

10 MR. THOMAS: GOOD MORNING, MADAM
11 CHAIRPERSON RAMOS, AND THE MEMBERS OF THE OHIO ADVISORY
12 COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS. AND THIS
13 IS MY SECOND OPPORTUNITY TO SIT BEFORE YOU, THE LAST TIME I
14 SAT BEFORE YOU YOU WERE IN THE CITY OF CLEVELAND, AND WE
15 HOPE THAT WE WERE A GOOD HOST CITY TO YOU.

16 I THINK THAT WHAT WE'RE ABOUT HERE THIS MORNING
17 IS VERY IMPORTANT, I THINK THE DIALOGUE IS VERY FRUITFUL. I
18 KNOW I'VE LEARNED A LOT JUST SITTING BACK THERE LISTENING TO
19 THOSE THAT HAVE COME BEFORE ME, SO I'LL TRY NOT TO BE
20 REDUNDANT AND TALK ABOUT AFFIRMATIVE ACTION FROM MY VANTANGE
21 POINT AND THAT IS I DIRECT THE HUMAN RIGHTS AGENCY IN THE
22 CITY OF CLEVELAND, A COMMUNITY RELATIONS BOARD, WHOSE
23 RESPONSIBILITY IS TO PROMOTE AMICABLE AND GOOD NEIGHBORLY
24 RELATIONS AMONGST THE 60 PLUS RACIAL, CULTURAL, AND ETHNIC
25 GROUPS IN THE CITY OF CLEVELAND.

1 AFFIRMATIVE ACTION PROGRAMS CONSTRUCTED THE
2 RIGHT WAY CAN CONSTITUTIONALLY CREATE EQUAL OPPORTUNITY AND
3 IMPROVED QUALITY OF LIFE FOR EVERYONE.

4 UNFORTUNATELY, SOMETIMES PEOPLE ARE
5 DISENFRANCHISED AND NOT EVEN CONSIDERED IN THE POOL OF
6 APPLICANTS AND MADE VICTIMS BY AFFIRMATIVE ACTION PLANS THAT
7 ADHERE TO RIGID QUOTAS AND HAVE NO TIME LINES FOR ENDING THE
8 PROGRAM AND SACRIFICE QUALITY HIRING STANDARDS; YES, ON
9 OCCASION NEGLECT OR ILL-INTENTIONED OR UNDERINFORMED
10 EMPLOYERS HAVE ABANDONED THEIR MERITORIOUS EFFORTS IN GIVING
11 PREFERENCE TO STRAIGHT JACKETS.

12 THESE ISOLATED ABUSES OF THE FUNDAMENTAL
13 PRINCIPALS OF FAIR PLAY AND EQUAL PROTECTION THIS COUNTRY
14 WAS FOUNDED UPON HAVE UNFORTUNATELY BECOME PREVAILING,
15 MISLEADING US TO BELIEVE THAT ALL AFFIRMATIVE ACTION
16 PROGRAMS SHOULD BE ENDED.

17 PRESIDENT CLINTON IS A STRONG ADVOCATE OF
18 AFFIRMATIVE ACTION PROGRAMS, LAST YEAR IN A WHITE HOUSE
19 ROTUNDA ADDRESS, HE SAID AFFIRMATIVE ACTION, WHICH HAS BEEN
20 AROUND FOR 25 YEARS, SHOULD BE MENDED AND NOT ENDED, AND I
21 STRONGLY AGREE.

22 TODAY INTENTIONAL DENIAL OF EQUAL OPPORTUNITY
23 FOR EMPLOYMENT FOR MINORITIES AND WOMEN IS A REALITY.

24 DESPITE LAW MAKER'S ATTEMPTS TO REMEDY THE
25 SITUATION. WE ARE FACED WITH AN UNEMPLOYMENT RATE FOR

1 AFRICAN-AMERICANS THAT REMAIN TWICE THAT OF WHITES IN OUR
2 NATION, THE UNEMPLOYMENT RATE FOR HISPANICS IS STILL MUCH
3 HIGHER THAN THAT OF WHITES.

4 WOMEN HAVE NARROWED THE EARNING GAP, BUT STILL
5 EARN ONLY 72 PERCENT AS MUCH AS WHITE MEN DO FOR COMPARABLE
6 JOBS PRESIDENT CLINTON SAID.

7 CLEVELAND, OHIO, MY HOME TOWN, IS NO STRANGER TO
8 THIS NATIONAL MALADY THAT RELEGATES MINORITIES AND WOMEN TO
9 SECOND CLASS CITIZENSHIPS AND A DIMINISHED QUALITY OF LIFE.
10 I BELIEVE THAT THERE IS A CYCLICAL AND INTRICATE AND
11 SYMBIONIC RELATIONSHIP WITH A PERSON'S JOB, A PERSON'S
12 EDUCATION, A PERSON'S PLACE OF RESIDENCE AND CRIME.

13 BECAUSE A PERSON'S JOB IS PERHAPS THE MOST
14 IMPORTANT FACTOR IN DETERMINING HIS OR HER SUCCESS, OUR
15 VULNERABILITY TO THE OTHER FACTORS THAT DETERMINE THAT
16 PERSON'S QUALITY OF LIFE, THE STRUGGLE FOR EQUAL EMPLOYMENT
17 OPPORTUNITY HAS BEEN AND CONTINUES TO BE A HARD FOUGHT CIVIL
18 RIGHTS BATTLE.

19 AFFIRMATIVE ACTION, IT BEGAN WHERE THE CIVIL
20 RIGHTS STRUGGLE OF THE `60S ENDED, AND IT WORKED. TODAY
21 PEOPLE OF COLOR IN THE UNITED STATES HAVE MORE OPPORTUNITIES
22 THAN EVER BEFORE, WOULD ANYONE DISAGREE WITH THAT? PROBABLY
23 NOT.

24 WELL, THEN WHY DO WE STILL NEED IT, WHAT PURPOSE
25 DOES IT SERVE TODAY IN THE FACE OF GROWING CRITICISM AND A

1 BACKLASH FROM WHITE AMERICANS AND OTHERS WHO SAY REVERSE
2 DISCRIMINATION HAS TAKEN OVER.

3 MAYBE AFFIRMATIVE ACTION HAS SERVED ITS PURPOSE
4 AND IS READY TO BE RETIRED, LIKE AN OLD HORSE TAKEN OUT TO
5 PASTURE.

6 BUT I'M HERE TO TELL YOU TODAY THAT THE JOB IS
7 NOT DONE, THE PROBLEM IS NOT REMEDIED, AND MAYBE TODAY WE
8 NEED AFFIRMATIVE ACTION MORE THAN WE'VE EVER NEEDED IT
9 BEFORE.

10 THE JUSTIFICATION FOR CONTINUING AFFIRMATIVE
11 ACTION IS OBVIOUS BY THE OVERWHELMING EVIDENCE, AS I STATED
12 EARLIER MINORITIES AND WOMEN REMAIN SERIOUSLY ECONOMICALLY
13 DISADVANTAGED, AS COMPARED TO WHITE MALES.

14 IN MY HOMETOWN, CLEVELAND, OHIO, A THIRD OF
15 CLEVELAND'S FEMALES LIVE BELOW THE POVERTY LINE, WHILE ONLY
16 A QUARTER OF CLEVELAND'S MALES DO, AND HOPE THAT YOU'RE
17 WHITE TOO, BECAUSE BEING BLACK OR HISPANIC QUADRUPLES YOUR
18 CHANCES OF BEING BELOW THE POVERTY LINE.

19 THESE TWO GROUPS TOGETHER MAKE UP OVER 80
20 PERCENT OF CLEVELAND'S POOR. IN FACT, POVERTY AS A WHOLE
21 HAS RISEN DRAMATICALLY IN CLEVELAND, OHIO AND CUYAHOGA
22 COUNTY. NOW, ABOUT 55 PERCENT OF CLEVELAND'S POPULATION
23 LIVES IN POVERTY.

24 THE COUNTY AS A WHOLE DOES A LITTLE BETTER AT
25 49 PERCENT; NOT FOR CHILDREN THOUGH, OVER 60 PERCENT OF THEM

1 LIVE IN POVERTY. AS CLEVELAND MAYOR, MICHAEL R. WHITE
2 RECENTLY STATED, MORE YOUNG PEOPLE THAN EVER BEFORE ARE
3 BEING LOCKED INTO ECONOMIC SITUATIONS WITH THEIR FAMILIES,
4 WHICH GIVE THEM NO HOPE.

5 A CYCLE OF VIOLENCE IS BEING BRED BY A LACK OF
6 ECONOMIC OPPORTUNITY AND A LACK OF SOCIAL COHESIVENESS
7 NECESSARY TO CREATE A COMMUNITY.

8 WHY THE GROWTH IN POVERTY IN OUR COMMUNITY, WHEN
9 MOST OF US KNOW THAT THE NUMBER OF SINGLE PARENT FAMILIES
10 HAS GROWN TREMENDOUSLY OVER THE LAST DECADE, THE NUMBER OF
11 CHILDREN GROWING UP IN FEMALE HEADED HOUSEHOLDS LIKEWISE
12 CONTINUES TO INCREASE.

13 THIS TREND SHOWS NO SIGNS OF SLOWING DOWN. THE
14 PROPORTION OF SINGLE MOTHER'S HAS INCREASED TO 64 PERCENT IN
15 THE CITY OF CLEVELAND, AND ACCORDING TO THE 1990 CENSUS
16 FEMALE HEADED HOUSEHOLDS ARE EIGHT TIMES MORE LIKELY TO BE
17 IN POVERTY THAN A TWO PARENT HOUSEHOLD.

18 IN THE CITY OF CLEVELAND THE TOTAL NUMBER OF
19 HOUSEHOLDS UNDER POVERTY LEVEL, 51 PERCENT ARE FEMALE
20 HEADED, WHILE ONLY 12 PERCENT OF THE TOTAL ARE MARRIED
21 HOUSEHOLDS.

22 IF YOU'RE A WOMAN YOU'RE NOT LIKELY TO BE THE
23 CEO OF A MAJOR CORPORATION WHO REALLY BRINGS HOME THE BACON
24 TO HER FAMILY. IN FACT, 97 PERCENT OF SENIOR MANAGERS IN
25 FORTUNE 1,000 CORPORATIONS ARE WHITE MALES, THINGS HAVEN'T

1 CHANGED MUCH, HAVE THEY.

2 LET ME JUST GIVE A BRIEF OVERVIEW OF WHAT GIVES
3 ME HOPE THAT AFFIRMATIVE ACTION IS NOT DEAD FROM A LEGAL
4 PERSPECTIVE IN LOOKING AT CASES FROM BAKKE TO ADERAN.

5 IN BAKKE WHAT I BROUGHT -- TOOK FROM THAT CASE
6 IS THAT RACE AND ETHNICITY CAN BE A FACTOR IN MAKING
7 DECISIONS ABOUT PROGRAMS TO HIRE OR TO ADMIT, IT CAN'T BE
8 THE FACTOR, IT CAN BE A FACTOR.

9 IN WEBER IN 1979, PROGRAMS CAN BE TEMPORARY AND
10 NOT AN ABSOLUTE BAROMETER TO JOB OPPORTUNITIES FOR WHITES IN
11 THE PRIVATE SECTOR WHERE THERE IS NO STATE ACTION AND THE
12 RIGHT TO CONTRACT IS GIVEN DEFERENCE.

13 IN FULLER LOVE 1980, CONGRESS HAS AUTHORITY TO
14 ELIMINATE BARRIERS TO EQUAL EMPLOYMENT OPPORTUNITIES AND
15 CONTRACTING OPPORTUNITIES, AND DEFERENCE WAS GIVEN THERE.

16 IN WEYANT IN 1986, SCHOOL BOARD'S INTEREST IN
17 PROVIDING MINORITY ROLE MODELS FOR MINORITY STUDENTS IS NOT
18 COMPELLING ENOUGH TO JUSTIFY THE USE OF RACE BASED LAYOFFS.

19 PARADISE 1987, A COMPELLING GOVERNMENTAL INTEREST
20 IS ILLUSTRATED WHERE THE ALABAMA DEPARTMENT OF PUBLIC
21 SAFETY'S PERVASIVE, SYSTEMIC AND OBSTINATE DISCRIMINATORY
22 CONDUCT JUSTIFIED A NARROWLY TAILORED RACE BASED REMEDY
23 RESERVING FOR BLACKS 50 PERCENT OF THE PROMOTIONS.

24 JOHNSON IN 1987, VOLUNTEER AFFIRMATIVE ACTION
25 PROGRAM DESIGNED TO REMEDY THE UNDER-REPRESENTATION OF WOMEN

1 IN CERTAIN JOBS IS PERMISSIBLE.

2 CROSON 1989, WE'VE HEARD A LOT ABOUT THAT THIS
3 MORNING, BASICALLY STRICT SCRUTINY WAS APPLIED IN THAT CASE
4 THAT STRUCK DOWN THE CITY'S PROGRAM REQUIRING 30 PERCENT OF
5 ITS CONTRACTING TO GO TO MINORITY OWNED BUSINESS AND THAT'S
6 WHERE THE CROSON STUDY, AS YOU KNOW, CAME FROM.

7 METRO BROADCASTING, THE COURT REINSTATED THE
8 STRICT SCRUTINY STANDARD OF REVIEW OF AFFIRMATIVE ACTION
9 PROGRAMS, AND FINALLY WE HEARD SO MUCH ABOUT HOW ADERAN IN
10 JUNE OF 1995 WAS THE DEATH NAIL FOR AFFIRMATIVE ACTION
11 PROGRAMS.

12 IT'S NOT SO, THE CASE WAS MERELY REMANDED BACK
13 TO THE LOWER COURT IN ORDER FOR IT TO EXERCISE STRICT
14 SCRUTINY TO DETERMINE IF THE PROGRAMS, IF IT WAS
15 CONSTITUTIONAL.

16 CHAIRWOMAN RAMOS: THANK YOU VERY MUCH.
17 ARE THERE ANY QUESTIONS?

18 MR. PEREZ: YOU MADE A COMMENT THAT IN
19 YOUR PRESENTATION THAT PROGRAMS SHOULD BE SET UP FOR
20 TEMPORARY IN NATURE, AND THEN YOU FOLLOWED UP WITH A COMMENT
21 ABOUT PRESIDENT CLINTON ACKNOWLEDGING THAT PROGRAM --
22 AFFIRMATIVE ACTION PROGRAM HAS BEEN GOING ON FOR 25 YEARS,
23 AT WHAT POINT DO WE CALL IT TEMPORARY?

24 I MEAN IT'S LIKE, I THINK FROM WHAT I HEAR FROM
25 THE MAJORITY COMMUNITY THAT THEIR MAJOR CONCERN IS THEY SEE

1 MORE OF A PERMANENT SITUATION, AS OPPOSED TO A TEMPORARY
2 PROGRAM; WHEN DO WE SAY, YOU KNOW, ENOUGH IS ENOUGH?

3 MR. THOMAS: IN ORDER TO RESPOND TO THAT
4 QUESTION WITH BALANCE, BECAUSE IT'S ONE THING TO HAVE A
5 PROGRAM OR LEGISLATION ON THE BOOKS, AND ANOTHER THING TO
6 LOOK AT THE EFFECTS OF IT, HAS IT BEEN SUCCESSFUL AND I
7 THINK OVER THE 25 YEAR HISTORY OF AFFIRMATIVE ACTION
8 PROGRAMS, THINGS MAY HAVE GOTTEN WORSE, THE EFFECT ISN'T
9 WHAT WE WOULD LIKE TO SEE IT BECOME.

10 AND WHEN YOU TAKE -- WHEN YOU HAVE TO ANSWER ON
11 AN INDIVIDUAL BASIS, IF THERE IS A LOCAL OR STATE OR A
12 NATIONAL BODY THAT'S PUTTING IN PLACE AN AFFIRMATIVE ACTION
13 PROGRAM, HOPEFULLY THAT PROGRAM HAS BEEN DESIGNED TO REMEDY
14 SOME DISCRIMINATION.

15 THERE'S BEEN A STUDY THAT DETERMINES THAT
16 THERE'S A CERTAIN PERCENTAGE OF RECIPIENTS OUT THERE
17 ELIGIBLE FOR THAT PROGRAM, AND SO YOU SET GOALS AND TIME
18 TABLES IN ACCORDANCE WITH THAT.

19 AND WHEN THAT PROGRAM HAS ACHIEVED THAT LEVEL,
20 THEN, I THINK IT'S TIME TO CUT THE PROGRAM OFF, BUT CLEARLY
21 IN THIS COUNTRY AND IN THE CITY OF CLEVELAND THERE'S -- WE
22 STILL HAVE A LONG WAY TO GO.

23 CHAIRWOMAN RAMOS: I HAVE A QUESTION.
24 WHAT IS YOUR GOAL, DO YOU HAVE A CITY ORDINANCE FOR
25 CONTRACTS? WE HEARD COLUMBUS HAD ONE -- HAD SOME SPECIFIC

1 NUMBERS, DO YOU HAVE SOMETHING SIMILAR?

2 MR. THOMAS: I CAN SPEAK TO THAT, MADAM
3 CHAIR, VERY GENERALLY, I WISH I HAD BROUGHT MY EEO DIRECTOR
4 WITH ME. I KNOW THAT OUR LEADER, MAYOR WHITE, AT LEAST ONCE
5 OR TWICE A MONTH IN OUR CABINET MEETINGS REMINDS US OF THE
6 EIGHT PERCENT FOR WOMEN AND THE CORRESPONDING PERCENTAGE FOR
7 MINORITY PARTICIPATION IN CITY BUSINESS.

8 WHETHER IT'S A MATTER OF US GOING OUT PURCHASING
9 SUPPLIES OR LETTING CONTRACTS OUT INTO THE CONTRACT
10 COMMUNITY. BUT, YES, WE DO HAVE PROGRAMS AND GOALS IN
11 PLACE.

12 MS. RODEMYER: MR. THOMPSON, A NUMBER OF
13 STATISTICS WERE BASED ON MONEY, ON INCOME, ARE YOU
14 SUGGESTING THAT AFFIRMATIVE ACTION BASICALLY SHOULD BE
15 LIMITED TO COMING FROM A FAMILY WITH A SPECIFIC INCOME OR
16 ARE YOU SUGGESTING IT BE KEPT OPEN ACROSS THE BOARD
17 REGARDLESS OF THE INCOME?

18 MR. THOMAS: I THINK GENERALLY SPEAKING,
19 WHAT I TRIED TO CONVEY WAS THAT WHERE A PERSON LIVES, A
20 PERSON'S EDUCATION AND A PERSON'S JOB, HAVE A SYMBIONIC
21 RELATIONSHIP, BUT THAT PROBABLY A PERSON'S JOB AND ECONOMIC
22 ABILITY HAS THE GREATER IMPACT ON THE OTHER TWO.

23 IF THAT -- IF I WERE THE POLICYMAKER AND I HAD
24 LIMITED RESOURCES AND ENERGIES, I WOULD PUT IT INTO
25 IMPROVING EQUAL EMPLOYMENT OPPORTUNITY, I'M NOT SAYING OTHER

1 AREAS DO NOT NEED REMEDIATION.

2 MS. RODEMYER: WELL, LET ME TRY AGAIN.

3 MR. THOMAS: OKAY.

4 MS. RODEMYER: IN OTHER WORDS, WOULD IT BE
5 YOU START WITH THE POOREST AND THEY WOULD GET THE FIRST
6 OPPORTUNITY, AND YOU WOULD KEEP TRACK OF INCOME LEVELS, OR
7 AGAIN IS IT ACROSS THE BOARD, IF YOU'RE A WOMAN OR A
8 MINORITY IT MAKES NO DIFFERENCE?

9 BECAUSE SO MUCH OF THE STATISTICS, YOU
10 UNDERSTAND WHAT I'M SAYING?

11 MR. THOMAS: I UNDERSTAND WHAT YOU'RE
12 SAYING.

13 MS. RODEMYER: SO MUCH OF THE STATISTICS
14 ARE SINGLE MOTHER, LOW INCOME, ET CETERA, ET CETERA, ET
15 CETERA.

16 MR. THOMAS: YES.

17 MS. RODEMEYER: AND IF THAT IS SO, SHOULD
18 CITY MONEY BE DIRECTED THERE PRIMARILY?

19 MR. THOMAS: WELL, I THINK THAT GETS TO MY
20 CONCEPT OF DISENFRANCHISEMENT, THAT WHEN YOU ISOLATE A
21 PROGRAM TO JUST ONE GROUP AT THE EXPENSE OF OTHERS, THAT'S
22 DISENFRANCHISING AND ALIENATING THE OTHER GROUP THAT MIGHT
23 BE JUST AS NEEDY IN TERMS OF THEIR ECONOMIC SITUATION.

24 BUT I THINK THAT THE STATE OF OHIO, GOVERNOR
25 VOINIVICH HAS OFFERED AT HIS LATEST OFFERING OF AN

1 AFFIRMATIVE ACTION PROGRAM TO INCREASE THE NUMBER OF
2 PROTECTED CLASSES, IF YOU WILL, UNDER THE PROGRAM.

3 AND SENATOR JEFF JOHNSON CHALLENGED HIM THAT IF
4 YOU ARE GOING TO DO THAT YOU NEED TO INCREASE THE POOL OF
5 MONEY THAT'S GOING TO BE MADE AVAILABLE, IF YOU'RE GOING TO
6 MAKE IT BROADER THAN AFRICAN-AMERICANS.

7 MR. BATTLE: MR. THOMAS, YOU MENTIONED
8 EARLIER IN YOUR PRESENTATION ABOUT AFFIRMATIVE ACTION, THE
9 VALUE OF AFFIRMATIVE ACTION PROGRAMS THAT ARE CONSTRUCTED
10 THE RIGHT WAY BY IMPLICATION, ARE YOU ALSO SAYING THAT
11 AFFIRMATIVE ACTION PROGRAMS CONSTRUCTED THE WRONG WAY COULD
12 TAKE ON THE EFFECT, PERHAPS, OF INTENTIONALLY SABOTAGING THE
13 PLAN ITSELF, OR PERHAPS I WOULD JUST LIKE TO HEAR YOU
14 COMMENT ON THAT AND, PERHAPS, MAYBE FROM YOUR OBSERVATIONS
15 ABOUT AFFIRMATIVE ACTION PLANS CONSTRUCTED THE WRONG WAY AND
16 THE CONSEQUENCES OF THEM WHEN THAT HAPPENS.

17 MR. THOMAS: IN A NUTSHELL, WE HAVE, IN MY
18 OPINION, ENOUGH LEGISLATION ON THE BOOKS THAT CAN CORRECT
19 THE SITUATION. THE ISSUE FOR ME AS I WAS SHARING WITH MRS.
20 PRESLEY EARLIER, IT'S THE MORAL MINDSET OF THE
21 DECISIONMAKERS, AND IF YOU LOOK AT THE SUPREME COURT AND HOW
22 IT'S CURRENTLY CONSTRUCTED AND WHOSE MAKING DECISIONS AS TO
23 WHAT IS PERMISSIBLE, I THINK THEY ARE NOT LOOKING AT ALL AT
24 THE HUMAN MISERY AND SUFFERING THAT'S GOING ON OUT THERE.

25 THEY DON'T SEE AS I SEE THAT THE STATISTICS THAT

1 I'VE READ OFF, AND THE ATTENDING MISERY WITH THAT CREATES TO
2 ME A VERY COMPELLING GOVERMENTAL INTEREST AND IF INDEED
3 ADERAN AND CROSON IS FOLLOWED, THAT SAYS THAT, YOU KNOW, IN
4 ORDER FOR A PROGRAM TO BE CONSTITUTIONAL THERE MUST BE A
5 COMPELLING GOVERNMENTAL INTEREST, I THINK THERE IS.

6 NOW, THE CHALLENGE IS TO NARROWLY TAILOR A
7 PROGRAM AND MEET THAT COMPELLING INTEREST.

8 MR. BATTLE: THANK YOU.

9 MR. PEREZ: IF WE'RE GOING TO FOCUS ON THE
10 ECONOMICS OF IT ALL AS YOU WERE DISCUSSING WITH MS.
11 RODEMEYER, SHOULDN'T THE CRITERIA BE WHETHER A BUSINESS OR
12 PERSON IS DISADVANTAGED AS OPPOSED TO RACE OR GENDER?

13 MR. THOMAS: YES, I THINK I WOULD AGREE
14 WITH THAT. ONE OF THE THINGS THAT DETERMINES WHETHER OR NOT
15 THE SECOND PRONG OF THAT SCRUTINY IS MET IS HAVE
16 NON-RACE-BASED NEUTRAL PROGRAMS BE PUT IN PLACE, LIKE
17 LOOKING AT THE ECONOMICS, LOOKING AT WHETHER OR NOT THE
18 BUSINESS IS A NEW BUSINESS, FOR THIS INDIVIDUAL OR FOR THIS
19 ENTERPRISE, OTHER THINGS THAN RACE BEING CONSIDERED.

20 CHAIRWOMAN RAMOS: QUESTIONS?

21 MR. THOMAS: AGAIN IT GOES BACK TO RACE
22 CAN BE A FACTOR, NOT THE FACTOR.

23 MR. WILSON: I'M FOLLOWING UP MR. PEREZ'
24 QUESTION. IT SEEMS TO ME THAT IF THE ISSUE THAT YOU'RE
25 TRYING TO ADDRESS IS NOT RACE AND GENDER DISCRIMINATION, PER

1 SE, BUT SOCIAL AND ECONOMIC INEQUALITY AND DISADVANTAGE, I
2 DON'T KNOW WHY WE SHOULDN'T BE WILLING TO CONSIDER, YOU
3 KNOW, AFFIRMATIVE ACTION AS SOMETHING THAT'S NOT THE RIGHT
4 SOLUTION FOR THE PROBLEM YOU'RE TRYING TO ADDRESS.

5 WHY INVEST SO MUCH, YOU KNOW, POLITICAL CAPITAL
6 INTO TRYING TO SAVE A PROGRAM THAT IS CLEARLY NOT DIRECTLY
7 RELATED TO THE PROBLEM YOU'RE CONCERNED ABOUT. WE TALKED
8 ABOUT HOW CONTROVERSIAL IT IS EARLIER THIS MORNING AND THE
9 SOCIAL ANIMOSITY THAT IT CREATES.

10 ARE THESE COSTS TO AFFIRMATIVE ACTION IN TERMS
11 OF COMMUNITY AND IT'S COHESIVENESS? AND I JUST WONDER IF,
12 YOU KNOW, YOUR EMPHASIS WOULD BE BETTER PLACED ON THE SOCIAL
13 AND ECONOMIC PROBLEMS THAT ARE THE REAL PROBLEMS OF
14 CLEVELAND AND BE WILLING TO, YOU KNOW, TAKE ANOTHER LOOK AT
15 AFFIRMATIVE ACTION AND ASK THAT QUESTION, IS THIS REALLY THE
16 RIGHT REMEDY FOR THIS PROBLEM?

17 MR. THOMAS: I THINK THAT THE SUPREME
18 COURT IS GRAPPLING WITH THE ISSUE THAT YOU RAISED. THE
19 PROBLEM FOR ME IS THAT I THINK THAT MINORITIES AND WOMEN
20 HAVE A MORE COMPELLING SITUATION IN TERMS OF THEIR
21 ECONOMICS, AND IN AN IDEAL WORLD THERE WOULD BE A
22 DISPROPORTIONATE AMOUNT OF PARTICIPATION BY THE MOST NEEDY
23 IN THE COMMUNITY, AND THAT IS THE MINORITY IN TERMS OF THEIR
24 ECONOMIC AND SOCIAL DISADVANTAGE.

25 WE'RE TALKING ABOUT TRYING TO EQUALIZE THE

1 APPLICATION OF THE LAW FOR EQUAL PROTECTION, AND IT'S ALMOST
2 LIKE YOU DON'T WANT TO, YOU KNOW, CUT OFF YOUR NOSE TO SPITE
3 YOUR FACE.

4 AND IT'S JUST A TOUGH BALANCE AND I'M STRUGGLING
5 WITH IT AS I'M PROBABLY STRUGGLING TO EXPLAIN HOW I CAN SEE
6 PEOPLE THAT LOOK LIKE ME DYING UNNATURAL DEATHS EVERY DAY
7 BECAUSE OF THE ECONOMIC SITUATION.

8 IF IT WERE UP TO ME I WOULD PROBABLY HAVE A
9 PROGRAM, THAT WOULDN'T BE PROVIDING FOR EQUAL PROTECTION FOR
10 OTHER GROUPS, BUT IT WOULD BE STRUCK DOWN TOMORROW, SO IT'S
11 A REAL STRUGGLE FOR ME.

12 CHAIRWOMAN RAMOS: MR. CHOI.

13 MR. CHOI: EXCELLENT POINT. I ADMIRE
14 YOU, YOUR EFFORT AS A GOVERNMENT AGENCY IN INTERPRETING THIS
15 AFFIRMATIVE ACTION UNDER STRONG THREAT, YET WITH CONFIDENCE
16 AFFIRMATIVE ACTION WILL NOT STOP, IT WILL GROW, IT WILL
17 STEADILY STRONGLY GROW IN THIS SOCIETY.

18 THE REASON IS, WE STRUGGLE BETWEEN LIBERTY AND
19 EQUALITY, AND CONFUSION COME FROM DISCRIMINATION AND
20 AFFIRMATIVE ACTION, WE ARE LIVING IN TRANSITION OF
21 INTERPRETATION OF MEANING OF AFFIRMATIVE ACTION.

22 SO IT'S AN EXCELLENT POINT. WE HAVE TO REALLY
23 STRONGLY STRIVE, MORTIFY OUR AGENDA AND PRIORITIZE IT. WHAT
24 WAS AFFIRMATIVE ACTION IN THE PAST, AND WHAT IS AFFIRMATIVE
25 ACTION IN THE FUTURE.

1 CHAIRWOMAN RAMOS: DO WE HAVE OTHER
2 QUESTIONS?

3 MR. PEREZ: JUST ONE QUESTION. HOW DOES
4 THE CITY OF CLEVELAND DEFINE MINORITY?

5 MR. THOMAS: VERY BROADLY. ON MY BOARD WE
6 HAVE HISPANIC REPRESENTATION, NATIVE-AMERICAN,
7 ARAB-AMERICAN, AFRICAN-AMERICAN.

8 MR. PEREZ: FOR PURPOSES OF SET SIDES,
9 THOUGH?

10 MR. THOMAS: THIS IS WHERE I'M AT A
11 DISADVANTAGE. I WISH I DID HAVE LINDA WILLIS WITH ME TO
12 GIVE YOU THE ACTUAL FIGURES ON THAT, BUT I KNOW THAT
13 HISPANICS DO PARTICIPATE IN OUR PROGRAM.

14 CHAIRWOMAN RAMOS: WE WANT TO THANK YOU
15 AGAIN FOR JOINING US.

16 MR. THOMAS: THANK YOU.

17 CHAIRWOMAN RAMOS: THIS IS THE KIND OF
18 STUFF WE'RE LOOKING FOR TO ENLIGHTEN US AND SEE WHAT'S GOING
19 ON IN THE STATE OF OHIO.

20 MR. THOMAS: VERY GOOD, MY PLEASURE.
21 THANK YOU VERY MUCH.

22 CHAIRWOMAN RAMOS: WE HAVE WITH US LARRY
23 ROBINSON, AND ARE YOU WITH AIA ARCHITECTS?

24 MR. ROBINSON: I'M HERE BY MYSELF ON MY
25 OWN. I'M VERY HONORED TO BE ASKED TO SPEAK. I'M NOT REALLY

1 REPRESENTATIVE OF ANYTHING VERY LARGE, OTHER THAN MYSELF AND
2 I'VE BEEN TRYING TO DIET A LITTLE, BUT I WANT TO -- I
3 SUPPOSE THERE, YOU KNOW, I'M GOING TO TALK ABOUT
4 ARCHITECTURE. I'M AN ARCHITECT.

5 I'M SORT OF PIGEONHOLING ONE LITTLE BIT AND
6 THAT'S BAD IN A WAY, BECAUSE I CAN'T MAKE ANY GENERALITIES
7 ABOUT AFFIRMATIVE ACTION, OTHER THAN WELL, IT'S NOT A
8 GENERALITY, IT'S HOW IT'S AFFECTED MY LIFE, AND IT'S REALLY
9 BEEN BAD.

10 IT'S -- I DON'T KNOW IF ALL FIELDS ARE LIKE
11 ARCHITECTURE AND I DON'T THINK THEY ARE. I THINK
12 ARCHITECTURE IS SOMETHING VERY TANGIBLE. YOU HAVE A DOLLAR
13 AMOUNT FIXED TO CONSTRUCTION AND YOU CAN TAKE THE
14 AFFIRMATIVE ACTION SUBTRACTION OF AFFIRMATIVE ACTION AND YOU
15 CAN, LIKE I SAY, MAKE IT MORE REAL, MORE TANGIBLE AND YOU
16 CAN SET ASIDE NUMBERS.

17 AND IN OHIO THEY HAVE VERY STRICT QUOTAS, DOES
18 NOT HAVE TO DO WITH A RELAXED BENIGN TYPE OF GOAL ORIENTED
19 SYSTEM, IT'S QUOTA, 15 PERCENT FOR ARCHITECTS, MINIMUM 15
20 PERCENT.

21 ABOUT ONE PERCENT OF THE ARCHITECTS ARE
22 MINORITIES AND THEY ARE GIVEN 15 PERCENT OF THE WORK, I
23 THINK IT'S TOO MUCH. I THINK WE'RE GIVING TOO MUCH TO TOO
24 FEW.

25 I THINK ONE REASON WHY PEOPLE IN MY NEIGHBORHOOD

1 -- I LIVE IN A PREDOMINANTLY BLACK COMMUNITY, ALWAYS HAVE, I
2 CAN'T SEEM TO AFFORD TO LIVE ANYWHERE ELSE, I'LL BE QUITE
3 HONEST. IT'S A VERY COMPETITIVE FIELD ARCHITECTURE IS.

4
5 THERE ARE APPROXIMATELY 5,700 ARCHITECTS IN THE
6 STATE OF OHIO AND THERE ARE 37 AFRICAN-AMERICAN ARCHITECTS.
7 THERE ARE 1600 FIRMS IN OHIO, ROUGHLY. IT'S HARD TO GET AN
8 EXACT COUNT, BUT THERE ARE 16 MBE FIRMS; 12 OF WHOM ARE
9 BLACK, TWO OF THOSE ARE ORIENTAL, ONE IS HISPANIC AND ONE IS
10 ASIAN -- INDIAN.

11 SO YOU CAN SEE THERE'S AN AWFUL LOT OF WORK WHEN
12 YOU TAKE 15 PERCENT, THERE'S LIKE 62 MILLION DOLLARS FOR
13 MBE'S IN 1994, YOU GIVE IT TO 64 PERCENT, OR 64 MILLION
14 DOLLARS -- 62 MILLION DOLLARS, WHEN YOU GIVE THAT TO -- 15
15 OF THAT TO ONLY 16 FIRMS AND THE REST OF THE FIRMS, ALMOST
16 1600 FIRMS HAVE TO COMPETE FOR THE REST OF THE DOLLAR
17 AMOUNT, YOUR CHANCES OF GETTING A JOB WORK OUT
18 MATHEMATICALLY, FOR THOSE INTERESTED IN MATH TO ONE JOB
19 EVERY 14 YEARS ON AVERAGE. IF THINGS WORKED ON AN AVERAGE
20 THAT'S HOW LONG IT WOULD TAKE A NON-MINORITY FIRM TO GET A
21 JOB.

22 IF YOU WORK THE NUMBERS THE OTHER WAY EVERY
23 MINORITY WOULD GET -- A FIRM ON AVERAGE ABOUT A JOB A YEAR.

24 THIS CREATES A LOT OF RESENTMENT, IT'S CAUSED A
25 GREAT DEAL OF RESENTMENT AMONG IN A LOT OF THE ARCHITECTS

1 WORKING IN THE PRIVATE SECTOR FOR JOBS THAT PAY RIGHT NOW,
2 THEY ARE GOING AS LOW AS 2 TO 4 PERCENT OF CONSTRUCTION
3 COSTS.

4 I KNOW WHEN I WAS IN COLLEGE THE RULE OF THUMB
5 WAS 10 PERCENT OF CONSTRUCTION COSTS WENT TO ARCHITECTS.
6 TODAY WE'RE LOOKING AT AS LOW AS 2 TO 4 PERCENT, THAT'S FOR
7 THE NON-PREVAILING WAGE JOB, THAT'S NON-UNION.

8 ALMOST ALL GOVERNMENT JOBS ARE UNION, GOOD GRAVY
9 JOBS, PREVAILING WAGE, EXCEPT FOR THE VERY SMALL JOBS, SO
10 YOU'RE TAKING A VERY LARGE PIE TO BEGIN WITH.

11 USUALLY PREVAILING WAGE PAYS 25 TO 35 PERCENT
12 MORE, YOU'RE TAKING A NICE HEFTY PIE, AND YOU'RE TAKING A
13 NICE DECENT ARCHITECT'S CUT, CUTS FROM 8 TO 16 PERCENT IN
14 OHIO, DEPENDING ON THE SCOPE OF THE WORK, GOOD WORK, LOT OF
15 IT.

16 SO MY MAIN POINT -- OR ONE OF MY PAIN POINTS IS
17 IF A MINORITY CAN GET THIS GOOD WORK, THIS GUARANTEED WORK
18 WHAT INCENTIVES ARE THERE TO DO -- ONE OF THE THINGS I
19 THOUGHT AFFIRMATIVE ACTION WAS SUPPOSED DO, ONE OF THE
20 ORIGINAL GOALS THAT WAS TO KIND OF LET THE MINORITY FIRM
21 WORK INTO THE COMPETITIVE MAIN STREAM OF AMERICAN SOCIETY.

22 FOR FAR TOO MANY IT'S BECOME A HANDOUT RATHER
23 THAN A HAND UP TO THE NEEDY.

24 ANOTHER PROBLEM I HAVE IS FINDING MINORITIES.
25 THERE ARE SO FEW MINORITIES, THEY STRIKE UP RELATIONSHIPS A

1 LOT OF THEM WITH WHAT I CALL THE OLD BOY FIRMS, OR
2 ESTABLISHED FIRMS, THE ONES WHO HAVE A BIG TRACK RECORD,
3 LOTS OF PAST AND MAYBE KNOWS A FRIEND WITH A HIRING AGENCY,
4 SO THE MINORITY WILL WORK WITH THEM.

5 WHEN I CALL THEM A LOT OF TIMES THEY SAY, NO,
6 THEY TURN ME DOWN. HERE IS A GOVERNMENT SANCTION, A REQUEST
7 FOR PROPOSALS STATING YOU WILL HAVE SO MANY MINORITIES, AND
8 I CALL AND I CAN'T GET ONE, I CAN'T BID ON A JOB BECAUSE I
9 CAN'T GET A MINORITY, THAT WORKS ALSO AGAINST AFFIRMATIVE
10 ACTION.

11 BECAUSE AFFIRMATIVE ACTION WAS SUPPOSED TO PUT
12 TOGETHER JOINT VENTURES WITH STRUGGLING FIRMS, NOT WELL
13 HEALED FIRMS, NOT FIRMS ALREADY ESTABLISHED AND FEEDING
14 THEIR DYNASTY.

15 MY REPORT, WHICH I HAVE WRITTEN, IT'S GOT A LOT
16 OF DILEMMAS BASED ON THE MINORITY AS WELL AS THE
17 NON-MINORITY. THE MINORITY'S DILEMMA MAINLY IS HOW DO I GET
18 THE WORK DONE, OR TO BORROW AN OLD ARCHITECTURAL SAYING, HOW
19 DO I GET THE LEAD OUT.

20 WHENEVER YOU'VE GOT -- WHENEVER YOU'VE GOT 16
21 ARCHITECTURAL FIRMS WHO ARE COMMANDED TO DO THE KIND OF WORK
22 THEY ARE COMMANDED TO DO BY LAW, AND I MEAN THEY ARE THE 15
23 PERCENT OF THE 62 MILLION DOLLARS THAT WAS STATE SET ASIDE,
24 YOU'VE GOT FEDERAL SET ASIDE, YOU'VE GOT COUNTY AFFIRMATIVE
25 ACTION ACROSS THE BOARD.

1 SOME OF THEM HAVE PRIVATE SECTOR WORK, WELL WHAT
2 HAPPENS IS THERE ARE JUST NOT ENOUGH MINORITIES TO DO THE
3 WORK, AND SO THERE'S A LOT OF IT FARMED OUT.

4 THERE'S ALSO HUGE ARCHITECT'S OFFICES, MINORITY
5 FIRMS THAT ARE COMPRISED OF WHITE GUYS. YOU GOT WHITE GUYS,
6 ARMY OF WHITE GUYS WORKING IN MINORITY OFFICES, NOW, AGAIN
7 THAT WORKS AGAINST ONE OF THE ORIGINAL GOALS OF AFFIRMATIVE
8 ACTION TO HIRE MINORITIES, NOT TO PROVIDE AN AVENUE OF
9 EMPLOYMENT FOR WHITE GUYS.

10 IN CLOSING, AND IT GETS INTO A LOT OF DETAIL,
11 BUT I DO RECOMMEND FOUR DISTINCT REALIZABLE WAYS TO IMPROVE
12 THE SYSTEM. I'VE BEEN WORKING FOR MANY YEARS ON THIS, I
13 WORKED WITH THE CITY OF COLUMBUS ON THE PREDICATE STUDY IN
14 1993, WE ENACTED A GRADUATION FOR THE CITY OF COLUMBUS THAT
15 SAID WHEN AN MBE EARNED ABOVE AVERAGE REVENUES FOR TWO
16 CONSECUTIVE YEARS FOR THAT SERVICE GROUP, THAT FIRM WOULD
17 THEN GRADUATE AND GET BACK INTO THE COMPETITIVE MAIN STREAM.

18 IT WAS WONDERFUL WHEN THAT WENT THROUGH, I TRIED
19 TO TALK TO THE STATE, I STARTED CALLING MY STATE LEGISLATOR
20 ABOUT 10 YEARS AGO, THEY WOULDN'T TALK TO ME, 10, 9, 8, 7,
21 6, 5, 4, 3, 2, THEY WOULDN'T TALK.

22 THEY SAY YOU'RE A NICE GUY, BUT IT'S TOO
23 SENSITIVE, WE'RE NOT GOING TO TALK ABOUT IT. THEY WOULD NOT
24 EVEN TALK ABOUT GRADUATION. STINZIANO, WHO IS A STATE
25 REPRESENTATIVE, FINALLY CALLED ME UP AFTER FOUR YEARS OF

1 TRYING TO TALK TO HIM, HE WAS MY STATE REP; HE CALLED TO SAY
2 DON'T CALL MY OFFICE ANY MORE AND HUNG UP ON ME.

3 SO I WORKED AGAINST HIS CAMPAIGN SEDULOUSLY, I
4 WORKED AND HE LOST BY A FEW HUNDRED VOTES AFTER BEING IN
5 OFFICE 20 YEARS, AMY SALERNO WON.

6 THAT'S ONE WAY I CAN GET SOME KIND OF
7 VINDICATION IS TO GO DO IT POLITICALLY. IT MEANS A LOT TO
8 ME TO BE ABLE TO TALK, I THINK THIS IS SO WONDERFUL THAT YOU
9 PEOPLE ARE TALKING ABOUT THIS.

10 FOR TEN YEARS NOBODY WOULD TALK TO ME, NOBODY IN
11 THE STATE WOULD TALK TO ME, I COULDN'T GET A MEETING.

12 GRADUATION WAS VERY IMPORTANT TO GET THIS POINT
13 ACROSS TO THE GOVERNOR, TO THE LEGISLATORS. EVEN THE
14 DISSENTING JUDGES IN THE ADERAN CASE, GINSBERG AND STEVENS
15 SAID THERE SHOULD BE TWO PARTS, ONE SHOULD HAVE GRADUATION
16 AND A TIME LIMIT.

17 SO THOSE TWO JUSTICES SAY THAT HAS TO HAPPEN IN
18 OHIO, IT'S JUST A PLAIN OLD 15 PERCENT FOR ONE PERCENT OF
19 THE WORKERS IN THIS PARTICULAR CATEGORY, IT'S NOT FAIR.

20 ANOTHER THING IS -- ANOTHER THING I DEVELOPED
21 OVER THE YEARS WAS SOMETHING CALLED PROPORTIONAL
22 REPRESENTATION. YOU COULDN'T SAY 15 PERCENT OF THE WORK
23 WOULD GO TO EVERYONE WHO IS A MINORITY. YOU HAVE TO SEE HOW
24 MANY PEOPLE WERE AVAILABLE IN ARCHITECTURE.

25 AS I SAID THERE'S APPROXIMATELY 1 PERCENT OF THE

1 ARCHITECTS WHO ARE MINORITIES, MAYBE YOU GIVE THE MINORITIES
2 5 PERCENT OR 6 PERCENT TO MAKE UP FOR PAST INJUSTICES.
3 SURELY YOU DON'T GIVE THE MINORITY SUCH EXCESSIVELY HIGH
4 AMOUNTS AND AFTER A CERTAIN AMOUNT OF TIME YOU SEE HOW
5 MINORITIES ARE AND WIND IT DOWN.

6 THAT WAS THE THING THAT I WANTED TO TALK ABOUT,
7 UNTIL TODAY NOBODY WOULD LISTEN TO ME, I'M GLAD YOU ARE. I
8 THINK PROPORTIONAL REPRESENTATION TAKES UP TIME, YOU HAVE TO
9 LOOK THROUGH THE SERVICE CLASSIFICATIONS AND SEE HOW YOU
10 JUDGE EVEN A BALL PARK ESTIMATE HOW MANY PEOPLE ARE
11 AVAILABLE.

12 BUT IT'S SORT OF SILLY DOING IT THE OTHER WAY,
13 IT'S CRUEL TO PEOPLE WHO ARE NOT MINORITY TO HAVE THAT MUCH
14 POTENTIAL WORK TAKEN AWAY FROM THEM.

15 ANOTHER BIG THING IS EDUCATION, IN ARCHITECTURE
16 THERE ARE LIKE FOUR MINORITIES OUT OF EVERY 100 STUDENTS AND
17 I THINK IT'S LUDICROUS THAT FOUR OUT OF 100 STUDENTS AT OHIO
18 STATE UNIVERSITY AND ALL ACROSS AMERICA AT THE OTHER 93
19 UNIVERSITIES, THERE'S ONLY FOUR COLLEGES CERTIFIED TO TEACH
20 ARCHITECTURE, THERE'S 4 OUT OF A HUNDRED, THEY EXPECT 15 TO
21 20 PERCENT OF ALL OF THEIR BUILDINGS TO BE DESIGNED BY
22 MINORITIES ON ALL THESE CAMPUSES, THAT'S NOT FAIR.

23 SO THAT'S MY THIRD THING, I THINK HAVE TO DO IS
24 WHERE YOU FIND THAT THERE IS A NOTICEABLE AND CONSPICUOUS
25 ABSENCE OF A CERTAIN MINORITY FROM CERTAIN CURRICULUMS,

1 EFFORTS SHOULD BE MADE IRRESPECTIVE OF THE RACE TO ASSURE
2 THAT YOU HAVE A WORK FORCE BUILT UP, A WORK FORCE SOME DAY
3 THAT YOU START APPROXIMATING THE NORM.

4 AND FINALLY EQUITABLE DISTRIBUTION OF THE WORK
5 IRRESPECTIVE OF RACE, IRRESPECTIVE, I'M NOT AGAINST
6 AFFIRMATIVE ACTION, I MEAN RACE BASED AND GENDER AFFIRMATIVE
7 ACTION.

8 MY NEIGHBORS AND I TAKE BUS RIDES TO WASHINGTON
9 FIGHTING AGAINST CRIME, FOR YEARS I WAS PRESIDENT OF A
10 PREDOMINANTLY BLACK GROUP ON THE SOUTH END, SOUTHSIDE,
11 UNITED NEIGHBORS, FOR A NUMBER OF YEARS.

12 SO I'M HERE TO TAKE SOME BUS RIDES AGAINST RACE
13 AND GENDER BASED AFFIRMATIVE ACTION, IT'S JUST NOT RIGHT,
14 IT'S ONE OF THE MOST INSIDIOUS MISCARRIAGES OF JUSTICE THAT
15 I'VE EVER LIVED THROUGH.

16 CHAIRWOMAN RAMOS: I WANT TO CLARIFY, DID
17 YOU SAY THERE ARE 5,700 ARCHITECTS IN OHIO?

18 MR. ROBINSON: REGISTERED, NOT FIRMS,
19 REGISTERED ARCHITECTS.

20 CHAIRWOMAN RAMOS: AND HOW MANY OF THOSE
21 ARE MINORITIES?

22 MR. ROBINSON: 37.

23 CHAIRWOMAN RAMOS: THERE ARE 600?

24 MR. ROBINSON: 1600 FIRMS.

25 CHAIRWOMAN RAMOS: THAT'S WHAT I THOUGHT,

1 1600 ARCHITECTURAL FIRMS.

2 MR. ROBINSON: ALL FIRMS ONE OR TWO MAN
3 OFFICES, EVERYBODY THAT'S NOT NEARLY THAT MANY LARGE FIRMS.
4 BUT ANYWAY I'D LIKE TO JUST CLOSE AND MY PAPER HAS A LOT OF
5 ANECDOTES IN IT ABOUT THINGS I HAVE EXPERIENCED AND HAVE
6 DISCRIMINATED AGAINST ME.

7 I THINK -- AGAIN I THINK IT'S WONDERFUL THAT WE
8 CAN OPEN IT UP TO TALK ABOUT IT. YOU DON'T KNOW WHAT IT'S
9 BEEN LIKE TO CALL ON LEGISLATORS, THIS IS -- THEY WON'T HAVE
10 ANYTHING -- IT'S TOO SENSITIVE, LARRY, WE WON'T TALK ABOUT
11 IT. I THINK I HAVE GOOD ARGUMENTS FOR CHANGING THE SYSTEM
12 AND I'M GLAD THE FEDERAL GOVERNMENT IS STEPPING IN TAKING A
13 LOOK AT IT.

14 CHAIRWOMAN RAMOS: THAT IS TO LISTEN TO
15 BOTH SIDES AND HEAR WHAT'S GOING ON, MAYBE SOMEBODY WILL
16 LISTEN TO US. DO WE HAVE ANY QUESTIONS WE WOULD LIKE TO
17 ASK?

18 MR. WILSON: I WILL MAKE A COMMENT THAT
19 MIGHT TURN INTO A QUESTION. BUT MR. ROBINSON, I THINK IT'S
20 GOOD THAT YOU CAME HERE TODAY TO KIND OF PUT SOME MEAT ON
21 THE BONES, BECAUSE WHEN WE DISCUSS AFFIRMATIVE ACTION YOU
22 TEND TO DO IT IN ABSTRACTIONS AND RARELY DO WE SEE EITHER
23 THE BENEFICIARIES OR THE VICTIMS IN FRONT OF US TALKING
24 ABOUT HOW IT'S EFFECTED THEIR LIVES, I THINK THAT'S VERY
25 USEFUL.

1 I -- JUST LISTENING TO YOU TALK I DON'T KNOW HOW
2 EVERYONE ELSE FELT ABOUT IT, BUT YOU KNOW, I CAN'T HELP BUT
3 THINK THAT IT'S UNHEALTHY FOR AMERICANS TO IDENTIFY ANOTHER
4 AS THE MINORITY AND THE MAJORITY AND THAT'S NO CRITICISM OF
5 YOU, BECAUSE I UNDERSTAND THAT YOU ARE SIMPLY PARTICIPATING
6 IN THE LANGUAGE OF THE LAW, WHICH YOU'RE -- WHICH YOU'RE
7 STRUGGLING WITH.

8 BUT I DO THINK THAT'S AN UNHEALTHY SITUATION,
9 AND I LIKE YOU REGRET THAT THE GOVERNMENT IS SOMEHOW
10 IMPLICATED IN THE CONTINUATION OF THOSE CATEGORIES IN THE
11 PUBLIC CONSCIOUSNESS.

12 WE ALL HAVE OUR PRIVATE CONSCIOUSNESS, BUT WHY I
13 THINK YOUR QUESTION MUST FEED OUR RACE AND GENDER BASED
14 CONSCIOUSNESS AND SO I APPRECIATE WHAT YOU HAD TO SAY, I'LL
15 LEAVE IT AT THAT.

16 MR. CHOI: MR. ROBINSON, I AGREE, WE HAVE
17 TO LOOK TOGETHER, THE CURRENT SYSTEM HAS TO TAILOR TO FIT
18 TODAY'S CIRCUMSTANCES. AND YET IN YOUR VIEW YOU ARE FOCUSED
19 ON GOVERNMENT, IF YOU LOOKED AT THE REVENUE COMING TO THE
20 CONSTRUCTION INDUSTRY, FEES FOR ARCHITECTS COMING FROM
21 PRIVATE INDUSTRY, ALL TOGETHER, WEIGH THAT WHERE THIS WHITE
22 ARCHITECTS AND MINORITY ARCHITECTS POSITIONS ARE.

23 JUST ONE EXAMPLE, ONE MINORITY ARCHITECT KNOCKED
24 ON THE DOOR, 85 PERCENT OF PRIVATE ORGANIZATION, INDUSTRY
25 THEY IGNORE HIM, THEIR FRUSTRATION IS THEN WHAT YOUR

1 FRUSTRATION IS, SO TO BE FAIR YOU HAVE TO LOOK AT OVERALL
2 SOCIETY.

3 IN JUST A GOVERNMENT BUDGET, GOVERNMENT IS TO
4 PROTECT THOSE VICTIMS. IN YOUR EYES YOU HAPPEN TO LOOK AT
5 THE POINTS, HUGE SUBJECT, BUT IT'S NOT VERY LIMITED REVENUE
6 IN THIS SOCIETY THEY ARE UNDER THE PROTECTION.

7 NOW, VERY IMPORTANT POINT IS WHEN YOU TRY TO DO
8 YOUR BEST FAVOR FOR BLACK FRIENDS AND MINORITY SOCIALLY
9 HANDICAPPED FRIENDS, YOU DO YOUR BEST TO MAINTAIN YOUR SENSE
10 OF FAIRNESS AND YET WHEN YOU EXPECT SOME RETURN FROM IT YOU
11 DON'T GET IT, IT'S VERY FRUSTRATING.

12 THAT'S THE SYSTEM WE LIVE IN IN THIS SOCIETY --
13 WE WORK TOGETHER TO IMPROVE IT, SO YOUR POINT IS WELL TAKEN
14 TODAY, AND WE WILL TRY TO REFLECT THAT TO THE GOVERNMENT IN
15 FAIR FASHION, BUT I RECOMMEND YOU STRONGLY LOOK AT THE
16 OVERALL BIG PICTURE, DON'T JUST FOCUS ON THE GOVERNMENT
17 POLICIES.

18 MR. ROBINSON: IS IT MR. CLAY?

19 MR. CHOI: CHOI.

20 MR. ROBINSON: IN MY REPORT I ADDRESSED
21 THAT ISSUE, AT ONE TIME GOVERNMENT WAS CONSIDERED A TOKEN
22 AMOUNT AND 1996 PROJECTIONS ARE THAT THE PRIVATE SECTOR
23 NON-RESIDENTIAL, BUT I'M TALKING ABOUT COMMERCIAL PRIVATE
24 SECTOR MARKET IS A 119 BILLION DOLLARS, WE'RE TALKING ABOUT
25 THINGS THAT ARE ON PARLAY WITH EACH OTHER NOW, GOVERNMENT IS

1 NO LONGER A TOKEN, IT'S A GOOD CHUNK OF THE GOVERNMENT
2 CAPITAL IMPROVEMENTS WORK IS THE LIONS SHARE TODAY.

3 IT'S NOT LIKE IT ONCE WAS IN THE PRIVATE SECTOR
4 WHEN AN ARCHITECT MAKES 2 TO 4 PERCENT OF THE CONSTRUCTION
5 COSTS -- LET ME PUT THAT INTO PERSPECTIVE, IT TAKES 5
6 PERCENT TO KEEP THE DOORS OPEN, 5 PERCENT IS BREAK EVEN
7 POINT, 5 PERCENT OF THE CONSTRUCTION COSTS TO PAY THE BILLS,
8 ANYTHING ABOVE THAT YOU START MAKING A PROFIT.

9 GOVERNMENT PAYS 8 TO 16 PERCENT, 2 TO 4 PERCENT
10 IS BELOW THAT. IT'S CUT THROAT RIGHT NOW. IT'S NOT
11 PARADISE THAT SOMETIMES IT'S PORTRAYED TO YOU, YOU NEED
12 SOME GOVERNMENT WORK, IT'S NICE TO HAVE PRIVATE SECTOR WORK
13 TO GET -- KEEP YOUR DESIGN CUTTING EDGE SHARP AS AN
14 ARCHITECT, BUT YOU NEED TO PAY THE BILLS WHETHER THAT'S
15 RIGHT OR WRONG.

16 CHAIRWOMAN RAMOS: DID YOU SAY 62 MILLION
17 IS WHAT THEY SET ASIDE FOR ARCHITECTS OR JUST SET ASIDES IN
18 GENERAL IN OHIO?

19 MR. ROBINSON: THAT WAS SET ASIDE FOR
20 ARCHITECTS AND ENGINEERS. 90 PERCENT OF THAT WAS
21 ARCHITECTURAL WORK AND 10 PERCENT WAS FOR ENGINEERS. MOST
22 ENGINEERS GET THEY'RE WORK FROM THE DEPARTMENT OF
23 TRANSPORTATION, BRIDGES AND ROADS, THIS IS STRICTLY FROM THE
24 BUILDING STATE ARCHITECT'S OFFICE, NOT FOR ALL PHYSICAL
25 IMPROVEMENTS.

1 MR. LEVENTHAL: WHAT I HAVE TO SAY, MR.
2 ROBINSON, APPLIES TO YOU, BUT ALSO EMBRACES A MUCH WIDER
3 LARGER SCOPE. I'M SORT OF AMBIVALENT ABOUT THE WHOLE
4 SITUATION.

5 WE HAVE BEEN TOLD AND I APPRECIATE AND I AGREE
6 WITH WHAT'S BEEN TOLD ABOUT HOW AFFIRMATIVE ACTION HAS
7 HELPED MINORITIES AND WOMEN TO COME A LONG WAY THAN WHERE WE
8 WERE BACK IN THE MID `60S.

9 ON THE OTHER HAND, WHAT YOU HAVE SAID TODAY
10 POINTS OUT A MAJOR PROBLEM IN NOT ONLY THE FIELD OF
11 ARCHITECTURE, IT POINTS OUT THE REVERSE DISCRIMINATION PART
12 OF AFFIRMATIVE ACTION, THAT IS SORT OF A LIABILITY AS
13 COMPARED TO THE ASSETS OF AFFIRMATIVE ACTION.

14 WE HAVE A LOT OF WHITE MALES PARTICULARLY -- I
15 DON'T AGREE WITH THEM, I'M SAYING WHAT THEY SAY, WHO FEEL
16 THAT THEY HAVE BEEN HURT SEVERELY BY AFFIRMATIVE ACTION, AS
17 YOU REPRESENT ONE OF THEM.

18 THIS HAS EXACERBATED THE WHOLE PROBLEM OF
19 INTERRACIAL RELATIONSHIPS IN OUR COUNTRY. FOR EXAMPLE IN
20 ST. THOMAS I THINK EVERYBODY KNOWS WHAT'S BEEN GOING ON
21 WITH THE ANTI-DEFAMATION LEAGUE AND THE JEWISH COMMUNITY,
22 AND THE AFRICAN-AMERICAN COMMUNITY, THE DIFFERENCE IN
23 OPINION BETWEEN AFFIRMATIVE ACTION AS SEEN BY
24 AFRICAN-AMERICANS AND AFFIRMATIVE ACTION AS SEEN BY JEWISH
25 PEOPLE AND LET'S SAY THE ANTI-DEFAMATION LEAGUE.

1 THE ANTI-DEFAMATION LEAGUE, THEIR PROGRAM OR
2 THEIR POLICY IS THAT WE WANT NO QUOTAS, BUT WANT REMEDIAL
3 ACTION. WE WANT TO TRY TO BRING MINORITIES UP TO THE POINT
4 WHERE THEY CAN COMPETE EQUALLY WITH THE NON-MINORITIES.

5 WE ARE DEFINITELY AGAINST QUOTAS, IN ANY FORM
6 BECAUSE JEWS HAVE SUFFERED IN THE PAST, MEDICAL SCHOOLS AND
7 LAW SCHOOLS AND OTHERS HAVE SUFFERED AS A RESULT OF QUOTAS,
8 WHAT WE WOULD LIKE ARE GOALS EVENTUALLY TO GET TO A CERTAIN
9 POINT.

10 NOW, WE ALL SEE THINGS FROM OUR OWN PERSPECTIVE
11 AND I'M NOT SMART ENOUGH OR WISE ENOUGH TO SAY WHAT'S RIGHT
12 AND WHAT'S WRONG, ALL I'M SAYING IS THAT ON THE ONE HAND
13 AFFIRMATIVE ACTION HAS HELPED TO MOVE SOCIETY FORWARD IN
14 AMERICA, AND ON THE OTHER HAND IT'S CREATING A TREMENDOUS
15 PROBLEM WITH THE FRACTURING OF THE DIFFERENCES OF OPINIONS.

16 I DON'T HAVE ANY ANSWERS, I'M JUST POINTING THIS
17 OUT BECAUSE YOUR STATEMENTS HAVE BROUGHT IT TO MY MIND.

18 MR. ROBINSON: MR. LEVENTHAL, THERE'S A
19 LOT OF RIDDLES AND ANYTHING THAT GOES THROUGH THE
20 NON-MINORITY'S MIND, YOU HAVE ALL THESE PROGRAMS, YET SO
21 MANY CHOOSE NOT TO PARTICIPATE IN THEM.

22 DOWN WHERE I LIVE, I PREACH ARCHITECTURE TO
23 YOUNG BLACK KIDS IN MY COMMUNITY, IT SEEMS LIKE IT FALLS ON
24 DEATH EARS, I TELL THEM ABOUT THE OPPORTUNITIES, BECAUSE I
25 WANT MINORITIES TO HAVE SOME COMPETITION.

1 WHAT DO YOU DO WHEN WE SEE ALL THESE PROGRAMS IN
2 THE WORK PLACE, WE MEANING THE NON-MINORITY AND YET WE HEAR
3 A MINORITY SAY THEY ARE DISTRUSTFUL OF THE SYSTEM, THEY JUST
4 -- I SOMETIMES THINK SOME MINORITIES THINK TO THEMSELVES
5 MAYBE THEY JUST DON'T WANT TO GET A JOB BECAUSE OF NUMERICAL
6 QUOTAS, MAYBE THERE'S SOME GOOD CREDIT FOR MINORITIES THAT
7 FEEL KIND OF FUNNY ABOUT THAT.

8 I MEAN THERE'S A PLURALITY OF VIEWPOINTS AND YOU
9 BROUGHT THAT OUT, THIS IS THE BEGINNING OF TALKING ABOUT
10 THAT.

11 MR. ESPRIT: I HAVE A COUPLE COMMENTS AND
12 I WOULD LIKE TO THANK YOU FOR SHARING THOSE THOUGHT
13 PROVOKING REMARKS, WHICH PROBABLY WE HADN'T -- I HADN'T
14 CONSIDERED BEFORE. QUANTITATIVELY, THE INFORMATION THAT YOU
15 GAVE US SPEAKS TO SOMETHING ELSE THAT'S THE ANTITHESIS OF
16 WHAT WE THOUGHT AFFIRMATIVE ACTION WAS ALL ABOUT.

17 MY QUESTION IS WHERE DO WE GO FROM HERE IN TERMS
18 OF FAIRNESS, IN TERMS OF JUSTICE, AND SINCERITY AS WE
19 WRESTLE WITH THE PROBLEM OF AFFIRMATIVE ACTION AND WHAT IT
20 IS WE WOULD LIKE FOR IT TO DO, AND THAT'S WHERE I'LL END
21 THIS STATEMENT.

22 MR. ROBINSON: WELL, I HOPE YOU READ MY
23 REPORT, IF YOU DO THOSE FOUR THINGS AT THE END I'VE
24 DEVELOPED OVER THE YEARS, PROPORTIONAL REPRESENTATION,
25 GRADUATION, EQUITABLE DISTRIBUTION, AND EDUCATION ARE FOUR

1 GOOD STARTING POINTS.

2 AND OF COURSE GET RID OF STRICT GENDER AND RACE
3 BECAUSE THERE'S A LOT OF ARCHITECTS LIVING IN WORTHINGTON
4 AND UPPER ARLINGTON, AND I'M STILL DOWN ON 17TH STREET DOWN
5 IN THE SOUTH END, AND I FEEL RESENTFUL.

6 I THINK IT COULD -- IF IT HASN'T ALREADY EVOLVED
7 TO THAT STAGE YET, AFFIRMATIVE ACTION AS IT NOW STANDS AT
8 LEAST IN OHIO, COULD BE SOMETHING THAT CREATES MORE
9 RESENTMENT BETWEEN THE RACES THAN ANYTHING SINCE THE CIVIL
10 WAR, IT'S POSSIBLE AND I THINK IT'S GOOD WE'RE LOOKING AT
11 IT.

12 MR. ESPRIT: MY EYEBROWS RAISED WHEN YOU
13 SAID WHITE GUYS WERE HIRED BY THE BLACK GUYS, WHEN WE THINK
14 OF AFFIRMATIVE ACTION IT WAS SUPPOSED TO BE THE OTHER WAY
15 AROUND.

16 MR. ROBINSON: GO INTO ANY OF OUR MBE
17 ARCHITECT OFFICES AND WATCH THAT TWIST OF FATE FOR YOURSELF.

18 CHAIRWOMAN RAMOS: WE WANT TO THANK YOU
19 AGAIN. THIS IS THE PURPOSE TO BE HERE AND HEAR ALL THESE
20 VARIOUS PERSPECTIVES.

21 MR. ROBINSON: THANK YOU, IT WAS GREAT
22 BEING HERE.

23 CHAIRWOMAN RAMOS: WE HOPE EVERY ONE WILL
24 READ THE REPORT. IT'S 12:00 O'CLOCK, WE'LL TAKE A BREAK FOR
25 LUNCH AND WE WILL RECONVENE AT 1:30. SO WE ARE NOW

1 DISMISSED FOR LUNCH.

2 (THEREUPON A LUNCH RECESS WAS TAKEN.)

3 - - -

4 TUESDAY AFTERNOON SESSION,

5 APRIL 30, 1996.

6 - - -

7 CHAIRWOMAN RAMOS: CALL THE MEETING BACK
8 TO ORDER. WE HAVE WITH US -- I HOPE YOU ALL HAD A NICE
9 LUNCH, IT WAS FREEZING OUT THERE, LYNN WE'RE STARTING TO
10 ENJOY THIS, BUT IT WAS COLD.

11 OKAY. OF THE AND GOT WE'VE GOT WITH US NOW
12 CHARLIE JONES FROM CAPITAL UNIVERSITY AND WE WELCOME YOU
13 HERE AND WE'RE ALL ANXIOUS. WE GIVE YOU ABOUT 5 TO 7
14 MINUTES TO SUMMARIZE WHAT YOUR PAPER WILL PRESENT AND WE
15 WILL BE ASKING YOU QUESTIONS.

16 MR. JONES: OKAY. THE TITLE OF THE PAPER
17 IS "AFFIRMATIVE ACTION REPRESENTS A CONFLICT IN AMERICA THAT
18 HUMANITARIANS MUST HEAR."

19 THE GIST OF THE PAPER IS THAT THE AFFIRMATIVE
20 ACTION DEBATE AND THESE WILL REFLECT A MUCH GREATER AND
21 LARGER DEBATE, A DECISION THAT AMERICA WILL HAVE TO MAKE IN
22 TERMS OF WHICH DIRECTION IT WILL GO IN TERMS OF OUR BASIC
23 ORIENTATION, SO THIS THING CUTS TO THE FIBER OF WHO WE ARE
24 IN AMERICA.

25 THE TWO ISSUES AT HAND THAT I TALK ABOUT ARE

1 INDIVIDUALISM, SOME PEOPLE CALL IT CLASSICAL LIBERALISM, IT
2 HAS OTHER NAMES, BUT IT IS THE TRADITIONAL FOUNDATION ON
3 WHICH AMERICA IS BASED.

4 THIS COMMUNITY STARTED OUT AS A LIBERAL
5 DEMOCRACY WITH AN IDEOLOGY CONSISTENT WITH THAT DEMOCRACY
6 CALLED LIBERALISM. TODAY PEOPLE CALL THEMSELVES
7 CONSERVATIVES IN AMERICA ON THAT ISSUE.

8 THE OTHER SIDE IS CALLED COMMUNITARISM, SOME
9 PEOPLE CALL IT MORALISM, SOME PEOPLE CALL IT SOCIALISM, BUT
10 EACH ONE OF THESE ELEMENTS ARE APART OF OUR SOCIETY AND HAS
11 ALWAYS BEEN APART OF OUR SOCIETY.

12 THE CLASSICAL LIBERAL OR INDIVIDUALISTIC
13 ORIENTATION EXISTED FROM THE FOUNDATION OF THE COUNTRY UNTIL
14 ABOUT THE 1920'S AND SPECIFICALLY THE 1930'S AS A RESULT OF
15 THE GREAT DEPRESSION.

16 THIS NOTION OF COMMUNITARISM AROSE AS A RESULT
17 OF THE CRISIS ASSOCIATED WITH THE GREAT DEPRESSION. FROM
18 ABOUT 1935 UNTIL ABOUT 1980, THAT WAS A DOMINANT ORIENTATION
19 OF AMERICA. SO BOTH ORIENTATIONS HAVE EXISTED IN AMERICA.

20 OF COURSE COMMUNITARISM HAS EXISTED FOR A
21 SHORTER PERIOD OF TIME. THE ARGUMENT IS SIMPLE THAT THESE
22 TWO ORIENTATIONS ARE IN CONFLICT AND AMERICA WILL HAVE TO
23 DECIDE WHICH WAY WILL IT GO, WILL IT GO BACK TO LIBERALISM,
24 I'M NOT TALKING ABOUT LIBERALISM, I'M TALKING ABOUT
25 CONSERVATIVISM, WILL IT MOVE ON TO COMMUNITARISM. LET'S

1 TALK ABOUT WHAT EACH ONE OF THESE REPRESENTS VERY BRIEFLY.

2 WHEN WE TALK ABOUT LIBERALISM, AGAIN WE'RE
3 TALKING ABOUT INDIVIDUALISM, THE IDEA OF EVERYONE IS
4 RESPONSIBLE FOR THEMSELVES AT AN ORIENTATION. THE IDEA THAT
5 OUR SOCIETY IS BEST WHEN IT'S SELFISH AND COMPETITIVE, AND
6 RATIONAL WITH VERY LIMITED GOVERNMENT.

7 THE GIST OF THIS LIBERALISTIC ORIENTATION IS
8 GOVERNMENT SHOULD BE LIMITED AT ALL COSTS.

9 ON THE OTHER SIDE OF THE ISSUE AND PEOPLE
10 DISCOVERED AS A RESULT OF THE GREAT DEPRESSION THAT
11 SOMETIMES GOVERNMENT IS ABSOLUTELY NECESSARY, NOT MAKE AN
12 ARGUMENT THAT GOVERNMENT SHOULD BE ALL AND THAT GOVERNMENT
13 SHOULD CONTROL ALL.

14 BUT SIMPLY IN SOME CASES GOVERNMENT IS
15 CRITICALLY IMPORTANT AND SOME PEOPLE SIMPLY CAN'T DO THEIR
16 BEST WITHOUT INTERVENTION FROM THE GOVERNMENT ARENA.

17 THIS PARTICULAR ORIENTATION, AGAIN JUST TO
18 RE-STATE, EXISTED AS A DOMINANT ORIENTATION FROM ABOUT 1935
19 UNTIL 1980. WHICH WAY SHOULD WE GO, SHOULD WE GO BACK TO
20 PRE-1930 OR SHOULD WE MOVE ON TO THE FUTURE.

21 AGAIN THE CONSERVATIVES MAKE THE ARGUMENT THAT
22 WE SHOULD GO BACK, GO BACK TO THE BASIS OF AMERICAN HISTORY
23 IN TERMS OF INDIVIDUALISM, KNOCK THOSE PEOPLE OFF OF
24 WELFARE, ELIMINATE AFFIRMATIVE ACTION, EVERYBODY SHOULD MAKE
25 IT ON THEIR OWN.

1 IF THEY CAN'T MAKE IT ON THEIR OWN, OBVIOUSLY
2 IT'S THEIR PROBLEM, THEY HAVE MADE SOME MISTAKE ALONG THE
3 WAY.

4 I CAN'T THINK OF A SINGLE INDUSTRIALIZED
5 DEMOCRACY THAT MAKES THAT ARGUMENT TODAY. AMERICA IS
6 PROBABLY THE LAST MAJOR DEMOCRACY TO MAKE THAT ARGUMENT.

7 ON THE OTHER SIDE IS THE ARGUMENT THAT WE HAVE A
8 NEW IMPERATIVE IN AMERICA. WE HAVE AN ECONOMIC SYSTEM THAT
9 IS CLEARLY NOT INDUSTRIAL BASED AS IT WAS PRIOR TO THE
10 1930'S, THAT WILL REDUCE INDIVIDUAL CAPABILITIES TO HELP
11 THEMSELVES, THAT WILL REQUIRE SOME GOVERNMENT INTERVENTION.

12 THIS PARTICULAR ORIENTATION IS CONSISTENT WITH
13 WHAT WE SEE IN JAPAN, WITH WHAT WE SEE IN GERMANY, WHAT WE
14 SEE IN DEVELOPED EUROPE, AND OF COURSE NOT TO MENTION OUR
15 NEIGHBOR, CANADA.

16 THIS PARTICULAR ORIENTATION IS COMMUNITARISM IS
17 CONSISTENT WITH A SOCIETY THAT'S BASED ON INFORMATION AND
18 TECHNOLOGY AND NOT INDUSTRIALISM.

19 SO THE ARGUMENT AGAIN IS SIMPLE, WHICH WAY
20 SHOULD WE GO -- SHOULD WE GO BACK TO INDIVIDUALISM, WHICH IS
21 VERY PREDICATED ON AN INDUSTRIAL SOCIETY, COMPETITION,
22 GOVERNMENT INTEREST, OR SHOULD WE MOVE TO A NEW SOCIETY,
23 COMMUNITARISM, WHERE GOVERNMENT IS AN IMPORTANT ALLY IN
24 DEALING WITH INFORMATION AND SERVICE ECONOMY.

25 AND SO THIS IS THE BASIC ARGUMENT THAT I'M

1 MAKING THAT WE HAVE TO DECIDE WHICH WAY WE GO AND HOW WE
2 DECIDE THE AFFIRMATIVE ACTION ISSUE WILL SUGGEST SOMETHING
3 VERY IMPORTANT ABOUT WHICH WAY THIS COUNTRY WILL BE MOVING.

4 CHAIRWOMAN RAMOS: THANK YOU. NOW, I'M
5 GOING TO ASK YOU WHAT ARE YOU THINKING ABOUT WHEN YOU SAY
6 THAT?

7 MR. JONES: I BELIEVE THAT COMMUNITARISM
8 IS THE ONLY SOLUTION TO MANY OF THE PROBLEMS THAT WE HAVE
9 TODAY. WE ARE IN A SITUATION WHERE, FOR EXAMPLE, WE ARE
10 TRYING TO DEAL WITH A HUGE BUDGET DEFICIT, NATIONAL DEBT,
11 ASTRONOMICALLY HIGH, BUT WE HAVE INTEREST GROUPS FIGHTING TO
12 ELIMINATE THE DEFICIT.

13 WE HAVE INTEREST GROUPS FIGHTING, UNKNOWINGLY IN
14 MANY CASES TO MAINTAIN THE DEFICIT, BECAUSE WE CAN'T REALLY
15 DEAL WITH THE DEFICIT UNLESS WE DEAL WITH SOCIAL PROGRAMS,
16 LIKE SOCIAL SECURITY, MEDICARE.

17 AT THE SAME TIME WE CAN'T THROW PEOPLE OFF OF
18 THESE THINGS AND PROVIDE NO OPPORTUNITY FOR THEM.

19 IN THE GOOD OLD DAYS IN THE INDUSTRIAL
20 REVOLUTION WE COULD FIND JOBS FOR THEM IN THE INDUSTRY AND
21 YOU DON'T NEED A LOT OF SKILLS TO DO THAT.

22 TODAY YOU NEED TO BE HIGHLY SKILLED TO BE
23 COMPETITIVE IN OUR SOCIETY, WE CAN'T DO THAT TODAY. SO WE
24 HAVE A DILEMMA, WE DON'T HAVE THE INDUSTRIAL BASE ANY MORE,
25 BUT WE CAN'T AFFORD TO CONTINUE TO PAY FOR THESE SOCIAL

1 PROGRAMS .

2 THE ONLY REAL SOLUTION IS THAT ALL AMERICANS
3 HAVE TO GIVE UP SOMETHING TO SOLVE THIS PROBLEM. WE CAN'T
4 SOLVE THIS PROBLEM, WE CAN'T GIVE UP UNDER OUR
5 INDIVIDUALISM, WE WILL FIGHT TOOTH AND NAIL TO MAINTAIN OUR
6 SHARE ON INDIVIDUALISM. UNDER COMMUNITARISM WE ARE STARTING
7 TO LOOK AT THE COMMON GOOD TO BECOME CRITICALLY IMPORTANT,
8 NOT UNDER INDIVIDUALISM.

9 SO I MAKE THE ARGUMENT FOR COMMUNITARISM AS THE
10 ONLY VIABLE ALTERNATIVE TO DEAL WITH THE PROBLEM.

11 MR. WILSON: JUST A GENERAL COMMENT ABOUT
12 THE -- PERHAPS YOUR USE OF TERMS. IT SEEMS TO ME THAT AT
13 LEAST THE FRAMERS OF THE CONSTITUTION, IMPORTANTLY FLAWED
14 CONSTITUTION IN SOME RESPECTS PARTICULARLY WITH THE -- WITH
15 IT'S PROTECTION OF SLAVERY.

16 STILL THE FRAMERS OF THAT CONSTITUTION DID NOT
17 SEE THE RADICAL TENSION THAT YOU SEE BETWEEN THE PROTECTION
18 OF INDIVIDUAL RIGHTS AND JUSTICE OR THE COMMON GOOD.

19 THEY TALKED AS IF THEIR CONSTITUTION WERE ABOUT
20 BOTH, AND THAT BY SECURING RIGHTS THEY PROMOTE THE PUBLIC
21 GOOD. SO IT SEEMS TO ME THAT IT'S NOT TRUE TO SUGGEST THAT
22 THE CONCERN FOR THE COMMON GOOD IS A POST 1930'S PHENOMENON
23 IN AMERICAN POLITICAL AND LEGAL THOUGHT, THAT'S ONE OF MY
24 COMMENTS.

25 THE OTHER HAS TO DO WITH AFFIRMATIVE ACTION

1 SPECIFICALLY. IT SEEMS TO ME THAT THERE ARE MANY
2 COMMUNITARIANS ON BOTH SIDES OF THE AFFIRMATIVE ACTION
3 QUESTION JUST AS THERE ARE CLASSICAL LIBERALS ON BOTH SIDES
4 OF THE AFFIRMATIVE ACTION QUESTION.

5 THERE ARE SUPPORTERS OF THE ADMINISTRATIVE STATE
6 OR A ROLE FOR GOVERNMENT AND SOCIAL PROGRAMS WHO ARE OPPOSED
7 TO AFFIRMATIVE ACTION BECAUSE OF WHAT THEY SEE TO BE THE
8 SOCIAL HOSTILITY THAT ITS PROGRAMS ARE CAUSING.

9 SO AGAIN IT SEEMS TO ME THAT IT'S POSSIBLE TO
10 DIVORCE THE AFFIRMATIVE ACTION QUESTION FROM THE LARGER
11 PHILOSOPHICAL DEBATE THAT YOU'RE INTERESTED IN.

12 ONE CAN REASONABLY MAKE AN ARGUMENT, IT MAY NOT
13 PERSUADE YOU, BUT ONE CAN MAKE AN ARGUMENT THAT THE PURSUIT
14 OF AFFIRMATIVE ACTION HAS INDEED BEEN CONTRARY TO THE COMMON
15 GOOD, THE PUBLIC GOOD, BECAUSE OF THE TENSIONS AND
16 HOSTILITIES THAT IT HAS CAUSED.

17 SO I WISH YOU WOULD SEPARATE OUT THE AFFIRMATIVE
18 ACTION QUESTION FROM YOUR LARGER PHILOSOPHICAL CONCERNS AND
19 ADDRESS IT SPECIFICALLY, WHY IS IT NECESSARY TO HAVE
20 AFFIRMATIVE ACTION IN AMERICA IN 1996?

21 MR. JONES: YOU SORT OF PUT ME IN A CORNER
22 HERE.

23 MR. WILSON: I DIDN'T MEAN TO PUT YOU IN A
24 CORNER.

25 MR. JONES: BECAUSE YOU'RE DARING ME TO

1 MAKE THE ARGUMENT THAT I'M MAKING HERE THAT THERE IS A
2 CONNECTION, AND I DON'T KNOW HOW TO MAKE IT ANY OTHER WAY.
3 GIVEN THE FACT THAT YOU REALIZE THAT UNDER OUR LIBERAL
4 DEMOCRACY AND UNDER OUR CLASSICAL ORIENTATION, WE TEND TO
5 ASSUME A ZERO SUM GAIN THAT IF ONE GROUP RECEIVES SOMETHING
6 THEN ANOTHER GROUP LOSES.

7 MR. WILSON: I RECOGNIZE THAT, BUT GO
8 AHEAD.

9 MR. JONES: YOU'RE NOT AWARE OF THAT?

10 MR. WILSON: WELL, I'M AWARE OF THE
11 ARGUMENT, I JUST -- I DON'T ACCEPT IT. I THINK THAT
12 PROTECTING PEOPLE'S EQUAL RIGHTS TO BE TREATED REGARDLESS OF
13 THEIR RACE OR SEX, TREATED EQUALLY UNDER THE LAW IS NOT A
14 ZERO SUM GAIN, I THINK EVERYBODY BENEFITS BY BEING TREATING
15 EQUALLY UNDER THE LAW.

16 SO I DON'T SEE -- WE'RE JUST TALKING ABOUT
17 GOVERNMENT AND ITS LAWS, I DON'T THINK TO PROTECT ONE
18 INDIVIDUAL'S RIGHT IS AT THE EXPENSE OF ANOTHER INDIVIDUAL'S
19 RIGHT.

20 MR. JONES: BUT IN A CLASSICAL LIBERAL
21 SOCIETY WHERE WE TALK ABOUT POLICY AS CONFLICT, WHERE ONE
22 GROUP WINS AND ONE GROUP LOSES, HOW ELSE CAN YOU THINK ABOUT
23 THAT?

24 MR. WILSON: I DON'T THINK IN TERMS OF
25 GROUPS AND THEIR RIGHTS, I THINK OF INDIVIDUALS AND THEIR

1 RIGHTS. YOU SEE I'M SUGGESTING THAT THE LOSS OF BOTH OUR
2 DECLARATION OF INDEPENDENCE AND THE CONSTITUTION, IS A
3 PHILOSOPHY THAT JUSTICE CONSISTS OF SECURING THE RIGHTS OF
4 INDIVIDUALS.

5 MR. JONES: OH, NO.

6 MR. WILSON: TREATING THEM EQUALLY.

7 MR. JONES: OH, NO.

8 MR. WILSON: THAT BOTH DOCUMENTS SAY, NOW,
9 IF YOU WANT TO, YOU KNOW, UNDERMINE THE PLAIN LANGUAGE OF
10 THE DOCUMENT, FINE, BUT THE DECLARATION SAYS EVERYBODY IS
11 CREATED EQUAL.

12 CHAIRWOMAN RAMOS: WE'RE NOT HERE TO
13 UNDERMINE, WE'RE HERE TO KIND OF DISCUSS WHAT THE PHILOSOPHY
14 IS. AND I THINK THE QUESTIONS YOU'RE ASKING, WE'RE TALKING
15 ABOUT THE PERSPECTIVE ON AFFIRMATIVE ACTION AND I MEAN YOU
16 KNOW HOW TO INTERPRET IT IS EVERYBODY'S INDIVIDUAL WILL.

17 MR. WILSON: LET ME SAY THIS ONE THING
18 ABOUT IT: THE REASON HE AND I ARE ENGAGED IN THIS
19 DISCUSSION IS BECAUSE HE BELIEVES THAT THE ISSUE OF
20 AFFIRMATIVE ACTION CAN ONLY BE PROPERLY UNDERSTOOD WHEN
21 PLACED IN THE PHILOSOPHICAL CONTEXT THAT HE HAS SET FOR IT.

22 I'M TRYING TO SUGGEST THAT IT NEED NOT BE SEEN
23 IN THAT CONTEXT TO PROPERLY BE UNDERSTOOD. THAT'S WHY I
24 ASKED HIM TO ADDRESS AFFIRMATIVE ACTION SPECIFICALLY, SO WE
25 CAN SEE WHY IT IS NECESSARY TO PROMOTE AFFIRMATIVE ACTION IN

1 ORDER TO SECURE THE COMMON GOOD OR THE PUBLIC GOOD AS YOU
2 SEE IT.

3 MR. JONES: I WILL COME BACK TO THAT
4 POINT, BUT THERE'S NO WAY TO DEAL WITH AFFIRMATIVE ACTION ON
5 ANY ISSUE WITHOUT PUTTING IT INTO A PHILOSOPHICAL CONTEXT,
6 YOU WILL DO THAT.

7 MR. WILSON: I TEND TO DISAGREE WITH THAT.

8 MR. JONES: PLEASE GO BACK TO THE
9 CONSTITUTION, FOR HEAVEN'S SAKE, THE CONSTITUTION WAS NOT
10 DESIGNED TO DEAL WITH ANY INDIVIDUAL RIGHTS, IT WAS DESIGNED
11 TO ENSURE MAJORITY RULE AND DOMINATION.

12 INDIVIDUAL RIGHTS WAS AN AFTERTHOUGHT, SOMETHING
13 THAT HAD TO BE DEALT WITH A LITTLE LATER ON.

14 SO WE HAVE CONTINUOUSLY HAD TO DEBATE BETWEEN
15 MAJORITY RULE VERSUS INDIVIDUAL RIGHTS CONTINUOUSLY SINCE
16 THE CONSTITUTION WAS ESTABLISHED. SO THAT'S BEEN AN
17 IMPORTANT DEBATE.

18 AND WHAT HAS HAPPENED, IN EFFECT WE GAIN ONE, WE
19 LOSE SOME OF THE OTHER. IF WE GAIN MAJORITY RULE, WE LOSE
20 INDIVIDUAL RIGHTS, WE GAIN INDIVIDUAL RIGHTS, WE LOSE
21 MAJORITY, WE LOSE A LITTLE OF EACH. THEY CAN'T EXIST
22 TOGETHER AT THE SAME TIME.

23 MR. WILSON: TAKE IT UP TO AFFIRMATIVE
24 ACTION TODAY FOR ME.

25 MR. JONES: OKAY. THE SAME THING YOU HAVE

1 TO PUT IN SOME CONTEXT, WHAT CONTEXT DO YOU PUT AFFIRMATIVE
2 ACTION IN IN ORDER TO DETERMINE IF IT'S GOOD OR BAD?

3 CHAIRWOMAN RAMOS: WAIT A MINUTE -- WAIT A
4 MINUTE, WE'RE NOT HERE TO HAVE A DEBATE. THIS IS HIS
5 PERSPECTIVE AND HIS PRESENTATION THAT YOU MAY HAVE A
6 DIFFERENT SLANT, IF YOU HAVE A COMMENT ABOUT AFFIRMATIVE
7 ACTION THAT'S WHAT WE'RE LOOKING AT HERE.

8 MR. WILSON: THAT'S WHAT I'M TRYING TO
9 GET TO, HIS PERSPECTIVE.

10 MR. LEVENTHAL: FIRST YOU MENTIONED THE
11 REST OF THE WORLD HAS DONE A GREAT JOB ON SOCIAL AFFIRMATIVE
12 ACTION PROBLEMS, AND THIS HAS SORT OF GONE BACKWARDS. I'D
13 SAY IN GERMANY AND FRANCE AND SCANDANAVIAN COUNTRIES THEY
14 WENT TOO FAR TOWARD SOCIAL PROGRAMS AND IT'S HURT THEIR
15 ECONOMY SO MUCH THAT WHEN THEY TRY TO REGRESS AND GO THE
16 OTHER WAY THEY ARE HAVING -- THEY ARE HAVING PROBLEMS.

17 AND IT'S, IT'S A TOUGH SITUATION IN EUROPE
18 TODAY, BECAUSE TRYING TO CHANGE THE MONEY THAT THEY'VE SPENT
19 WHERE IF A PERSON IS OUT OF WORK HE GETS PAID FOR LET'S SAY
20 TWO YEARS AND RETIRES AT THE AGE OF 45, IT MAKES IT TOUGH TO
21 BE ABLE TO SUPPORT THAT, BUT THE MAIN QUESTION I WANTED TO
22 ASK YOU, YOU MADE A COMMENT THAT IF THINGS ARE TO BE HELPED,
23 I CAN'T QUOTE YOU EXACTLY, WE'RE GOING TO HAVE TO GIVE UP
24 SOME MONEY, IS THAT WHAT YOU SAID?

25 MR. JONES: NO.

1 MR. LEVENTHAL: WELL, WE'RE GOING TO HAVE
2 TO GIVE THINGS UP.

3 MR. JONES: YEAH.

4 MR. LEVENTHAL: NOW, WHAT DO YOU MEAN,
5 WHAT SHOULD BE GIVEN UP BY LET'S SAY A CERTAIN CLASS OF
6 PEOPLE OR CERTAIN GROUP OF PEOPLE, COULD YOU EXPLAIN WHAT
7 YOU MEANT BY THAT?

8 MR. JONES: YOU KNOW, WE'RE TALKING
9 ACROSS THE BOARD HERE, WE'RE TALKING ABOUT THE RICH, IF YOU
10 WOULD LIKE TO START THERE, THE RICH HAVE TO REALIZE THEY
11 CAN'T EXIST TAX-FREE OR RULE SIMPLY FOR THEIR PARTICULAR
12 BENEFIT.

13 THE MIDDLE CLASS WILL HAVE TO REALIZE THAT IT
14 TOO CAN'T EXIST AT THE LEVEL THAT IT HAS EXISTED SINCE THE
15 1940'S IN TERMS OF OUR EXPECTATION THAT WE ALL -- MOST OF US
16 CAN BE MIDDLE CLASS, CAN HAVE THE FOUR BEDROOM HOME, TWO
17 BATHROOMS, BOAT IN THE YARD, ALL THIS KIND OF STUFF AND
18 STILL NOT HAVE -- WELL, HAVE THE TRADITIONAL FAMILY, WITH
19 THE WIFE AT HOME, THE KIDS, ALL THOSE EXPECTATIONS WILL HAVE
20 TO CHANGE.

21 POOR PEOPLE, OF COURSE THEIR EXPECTATION HAS
22 BEEN TRADITIONALLY FAIRLY LOW, AND THAT MEANS WE TOO BEGIN
23 TO DEAL WITH PROVIDING THEM WITH A CEILING -- WELL, A FLOOR
24 ACTUALLY, BELOW WHICH THEY SHOULDN'T FALL AND SO.

25 MR. LEVENTHAL: SHOULD THAT BE FROM THE

1 GOVERNMENT OR PRIVATE INDIVIDUALS, THIS MOVING MONEY FROM
2 ONE CLASS TO ANOTHER?

3 MR. JONES: TRADITIONALLY THAT'S THE ROLE
4 OF GOVERNMENT, PRIVATE PEOPLE WON'T DO IT ESPECIALLY ON
5 LIBERALISTIC SOCIETY, WE WON'T DO THAT, IT'S UNREALISTIC TO
6 TALK ABOUT THAT, WE WON'T DO THAT.

7 IN OUR SOCIETY WE ARE COMPETITIVE IN
8 SELF-INTEREST, WE DO NOT DO THAT KIND OF THING.

9 MR. PEREZ: MY QUESTION IS GOING TO DEAL
10 WITH YOUR TALKING ABOUT FROM THE RICH TO THE POOR FROM THOSE
11 THAT HAVE TO THOSE THAT DON'T HAVE, WHY THEN DO WE FOCUS, DO
12 WE HAVE TO FOCUS ON THE AFFIRMATIVE ACTION ISSUE ON GIVING
13 TO THOSE WHO ARE OF A SPECIFIC GENDER OR SPECIFIC RACE OR
14 COLOR OR NATIONALITY, AS OPPOSED TO EVERYBODY THAT DOES NOT
15 HAVE?

16 MR. JONES: SO YOU'RE ASKING -- IF I
17 UNDERSTAND WHAT YOU'RE ASKING, IF WE ARE TALKING ABOUT
18 RE-DISTRIBUTING WEALTH IN SOME PHYSICAL MONETARISM THAT
19 WASN'T WHAT I -- I DIDN'T WANT TO IMPLY THAT, THAT WE WERE
20 TALKING ABOUT REDISTRIBUTING WEALTH.

21 MR. PEREZ: WHATEVER ELSE YOU'RE TALKING
22 ABOUT, FOR INSTANCE THE AFFIRMATIVE ACTION CONTEXT YOU'RE
23 TALKING ABOUT THE COMMUNITY FOR THE MOST PART?

24 MR. JONES: YEAH.

25 MR. PEREZ: AND IF WE'RE TALKING ABOUT THE

1 OPPORTUNITY IN THAT CONTEXT, WHY NOT MAKE THE OPPORTUNITY
2 AVAILABLE TO EVERYBODY ECONOMICALLY DISADVANTAGED, NOT JUST
3 A CERTAIN SEGMENT OF THE COMMUNITY?

4 MR. JONES: I'M NOT SURE I UNDERSTAND YOUR
5 QUESTION. AFFIRMATIVE ACTION IS DESIGNED TO DO THAT AS IT
6 CURRENTLY EXISTS AND IN CONCEPT.

7 MR. PEREZ: IT'S DESIGNED TO DEAL WITH THE
8 WHITE -- POOR WHITE FROM APPALACHIA?

9 MR. JONES: OH, I SEE.

10 MR. PEREZ: AS WELL AS THE POOR RURAL
11 BLACK OR INNER-CITY BLACK.

12 MR. JONES: OKAY. WELL, WE HAVE A
13 PROBLEM. I THINK WHAT WE'RE DOING IS MIXING THE ECONOMIC
14 WITH THE AFFIRMATIVE ACTION ISSUE, AND I'M NOT SURE I CAN
15 UNTANGLE THAT KIND OF THING OR I WOULDN'T RELATE, I CAN'T
16 ANSWER THAT IN THAT CONTEXT. PERHAPS IF YOU COULD REDEFINE
17 WHAT YOU MEAN OR WHAT YOU'RE CONCERNED ABOUT.

18 MR. PEREZ: I GUESS I'M TRYING TO GET
19 YOUR VIEWPOINT BACK TO WHAT YOU'RE SAYING BACK TO THE
20 AFFIRMATIVE ACTION SIDE OF IT, I UNDERSTAND HOW YOUR
21 STATEMENTS RELATE TO AFFIRMATIVE ACTION, AND I UNDERSTAND
22 THAT I THINK I UNDERSTAND THAT YOU'RE SAYING IN THIS CONTEXT
23 WHERE WE BECOME MORE COMMUNITARIAN AND TAKE CARE OF EACH
24 OTHER, THAT PART OF THAT WILL HAVE TO, THE INDIVIDUALS OF
25 CERTAIN ECONOMIC LEVELS HAVE TO MAKE SOME ADJUSTMENT. IF I

1 BRING IT DOWN TO AFFIRMATIVE ACTION, WHICH IMPACT
2 INDIVIDUALS FROM CERTAIN RACE OR GENDER, NATIONAL ORIGIN,
3 POSSIBLY HOW DOES THAT RELATE TO YOUR PHILOSOPHY YOU ARE
4 DISCUSSING?

5 MR. JONES: I'M STILL HAVING A LITTLE
6 PROBLEM WITH THAT. WHEN I THINK ABOUT -- WHEN I'M TALKING
7 ABOUT COMMUNITARISM, I'M NOT TALKING ABOUT IN AN ECONOMIC
8 SENSE, I'M NOT TALKING ABOUT POLITICAL SENSE, I'M TALKING
9 ONLY IN A SOCIAL SENSE.

10 IN TERMS OF, I GUESS YOU CAN PUT IT IN SOME KIND
11 OF ECONOMIC CONTEXT THAT'S NOT WHAT I WANT TO DO. I WANTED
12 TO TALK ABOUT IT IN TERMS OF A LEGAL PROTECTION, NOT SOME
13 ECONOMIC GAIN FROM IT.

14 AGAIN YOU'RE SHIFTING IT INTO A CLASSICAL
15 LIBERAL POSITION THAT YOU DO THIS. THERE MUST BE SOME GAIN
16 -- ECONOMIC GAIN ASSOCIATED WITH IT. I'M HAVING A LITTLE
17 PROBLEM DEALING WITH THAT. I HAVEN'T THOUGHT ABOUT IT IN
18 TERMS OF ECONOMIC GAIN AND IF I UNDERSTAND YOU THAT'S WHERE
19 YOU'RE COMING FROM, LOOKING FOR SOME KIND OF ECONOMIC VALUE
20 ON THIS PARTICULAR ISSUE.

21 CHAIRWOMAN RAMOS: LET ME CLEAR THIS UP.
22 I THINK ONE OF THE THINGS -- I THINK I UNDERSTAND WHAT
23 YOU'RE SAYING, YOU'RE TALKING ABOUT THE COMMUNITARIAN, YOU
24 ARE TALKING ABOUT THE COMMON GOOD OF OUR PHILOSOPHY, DO WE
25 ALL PROSPER TOGETHER OR INDIVIDUALLY, OR DO WE FIGHT FOR OUR

1 OWN LITTLE TURF?

2 WE'RE NOT LOOKING AT AFFIRMATIVE ACTION AS
3 SOCIAL/PHILOSOPHICAL VIEW, WHAT WE ARE DEALING WITH ARE A
4 LOT OF SET ASIDE PROGRAMS, PROGRAMS GET INTO ONE ENTITY
5 BASED ON RACE, GENDER, WHATEVER VERSUS ECONOMIC, PEOPLE THAT
6 HAVE SMALL BUSINESSES AND THEY WANT TO BE JUDGED AGAINST
7 PEERS OF THEIR OWN.

8 AND I THINK THAT WE'RE REALLY DEALING WITH
9 AFFIRMATIVE ACTION ON AN ECONOMIC BASIS, THE SET ASIDE
10 PROGRAM I THINK THAT'S WHY THERE'S A LITTLE BIT OF
11 CONFUSION. YOU'RE LOOKING AT SOCIAL PROBLEMS OF AFFIRMATIVE
12 ACTION AND NOT NECESSARILY THE ECONOMIC BENEFITS THAT ARE
13 KIND OF THE FALLOUT OF THAT KIND OF PHILOSOPHY.

14 AND I THINK THAT'S WHERE PERHAPS WE'RE MIXING A
15 LITTLE BIT OF WHAT YOUR PRESENTATION IS, YOU SAY WHAT WE
16 WERE LOOKING AT WAS MORE BASED ON THE ECONOMIC BENEFACTORS
17 OF THE PROGRAM.

18 MR. JONES: MY IDEA WAS TO TRY TO BRING
19 YOU OUT OF THAT TRADITIONAL MODE OF LOOKING AT EVERYTHING AS
20 HAVING A DOLLAR VALUE AND RESPONDING TO EVERYTHING IN TERMS
21 OF A BUCK, WHICH IS SORT OF HARD TO DO, BUT MY PRESENTATION
22 HAD NOTHING TO DO WITH LOOKING AT THE DOLLAR VALUE.

23 CHAIRWOMAN RAMOS: AND AGAIN THAT BRINGS
24 ANOTHER PERSPECTIVE TO WHAT WE'RE DOING, WE'RE LOOKING AT
25 THE SOCIAL IMPACT OF THESE PROGRAMS, HOW LIBERALLY AND

1 PHILOSOPHICALLY WE'RE LOOKING AT VERY DIFFERENT VIEWPOINTS,
2 YOU BRING ONE VERY DIFFERENT FROM SOME OF THE THINGS WE'VE
3 HEARD. I THINK IT WILL BE VERY INTERESTING TO READ YOUR
4 PAPER.

5 MR. JONES: I GUESS I DO APOLOGIZE BECAUSE
6 IT JUST NEVER OCCURRED TO ME AND IT SHOULD HAVE, THAT IT
7 WOULD BE LOOKED AT FROM AN ECONOMIC PERSPECTIVE.

8 CHAIRWOMAN RAMOS: NO, I THINK THAT WE MAY
9 HAVE NOT LOOKED AT THAT OTHER PART OF THAT PUZZLE, MAYBE
10 THAT'S WHAT IS ACTUALLY IN REALITY WE'RE DEALING WITH AND
11 NOT ECONOMIC.

12 MS. RODEMYER: WE'RE SAYING SOCIAL POLICY
13 COSTS NOTHING AND HE ALREADY SAYS IT DOES, SO THE BUSINESS
14 THAT YOU CAN AVOID ECONOMICS IS NOT SO, THERE'S A COST, AND
15 IT WILL BE PAID, IF SOMEBODY GETS SOMETHING THAT SOMEBODY
16 DOES NOT, THE NOT PAYS, IN A WAY.

17 MR. JONES: YEAH, BUT IS THAT --

18 MS. RODEMYER: AND TO ANNOUNCE THAT
19 THERE'S SOME AREA WHERE THIS DOESN'T HAPPEN, AND THE
20 SUGGESTIONS THAT YOU GAVE, CANADA, IT'S IN A HORRIBLE
21 DEFICIT AND THEY ARE GOING TO HAVE TO SCALE EVERYTHING BACK,
22 IT'S A SOCIALIST STATE.

23 JAPAN IS HAVING A GREAT DEAL OF DIFFICULTY,
24 EVERYBODY HAS A JOB FOR THE REST OF THEIR LIFE, NOT ANY
25 MORE. IT'S A FLUID THING AND YOU ACT AS THOUGH IT'S NOT,

1 IT'S NOT ECONOMICALLY BASED. IN MANY WAYS THAT'S THE ONLY
2 WAY PEOPLE KEEP SCORE.

3 CHAIRMAN RAMOS: WELL, IT MIGHT NOT BE --
4 MS. RODEMEYER: IN THE SENSE WE DEALT
5 WITH IT ALL MORNING LONG ABOUT STATISTICS AND WHY THIS WAS
6 NECESSARY.

7 CHAIRWOMAN RAMOS: WELL, WHAT HAPPENED IS
8 THAT YOU KNOW WE CAN -- BECAUSE HE BROUGHT IN A DIFFERENT
9 VIEWPOINT, IT'S BEEN INTERESTING, BUT I REALLY THINK THAT
10 PERHAPS WE DON'T ALWAYS THINK OF THE WHOLE PICTURE, YOU'RE
11 BRINGING A DIFFERENT PART OF THE PICTURE AND I REALLY
12 APPRECIATE THAT, AND I THINK IT'S REALLY TAKEN US BY
13 SURPRISE, THERE ARE A LOT OF DIFFERENT PHILOSOPHIES.

14 SO WE THANK YOU VERY MUCH FOR THAT AND WE LOOK
15 FORWARD TO READING YOUR PAPER AND ADAPTING HOW IT ALL FITS
16 TOGETHER.

17 MR. JONES: ALL RIGHT. THANK YOU VERY
18 MUCH.

19 CHAIRWOMAN RAMOS: THANK YOU VERY MUCH.
20 WE HAVE SAMUEL GRESHAM FROM THE COLUMBUS URBAN LEAGUE AND
21 WE WELCOME YOU. YOU HAVE ABOUT 5 TO 7 MINUTES TO DO AN
22 OVERALL PRESENTATION OF YOUR PAPER, THEN, WE WILL ASK
23 QUESTIONS.

24 MR. GRESHAM: WHAT I WILL DO IS THE
25 ENTREE AND THEN I WILL DO THE CONCLUSION AND THEN WE CAN

1 DISCUSS IT.

2 ON BEHALF OF THE NATIONAL URBAN LEAGUE AND
3 COLUMBUS URBAN LEAGUE IN SPECIFIC, I THANK YOU FOR THIS
4 OPPORTUNITY TO MAKE A PRESENTATION REGARDING AFFIRMATIVE
5 ACTION TODAY.

6 THE CONCEPT OF AFFIRMATIVE ACTION, THE NEED FOR
7 AFFIRMATIVE ACTION IS EMBEDDED INTRICABLY IN THE HISTORY OF
8 THE UNITED STATES IS MEANINGLY OUTSIDE THE CONTEXT OF THAT
9 HISTORY. TO UNDERSTAND THE CURRENT STRIDE AND CONTROVERSY
10 OF AFFIRMATIVE ACTION IT IS NECESSARY TO UNDERSTAND THE
11 ISSUES.

12 THE FUNDAMENTAL ISSUES ARE IS AFFIRMATIVE ACTION
13 NECESSARY TO SECURE A RACIALLY INCLUSIVE SOCIETY AND SUCH A
14 RACIALLY INCLUSIVE SOCIETY IN THE NATIONAL INTEREST. TO
15 BEGIN THIS DISCUSSION I'D LIKE TO DEFINE THE SUBJECT OF
16 HAVING A WORKING DEFINITION OF WHAT I MEAN BY AFFIRMATIVE
17 ACTION.

18 WHAT I MEAN BY AFFIRMATIVE ACTION IS A PROCESS
19 BY WHICH PUBLIC AND PRIVATE SECTOR EMPLOYEES TAKE AGGRESSIVE
20 STEPS TO CORRECT AND UNDO PAST DISCRIMINATORY PRACTICES THAT
21 HAVE KEPT ETHNIC MINORITIES AND WOMEN OUT OF THE MAIN STREAM
22 AMERICAN SOCIETY.

23 THE GOAL OF AFFIRMATIVE ACTION IS NOT TO FORCE
24 EMPLOYERS TO HIRE INCOMPETENT OR UNQUALIFIED PERSONS, THE
25 GOAL IS TO MOTIVATE THEM TO SEEK OUT TRAINED AND EDUCATE AND

1 HIRE PERSONS WHO ARE QUALIFIED OR QUALIFIABLE IN AREAS THAT
2 HAVE BEEN DENIED ACCESS BECAUSE OF DISCRIMINATORY PRACTICES.

3 THE OPPONENTS OF AFFIRMATIVE ACTION ARE MOUNTING
4 ASSAULTS ON EVERY FRONT, THERE ARE IN THE COURTS CHALLENGES
5 TO SET ASIDES, MINORITY SCHOLARSHIPS, LEGISLATIVE
6 RE-DISTRICTING, THE FORENSIOUS STEP BINDING OF INSESUOUS
7 RAPPING ON RADIO, TALK SHOWS ABOUT ANGRY WHITE MALES WHOSE
8 ANXIETY ABOUT JOB SECURITY AND ABOUT DECLINING INCOME DRIVES
9 AT THE THRUST TO SCAPEGOATE MINORITIES, WOMEN AND
10 AFFIRMATIVE ACTION FOR THE CAUSES OF THEIR WOES.

11 THIS APPROACH DENIES THE FACTS THAT ARE RIGHT IN
12 FRONT OF THEIR FACE, THE FACTS ARE QUITE SIMPLE, MORE THAN
13 EIGHT HUNDRED MILLION HUMAN BEINGS ARE UNEMPLOYED IN THE
14 WORLD, THIS FIGURE IS LIKELY TO RISE SHARPLY BETWEEN NOW AND
15 THE UPTURN OF THE CENTURY.

16 MILLIONS OF ENTRY LEVEL BETWEEN NOW AND THE TURN
17 OF THE CENTURY HAVE MILLIONS OF JOBS, AS NEW ENTRIES ENTER
18 THE WORK FORCE AND FIND THEMSELVES WITHOUT JOBS, MANY OF THE
19 VICTIMS OF A TECHNOLOGICAL REVOLUTION THAT, IN FACT, IS
20 REPLACING HUMAN BEINGS WITH MACHINES IS VIRTUALLY IN EVERY
21 SECTOR OF OUR INDUSTRY AND THE GLOBAL ECONOMY.

22 AFTER YEARS OF WISHFUL FORECAST AND FALSE STARTS
23 THE NEW COMPUTER AND COMMUNICATION TECHNOLOGY ARE FINALLY
24 MAKING THEIR LONG TERM ANTICIPATED IMPACT ON THE WORK PLACE,
25 AND ECONOMY THROWING THE WORLD COMMUNITY INTO THE GRIPS OF

1 THE THIRD GREAT INDUSTRIAL REVOLUTION.

2 ALREADY MILLIONS OF WORKERS ARE PERMANENTLY
3 UNEMPLOYED FROM THE ECONOMIC PROCESS AND WHOLE JOB
4 CATEGORIES HAVE BEEN RECONSTRUCTED OR DISAPPEARED, THE
5 INFORMATION AGE IS UPON US.

6 AFFIRMATIVE ACTION IS A POLITICAL WEDGE THAT IS
7 BEING USED TO CAMOUFLAGE THE WHOLESALE SUBSTITUTION OF
8 MACHINES FOR MAN.

9 THE NATIONAL DEBATE OVER AFFIRMATIVE ACTION THUS
10 FAR HAS NOT FOCUSED ON THE FUNDAMENTAL CORE ISSUE. IT HAS
11 BEEN ABOUT PERIPHERAL ISSUES, AND ANECDOTAL CONCLUSIONS,
12 THERE IS NO IMPERIAL DATA THAT SUPPORT THE NEED TO
13 DISCONTINUE AFFIRMATIVE ACTION.

14 NOW, FROM HERE I GO INTO A LITANY OF STATISTICAL
15 PRESENTATIONS, AND DEMOGRAPHIC INFORMATION TO SUPPORT MY
16 BASIC CONTENTION THAT THERE'S SUFFICIENT IMPERIAL DATA THAT
17 SUPPORTS THE POSITION. I CAN TALK ABOUT THAT IN MORE
18 DETAIL, BUT LET ME GET TO MY CONCLUSIONS.

19 AFFIRMATIVE ACTION IS A POLITICAL WEDGE OF THE
20 YEAR. POLITICIANS ARE UNWILLING TO ADDRESS THE ECONOMIC
21 VULNERABILITY OF ORDINARY AMERICANS, SEEMED DETERMINE TO
22 DETRACT THEM FROM THEIR INSECURITIES, BY PITTING FINANCIALLY
23 PUT UPON WHITE MALES AGAINST EQUALLY PUT UPON WOMEN AND
24 MINORITIES.

25 THE SOCIAL DIVISIVENESS AND EXPLOSIVE TACTICS

1 MUST NOT BE ALLOWED TO WORK. THE HOPES OF MILLIONS OF
2 MINORITIES AND WOMEN AND THE VITALITY OF OUR NATION'S
3 ECONOMY, WHICH MUST RELY ON THEIR TALENTS AND THE VERY
4 FUTURE OF OUR SOCIETY AS A COHERENT INCLUSIVE ENTERPRISE ARE
5 AT STAKE.

6 DETRACTIVES SAY AFFIRMATIVE ACTION DOES NOT WORK
7 THAT'S SIMPLY NOT SO. THE PROOF IS FOUND EVERYDAY IN THE
8 DRASTICALLY CHANGED COMPOSITION OF COLLEGE CAMPUSES AND
9 CORPORATE WORK PLACES.

10 BACK IN 1961 134,000 BLACK STUDENTS ATTENDED
11 PREDOMINANTLY WHITE COLLEGES AND UNIVERSITIES AROUND THE
12 COUNTRY, TODAY THAT NUMBER IS A STUNNING 1.2 MILLION
13 AFRICAN-AMERICANS IN SUCH SCHOOLS.

14 MUCH OF THE SAME IS TRUE OF THE WHITE COLLAR
15 MARKET, VIRTUALLY EVERY FORTUNE 500 COMPANY IS VASTLY MORE
16 INTEGRATED TODAY.

17 THINK BACK TO WHAT IT WAS IN 1954, IN THE YEAR
18 OF THE LANDMARK BROWN VERSUS EDUCATION DECISION THAT
19 OUTLAWED SCHOOL DESEGREGATION, WOMEN AND MINORITIES IN
20 CORPORATIONS BACK IN THOSE DAYS SELDOM ROSE ABOVE SECRETARY
21 OR MESSENGER.

22 EVEN THINK ABOUT THE COMPILATIONS OF LOCAL
23 POLICE AND FIRE DEPARTMENT IN THOSE DAYS, CONTRACTS, SET
24 ASIDE THAT SPURRED THE GROWTH OF FEMALE AND MINORITY OWNED
25 FIRMS OPERATING IN THE MAIN STREAM ECONOMY. THESE GAINS

1 HELP EXPLAIN THE WELCOME GROWTH OF THE BLACK MIDDLE CLASS.

2 TO THOSE WHO SAY THE POOR HAS NOT BENEFITTED
3 FROM INCLUSION, THINK AGAIN ABOUT THE TEN FOLD INCREASE IN
4 BLACK STUDENTS IN MINORITY COLLEGES.

5 I AM A LIVING EXAMPLE, MY FAMILY WERE SHARE
6 CROPPERS FROM GREENWOOD, MISSISSIPPI. I LIVED IN LAFORD
7 COUNTY, I MOVED TO THE WEST SIDE OF CHICAGO WHERE I GREW UP.

8 MY OPPORTUNITIES WOULD NOT HAVE EXISTED FOR ME
9 TO GO TO THE UNIVERSITY OF ILLINOIS OR TO THE UNIVERSITY OF
10 PENNSYLVANIA WARDEN SCHOOL OF BUSINESS, NOR WOULD IT HAVE
11 EXISTED FOR ME TO GO TO CORNELL UNIVERSITY IF IT WAS NOT FOR
12 AFFIRMATIVE ACTION.

13 THOSE AMBITIOUS YOUNG PEOPLE DID NOT ARRIVE ON
14 THOSE CAMPUSES WITH SILVER SPOONS IN THEIR MOUTHS, THEY WERE
15 LARGELY OFFSPRINGS OF WORKING CLASS LOW INCOME FAMILIES.

16 THIS IS THE SAME BLACK MIDDLE CLASS, THESE
17 FAMILIES DIDN'T DESCEND FROM BLACK OR UPPER CLASS, THEY ROSE
18 FROM A MORE MODEST CIRCUMSTANCE DUE TO THEIR INDIVIDUAL
19 DRIVE AND HIGHER EDUCATIONAL ATTAINMENT, BUT THANKS ALSO TO
20 THE DETERMINATION OF UNIVERSITY EMPLOYEES TO INCLUDE THEM
21 AND THE CORPORATION AND GOVERNMENT AGENCIES TO DO BUSINESS
22 WITH MINORITY FIRMS.

23 SINCE POVERTY PERSISTS IN THE MINORITY
24 COMMUNITY, I CONCEDE THAT JOBS OF INCLUDING POOR FOLK IN
25 EDUCATIONAL ECONOMIC MAIN STREAM IS A HEARTY ONE.

1 IMPROVING "K" THROUGH 12 EDUCATION IS THE KEY
2 AND PRECISELY BY THE TOP PRIORITY OF THE NATIONAL URBAN
3 LEAGUE AND DEVELOPING OUR CHILDREN ACADEMICALLY AND SOCIALLY
4 FOR THE 21ST CENTURY.

5 BUT IF INNER-CITY YOUTHS ARE TO RUN THE RACE AT
6 OUR BEHEST AND HELP THEY MUST KNOW THAT THEY CROSS THE
7 FINISH LINE TO OPPORTUNITY, STRUCTURE IS ON THE OTHER SIDE
8 WILL REALLY BE OPEN FOR THEM.

9 IF IT ISN'T THEN THE DISTINGUISHED SCHOLARS LIKE
10 JULIUS WILSON AND ELIJAH ADAMS ONE, THESE YOUNG PEOPLE WILL
11 REMAIN CYNICAL AND ISOLATED IF THEY SEE NO RETURN ON THEIR
12 INVESTMENT IN EDUCATION THAT'S WHY IT'S SO IMPORTANT FOR
13 UNIVERSITY EMPLOYERS TO KEEP THE DOORS WIDE OPEN FOR THEM.

14 LET'S BE CLEAR, AFFIRMATIVE ACTION IS ABOUT
15 INCLUSION NOT ABOUT QUOTAS. IT'S ABOUT GIVING QUALIFIED
16 WOMEN AND MINORITIES WHO HAVE LONG BEEN SHUT OUT A GENUINE
17 SHOT AT PERFORMING, IT IS RECRUITING AND PROMOTING THOSE WHO
18 ARE QUALIFIED.

19 OF COURSE PEOPLE SHOULD BE SELECTED SOLELY ON
20 MERIT, THE CRUCIAL QUESTION OF WHAT IS MEANT BY MERIT AND
21 HOW DO WE GO ABOUT MAKING THAT MONUMENTAL DECISION. THE
22 FACT OF THE MATTER IS THAT GATEKEEPING TESTS LIKE THE SAT
23 AND SCHOLASTIC APTITUDE TEST MAY HELP SORT THOSE WHO DO
24 WELL IN THE SHORT TERM, BUT THEY DON'T PREDICT SUCCESSFUL
25 PERFORMANCE LATER IN LIFE.

1 INDEED A STUDY OF HARVARD GRADUATES WHO HAVE
2 BEEN OUT OF SCHOOL FOR MORE THAN 30 YEARS FOUND THE MOST
3 SUCCESSFUL GRADUATES HAD LOW SAT SCORES AND THEY CAME FROM
4 BLUE COLLAR BACKGROUNDS. IN OTHER WORDS THEY WERE
5 AMBITIOUS.

6 I BELIEVE UNIVERSITY EMPLOYEES SHOULD SET THE
7 QUALIFICATIONS BAR APART, WITH RELIABLE PREDICTORS OF ALL
8 THOSE ABOVE WHO CAN DO THE WORK AND THAT'S THE WAY EVERYBODY
9 IN THE CANDIDATE POOL SHOULD BE QUALIFIED, WHICH SHOULD BE
10 QUALIFIED WITHOUT QUESTION.

11 THEY WOULD, THEN, ENABLE THOSE DOING THE
12 ADMITTING TO HIRE SELECTED CANDIDATES OF ALL ETHNIC AND
13 SOCIAL AND ECONOMIC GROUPS DEMONSTRATING ABILITY AND BASED
14 ALSO ON POTENTIAL AMBITION AND PERSISTENCE.

15 THESE ACTUAL GROUPS ARE EASILY DETECTABLE OR
16 DISCERNABLE ON THE STANDARDIZED STANDARD, AND THEY ARE
17 CERTAINLY RELEVANT TO PEOPLE WHO PERFORM SUCCESSFULLY.

18 GIVE YOU AN EXAMPLE, I TOOK THE SAT, MY OVERALL
19 SCORE WAS 14, I GRADUATED FROM THE UNIVERSITY OF ILLINOIS
20 WITH A 3.8. I GRADUATED FROM THE UNIVERSITY OF PENNSYLVANIA
21 WITH A 4 POINT. IN REGARDS TO WHAT THE SAT GAVE AS A
22 PREDICTOR REGARDING MY PERFORMANCE, MY EXTRACURRICULAR
23 ACTIVITY, MY INVOLVEMENT IN STUDENT GOVERNMENT WAS AN
24 INDICATION OF MY DETERMINATION AND PERSISTENCE. THE SAT
25 SCORE COULD NOT HELP ME THERE.

1 LET ME CONCLUDE, I WON'T READ THE REST, I'LL LET
2 YOU READ IT FOR YOURSELF, WITH THESE POINTS. IT'S WHAT OUR
3 PRESIDENT HUGH PRICE CALLS FIVE COMMANDERS OF AN INCLUSIVE
4 OF AMERICA, AND HE BELIEVES THAT THE GOAL IS THEN THE
5 GENUINE INCLUSION, SO WE CANNOT CONDONE QUOTA, BUT NEITHER
6 CAN WE TOLERATE TOKENISM OR TOTAL EXCLUSION OF ANY SEGMENT
7 OF THE AMERICAN SOCIETY FROM THE OPPORTUNITY STRUCTURE, ONLY
8 THE QUALIFIED SHOULD BE INCLUDED.

9 CANDIDATES WHO ARE NOT QUALIFIED ARE NOT TO BE
10 IN THE APPLICATION POOL, BUT FOR THOSE WITH THE POTENTIAL
11 WHO LACK THE REQUISITE SKILL, TO LET THEM BE IN INTENSIVE
12 REMEDIATION PROGRAM, TO HELP THEM GET UP QUICKLY TO SPEED SO
13 THEY TOO CAN QUALIFY FOR SOMETHING.

14 SELECTION SHOULD BE BASED ON BROAD UNDERSTANDING
15 OF WHAT QUALIFY AND WHAT MERIT MEANS IN THE REAL WORLD.
16 THOSE WHO DO THE PICKING SHOULD BE FREE TO WEIGH TRADITIONAL
17 INDICATORS, SUCH AS TEST SCORES AND GRADES ALONG WITH
18 INTANGIBLE ATTRIBUTES LIKE GRIT AND DETERMINATION.

19 INCLUSION IS MORALLY A VITAL AND ECONOMICALLY
20 ADVANTAGEOUS AND DEMOGRAPHICALLY INEVITABLE, OUR POPULATION
21 IS DIVERSE BY DEFINITION, 50 PERCENT WOMEN, AND MORE AND
22 MORE MULTI-ETHNIC BY THE DAY. AMERICA CANNOT ACCEPT THIS
23 REALITY -- AMERICA MUST ACCEPT THIS REALITY AND INCORPORATE
24 IN IT THE ALLOCATION OF OPPORTUNITY TO LEARN TO WORK AND DO
25 BUSINESS IN OUR SOCIETY.

1 TO ACHIEVE THIS INCLUSION THOSE WHO ALLOCATE
2 OPPORTUNITY SHOULD TAKE INTO -- TAKE MANY FACTORS INTO
3 ACCOUNT, AMONG THOSE GEOGRAPHY, GENDER, ETHNICITY, ECONOMIC
4 STATUS, GENDER AND RACE NEED NOT BE THE DECIDING FACTOR, BUT
5 THEY DEFINITELY SHOULD BE AMONG CRITERIA USED TO OVERCOME
6 EXCLUSION AND TO PROMOTE INCLUSION OF ALL THOSE WHO ARE
7 QUALIFIED.

8 LET US KEEP OUR EYES ON THE PRIZE, WOMEN AND
9 MINORITIES, IT IS FULL INCLUSION IN A PROSPEROUS SOCIETY,
10 FOR ALL AMERICANS THERE'S A PROSPEROUS ECONOMY, WHICH
11 INCLUDES EVERYBODY. THANK YOU.

12 CHAIRWOMAN RAMOS: WE HAVE SOME QUESTIONS.

13 MR. BATTLE: MR. GRESHAM, EARLIER IN YOUR
14 PRESENTATION YOU LINKED QUALIFIED AND QUALIFIABLE ALMOST IN
15 THE SAME BREATH AND THEN AS YOU CONCLUDED I NEVER HEARD
16 QUALIFIABLE AGAIN, WOULD YOU RECONCILE THE APPARENT
17 CONTRADICTION THAT THESE TWO TERMS AND THE PLACES YOU CHOSE
18 TO USE THEM IN YOUR PAPER.

19 I'M HAVING A LITTLE TROUBLE BECAUSE IN MY MIND
20 QUALIFIABLE CONJURES UP SOME THINGS THAT MIGHT -- I WON'T
21 PUT WORDS IN YOUR MOUTH THERE, YOU HELP US UNDERSTAND, OR
22 HELP ME, MAYBE I'M THE ONLY ONE THAT DIDN'T CATCH THAT, BUT
23 HELP ME UNDERSTAND THE DIFFERENCES BETWEEN THE QUALIFIED AND
24 THE QUALIFIABLE AND HOW THEY FIT IN WITH WHAT WE'RE TALKING
25 ABOUT WITH AFFIRMATIVE ACTION TODAY.

1 MR. GRESHAM: OKAY. THAT WAS NOT BY
2 ACCIDENT AND I'M GLAD YOU CAUGHT IT. I WANT TO DISCUSS THAT
3 AT GREAT LENGTH. AMERICAN SOCIETY IS UNIQUE AMONG ALL
4 COUNTRIES, THERE IS NO OTHER SITUATION WHERE YOU HAVE A
5 HETEROGENOUS SOCIETY AT A SCALE WE HAVE, THAT'S WORKING IN A
6 DEMOCRATIC POSTURE UNIQUELY IN COMPARISON TO "A" COUNTRY AND
7 "B" COUNTRY AND "Y" COUNTRY, THERE IS NO OTHER COMPARISON.

8 SECOND TO THAT YOU HAVE AN INDIGENOUS
9 POPULATION, PEOPLE, IT'S A LARGE SEGMENT OF THIS POPULATION
10 WHO WERE NOT BROUGHT HERE AS IMMIGRANTS OR WILLING
11 PARTICIPANTS. THEY WERE BROUGHT HERE AS CAPTIVES AND
12 REQUIRED TO DO SOME WORK WITHIN THE CONTEXT OF THE GROWTH OF
13 THAT COUNTRY.

14 SO WHEN YOU MAKE AN ABSOLUTE STATEMENT ABOUT
15 QUALIFIED AND QUALIFIABLE YOU THEN MUST IN A SIMPLE ANALOGY
16 ONE CAN RUN THE RACE AND ONE CAN BE PREPARED TO RUN THE
17 RACE, OKAY, AND ONE CAN BE READY TO RUN THE RACE, IN THAT
18 PREPARATION ONE CAN WIN, AND ONE WHO IS PREPARED CAN BE
19 BEATEN, LET ME MAKE IT REAL SIMPLE.

20 WE HAVE A LARGE POPULATION THAT WE THINK HAVE
21 GENIUS THAT HAS NOT BEEN EXPLORED, IT'S BEEN OPPRESSED.
22 LET'S TAKE AN EXAMPLE, WHEN WE LOOK AT THOSE THINGS THAT ARE
23 ORIGINAL TO AMERICA AND THAT ARE NEW TO THE WORLD, THEY HAVE
24 PRIMARILY COME FROM, IT'S PEOPLE OF COLOR AND IT'S
25 INDIGENOUS POPULATION.

1 WE CAN TAKE MUSIC, IF YOU WANT TO LOOK AT THE
2 CREATION OF NEW FORMS OF MUSIC, IF WE EVEN WANT TO LOOK AT
3 THE CONTRIBUTIONS OF SUCH SCIENTISTS AS -- HE'S FROM
4 COLUMBUS, GRANVILLE T. WOODS, WHO HAVE BEEN SUPPRESSED, BUT
5 THAT GENIUS IS STILL EXISTING THERE.

6 I'M SAYING THERE ARE PEOPLE WHO ARE QUALIFIABLE,
7 BUT WHO HAVE NOT HAD THE PROPER PREPARATION AND OPPORTUNITY
8 AND THEY CAN EXERCISE THEIR GENIUS SO THEY CAN RUN THE RACE
9 ALSO.

10 THANK YOU.

11 MR. LEVENTHAL: MR. GRESHAM, I'D LIKE TO
12 ASK YOU, FIRST OF ALL, I THINK MOST OF US AGREE IN ESSENCE
13 WITH WHAT YOU ARE SAYING. IT'S VERY WELL STATED AND IT'S A
14 GOOD DEFINITION OF AFFIRMATIVE ACTION FOR YOU AND FOR US,
15 BUT FOR MOST AMERICANS IT'S NOT IN MY OPINION, A DEFINITION
16 OF WHAT AFFIRMATIVE ACTION MEANS TO THEM.

17 AND ONE OF THE THINGS THAT IS DIVIDING OUR
18 COUNTRY TODAY IS THIS DIFFERENCE IN THE DEFINITION OF WHAT
19 IS AFFIRMATIVE ACTION. TO MOST AMERICANS I WOULD SAY THAT
20 AFFIRMATIVE ACTION MEANS GIVE ME A JOB, BECAUSE I WAS
21 HANDICAPPED IN THE PAST AS A RESULT OF SLAVERY, SO I'M MORE
22 ENTITLED TO THAT JOB THAN A WHITE GUY BECAUSE OF WHAT
23 HAPPENED TO ME IN THE PAST.

24 BECAUSE OF THAT OPINION OF A LOT OF WHITE PEOPLE
25 IN THIS COUNTRY TODAY BELIEVE THAT THEY ARE BEING DENIED

1 JOBS, NOT BY WHAT YOU SAY, BUT BECAUSE OF QUOTAS, AND I
2 THINK THAT WE HAVE NOT ADDRESSED THE PROBLEM OF QUOTAS.

3 FROM WHAT YOU SAID YOU'RE SORT OF AGAINST
4 QUOTAS, YOU'RE FOR GOALS FOR THOSE THAT ARE QUALIFIED, BUT
5 THE DEFINITION IN THE MIND OF THE AVERAGE AMERICAN IS THAT
6 AFFIRMATIVE ACTION MEANS QUOTAS, NOW COULD YOU COMMENT ON
7 THAT?

8 MR. GRESHAM: AND I AGREE WITH YOU AND
9 HENCE THAT'S OUR PROBLEM. WE'VE ALLOWED POLITICIANS TO
10 BECOME DEMAGOGUES AND GIVE DISINFORMATION OF WHAT
11 AFFIRMATIVE ACTION REALLY IS AND I ALWAYS USE THAT
12 DEFINITION AS A BEGINNING POINT OF DISCUSSION ANY TIME I GET
13 INVOLVED IN A DEBATE OR SYMPOSIUM CONCERNING AFFIRMATIVE
14 ACTION, BECAUSE I WANT IT CLEAR ABOUT WHAT I MEAN, AND
15 THAT'S WHAT I MEAN.

16 AND I THINK IN MOST CASES WHERE I'VE BEEN
17 INVOLVED AND I'VE BEEN IN THIS BUSINESS FOR 25 YEARS NOW,
18 WHAT I USED AS A DEFINITION IS WHAT'S BEING APPLIED. NOW
19 THERE ARE CASES WHERE PEOPLE ABUSE IT AND PEOPLE WILL SET UP
20 PEOPLE TO GIVE EXAMPLES OF BEING ABUSED.

21 SO I THINK THERE'S ENOUGH ON BOTH SIDES, BUT I
22 THINK WE CAN ARGUE AND LET POLITICIANS DIVIDE US. I DON'T
23 THINK THAT'S OUR FUTURE AND IN OUR BEST INTEREST. WE DO
24 HAVE A HETEROGENOUS DEMOCRATIC SOCIETY.

25 NOTHING LIKE THIS HAS EVER HAPPENED IN THE

1 CONTEXT OF THE WORLD BEFORE, AND WE HAVE TO FIND A WAY TO
2 MAKE IT WORK, WE CANNOT DENY THE 300 OR 400 YEARS OF
3 OPPRESSION THAT HAS EXISTED FOR CERTAIN SEGMENTS.

4 WE CANNOT DENY GENDER HAS NOT BEEN A LIABILITY
5 FOR A CERTAIN 50 PERCENT OF OUR POPULATION, WE CANNOT DENY
6 THAT LANGUAGE OR ETHNICITY HAS NOT BEEN A DISADVANTAGE.

7 WHEN YOU GET DOWN TO THE ARGUMENTS OF BEING
8 SUCCESSFUL AND WE GET INTO MERIT I CAN GIVE YOU A STRONG
9 COUNTER-ARGUMENT AS TO HOW THINGS ARE DONE, AND IT'S NOT ALL
10 ABOUT MERIT.

11 IN HARVARD WHEN BLACK PEOPLE DIDN'T GO THERE,
12 THERE WERE STILL WHITE PEOPLE WITH LOW SAT AND ACT SCORES,
13 THEY'VE ALWAYS BEEN THERE, THEY'LL ALWAYS BE THERE.

14 I COULD QUESTION WHY THEY WERE THERE VERSUS THE
15 WHITE KIDS WITH HIGHER SCORES, THAT'S ALSO BEEN HISTORICALLY
16 TRUE THOSE FAMILIA RELATIONSHIPS AND ACADEMIC SETTINGS AND
17 IN BUSINESS THEY'VE ALREADY EXISTED.

18 THERE HAVE BEEN RACIAL AND ETHNIC RELATIONSHIPS
19 THAT ALWAYS HAVE BEEN IN EXISTENCE FOR SOME ODD REASONS.
20 THERE HAVE BEEN ETHNIC GROUPS IN AMERICA WHO HAVE NOT YET
21 LEARNED TO NEGOTIATE OR HAVE NOT CREATED ENOUGH POLITICAL
22 CLOUT, OR WHO INSTITUTIONALLY HAVE NOT -- WILL NOT BE
23 ALLOWED AN OPPORTUNITY.

24 AND LET ME GIVE YOU ONE CLEAR EXAMPLE AS IT
25 RELATES TO PEOPLE OF COLOR. IT IS AMAZING TO ME HOW ONE CAN

1 BE A PERSON OF COLOR AND DON'T DISPLAY THEIR CREDENTIALS OR
2 EXPERIENCE OR RESUME ON THEIR CHEST, BUT YOU UNIFORMLY
3 WHEN YOU PUT THEM IN ANY SORT OF CIRCUMSTANCES THOSE PEOPLE
4 OF COLOR WILL BE TREATED THE SAME, OKAY.

5 AND I MAKE A DISTINCTION, BLACK PEOPLE ARE THE
6 SAME, I CAN HAVE A PH.D AND MILLIONS OF DOLLARS, BUT IF I
7 GET IN THE ELEVATOR WITH A POOR BLACK PERSON, I WILL BE
8 TREATED EXACTLY THE SAME. WHEN I GO TO A RESTAURANT IT'S
9 EXACTLY THE SAME.

10 MR. LEVENTHAL: BUT YOU'RE NOT TALKING
11 ABOUT AFFIRMATIVE ACTION, YOU'RE TALKING PREJUDICE.

12 MR. GRESHAM: PREJUDICE IS A RESULT OF
13 BEHAVIOR, AND BEHAVIOR DENIES OPPORTUNITY, HENCE YOU NEED
14 SOMETHING TO COUNTER BEHAVIOR, YOU NEED AFFIRMATIVE ACTION.

15 I THINK WE CAN ARGUE, BUT I DON'T WANT TO ARGUE.
16 WHAT I WANT TO DO IS PRESENT MY SIDE, LET YOU PUT ON YOUR
17 SIDE AND LET'S FIND SOME WAY WE CAN WORK THIS THING OUT.

18 MR. BATTLE: WE DON'T HAVE A SIDE, WE'RE
19 NOT SUPPOSED TO HAVE A SIDE.

20 MR. GRESHAM: I MEAN IF YOU AND I WERE
21 HOLDING A CONVERSATION, BELIEVE IT OR NOT I DO THIS A LOT, I
22 GO INTO PLACES WHERE THERE ARE OPPONENTS OF AFFIRMATIVE
23 ACTION AND I CAN SAY, OKAY, LET'S SIT DOWN AND TALK ABOUT
24 IT, LET'S HEAR YOUR POSITION. THIS IS MY POSITION, LET'S
25 HEAR YOUR POSITION.

1 SOME PEOPLE CAN DEAL WITH IT DEMOCRATICALLY,
2 SOME CAN'T. AND I HAVE TO DECIDE WHICH ONES I'M GOING TO
3 TAKE A CHANCE WITH.

4 CHAIRWOMAN RAMOS: WELL, I THINK THAT'S
5 THE PURPOSE TO HEAR ALL THE SIDES.

6 MS. RODEMYER: WE'RE LOOKING MORE FOR A
7 DEFINITION FOR ONE THING, AND IT'S BEEN ALL OVER THE PLACE
8 AS TO WHAT AFFIRMATIVE ACTION REALLY MEANS.

9 YOU SAID SOMETHING ABOUT YOU THOUGHT AFFIRMATIVE
10 ACTION WAS TO MOTIVATE PEOPLE, WELL, TO DO THE RIGHT THING,
11 WELL, A NUMBER OF PEOPLE CONSIDER IT GROSS GOVERNMENT
12 COERCION, LIKE THE SCREW'S REALLY PUT TO THEM TO GIVE YOU
13 THE RANGE.

14 SO WHAT WE'RE LOOKING FOR IS A WORKABLE
15 AFFIRMATIVE ACTION. WE WOULD LOVE TO HEAR SOMETHING, NOT
16 HEAR WE HAVE DIFFERENT POINTS OF VIEW, BUT PUT IT TOGETHER,
17 HELP US SYNTHESIZE SOMETHING WHERE YOU'RE GOING TO GET FROM
18 A MOTIVATOR AND NOT SO MUCH A COERCIVE, EVEN CRUEL FORCE.

19 YOU REALIZE THERE ARE PEOPLE WHO BELIEVE THAT
20 AFFIRMATIVE ACTION IS CRUEL?

21 MR. GRESHAM: YES, MA'AM. CAN I RESPOND
22 TO HER?

23 CHAIRWOMAN RAMOS: SURE.

24 MR. GRESHAM: I THINK IT'S GOVERNMENT'S
25 RESPONSIBILITY TO DO WHAT'S IN THE BEST INTEREST OF THE

1 MAJORITY OF PEOPLE IN AMERICA, EVERYBODY, NOT JUST A SEGMENT
2 OR A GROUP, I THINK THAT'S OUR LEGACY, WHETHER YOU WANT TO
3 CALL IT UNDER THE REPUBLIC OR DEMOCRACY OR WHATEVER YOU WANT
4 TO CALL IT.

5 OUR FOUNDING FATHERS GAVE US SOMETHING TO HANG
6 ON TO, AND WE AS AFRICAN-AMERICANS WHO HAVE BELIEVED IN --
7 AS MUCH, IF NOT AS MUCH, MORE THAN OTHER PEOPLE, I THINK WE
8 HAVE TO FIND A WAY, BECAUSE ANY FORM OF REGULATION AND
9 LEGISLATION, EVEN DOWN TO A TRAFFIC TICKET OR BUYING A STAMP
10 IS SEEN AS COERCIVE BY SOMEBODY.

11 MS. RODEMYER: OH, SURE.

12 MR. GRESHAM: BUT WHAT'S IN THE BEST
13 INTEREST OF OUR COUNTRY, WE HAVE TO STRUGGLE WITH FINDING A
14 SOLUTION. NOW, I'M GOING TO SAY TO YOU ALSO THERE ARE
15 BENEFITS TO OPPRESSION AND SEGREGATION, AND AS A PORTION OF
16 OUR SOCIETY WHO HAS ACCRUED BENEFITS, AND IT'S ALMOST
17 PSYCHOSOMATIC NOW, WHERE IT'S VERY DIFFICULT, YOU HAVE TO
18 PROVE YOURSELF BEYOND REASONABLE MEANS WHEN YOU FIND
19 YOURSELF IN A SITUATION, WHETHER IT'S SOCIAL OR BUSINESS FOR
20 CERTAIN PEOPLE.

21 I THINK THE NEXT MILLENIUM WILL NOT ALLOW US TO
22 MAKE THESE MISTAKES IN THE FASHION THAT WE HAVE AND WE NEED
23 TO BE IN THAT MILLENIUM FINDING A RESOLUTION AND I THINK WE
24 HAVE TO MOVE FORWARD AND STRUGGLE WITH IT.

25 CHAIRWOMAN RAMOS: ANYBODY ELSE? OKAY,

1 THANK YOU VERY MUCH.

2 MR. BATTLE: I JUST WANTED TO THANK MR.
3 GRESHAM, BECAUSE I THINK YOU REALLY DID IN THE CENTER OF
4 WHAT YOU SAID, FRAME SOMETHING FOR ME WHAT WE'RE ALL ABOUT
5 HERE AND IF I COULD, TRY TO QUOTE WHAT YOU SAID, THAT FRAMED
6 IT FOR ME, IS THE ASPECT OF PROVIDING AN OPPORTUNITY FOR THE
7 INDIVIDUAL DRIVE FOR HIGHER EDUCATIONAL ATTAINMENT.

8 AND I KNOW THE WORK OF THE URBAN LEAGUE AND I
9 KNOW THAT IT'S AT THE CORE OF WHAT GOES ON BOTH IN THE LOCAL
10 URBAN LEAGUE AND IN THE NATIONAL URBAN LEAGUE AND IT'S THE
11 INDIVIDUAL PART OF THAT I THINK THAT IS SO VERY IMPORTANT
12 FOR US.

13 THAT IT WON'T DO ANY OF US ANY GOOD IF WE HAVE
14 ALL OF THIS OPPORTUNITY THERE TO DO IT IN, IF ITS NOT PERSON
15 BY PERSON WHOSE TAKING ADVANTAGE OF IT AND WE'VE HAD SEVERAL
16 SPEAKERS TODAY WHO HAVE EMPHASIZED THE FACT THAT NOT EVERY
17 ONE IS REACHING FOR THE BRASS RING, AND I THINK THAT'S THE
18 ISSUE THAT WE REALLY NEED TO CONCENTRATE ON.

19 AND TO THE EXTENT THAT YOU'VE CHOSEN TO PUT IT
20 IN SUCH A PROMINENT PLACE IN YOUR PAPER I THINK IT WILL GET
21 THE ATTENTION THAT IT DESERVES. SO THANK YOU FOR SAYING
22 THAT.

23 MR. GRESHAM: CAN I JUST HAVE THREE
24 SECONDS?

25 CHAIRWOMAN RAMOS: OKAY.

1 MR. GRESHAM: YOU DON'T GET THE MIKE VERY
2 OFTEN, AND WHEN YOU GET IT YOU DON'T WANT TO GIVE IT UP, AND
3 I'M A PREACHER BY HEART.

4 I THINK THE WORK THAT YOUR'RE DOING IS VERY
5 IMPORTANT, AND I THINK IT'S HOW IT SHOULD BE DONE IN A
6 DEMOCRACY WITH DISCORD, YOU PLAY WITH IT AND COME TO SOME
7 CONCLUSIONS. I DON'T KNOW IF OUR ENVIRONMENT NOW IS CIVIL
8 ENOUGH TO TREAT IT LIKE THIS ANY MORE.

9 I THINK WE ARE AT A MUCH MORE CRITICAL STATE IN
10 THE DIVISIVENESS AND THE DISINFORMATION AND THE ANIMOSITY.
11 I THINK GOVERNMENT IS GOING TO HAVE TO MAKE SOME HARD
12 DECISIONS AND MOVE FORWARD WITH THEM.

13 AND I THINK UNFORTUNATELY WE'VE LET THE
14 POLITICIANS INTO PANDORA'S BOX AND HE OR SHE HAS LET ALL
15 THIS OUT, AND I DON'T THINK YOU'RE GOING TO SATISFY ANYBODY
16 WITH ANYTHING THAT YOU DO.

17 BUT WE HAVE TO HAVE WHAT'S IN THE BEST INTEREST
18 OF OUR SOCIETY, AND WE HAVE TO MOVE FORWARD. I CAN NAME
19 COUNTLESS EXAMPLES OF THINGS, EVEN THE VA, VETERANS
20 ASSISTANCE, IF YOU WANT TO GO BACK AND READ THE CONTROVERSY
21 AROUND VETERANS ASSISTANCE AND HOW THE DISADVANTAGES AND
22 ADVANTAGES THAT IT GAVE CERTAIN GROUPS OF PEOPLE, AND
23 ARGUMENTS TO AND FROM.

24 AND SOME OF YOU IN THIS ROOM ARE OLD ENOUGH TO
25 KNOW THOSE ARGUMENTS. I DON'T SEE VETERANS ASSISTANCE

1 HURTING ANYBODY. I SEE ALL IT'S DONE IS IMPROVED AMERICA,
2 AND I THINK THAT'S WHAT WE'RE TALKING ABOUT HERE WITH
3 AFFIRMATIVE ACTION, OPENING THE WINDOW FOR OPPORTUNITY FOR
4 ALL, SO WE CAN BE THE BEST THAT WE CAN BE IN AMERICA, AND I
5 THANK YOU.

6 CHAIRWOMAN RAMOS: THANK YOU VERY MUCH.
7 WE ARE TO TAKE A 10 MINUTE BREAK. AND SO 3:00 WE'LL BE
8 BACK.

9 - - -
10 (BRIEF RECESS TAKEN.)

11 - - -
12 CHAIRWOMAN RAMOS: AGAIN, THANK YOU FOR
13 COMING AND WE'LL LET JONATHAN ENTIN, FIRST, FROM CASE
14 WESTERN RESERVE. YOU OBSERVED THE PROCESS A LITTLE, SO
15 GIVE US A LITTLE OVERVIEW AND WE'LL BE ABLE TO ASK SOME
16 QUESTIONS PROBABLY, JUST THE SAME PROCESS.

17 MR. ENTIN: FIRST, THANK YOU VERY MUCH FOR
18 INVITING ME TO PARTICIPATE IN THIS PROGRAM, I KNOW THAT THE
19 ADVISORY COMMITTEES HAVE BEEN AN IMPORTANT PART OF THE WORK
20 OF THE CIVIL RIGHTS COMMISSION OVER A LONG PERIOD OF TIME,
21 AND I FOLLOWED THE WORK OF THE COMMISSION WITH SOME
22 INTEREST.

23 BECAUSE MY MAIN AREA IS CONSTITUTIONAL LAW AND
24 AN AWFUL LOT OF CONSTITUTIONAL LAW HAS BEEN MADE IN THIS
25 AREA, IT'S HAD SOME SIGNIFICANT INPUT FROM THE COMMISSION.

1 I WANT TO TALK VERY BRIEFLY PRIMARILY FROM MY STANDPOINT AS
2 A CONSTITUTIONAL LAW TEACHER.

3 I THINK IT'S PRETTY CLEAR THAT WE DON'T HAVE
4 MORE CONTENTIOUS ISSUES IN THE UNITED STATES THESE DAYS THAN
5 AFFIRMATIVE ACTION, AND I THINK THAT ONE OF THE REASONS IT'S
6 CONTENTIOUS IS BECAUSE WE'RE KIND OF PULLED INTO A COUPLE OF
7 DIRECTIONS.

8 ON THE ONE HAND I THINK WE ALL WOULD LIKE TO
9 REPAIR TO THE FIRST JUSTICE HARLAN'S STANDARD IN HIS DISSENT
10 IN PLESSY VERSUS FERGUSON, WHERE HE SAID THAT OUR
11 CONSTITUTION IS COLOR BLIND, AND NEITHER KNOWS OR TOLERATES
12 CLASSES AMONG CITIZENS.

13 BUT AT THE SAME TIME WE ALSO RECOGNIZE THAT RACE
14 AND SEX ARE SOCIAL FACTS THAT HAVE PROFOUND EFFECTS ON OUR
15 ATTITUDES AND BEHAVIOR AND NOT ALWAYS THE BEST.

16 IN THE PAPER I'VE TRIED TO DO SEVERAL THINGS,
17 FIRST, I'VE TRIED TO TALK A LITTLE BIT ABOUT THE EVOLUTION
18 OF THE LAW OF AFFIRMATIVE ACTION AND THAT'S THAT I GO
19 THROUGH, AS I SAY IN THE PAPER.

20 WHAT I WANT TO EMPHASIZE AT THIS POINT IS THAT
21 THE SUPREME COURT'S MOST RECENT AFFIRMATIVE ACTION DECISION
22 IN THE ADERAN CASE LAST YEAR, WHILE IT'S WIDELY REGARDED AS
23 THE DEATH NAIL FOR AFFIRMATIVE ACTION, I THINK IT WOULD BE A
24 MISTAKE TO VIEW ADERAN AS THE OBITUARY FOR AFFIRMATIVE
25 ACTION.

1 I THINK IT'S PRETTY CLEAR IF YOU READ THE
2 OPINIONS IN THE CASE THAT THE COURT IS VERY SKEPTICAL ABOUT
3 AFFIRMATIVE ACTION AND HAS SOME DIFFICULTY SWALLOWING
4 AFFIRMATIVE ACTION, BECAUSE A LOT OF THE JUSTICES, LIKE A
5 LOT OF AMERICANS WERE GENERALLY VERY TROUBLED ABOUT THE IDEA
6 THAT WE OUGHT TO THINK EXPLICITLY ABOUT RACE, ETHNICITY OR
7 SEX.

8 BUT I THINK THAT THE MOST IMPORTANT THING ABOUT
9 ADERAN IS THAT THE COURT DID NOT INVALIDATE THE PROGRAM AT
10 ISSUE. THE COURT SENT THE CASE BACK FOR FURTHER PROCEEDINGS
11 TO SEE WHETHER THE FEDERAL GOVERNMENT COULD DEMONSTRATE A
12 COMPELLING INTEREST IN TAKING ACCOUNT OF RACE, AND WHETHER
13 THAT INTEREST WAS NARROWLY TAILORED TO, OR WHETHER THE RACE
14 WAS NARROWLY TAILORED TO FULFILLING THAT INTEREST.

15 NOW, IF THE COURT WAS REALLY INTERESTED IN
16 STRIKING DOWN AFFIRMATIVE ACTION COMPLETELY THEY WOULDN'T
17 HAVE DONE THAT, THEY WOULDN'T HAVE SENT IT BACK, THEY WOULD
18 HAVE JUST DONE THE JOB RIGHT THERE.

19 I'M NOT SURE WHAT WILL ULTIMATELY HAPPEN TO THE
20 PROGRAM IN ADERAN, BUT I THINK IT'S PRETTY CLEAR THAT
21 ALTHOUGH THE COURT SAYS IN THE MAJORITY OPINION THAT THERE
22 IS REALLY NO DIFFERENCE OR WHETHER IT'S TOO DIFFICULT TO
23 TELL THE DIFFERENCE BETWEEN BENIGN RACIAL CLASSIFICATIONS.

24 THE COURT HAS A GOOD IDEA THERE'S A DIFFERENCE
25 AND ALTHOUGH THEY TALK ABOUT USING THE SAME STANDARD FOR ANY

1 RACIAL CLASSIFICATION, I THINK IT'S PRETTY APPARENT THAT THE
2 COURT IS GOING TO BE VERY RELUCTANT TO GO DOWN THAT ROAD.

3 CLEARLY SOME JUSTICES ARE -- I DON'T THINK
4 THERE'S A MAJORITY THERE. I THINK INSTEAD WHAT ADERAN
5 REPRESENTS IS A CHALLENGE TO THOSE WHO SUPPORT AFFIRMATIVE
6 ACTION TO REALLY TO COME UP WITH SOME BETTER ANSWERS TO SOME
7 OF THE HARD QUESTIONS THAT THE COURT HAS BEEN ASKING OVER
8 THE YEARS.

9 NOW, IN THE NEXT PART OF THE PAPER I TALK A
10 LITTLE BIT ABOUT HOW WE CAME TO AFFIRMATIVE ACTION AS A
11 LEGAL PROPOSITION.

12 WE HAVE OFTEN HEARD PEOPLE SAY THAT THE EQUAL
13 PROTECTION CLAUSE IS ABOUT EQUALITY OF OPPORTUNITY, AND
14 INDEED IF YOU READ BROWN AGAINST THE BOARD OF EDUCATION, ONE
15 PLAUSIBLE READING OF THAT OPINION IS INDEED THAT WHAT WE
16 WANT TO DO IS TO REMOVE THE FORMER BARRIERS OF THE LAWS AND
17 THE PUBLIC POLICIES THAT HAVE PREVENTED PEOPLE FROM
18 FULFILLING THEIR POTENTIAL, BECAUSE THE PROCESS WAS SKEWED
19 BY RACIAL, ETHNIC OR SEX BARRIERS.

20 SOME CRITICS HAVE SUGGESTED THAT AFFIRMATIVE
21 ACTION IS A WRONG STEP, BECAUSE INSTEAD OF FOCUSING ON
22 EQUALITY OF OPPORTUNITY IT'S FOCUSED MORE ON QUALITY OF
23 OUTCOME OR TRYING TO PROMOTE EQUALITY OF OUTCOME.

24 WHAT I SUGGEST IN THE SECOND PART OF THE PAPER
25 IS THAT THE ROOTS OF AFFIRMATIVE ACTION CAN BE SEEN IN THE

1 RESPONSE TO BROWN AGAINST BOARD OF EDUCATION.

2 I THINK A NUMBER OF YOU ARE OLD ENOUGH TO
3 REMEMBER THE REACTION TO BROWN, WHICH WAS GENERALLY MASSIVE
4 RESISTANCE. ONE OF THE SCHOOL DISTRICTS THAT WAS A
5 DEFENDANT IN THE BROWN LITIGATION ACTUALLY CLOSED ITS
6 SCHOOLS FOR FIVE YEARS RATHER THAN DESEGREGATE.

7 LOTS OF OTHER PLACES RESISTED LESS DRAMATICALLY,
8 ALTHOUGH SOME CAME PRETTY CLOSE, LITTLE ROCK, MISSISSIPPI,
9 PLACES LIKE THAT. ONE OF THE THINGS THAT HAPPENED IN THAT
10 PROCESS, I THINK WAS THAT THE SUPREME COURT ITSELF AND A LOT
11 OF OTHER AMERICANS CAME TO WONDER WHETHER RACISM WAS SO
12 DEEPLY ENGRAINED IN THE AMERICAN PSYCHE THAT SIMPLY
13 FOCUSING ON REMOVING FORMER BARRIERS WOULD BE ADEQUATE TO
14 DEAL WITH THE PROBLEMS.

15 ULTIMATELY THE SUPREME COURT ITSELF CAME TO VIEW
16 BROWN NOT AS A CASE ABOUT EQUALITY OF OPPORTUNITY THAT IS
17 REMOVING THE FORMER BARRIERS, BUT ACTUALLY MORE ABOUT
18 OUTCOMES.

19 BECAUSE AFTER 10 YEARS OF COMPLETE NON-ACTION,
20 PASSIVE AND MASSIVE RESISTANCE, THE COURT ULTIMATELY SAID
21 THAT THE OBLIGATION ON THE SCHOOL AUTHORITIES WAS TO COME UP
22 WITH A PLAN THAT PROMISED TO WORK AND TO WORK NOW.

23 AND BY WORKING THE COURT MEANT FOCUSING ON HOW
24 MANY AFRICAN-AMERICAN CHILDREN WERE GOING TO SCHOOL WITH
25 WHITES, A FOCUS IN OTHER WORDS ON OUTCOMES.

1 AND I THINK THAT THE LESSONS THAT PEOPLE DREW
2 FROM THE STRUGGLE OVER SCHOOL DESEGREGATION LED ULTIMATELY
3 TO PROPOSALS FOR MORE VIGOROUS KINDS OF GOVERNMENT ACTION,
4 THINGS THAT WE CALL AFFIRMATIVE ACTION, EXECUTIVE ORDER
5 112.46, THE PHILADELPHIA PLAN, A VARIETY OF OTHER SORTS OF
6 ACTIVITIES THAT HAVE LED US NOW INTO THE CONTROVERSY THAT
7 HAS LED THE COMMITTEE TO SET UP THIS CONSULTATION.

8 NOW, I WANT TO SUGGEST A COUPLE OF OTHERS
9 THINGS, AGAIN I'VE EXPLORED THAT IN MORE DETAIL IN THE
10 PAPER, BUT LET ME TOUCH ON THEM VERY BRIEFLY HERE.

11 THE FIRST THING TO KEEP IN MIND IS A LOT OF THE
12 DEBATE ABOUT AFFIRMATIVE ACTION GOES OFF ON THE ASSUMPTION
13 THAT ALL KINDS OF AFFIRMATIVE ACTION ARE ESSENTIALLY THE
14 SAME, I DON'T THINK THAT'S RIGHT.

15 I THINK AFFIRMATIVE ACTION ISSUES ARISE IN A
16 VARIETY OF CONTEXTS. IT ARISES, FOR EXAMPLE, IN THE ADERAN
17 SITUATION, WE'RE TALKING ABOUT PUBLIC CONTRACTING, IT ARISES
18 IN THE EMPLOYMENT SETTING.

19 WE WERE TALKING ABOUT HIRING, ABOUT PROMOTIONS,
20 THE KIND OF RECRUITMENT THAT THE EMPLOYERS ARE SUPPOSED TO
21 UNDERTAKE, WHAT THEY DO WHEN IT'S TIME PERHAPS TO LAY PEOPLE
22 OFF.

23 AND IF YOU WORK ON A FIRST HIRED, OR LAST HIRED,
24 FIRST FIRED THEORY, AND THE EMPLOYER HAS ONLY RECENTLY BEGUN
25 TO INTEGRATE ITS WORK FORCE, WHAT WILL HAPPEN IS THAT

1 MINORITIES WILL BE OUT ON THE STREET.

2 THE SUPREME COURT HAS STRUGGLED WITH THOSE SORTS
3 OF ISSUES. BUT THERE'S A VARIETY OF ISSUES IN THE
4 EMPLOYMENT SETTING. THERE ARE ISSUES THAT HAVE COME UP IN
5 THE VOTING RIGHTS AREA, PARTICULARLY WITH RESPECT TO
6 LEGISLATIVE DISTRICTING, WHERE THE SUPREME COURT HAS
7 EXPRESSED SOME CONSIDERABLE SKEPTICISM ABOUT EFFORTS TO DRAW
8 SO-CALLED MAJORITY/MINORITY DISTRICTS, AND ITS MOST RECENT
9 CASES HAS MADE IT A LOT EASIER FOR PEOPLE TO CHALLENGE
10 DISTRICTS THAT SEEM TO HAVE BEEN DRAWN FOR THE PURPOSE OF
11 ELECTING MINORITY CANDIDATES.

12 THERE ARE A VARIETY OF ISSUES IN THAT AREA AND
13 THERE'S A VARIETY OF ISSUES IN THE EDUCATION CONTEXT, WHICH
14 IS THE ONE THAT I KNOW BEST AND THE ONE I SPEND THE MOST
15 TIME WITH IN THE PAPER.

16 NOW, WHEN I SAY THAT ADERAN REPRESENTS AN
17 OPPORTUNITY AND A CHALLENGE, WHAT I MEAN IS THAT FOR THOSE
18 OF US WHO SUPPORT AFFIRMATIVE ACTION, SEEMS TO ME THAT THE
19 COURT BY SAYING THAT THE AFFIRMATIVE ACTION EFFORTS WILL BE
20 SUBJECTED TO THE HIGHEST FORM OF JUDICIAL SCRUTINY, THE
21 GREATEST SKEPTICISM ABOUT TAKING ACCOUNT OF RACE AND
22 PRESUMABLY IMPLICATION ALSO, ETHNICITY AND SEX.

23 WE NEED TO COME UP WITH SOME BETTER ANSWERS TO
24 SOME QUESTIONS THAT WE TALKED ABOUT. FOR EXAMPLE THE
25 EDUCATION CONTEXT, THE ONLY INTEREST THAT HAS EVER BEEN

1 FOUND COMPELLING, WHICH WAS THE STANDARD THAT ADERAN
2 REQUIRES, IN THE EDUCATION CONTEXT HAS BEEN DIVERSITY IN THE
3 CLASSROOM.

4 NOW, I'M A TEACHER, I THINK DIVERSITY IS
5 IMPORTANT. I ALSO THINK THAT WE HAVEN'T REALLY COME UP WITH
6 A STRONG ENOUGH ANSWER TO PEOPLE WHO QUESTION THE VALUE OF
7 DIVERSITY IN THE CLASSROOM.

8 I THINK THAT ADERAN IS GOING TO FORCE US TO DO
9 THAT. WE HAVE THIS RECENT CASE INVOLVING THE UNIVERSITY OF
10 TEXAS LAW SCHOOL WHERE THE FIFTH CIRCUIT SAID THAT THE
11 UNIVERSITY COULDN'T EVEN LOOK AT RACE AT ALL, IT WAS SIMPLY
12 OUT OF BOUNDS.

13 I THINK THAT THE COURT GOT IT WRONG. I THINK
14 THAT THE SUPREME COURT WILL TAKE THE CASE AND WHILE THEY MAY
15 UPHOLD THE JUDGMENT THAT THE ADMISSIONS PROGRAM AT THE
16 UNIVERSITY OF TEXAS MAY HAVE VIOLATED APPROPRIATE AND LEGAL
17 STANDARDS, I THINK THE SUPREME COURT IS VERY LIKELY TO SAY
18 THE LOWER COURT WENT TOO FAR IN RULING ALL CONSIDERATION OF
19 RACE OUT OF BOUNDS.

20 BUT I WANT TO CONCLUDE WITH ONE POINT THAT'S IN
21 THE PAPER AND THEN I'LL BE HAPPY TO PICK THIS UP IN THE
22 DISCUSSION.

23 ONE OF THE THINGS THAT WE SOMETIMES LOSE SIGHT
24 OF IN THE DEBATE ABOUT AFFIRMATIVE ACTION IS THAT CONCEPTS
25 LIKE MERIT AND REPRESENTATION AND THE LIKE ARE NOT

1 SELF-DEFINING.

2 SOME OF THE CONTRIBUTIONS THAT THE AFFIRMATIVE
3 ACTION DISCUSSION HAVE MADE HAS BEEN TO SHOW US THAT OUR
4 TRADITIONAL WAYS OF THINKING ABOUT THESE ISSUES MAY HAVE
5 BEEN TOO NARROW, AND I THINK THAT TO SOME EXTENT DEFENSES OF
6 AFFIRMATIVE ACTION OUGHT TO EMPHASIZE THAT AND TO SUGGEST
7 THERE ARE BENEFITS, NOT SIMPLY TO THE PUNITIVE
8 BENEFICIARIES, BUT TO THE PEOPLE WHO MAY GET JOBS OR MAY GET
9 INTO OTHER SOURCES OF OPPORTUNITY AS A RESULT OF OTHER
10 AFFIRMATIVE ACTION.

11 BUT WE SEEM TO BE ABLE TO SAY THAT THESE
12 PROGRAMS GIVES US THE BASIS FOR THINKING IN A NEW WAY ABOUT
13 SOME IMPORTANT ISSUES THAT WILL BENEFIT ALL OF US. I THINK
14 THAT'S SOMETHING OFTEN LOST SIGHT OF.

15 CHAIRWOMAN RAMOS: DO WE HAVE ANY
16 QUESTIONS? OKAY. MR. HARROD, WE'LL HEAR YOUR PRESENTATION.

17 MR. HARROD: THANK YOU. THANK YOU MEMBERS
18 OF THE COMMITTEE. I'M WITH THE NATIONAL CONFERENCE OF
19 CHRISTIANS AND JEWS. WE ARE A HUMAN RELATIONS ORGANIZATION
20 DEDICATED TO FIGHTING BIAS, BIGOTRY AND RACISM IN AMERICA.

21 I REPRESENT THE GREATER CINCINNATI REGION, WE
22 HAVE TWO OTHER CHAPTERS IN OHIO, CLEVELAND AND IN DAYTON.

23 THE PERSPECTIVE THAT WE OSTENSIBLY BRING TO BEAR
24 ON THIS ISSUE IS AN APPRECIATION, HOPEFULLY, OF HUMAN
25 RELATIONS, THE CONTEXT OF HUMAN RELATIONS AND HOW

1 AFFIRMATIVE ACTION HAS PLAYED OUT IN THE REALM OF
2 INTER-GROUP RELATIONS IN OUR COUNTRY.

3 IF I MAY, AND IF YOU'LL PLEASE INDULGE ME, I
4 HAVE SOME NOTES I WOULD LIKE TO READ. I'M NOT READING FROM
5 MY PAPER, SO HOPEFULLY THIS WILL ADD TO THE DISCOURSE A BIT,
6 AND OBVIOUSLY IF I GET CLOSE TO MY TIME JUST THROW A SHOE AT
7 ME OR WHATEVER.

8 WHAT I WOULD LIKE TO DO, IF I CAN, IS SIMPLY SAY
9 AGAIN THAT OUR PERSPECTIVE IS TO EVALUATE AFFIRMATIVE ACTION
10 FROM THE STANDPOINT OF THE IMPACT THAT IT'S HAD ON
11 INTER-GROUP RELATIONS.

12 I'D LIKE TO START OFF DESCRIBING THE CONTEXT IN
13 WHICH THIS DEBATE OF AFFIRMATIVE ACTION IS TAKING PLACE
14 TODAY AN OFFER SOME THOUGHTS ON THAT, IF I MAY.

15 A WHILE BACK I REPORTED TO THIS COMMITTEE IN
16 SOME DETAIL ABOUT THE NCCJ TAKING AMERICA'S PULSE SURVEY, IT
17 WAS A NATIONAL SURVEY MEASURING THE QUALITY OF INTER-GROUP
18 RELATIONS IN AMERICA, IT WAS -- I'D LIKE TO BELIEVE IT WAS A
19 VERY WELL RECEIVED SURVEY AND IT STOOD THE TEST OF TIME.

20 A PRINCIPLE FINDING IN THAT SURVEY, AND I'LL
21 JUST REMIND THE MEMBERS OF THE COMMITTEE, WAS WHITES IN
22 AMERICA AND MINORITIES ARE POLLS APART ON THE AMERICAN
23 DREAM.

24 WIDE DIVERGENCE OF OPINION BETWEEN WHITES AND
25 PEOPLE OF COLOR ON THE SUBJECT OF EQUAL OPPORTUNITIES FOR

1 QUALITY EDUCATION, DECENT HOUSING, OBTAINING SKILLED JOBS,
2 CREDIT MORTGAGES AND EQUAL JUSTICE UNDER THE LAW, MOST
3 AMERICANS, HISPANIC-AMERICANS AND ASIAN-AMERICANS BELIEVE
4 THAT THEY DO NOT HAVE OPPORTUNITIES ON PAR WITH WHITES.

5 WHITES IN SHARP CONTRAST BELIEVE THEY DO. THERE
6 IS A WIDE GAP IN THE PERCEPTIONS OF WHITES AND MINORITIES
7 ABOUT THE RELATIVE SUCCESS OF THE LATTER. AN ISSUE SUCH AS
8 AFFIRMATIVE ACTION ARE GOING TO BE INTERPRETED FROM THESE
9 BIPOLAR, VERY DIVERGENT STANDPOINTS.

10 WITNESS THE O.J. SIMPSON VERDICT AND HOW TWO
11 RACES LOOKED UPON THE SAME SET OF FACTS, AND CAME UP WITH
12 WIDELY DIFFERING INTERPRETATIONS OF HOW THAT HAPPENED.

13 THAT'S THE KIND OF A BIPOLAR VIEW THAT WE HAVE
14 RIGHT NOW, THAT IS OPERATING IN SOCIETY BETWEEN OUR RACES.
15 WE ALSO HAVE IN MY HUMBLE OPINION A SOCIETY STILL
16 CHARACTERIZED BY A RUNAWAY INDIVIDUALISM AS ROBERT BELLA HAS
17 SAID, WE'VE TENDED TO ABANDON OUR COLLECTIVE TRADITIONS,
18 WHETHER IT'S DECLINING PARTICIPATION IN CHURCHES,
19 SYNAGOGUES, AND ASSOCIATIONS AND CLUBS, THIS IS STILL AN
20 I/ME GENERATION THAT IS OPERATING AT PLAY.

21 WE DON'T SEEM TO APPRECIATE THAT SENSE OF COMMON
22 FAITH, THAT SENSE OF COMMUNITY, THOSE KINDS OF THINGS THAT
23 KEEP US ACCOUNTABLE, KEEP US COMMITTED TO OTHER HUMAN
24 BEINGS.

25 WE ALSO HAVE A MASS MEDIA THAT PROMOTES EITHER

1 INTENTIONALLY OR UNWITTINGLY DIVISIVE RHETORIC ON ISSUES
2 THAT REQUIRE THOUGHTFUL DIALOGUE AMONG INTERESTED PARTIES ON
3 THIS VERY SENSITIVE ISSUE AFFIRMATIVE ACTION. ALL WE READ
4 OR SEE ON TV IS DEMAGOGUERY OR ONE-SIDED OPINIONS THAT
5 USUALLY LACK CREDIBILITY OR ACCOUNTABILITY.

6 THE NET IMPRESSION FOR THE AVERAGE MEDIA
7 DEPENDENT INDIVIDUAL IS THAT AFFIRMATIVE ACTION IS A TOPIC
8 ON WHICH WE CANNOT HAVE A RATIONAL CONVERSATION. NOW, AS
9 YOU KNOW THIS IS SIMPLY NOT THE CASE.

10 WE ALSO HAVE AN AFFIRMATIVE ACTION, AN ISSUE
11 THAT IS DIS-SERVED BY MISPERCEPTIONS, MISUNDERSTANDING AND
12 IRRESPONSIBLE USAGE OF LANGUAGE. THE RECKLESS USE OF QUOTAS
13 FOR GOALS, RACIAL PREFERENCE INSTEAD OF CULTURAL INCLUSION,
14 ET CETERA.

15 REGARDING AFFIRMATIVE ACTION -- I'LL JUST TRY TO
16 CUT TO THE CHASE FROM THE NCCJ'S STANDPOINT, WE SUPPORT
17 AFFIRMATIVE ACTION, IT HAS BEEN, IN OUR OPINION, AN
18 EFFECTIVE TOOL FOR THE REDRESS OF CENTURIES OF
19 DISCRIMINATION AND CREATION OF ACCESS AND OPPORTUNITIES FOR
20 MINORITIES AND WOMEN.

21 THIRTY YEARS AGO AMERICANS NEEDED THE PROMPTING
22 OF AFFIRMATIVE ACTION TO OPEN ITS DOORS TO THOSE WHO HAD
23 BEEN HISTORICALLY EXCLUDED FROM JOBS AND EDUCATIONAL
24 OPPORTUNITY.

25 IN THE NEAR 30 YEAR PERIOD OF AFFIRMATIVE ACTION

1 WE HAVE SEEN THE EMERGENCE OF A MIDDLE CLASS IN OUR MINORITY
2 COMMUNITIES, AFFIRMATIVE ACTION PLAYED AN IMPORTANT ROLE IN
3 FACILITATING THIS REVOLUTION.

4 TODAY IT IS REPORTED WOMEN AND PEOPLE OF COLOR
5 CONSTITUTES NEARLY 60 PERCENT OF THE AMERICAN WORK FORCE, A
6 SIGNIFICANT INCREASE IN JUST A GENERATION'S TIME.

7 SHOULD AFFIRMATIVE ACTION BE CONTINUED, IS IT
8 STILL A VIABLE PUBLIC POLICY, WE SUPPORT THE CONTINUATION OF
9 AFFIRMATIVE ACTION.

10 THE PROFESSOR -- LEARNED PROFESSOR WILL
11 APPRECIATE THIS, THERE'S AN EXPRESSION IN THE LAW THAT IF
12 THE REASON FOR THE RULE CEASES TO EXIST, SO SHALL THE RULE,
13 BUT THAT IS NOT THE CASE TODAY WITH AFFIRMATIVE ACTION.

14 WHILE WOMEN AND PERSONS OF COLOR HAVE MADE
15 SIGNIFICANT ADVANCES IN SECURING ECONOMIC AND EDUCATIONAL
16 OPPORTUNITIES OVER THESE PAST 30 YEARS THEY ARE NOT YET, AND
17 PERHAPS MAY NOT STILL FOR ANOTHER GENERATION BE ON PAR WITH
18 WHITE MEN.

19 CONCERNING INITIATIVE TO RE-EVALUATE THIS 30
20 YEAR POLICY, WE SUPPORT THEM IN SO FAR AS THEY PURPORT TO
21 ADVANCE THE EFFECTIVENESS OF AFFIRMATIVE ACTION.

22 IT DOES NOT TAKE A HUMAN RELATIONS PROFESSIONAL
23 TO OBSERVE THAT MOST PEOPLE, REGARDLESS OF RACE OR GENDER
24 HAVE A TENDENCY TO WANT TO ASSOCIATE WITH PERSONS LIKE
25 THEMSELVES.

1 WE HAVE BEEN ACULTURATED TOWARDS SAYING THIS IS
2 NOT DIFFERENCE, UNTIL SUCH TIME WHEN WE ARE MORE READILY
3 ACCEPTING OF HUMAN DIFFERENCES BASED ON MORE INTER-CULTURAL
4 EXPERIENCES THERE WILL BE THE NEED FOR SOCIETY TO NUDGE US
5 IN THE DIRECTION OF CULTURAL DIVERSION.

6 A BETTER DEFINITION OF AFFIRMATIVE ACTION IS THE
7 BETTER ANGEL THAT KEEPS US HONEST, KEEPS US COMMITTED, URGES
8 US BEYOND OUR LIMITATIONS.

9 I DROVE UP HERE WITH THE BENEFIT OF SOCIETY, IT
10 HELPED ME BY PUTTING UP THE SPEED LIMIT SIGNS, OTHERWISE I
11 MIGHT HAVE JUST RECKLESSLY COME UP HERE.

12 SOCIETY SAYS, CHIP, YOU HAVE TO SLOW DOWN, YOU
13 HAVE OTHER PEOPLE TO THINK ABOUT, THAT IS WHAT AFFIRMATIVE
14 ACTION IS.

15 AFFIRMATIVE ACTION SHOULD BE CREDITED, IN FACT,
16 FOR HAVING PROMPTED MORE INTER-CULTURAL CONTACT THAN ANY
17 OTHER POLICY OR MOVEMENT IN RECENT HISTORY.

18 FOR MANY PEOPLE IT WAS AFFIRMATIVE ACTION THAT
19 FIRST BROUGHT THEM INTO SUBSTANTIAL CONTACT WITH PERSONS OF
20 DIFFERENT RACES OR ETHNICITY.

21 SO ON THE QUESTION OF WHETHER AFFIRMATIVE ACTION
22 HAS IMPROVED INTER-GROUP RELATIONS IN AMERICA, THE ANSWER IN
23 OUR OPINION IS A RESOUNDING, YES.

24 WHILE NO RELATIONSHIP IS FREE OF PROBLEMS, THE
25 POINT IS WE NOW HAVE RELATIONSHIPS WHERE THEY DID NOT EXIST

1 BEFORE, AND AFFIRMATIVE ACTION PLAYED A SIGNIFICANT ROLE IN
2 THIS.

3 IT HAS BEEN SAID THAT AFFIRMATIVE ACTION IS AN
4 ISSUE THAT IS DIVIDING THIS COUNTRY, TO WHICH WE SAY
5 NONSENSE. IT IS THE PERSISTENCE OF RACISM AND SEXISM AND
6 INTOLERANCE AND OUR FAILURE TO ADMIT THIS, TO CONFRONT THIS
7 THAT IS REALLY DIVIDING THIS COUNTRY.

8 AFFIRMATIVE ACTION IS SIMPLY THE EASIER TARGET
9 FOR THOSE WHO ARE THREATENED BY AMERICA'S IMMINENT
10 MULTI-CULTURALISM.

11 THE NCCJ BELIEVES THAT AFFIRMATIVE ACTION
12 REMAINS AS A MUCH VIABLE PUBLIC POLICY NOW AS IT WAS IN THE
13 1960'S.

14 NOW, ALL THAT HAS CHANGED PERHAPS IS THE SENSE
15 OF URGENCY FOR INTEGRATING MINORITIES AND WOMEN INTO THE
16 MAIN STREAM OF AMERICAN ECONOMIC LIFE.

17 THE NCCJ IS WORKING AROUND THE COUNTRY TO
18 PROMOTE HONEST CONVERSATION ON RACE ETHNICITY AND RELIGION
19 TO TRY AND HANDLE SUCH ISSUES AS AFFIRMATIVE ACTION IN A
20 THOUGHTFUL RATIONAL WAY AS YOU ARE DOING HERE.

21 CONVERSATIONS ARE TAKING PLACE IN LIVING ROOMS,
22 CHURCHES, SYNAGOGUES, GROWING PUBLIC FORUMS THROUGHOUT
23 AMERICA, MORE IS NEEDED.

24 LET ME CLOSE WITH AN IMPORTANT FINDING FROM THE
25 TAP SURVEY. ON THE QUESTION IF AMERICA WANTS TO BE

1 COMPETITIVE IN THE WORLD, IT IS IN OUR SELF-INTEREST TO
2 EDUCATE AND GIVE JOB TRAINING TO RACIAL MINORITIES.

3 AN OVERWHELMING 87 PERCENT OF THE RESPONDENTS
4 AGREED, AS WE AT THE NCCJ SEE IT, WHEN AMERICANS ARE ABLE TO
5 COMMENT ON WHAT AMOUNTS TO AFFIRMATIVE ACTION IN LANGUAGE
6 THAT IS FREE OF INFLAMMATORY OR DIVISIVE RHETORIC THEY WILL
7 COME OUT IN SUPPORT OF THE MORAL IMPERATIVES THAT ULTIMATELY
8 MAKE A SOCIETY JUST.

9 WE ENCOURAGE THE COMMISSION'S CONTINUED SUPPORT
10 OF AFFIRMATIVE ACTION.

11 CHAIRWOMAN RAMOS: THANK YOU. QUESTIONS?

12 MR. WILSON: I HAVE A COMMENT ON A
13 QUESTION. I AGREE WITH YOU THAT DIVISIVE RHETORIC INSOFAR
14 AS IT CAN BE AVOIDED OUGHT TO BE AVOIDED.

15 I GUESS IT'S A WORD OF ADVICE FIRST, I THINK
16 THAT AT THIS TIME, IN FACT, IT PROBABLY DOESN'T ADVANCE THE
17 RATIONAL DISCUSSION OF THESE ISSUES TO SUGGEST THAT
18 EVERYBODY WHO OPPOSES AFFIRMATIVE ACTION IS DRIVEN BY FEAR
19 OF INSIPIENT MULTI-CULTURALISM, I DON'T THINK THAT'S TRUE.

20 I KNOW PEOPLE WHO DO OPPOSE AFFIRMATIVE ACTION
21 AND YOUR CHARACTERIZATION OF THEIR CHARACTER I THINK IS OFF
22 THE MARK.

23 MY QUESTION TO YOU IS THIS, WE HAD A GENTLEMAN
24 TESTIFY THIS MORNING THAT THERE IS A 15 PERCENT SET ASIDE
25 FOR MINORITIES AND WOMEN IN STATE ARCHITECTURAL CONTRACTS,

1 HE'S WHITE. ONE PERCENT OF THE ARCHITECTURAL FIRMS IN OHIO
2 ARE MINORITY OWNED, SO 15 PERCENT OF THE CONTRACT MONEY GOES
3 TO ONE PERCENT OF THE FIRMS BY LAW.

4 WHAT DO YOU HAVE TO SAY TO THIS GENTLEMAN, WHO
5 MADE A CASE THAT AFFIRMATIVE ACTION IS ALL TO THE GOOD,
6 THAT THOSE WHO DON'T LIKE IT ARE REALLY BEING MANIPULATED
7 BY, YOU KNOW, DIVISIVE POLITICIANS, ET CETERA.

8 HERE'S A MAN WHO BELIEVES HE HAS PERSONALLY BEEN
9 ON THE RECEIVING END IN A NEGATIVE WAY OF A QUOTA PROGRAM.

10 WOULD YOU DEFEND THE PROGRAM, OR WOULD YOU SAY
11 THAT'S NOT TRUE AFFIRMATIVE ACTION OR WOULD YOU SAY IT'S
12 SIMPLY THE PRICE HE PAYS FOR LIVING IN AMERICA, AND AMERICA
13 YOU THINK HAS BENEFITED OVERALL BY AFFIRMATIVE ACTION.

14 MR. HARROD: I DON'T WANT TO BE FLIP ABOUT
15 THIS. TO YOUR FIRST POINT, YES, I CONCEDE THAT MAY HAVE
16 BEEN A LITTLE BIT OF AN OVERSTATEMENT, I'LL ACCEPT THAT
17 POINT.

18 ON YOUR SECOND QUESTION, DO I BELIEVE THAT
19 CERTAIN INDIVIDUALS WILL FALL BENEATH THE WHEEL OF PROGRESS,
20 YES. NOW, THAT'S NOT TO SAY --

21 MR. WILSON: BUT YOU OPPOSE THE QUOTAS I
22 TAKE IT?

23 MR. HARROD: YES, I DO. THE KIND OF
24 SCENARIO YOU PAINT, YOU DESCRIBE IS WORTHY OF THE KIND OF
25 REVIEWS THAT ARE BEING SUGGESTED TODAY, THOSE ARE HEALTHY

1 REVIEWS. THOSE -- SO I SEE THAT CERTAINLY AS A SUBJECT THAT
2 MAYBE WAS NOT CONTEMPLATED 30 YEARS AGO, BUT HAS BECOME A
3 REALITY.

4 SO I DON'T HAVE ANY PROBLEM WITH EVALUATING A
5 SITUATION LIKE THAT TO SEE THAT YOU CAN BUILD IN MORE
6 EQUITY, I UNDERSTAND THAT.

7 CHAIRWOMAN RAMOS: WOULD YOU LIKE TO
8 COMMENT ON THAT, MR. ENTIN?

9 MR. ENTIN: I DON'T KNOW THE ARCHITECTURAL
10 PROGRAM, BUT I THINK AS A LEGAL MATTER TO THE EXTENT THAT
11 THERE IS A RIGID FIGURE THAT RESERVED SOME FIXED
12 PERCENTAGES, I THINK THAT THE PROGRAM IS CERTAINLY
13 VULNERABLE TO A LEGAL CHALLENGE.

14 I THINK THAT THE STATE WOULD HAVE TO JUSTIFY
15 BOTH THE EXISTENCE OF A RIGID FIGURE, WHATEVER THAT FIGURE
16 IS, AND THEN THEY HAVE TO JUSTIFY THE PARTICULAR FIGURE THEY
17 CHOSE AND THAT WOULD REQUIRE, AS I READ CASES THAT THE STATE
18 DEMONSTRATE THAT IT HAS BEEN EITHER AN ACTIVE OR PASSIVE
19 PARTICIPANT IN DISCRIMINATION IN THAT BUSINESS.

20 NOW, AS I SAID I DON'T KNOW THE DETAILS OF THE
21 PROGRAM, I DON'T WANT TO SPECULATE. BUT IT SEEMS TO ME
22 PARTICULARLY AFTER ADERAN AND CROSON, THAT VERY THICK FIRM
23 SET ASIDES ARE THE ONES MOST VULNERABLE TO CHALLENGE.

24 AND I NOTE, FOR EXAMPLE, NOT TOO LONG AGO OHIO
25 STATE UNIVERSITY SETTLED A LAWSUIT WHERE THERE WAS A SIMILAR

1 SORT OF CLAIM BROUGHT THAT ESSENTIALLY ALL OF CERTAIN
2 CONTRACTING WAS RESERVED FOR MINORITY CONTRACTORS, AND IT
3 SEEMS TO ME THAT THE LEGAL CLIMATE, WHATEVER, I WANT TO SAY
4 ABOUT THE POLITICAL CLIMATE, WHATEVER THE LEGAL CLIMATE NOW
5 IS CONDUCIVE TO BRINGING THESE SORTS OF CHALLENGES.

6 NOW, I THINK THAT ONE ARGUMENT THAT MIGHT BE
7 ADVANCED IN SUPPORT OF EFFORTS TO STEER PUBLIC CONTRACTS
8 SOMEWHAT DISPROPORTIONATELY IN THE DIRECTION OF MINORITY
9 FIRMS IS THAT HISTORICALLY IN A LARGE PART OF THE COUNTRY,
10 NOT JUST THE DEEP SOUTH, BUT IN MANY PLACES, THERE'S BEEN A
11 LOT OF DISCRIMINATION IN THE CONTRACTING BUSINESS, AND TO
12 THE EXTENT THAT THE GOVERNMENT HAS AN INTEREST AS I THINK IT
13 DOES IN OVERCOMING THAT SORT OF DISCRIMINATION, IT CERTAINLY
14 WOULD BE APPROPRIATE FOR THE GOVERNMENT TO TRY TO PUT ITS
15 THUMB ON THE SCALE.

16 BUT I THINK THAT THE WAY THE GOVERNMENT MIGHT BE
17 ALLOWED TO PUT ITS THUMB ON THE SCALE THESE DAYS COULD BE
18 SIGNIFICANTLY MORE LIMITED THAN WE MIGHT HAVE THOUGHT, SAY,
19 10 OR 15 OR 20 YEARS AGO.

20 MR. LEVENTHAL: I'D LIKE TO ASK EITHER ONE
21 OF YOU I'M A LITTLE MIXED UP ON, LET'S SAY APPLYING FOR A
22 JOB OR TRYING TO GET TO A COLLEGE WHERE YOU'RE NOT SUPPOSED
23 TO GIVE YOUR RACE OR YOUR RELIGION THAT'S AGAINST ONE LAW,
24 BUT ON THE OTHER HAND YOU HAVE TO FIND OUT A PERSON'S COLOR
25 OR RELIGION OR RACE IN ORDER TO ACHIEVE AFFIRMATIVE ACTION,

1 SO HOW IS THIS HANDLED?

2 IS IT RIGHT OR WRONG TO ASK A PERSON, LET'S SAY
3 SOMEONE ASKS ME FOR A JOB ON THE PHONE, CAN I SAY ARE YOU
4 BLACK, HOW DO YOU HIRE PEOPLE OR TRY TO HELP WITH
5 AFFIRMATIVE ACTION IF YOU CAN'T ASK THE QUESTION?

6 MR. ENTIN: I THINK YOU CAN ASK THE
7 QUESTION, THE POINT IS THAT YOU CAN'T FORCE AN ANSWER, THESE
8 THINGS ARE VOLUNTARY.

9 BUT LET ME TALK A LITTLE BIT ABOUT THE EDUCATION
10 SIDE, BECAUSE THAT'S SOMETHING I KNOW ABOUT, I SAT ON THE
11 LAW SCHOOL ADMISSIONS COMMITTEE, I TALK TO PEOPLE ON
12 ADMISSIONS COMMITTEES AT OTHER SCHOOLS AND I KNOW PEOPLE WHO
13 WORK IN ADMISSIONS ELSEWHERE ON CAMPUSES AT OTHER
14 UNIVERSITIES.

15 ONE OF THE THINGS THAT'S REALLY TROUBLING ABOUT
16 A LOT OF THIS DISCUSSION IS THE NOTION THAT SOMEHOW WE
17 SHOULD SIMPLY ADMIT PEOPLE TO COLLEGE OR GRADUATE OR
18 PROFESSIONAL SCHOOL BY THE NUMBERS, BY THEIR GRADES, BY
19 THEIR SCORES ON ADMISSIONS TESTS.

20 NOW, MY EARLIER TRAINING BEFORE I WAS A LAWYER,
21 I WAS A SOCIAL SCIENTIST. I HAVE A LOT OF RESPECT FOR
22 NUMBERS, BUT I DON'T THINK ANYBODY WHOSE WORKED WITH THE
23 NUMBERS OR WHOSE WORKED IN EDUCATION WILL TELL YOU THAT YOU
24 CAN MAKE THE CALL STRICTLY BY THE NUMBERS. THOSE NUMBERS
25 ARE USEFUL, BUT THEY ARE FAR FROM PERFECT PREDICTORS.

1 NOW, THE QUESTION IS WHAT ELSE DO WE LOOK AT,
2 AND HERE I THINK WE OUGHT TO BE A LITTLE BIT MORE HONEST
3 ABOUT WHAT'S GOING ON.

4 MAYBE IT COMES WITH LOWER GRADES FOR SOMEBODY
5 WHO TEACHES AT A SMALL UNIVERSITY, WHOSE FOOTBALL TEAM COULD
6 PROBABLY BE WIPED ALL OVER THE FIELD BY THE AVERAGE HIGH
7 SCHOOL JUNIOR VARSITY IN THE STATE, BUT WE HAVE A KIND OF
8 SPECIAL ADMISSIONS PROGRAM AT A LOT OF UNIVERSITIES IN THE
9 UNITED STATES.

10 IT'S A PROGRAM THAT ADMITS PEOPLE WHO
11 STATISTICALLY HAVE LOWER CREDENTIALS THAN WE THINK, AND WE
12 DON'T THINK TWICE ABOUT IT. THOSE FOLKS ARE ATHLETES, WE
13 GIVE SCHOLARSHIPS.

14 EVEN IN SCHOOLS LIKE MINE, CERTAINLY IVY LEAGUE
15 SCHOOL AND I WENT TO COLLEGE AT AN IVY LEAGUE SCHOOL. I
16 KNOW THAT MOST IVY LEAGUE SCHOOLS ADMIT SOME ATHLETES WITH
17 LESS STRONG CREDENTIALS THAN THE REST OF THE CLASS, EVEN
18 THOUGH THEY MAY NOT GET ON CHART.

19 WE DON'T THINK TWICE ABOUT THAT, BECAUSE WE
20 THINK FOR BETTER OR WORSE THAT ATHLETICS MAKES SOME SORT OF
21 IMPORTANT CONTRIBUTION TO THE UNIVERSITY.

22 NOW, WE ALSO HAVE SCHOOLS THAT ADMIT PEOPLE
23 BECAUSE POLITICIANS SPONSOR THEM IN ONE WAY OR ANOTHER. I
24 TALKED ABOUT THIS A LITTLE IN THE PAPER AND SOME OF THE
25 POLITICIANS WHO TRY TO PULL STRINGS ON BEHALF OF LESS

1 QUALIFIED APPLICANTS ARE ALSO UNFORTUNATELY FAIRLY STRONG
2 CRITICS OF AFFIRMATIVE ACTION, WHEN WE'RE TALKING ABOUT
3 TAKING ACCOUNT OF SOMETHING LIKE RACE, WHICH HAS
4 TRADITIONALLY BEEN A DEVISE FOR EXCLUDING PEOPLE.

5 NOW, WHEN WE'RE TRYING, HOWEVER IMPERFECTLY TO
6 COMPENSATE FOR THE SINS OF THE PAST, NOW PEOPLE ARE SAYING
7 WE OUGHT TO DO THIS STRICTLY BY THE NUMBERS, WE HAVE TO
8 ADOPT A FAIRLY RIGID NOTION OF MERIT.

9 I THINK WE OUGHT SERIOUSLY TO ASK PEOPLE WHY IS
10 IT SO BAD TO TRY TO DO THE RIGHT THING, TO OVERCOME THE SINS
11 OF THE PAST IN THIS AREA, WHICH I THINK EVERYBODY AGREES IS
12 OUR MOST DIFFICULT AND MOST TROUBLED PROBLEM.

13 WHEN IT'S APPARENTLY PERFECTLY FINE TO RECRUIT
14 ATHLETES, ALUMNI CHILDREN OR PEOPLE WHO HAPPEN TO BE WELL
15 CONNECTED TO POLITICIANS.

16 NOW, I DON'T MEAN TO SAY THERE ARE NO COSTS AT
17 ALL TO AFFIRMATIVE ACTION, I TALK ABOUT THAT IN THE PAPER
18 ALSO. ONE OF THE THINGS THAT TROUBLES ME ABOUT SPECIAL
19 ADMISSIONS TYPE AFFIRMATIVE ACTION PROGRAMS IN EDUCATION IS
20 THAT THERE MAY BE THE SENSE THAT NO MINORITY STUDENTS COULD
21 GET IN UNDER THE SO-CALLED NORMAL CRITERIA, THAT THEY ARE
22 ALL SPECIAL ADMITS.

23 I THINK THAT WHEN THAT HAPPENS, AND I THINK IT'S
24 PRETTY CLEAR THAT SOME FOLKS SEEM TO BELIEVE THAT, I THINK
25 WHAT YOU GET IS A REALLY CORROSIVE SITUATION IN AN

1 INSTITUTION.

2 I THINK, MR. LEVENTHAL, YOU KIND OF TOUCHED ON
3 SOME OF THESE DIFFICULTIES. PEOPLE THINK THAT THE
4 BENEFICIARIES OF AFFIRMATIVE ACTION ARE SOMEHOW NOT GOOD
5 ENOUGH IN THE NORMAL TERM.

6 THAT LEADS A LOT OF PEOPLE IN THE MAJORITY TO
7 KIND OF LOOK DOWN ON ANY MINORITY STUDENT, BUT I THINK IT
8 HAS AN ADDITIONAL SORT OF PROBLEM, WHICH IS THAT IF THIS
9 VIEW BECOMES WIDE SPREAD AND PUBLICLY ARTICULATED, I'VE SEEN
10 THIS WITH SOME OF MY MINORITY STUDENTS, THEY TEND TO
11 ASSIMILATE THAT NOTION, THEY TEND TO THINK THAT THEY CAN'T
12 CUT IT EITHER, AND THAT MAY SOMEHOW AFFECT THEIR COMMITMENT
13 TO GOING FORWARD WITH ALL OF THE ENERGY AND TALENT THAT
14 THEY'VE GOT.

15 SO I DON'T THINK THAT THIS IS AN EASY PROBLEM,
16 BUT IT SEEMS TO ME THE WAY TO DEAL WITH THAT PROBLEM IS TO
17 DEAL WITH IT HEAD ON, NOT JUST SIMPLY TO SAY WE CAN'T DO
18 ANYTHING AT ALL.

19 IT SEEMS TO ME THAT THAT WAY IS GOING TO LEAD US
20 INTO CONTINUED DIVISION, AND REALLY GROSS INEQUALITY AND
21 WHETHER IT MAKES US MORE OR LESS COMPETITIVE IN THE WORLD, I
22 THINK IT CERTAINLY MAKES US A LESS HUMANE SOCIETY.

23 CHAIRWOMAN RAMOS: DID YOU WANT TO ANSWER
24 THAT QUESTION, MR. HARROD? ANY COMMENTS?

25 MR. HARROD: NO, NOT REALLY, BEYOND WHAT

1 WAS SHARED I JUST APPRECIATED THE PROFESSOR'S ANSWER.

2 CHAIRWOMAN RAMOS: DO WE HAVE ANY OTHER
3 QUESTIONS FROM THE PANEL? WE THANK YOU AGAIN FOR COMING AND
4 SHARING YOUR VIEWS WITH US AND WE LOOK FORWARD TO READING
5 YOUR PAPERS.

6 MR. HARROD: WE THANK YOU, WE COMMEND YOU
7 FOR WHAT YOU'RE DOING, IT'S VERY IMPORTANT. WHEN WILL YOUR
8 REPORT COME OUT?

9 CHAIRWOMAN RAMOS: THIS FALL. ALL RIGHT.
10 WE HAVE TWO MORE SPEAKERS AND WE'LL START OUT WITH MS.
11 REBECCA THACKER FROM OHIO UNIVERSITY, AND WE WELCOME YOU
12 BACK, YOU WERE WITH US AT THE LAST MEETING.

13 PROFESSOR THACKER: YES, I WAS, I
14 CERTAINLY WAS.

15 CHAIRWOMAN RAMOS: YOU CAN HAVE 5 TO 7
16 MINUTES TO PRESENT AN OVERVIEW OF YOUR PAPER AND THEN THE
17 COMMISSION WILL ASK YOU QUESTIONS.

18 PROFESSOR THACKER: OKAY. I DO HAVE A
19 PREPARED STATEMENT AND I'LL BE READING THAT. SO GOOD
20 AFTERNOON TO ALL OF YOU. I'M HERE TO TELL YOU WHY I THINK
21 IT IS TIME TO DISMANTLE PREFERENTIAL TREATMENT AND SET ASIDE
22 PROGRAMS IN THIS COUNTRY.

23 AFFIRMATIVE ACTION HAS CREATED AN ENTIRE
24 GENERATION OF VICTIMS, YOUNG MEN AND WOMEN, PARTICULARLY
25 BLACK MEN AND WOMEN WHO HAVE BEEN BROUGHT UP TO BELIEVE THAT

1 SOCIETY OWES THEM SOMETHING BECAUSE OF THEIR HERITAGE.

2 HOWEVER, PREFERENTIAL NO LONGER MAKES SENSE
3 GIVEN THE CHANGING DEMOGRAPHICS OF OUR COUNTRY. THE
4 ORIGINAL CIVIL RIGHTS LEGISLATION WAS DESIGNED TO PROVIDE
5 AFFIRMATIVE ACTION FOR BLACKS, WHO CONSTITUTED THE GREAT
6 BULK OF THE ELIGIBLE POPULATION.

7 YET TODAY HISPANICS AND ASIANS ARE AS NUMEROUS
8 OR EVEN MORE NUMEROUS THAN BLACKS IN SOME PARTS OF THE
9 COUNTRY, LARGELY DUE TO IMMIGRATION PATTERNS OVER THE LAST
10 30 YEARS.

11 THESE IMMIGRANTS ARE ALSO PROTECTED CATEGORIES
12 AND ENTITLED TO PREFERENTIAL TREATMENT, HENCE PREFERENCES
13 ARE EXTENDED TO PEOPLE WHO, IF THEY EXPERIENCE
14 DISCRIMINATION AT ALL, EXPERIENCE IT IN ANOTHER COUNTRY, NOT
15 AT THE HAND OF A U.S. CITIZEN.

16 IN A SIMILAR VAIN PREFERENCES OFTEN FAIL TO
17 BENEFIT THOSE IN THE LEAST ADVANTAGED CATEGORY, BUT RATHER
18 BENEFITS MINORITIES FROM THE MOST ADVANTAGED FAMILIES.

19 THIS IS OFTEN TRUE WITH SET ASIDES AND
20 INSTITUTIONS OF HIGHER LEARNING. ULTIMATELY THE EFFECT OF
21 THE AFFIRMATIVE ACTION ARE INSIDIOUS, FORCING MINORITIES TO
22 THINK THEY CANNOT MAKE IT ON THEIR OWN, THEY NEED SPECIAL
23 TREATMENT TO GET AHEAD.

24 AND HERE'S WHERE WE SUBVERT THE NATURAL
25 INSTINCTS OF THE HUMAN SPIRIT, TOLD THAT THEY CAN NEVER MAKE

1 IT ON THEIR OWN WITHOUT THE HELP OF GOVERNMENT INTERVENTION,
2 MINORITIES ARE HANDICAPPED AT THE OUTSET.

3 IN THE FINAL ANALYSIS, AN INDIVIDUAL'S SENSE OF
4 RESPONSIBILITY IS ERODED, AND BELIEF THAT THE GOVERNMENT IS
5 SUPPOSED TO TAKE CARE OF THE INDIVIDUAL IS STRENGTHENED.

6 THE VICTIM BECOMES WEAKER AND MUCH LESS
7 DEPENDENT ON HIS OWN GOD-GIVEN SKILLS, ABILITIES AND TALENT
8 AND MUCH LESS CAPABLE OF ACCUMULATING WEALTH IN THE MANNER
9 COMMON TO THOSE WHO HAVE NOT ADOPTED THE ROLE OF VICTIM,
10 I.E., BETTERING ONES SELF THROUGH EDUCATION AND WORKING.

11 AFFIRMATIVE ACTION POLICIES, IN MY OPINION,
12 BRING OUT THE LOWEST AND THE LEAST IN PEOPLE, NOT THE BEST
13 AND THE BRIGHTEST.

14 WITNESS THE AFFECTS OF OVER 30 YEARS OF
15 AFFIRMATIVE ACTION PROGRAMS WHICH HAVE NOT WORKED. PRISONS
16 ARE FILLED WITH YOUNG BLACK MEN; THE MAJORITY OF BLACK
17 CHILDREN ARE BORN TO UNWED MOTHERS, THE MAJORITY OF THESE
18 CHILDREN LIVE IN POVERTY, ACADEMICALLY BLACKS LAG BEHIND
19 WHITES AND ASIANS; ABSURDLY DRAWN DISTRICTS ARE SOMETIMES
20 NECESSARY TO ELECT BLACK REPRESENTATIVES TO CONGRESS.

21 IN ADDITION, COMPLIANCE WITH AFFIRMATIVE ACTION
22 REGULATIONS IS INCREDIBLY BURDENSOME, TIME CONSUMING AN
23 UNPRODUCTIVE FOR EMPLOYERS.

24 FOR COMPANIES THERE ARE DIRECT ADMINISTRATIVE
25 COSTS ASSOCIATED WITH COMPLIANCE EFFORTS. FOR EXAMPLE, SOME

1 COMPANIES HAVE TO ADD TO STAFF JUST TO ENSURE THAT THEY ARE
2 COMPLYING WITH AFFIRMATIVE ACTION REGULATIONS. COSTS ARE
3 PAST ON TO THE COMPANY'S GOODS AND SERVICES RAISING THE
4 PRICES FOR EVERYONE.

5 BECAUSE I SPEND MUCH OF MY PROFESSIONAL TIME
6 WORKING IN THE HUMAN RESOURCES COMMUNITY, I CAN TELL YOU
7 UNEQUIVOCALLY THAT AFFIRMATIVE ACTION HAS RESULTED IN QUOTA
8 HIRING AND PROMOTIONS FOR MINORITY GROUPS.

9 I HAVE NOTICED PARTICULARLY SINCE THE PASSAGE OF
10 THE 1991 CIVIL RIGHTS ACT WHEN THE PENALTY FOR BEING FOUND
11 GUILTY OF DISCRIMINATION BECAME MORE EXPENSIVE FOR EMPLOYERS
12 WITH THE INTRODUCTION OF MONETARY DAMAGES FOR VICTIMS OF
13 ILLEGAL DISCRIMINATION.

14 WITH MONETARY DAMAGE AWARDS IT IS NOW MUCH MORE
15 ATTRACTIVE FINANCIALLY FOR INDIVIDUALS TO FILE A
16 DISCRIMINATION SUIT AGAINST THEIR EMPLOYER, WHICH IS A
17 CONSEQUENCE NOT SURPRISINGLY HAS CONTRIBUTED TO AN EXPLOSION
18 OF TITLE 7 CLAIMS.

19 AT THE SAME TIME THE BURDEN FOR PROVING THE
20 EMPLOYER WAS NOT DISCRIMINATING BECAME MUCH MORE ONEROUS, SO
21 AS A RESULT MANY EMPLOYERS SIMPLY HIRE BY THE NUMBERS IN
22 ORDER TO AVOID A PROLONGED AND EXPENSIVE LEGAL DEFENSE.

23 DIVERSITY HAS BECOME THE CODE WORD FOR COUNTING
24 BODIES BY RACE AND SEX. IN FACT, NUMERICAL DISPARITIES IN
25 THE EMPLOYER'S NUMBERS ARE AUTOMATICALLY A BIASED,

1 PREJUDICIAL EFFORT ON THE PART OF THE EMPLOYER.

2 OCCUPATIONS OR LEVELS OF THE ORGANIZATION WHERE
3 WHITES DOMINATE ARE AUTOMATICALLY LABELED SEGREGATED IN THE
4 MAJORITY SENSE. STATISTICAL DISPARITIES ARE ASSUMED TO BE
5 THE RESULT OF BIAS AND UNFAIR DISCRIMINATORY PRACTICES, YET
6 I HEAR NO OBJECTIONS, NO CRIES OF DISCRIMINATION, NO LAW
7 SUITS CHALLENGING THE LACK OF DIVERSITY FROM THE NATIONAL
8 BASKETBALL ASSOCIATION TEAMS.

9 INDEED, PEOPLE PAY LOTS OF MONEY TO WATCH THESE
10 SEGREGATED TEAMS PLAY BASKETBALL.

11 IF AMERICA WAS TRULY A RACIST SOCIETY WOULD WE
12 BE SPENDING OUR HARD EARNED DOLLARS TO WATCH A TEAM COMPOSED
13 PREDOMINANTLY OF A RACE AGAINST WHOM WE ARE ALLEGEDLY SO
14 PRONED TO DISCRIMINATE ILLEGALLY.

15 ULTIMATELY AFFIRMATIVE ACTION PROMOTES
16 SEPARATION AND EXCLUSION, NOT INCORPORATION AND INCLUSION.

17 DIVERSITY LEADS TO DIVISION, AFFIRMATIVE ACTION
18 POLICIES FORCE AND ENCOURAGE INDIVIDUALS TO LOOK AT OTHERS
19 AND NOTICE THE COLOR OF THEIR SKIN, RATHER THAN FOSTERING
20 MORE WORTHWHILE GOALS OF INCLUSION AND EQUAL OPPORTUNITY.

21 LIBERALS RESPOND THAT WHITE AMERICA HAS NEVER
22 BEEN SUBJECTED TO SLAVERY SO COULD NOT POSSIBLY UNDERSTAND
23 THE PLIGHT OF BLACKS.

24 BUT IN AN UNDERSTANDING OF HISTORY SHOWS THAT
25 ALMOST EVERY RACE HAS AT ONE TIME OR ANOTHER BEEN ENSLAVED

1 OR IN SOME WAY SUBJUGATED.

2 MY IRISH ANCESTORS WERE CERTAINLY NO EXCEPTION,
3 AND AS IMMIGRANTS TO THIS COUNTRY, THE IRISH SUFFERED
4 DISCRIMINATION IN EMPLOYMENT WITHOUT THE BENEFIT OF FEDERAL
5 LEGISLATION TO PROTECT THEM.

6 FURTHERMORE, IT SHOULD NOT BE FORGOTTEN THAT
7 MANY WHITES LOST THEIR LIVES ON THE CIVIL WAR BATTLEFIELD
8 FIGHTING TO FREE BLACKS FROM SLAVERY, WHICH BEGS THE
9 QUESTION WHO REALLY OWES WHO.

10 FINALLY, LET ME SAY THAT WE ARE USING
11 AFFIRMATIVE ACTION POLICIES TO SOLVE PROBLEMS THAT THEY HAD
12 THEIR ORIGINS LONG BEFORE MINORITIES EVER ENTERED THE WORK
13 FORCE WITH THE UNIVERSITY.

14 IF PUBLIC POLICYMAKERS WERE TRULY INTERESTED IN
15 BETTERING THE OPPORTUNITIES OF ALL MINORITIES, THEY WOULD
16 BEGIN BY ADDRESSING THE INCENTIVES OF THE WELFARE SYSTEM,
17 THRUSTING POWER AWAY FROM THE TEACHERS UNION, DESTROYING OUR
18 EDUCATIONAL SYSTEM, AND HANDICAPPING CHILDREN AT AN EARLY
19 AGE AND BACKING SCHOOL CHOICE.

20 THESE ACTIONS WOULD DO MORE TO IMPROVE THE
21 ECONOMIC PLIGHT, THE EMOTIONAL AND SPIRITUAL WELL BEING OF
22 INDIVIDUALS OF ANY GOVERNMENT AFFIRMATIVE ACTION OR
23 PREFERENTIAL TREATMENT PROGRAM COULD EVER HOPE TO DO.

24 IT IS TIME TO RETURN TO THE INTENT OF THE 1964
25 CIVIL RIGHTS ACT, AND I BELIEVE THIS FIRMLY, THE 1964 CIVIL

1 RIGHTS ACT, WHICH EMPHASIZED EQUAL EMPLOYMENT OPPORTUNITY
2 FOR ALL, A GOAL OF CONGRESSMAN CHARLES CANDACE'S EQUAL
3 OPPORTUNITY ACT, CONGRESSMAN CANDACE'S BILL IS THE FIRST AND
4 NECESSARY STEP TOWARDS RETURNING US TO A SOCIETY THAT
5 FOSTERS THE BROADER CHALLENGE OF OUTREACH AND INCLUSION,
6 RATHER THAN DIVISION, SEGREGATION AND EXCLUSION. AND I
7 THANK YOU.

8 CHAIRWOMAN RAMOS: THANK YOU. DO WE HAVE
9 ANY QUESTIONS?

10 MR. ESPRIT: I'D LIKE TO JUST ASK DR.
11 THACKER, WHAT YOU SUGGEST -- YOU MENTIONED DISMANTLING
12 AFFIRMATIVE ACTION, WHAT WOULD YOU SUGGEST THAT WE WOULD PUT
13 IN ITS PLACE?

14 PROFESSOR THACKER: WELL, I THINK YOU NEED
15 TO DISMANTLE ALL PREFERENTIAL TREATMENT SET ASIDE PROGRAMS.
16 IN ITS PLACE WE GO BACK TO THE 1964 CIVIL RIGHTS ACT, EQUAL
17 EMPLOYMENT OPPORTUNITY FOR ALL. AND AS I WORK IN THE HUMAN
18 RESOURCES COMMUNITY AND I TEACH HUMAN RESOURCE MANAGEMENT,
19 SO I HAVE STUDENTS, YOUNG MEN AND WOMEN COMING INTO THE WORK
20 WORLD, I DON'T SEE ANY OVERT, OR WIDE SPREAD ATTEMPT OR
21 EFFORT TO DISCRIMINATE.

22 I DON'T SEE IT IN PEOPLE'S HEARTS, I DON'T SEE
23 IT IN PEOPLE'S ACTIONS. IT IS THE FACT THAT THEY HAVE THESE
24 PREFERENTIAL TREATMENT SET ASIDE PROGRAMS THAT THEY MUST
25 COMPLY WITH AND ON TOP OF THAT THE FEDERAL GOVERNMENT,

1 PARTICULARLY THE DEPARTMENT OF LABOR, THAT ACTS LIKE A
2 POLICE SERVICE HERE IN THE COUNTRY.

3 THEIR HEAVY-HANDED EFFORTS THAT CAUSES PEOPLE,
4 THAT FORCES PEOPLE TO THINK ABOUT IS THIS A BLACK AND
5 HISPANIC AND ASIAN, IS THIS A MALE, IS THIS A FEMALE.

6 IT IS THOSE KINDS OF POLICIES THAT ARE CAUSING A
7 DIVISION. SO I THINK IF YOU DID AWAY WITH THAT THAT
8 NATURALLY PEOPLE WOULD BECOME ASSIMILATED IN THE WORKPLACE.

9 AND I'M NOT NAIVE ENOUGH TO THINK THERE WON'T BE
10 ILLEGAL DISCRIMINATION, BUT DO WE HAVE POLICIES AND PROGRAMS
11 THAT ARE NOT HITTING AT THE HEART OF THE ISSUE? DO WE DO
12 THAT AT THE COST OF ALL OF THIS BURDENENSOME REGULATION WHEN
13 ONLY A FEW PEOPLE ARE GOING TO BE HELPED?

14 SO I THINK YOU JUST NEED TO DO AWAY WITH
15 ANYTHING THAT FORCES PEOPLE TO COUNT BY THE NUMBERS AND LOOK
16 AT SOMEONE'S RACE, RELIGION OR GENDER OR WHATEVER, NATIONAL
17 ORIGIN OR WHATEVER.

18 MR. ESPRIT: BUT THE WHOLE IDEA BEHIND THE
19 AFFIRMATIVE ACTION WAS AND YOU MENTIONED SEPARATION, IT
20 PROMOTED SEPARATION AND EXCLUSION. AND I THOUGHT THE WHOLE
21 IDEA WAS TO PROVIDE INCLUSION RATHER THAN SEPARATION.

22 PROFESSOR THACKER: WELL, IT IS.

23 MR. ESPRIT: -- AND EXCLUSION.

24 PROFESSOR THACKER: THE 1964 CIVIL RIGHTS
25 ACT, THE SPIRIT OF IT WAS TO PROVIDE INCLUSION. AND THE

1 FACT OF THE MATTER IS THAT GIVEN THE -- PARTICULARLY THE
2 1991 CIVIL RIGHTS ACT, AND ALL OF THE HEAVY-HANDED
3 REGULATORY BURDEN IMPOSED ON EMPLOYERS BY THE GOVERNMENT,
4 THE FACT IS THAT IT HAS GOTTEN AWAY FROM THAT, WE ARE
5 COUNTING BY THE NUMBERS.

6 WE ARE FORCING EMPLOYERS TO HIRE PEOPLE WHO IN
7 SOME CASES ARE NOT QUALIFIED SIMPLY BECAUSE WE WANT OUR WORK
8 FORCE TO BE -- TO HAVE THE RIGHT QUOTAS, SO THAT WE WON'T BE
9 SUED BY ANYONE, THAT THE FEDERAL GOVERNMENT WON'T COME DOWN
10 ON US AND SAY YOU'RE NOT -- YOU DON'T HAVE THE RIGHT NUMBER
11 OF MINORITIES.

12 THAT IS NOT FOSTERING A SOCIETY THAT LOOKS AT
13 PEOPLE IN AN INCLUSIVE WAY, IT'S CAUSING RESENTMENT, IT'S
14 CAUSING HOSTILITY, AND IT IS NOT CAUSING PEOPLE TO WANT TO
15 WORK TOGETHER.

16 MR. WILSON: PROFESSOR THACKER, I'M
17 CURIOUS ABOUT ONE THING, YOUR CRITIQUE IS VERY INTERESTING,
18 IT MAKES SENSE OF THE MONETARY DAMAGES THAT THE LAW NOW
19 PERMITS FOR VICTIMS OF DISCRIMINATION. I SEE WHY THAT COULD
20 LEAD AN EMPLOYER TO PROTECT HIMSELF BY HIRING BY NUMBERS.

21 ON THE OTHER HAND, IT SEEMS TO ME AT LEAST
22 WITHIN THE SPIRIT OF THE 1964 CIVIL RIGHTS ACT TO PUT SOME
23 TOOL IN THE HANDS OF THE VICTIM, TO MAKE IT WORTH THEIR
24 WHILE TO ASSERT THEIR RIGHTS IN COURT, AND MONETARY DAMAGES
25 ARE THE MOST OBVIOUS WAY TO DO THAT.

1 I MEAN THE ALTERNATIVE IS TO WHAT, SOME KIND OF
2 NON-MONETARY VINDICATION OF ONE'S RIGHTS, BUT IF, YOU KNOW,
3 I THINK THE PROBLEM IS TODAY THAT PEOPLE FEAR -- A LOT OF
4 PEOPLE FEAR THAT IF YOU DISMANTLE AFFIRMATIVE ACTION, THERE
5 ARE -- THAT WE'RE SOMEHOW GOING TO REVERT TO A MUCH MORE
6 DISCRIMINATORY EMPLOYMENT PRACTICE IN THIS COUNTRY THAN WE
7 HAVE RIGHT NOW WITH AFFIRMATIVE ACTION.

8 AND THE MONETARY DAMAGES ARE A WAY OF PREVENTING
9 THAT FROM HAPPENING, IT SEEMS TO ME.

10 PROFESSOR THACKER: LET ME REMIND YOU THAT
11 THERE IS ALWAYS AND HAS ALWAYS BEEN SINCE THE 1964 CIVIL
12 RIGHTS ACT, THE DISPARATE TREATMENT THEORY, WHICH SAYS THAT
13 ANY INDIVIDUAL WHO FEELS HE OR SHE HAS SUFFERED
14 DISCRIMINATION HAS THE RIGHT TO THEIR DAY IN COURT AND THAT
15 THEORY IS STILL AVAILABLE.

16 BUT THE REMEDIES OF THE PAST, THE MAKE HOLD
17 RELIEF, IN MY OPINION ARE QUITE SUFFICIENT. YOU GET BACK
18 WHAT YOU LOST, YOU LOST YOUR JOB, YOU GET IT BACK; YOU LOST
19 A PROMOTION, YOU GET THE PROMOTION; YOU GET MADE WHOLE IN
20 TERMS OF ANY FINANCIAL OR BENEFIT PACKAGES THAT YOU'VE
21 MISSED IN THE INTERIM.

22 SO I DON'T BELIEVE THAT WE SHOULD BE THINKING OF
23 PEOPLE AS VICTIMS WHO ARE ENTITLED TO SOME CHUNK OF THE
24 EMPLOYER'S POT, BECAUSE APPROACHING IT FROM A BUSINESS
25 PERSPECTIVE IF YOU TAKE, FOR EXAMPLE, THE MITSUBISHI CASE IN

1 WHICH THE GOVERNMENT IN ITS INFINITE WISDOM HAS DECIDED TO
2 TAKE ON, IF EVERYONE OF THOSE WOMEN WINS, AND THIS IS OF
3 COURSE SEXUAL HARASSMENT AND NOT RACIAL DISCRIMINATION, IT'S
4 A GOOD EXAMPLE AND IS CURRENT; IF EVERY WOMAN WINS THAT'S
5 \$350,000 PER WOMAN, NOW WHAT'S THAT GOING TO DO TO THE COST
6 OF THE CAR, WELL THAT'S GOING TO SKYROCKET, BECAUSE SOMEHOW
7 MITSUBISHI --

8 MR. WILSON: THAT'S NOT MAKE WHOLE RELIEF,
9 THAT'S ABOVE AND BEYOND.

10 PROFESSOR THACKER: YES, I BELIEVE IT IS.
11 I DON'T BELIEVE WE NEED PEOPLE RECEIVING MONETARY DAMAGES
12 FOR DISCRIMINATION.

13 YOU GO THROUGH THE DISPARATE TREATMENT ROUTE,
14 I'M TOTALLY OPPOSED TO THESE CLASS ACTION SUITS WHERE ALL
15 YOU HAVE TO DO IS BE A MEMBER OF A PROTECTED CATEGORY.

16 YOU MAY NEVER HAVE SUFFERED DISCRIMINATION AS
17 LONG AS YOU'RE A MEMBER OF A PROTECTED CATEGORY, THEN, HENCE
18 YOU TOO CAN BE A VICTIM OF DISCRIMINATION. I THINK THAT'S
19 THE WRONG WAY TO GO, YOU USE THE DISPARATE TREATMENT ROUTE,
20 YOU MAKE THE INDIVIDUAL PROVE HE OR SHE HAS SUFFERED
21 DISCRIMINATION, THEN, THE RELIEF IS AWARDED IN TERMS OF
22 MAKING WHOLE.

23 CHAIRWOMAN RAMOS: MS. PRESLEY.

24 MS. PRESLEY: I WOULD JUST LIKE TO KNOW
25 DR. THATCHER --

1 PROFESSOR THACKER: IT'S THACKER.

2 MS. PRESLEY: THACKER, I'M SORRY; WHERE
3 YOU GOT SOME OF YOUR INFORMATION FROM, THE STATEMENT YOU
4 MADE ABOUT THE MAJORITY OF BLACK CHILDREN ARE BORN TO UNWED
5 MOTHERS, COULD YOU GIVE ME SOME BACKGROUND ON WHERE YOU GOT
6 THAT INFORMATION?

7 PROFESSOR THACKER: GOLLY, I CAN'T SITE A
8 SPECIFIC SOURCE, OTHER THAN WALL STREET JOURNAL, LOTS OF --
9 AND IT'S FAIRLY WIDELY DISSEMINATED THAT FIGURE. I COULD
10 CERTAINLY IF YOU ARE INTERESTED RUN IT DOWN FOR YOU.

11 MS. PRESLEY: I KNOW THAT THE ISSUE IS
12 THERE FOR UNWED MOTHERS, BUT I'M NOT AWARE THAT THE MAJORITY
13 OF BLACK CHILDREN ARE BORN TO UNWED MOTHERS THAT'S MY ISSUE,
14 SO SOME OF YOUR INFORMATION I WOULD CHALLENGE.

15 CHAIRWOMAN RAMOS: OKAY. WE GO TO OUR
16 NEXT SPEAKER, JOSEPH MAS FROM THE OHIO COMMISSION ON SPANISH
17 SPEAKING AFFAIRS. WOULD YOU GIVE US AN OVERVIEW OF YOUR
18 PAPER.

19 MR. MAS: CHAIRWOMAN RAMOS, THANK YOU VERY
20 MUCH FOR INVITING ME AND MEMBERS OF THE COMMITTEE AND AS
21 PREVIOUS SPEAKER, DR. THACKER, I'VE ALSO PREPARED A SUMMARY
22 OR BRIEF STATEMENT.

23 AS A FORMER TRIAL ATTORNEY AND FORMER COLLEGE
24 PROFESSOR I WAS AFRAID IF I SPOKE EXTEMPORANEOUSLY WE WOULD
25 BE HERE ALL NIGHT, OTHERWISE, AS THE PREVIOUS WITNESS SAID

1 MAYBE THROW A SHOE AT ME, SO PLEASE FORGIVE ME FOR
2 PROCEEDING WITH A PREPARED STATEMENT.

3 I WOULD LIKE TO SHARE WITH YOU A BRIEF OVERVIEW
4 OF THE COMMISSION ON SPANISH SPEAKING AFFAIRS, AND MORE
5 IMPORTANTLY CERTAINLY THE HISPANIC/LATINO COMMUNITY IN THE
6 STATE OF OHIO.

7 THE COMMISSION IS CHARGED WITH THE DUTY OF
8 ADVISING THE GOVERNOR, THE OHIO GENERAL ASSEMBLY AND ALL
9 STATE AND FEDERAL AGENCIES OF THE SPECIAL PROBLEMS AND NEEDS
10 OF THE HISPANIC COMMUNITY.

11 IT IS WITHIN THE SCOPE OF THIS ROLE THAT I AM
12 TESTIFYING REGARDING AFFIRMATIVE ACTION AS IT HAS IMPACTED
13 OHIO'S HISPANIC/LATINO COMMUNITY.

14 MORE THAN EVER BEFORE HISPANICS ARE FORMING A
15 SIGNIFICANT PRESENCE IN THE UNITED STATES, THIS IS ONE THAT
16 IS RAPIDLY GROWING THROUGHOUT OHIO AND AS WE CONSIDER THE
17 PRESENT STATUS OF LATINOS, IT IS IMPORTANT TO REMEMBER THAT
18 HISPANIC/LATINOS FORM AN INTEGRAL PART OF AMERICA AND THE
19 FUTURE OF THIS NATION.

20 LATINO WELL BEING IS INTERWOVEN WITH THE FUTURE
21 OF THIS STATE. IN THE UNITED STATES THE LATINO POPULATION
22 HAS INCREASED BY ABOUT FOUR PERCENT EACH YEAR FROM 1980 TO
23 THE PRESENT.

24 BY THE MOST CONSERVATIVE ESTIMATES THE LATINO
25 COMMUNITY NOW CONSTITUTES ABOUT 10 PERCENT OF THE U.S.

1 POPULATION, ABOUT 25 MILLION.

2 IN THE STATE OF OHIO THE RATIO OF LIVE BIRTHS TO
3 DEATHS BY ORIGIN AND DEATH INDICATE THAT THE FAMILY GROWTH
4 RATE OF HISPANICS IS NEARLY DOUBLE THAT FOR NON-HISPANICS
5 AND IS INCREASING, WHILE THE DEATH RATE IS, I'M HAPPY TO
6 SAY, LESS THAN ONE-FOURTH.

7 TODAY THE SPANISH SPEAKING POPULATION OF OHIO IS
8 ESTIMATED AT ABOUT 150,000 TO 200,000 AND HISPANICS RESIDE
9 IN EVERY COUNTY IN THE STATE.

10 NOW, I WOULD LIKE TO SHARE WITH YOU SOME
11 INFORMATION AND I HAVE, OF COURSE PREPARED A COMPLETE
12 ARTICLE CONCERNING THE ISSUES REGARDING THE HISPANIC
13 COMMUNITY AND I HAVE PICKED AND CHOSEN AMONG THE DATA IN
14 THAT ARTICLE, IN ORDER TO BE BRIEF.

15 I WOULD LIKE TO ADDRESS THE ISSUE OF EDUCATION
16 AND THE ISSUE OF EMPLOYMENT AND INCOME VERY QUICKLY. WITH
17 RESPECT TO EDUCATION THE COMPUTED COMPLETION RATES FOR
18 HISPANICS OF DIFFERENT AGE RANGES WERE NEARLY IDENTICAL TO
19 THE HIGH SCHOOL NON-COMPLETION RATE WAS 24 PERCENT FOR 20 TO
20 24 YEAR OLDS, AND 23.8 PERCENT OF THE 25 TO 29 YEAR OLDS.
21 HIGH SCHOOL COMPLETION RATES FOR HISPANICS WERE 76 PERCENT.

22 HOWEVER, LET ME CAUTION YOU HERE, DUE TO THE
23 REPORTING STANDARDS AND STEREOTYPICAL MANIPULATIONS THESE
24 FIGURES ARE IN CONFLICT WITH ANECDOTAL REPORTS FROM HIGH
25 SCHOOL PRINCIPALS AND OTHER SCHOOL OFFICIALS, WHICH SUGGEST

1 THAT THE NON-COMPLETION RATE MAY BE AS HIGH AS 80 PERCENT,
2 THAT IS ONLY 20 PERCENT OF OUR YOUNG PEOPLE ARE GRADUATING
3 FROM CERTAIN SCHOOL DISTRICTS.

4 SCHOOL OFFICIALS MAY BE IDENTIFYING DROPOUTS IN
5 CERTAIN DISTRICTS, AS IT HAPPENED IN LUCAS COUNTY RECENTLY
6 AS QUOTE, HAVING MOVED FROM THE AREA. THEREFORE APPLYING
7 EXPECTATIONS RELATED TO MIGRANT LABOR PATTERNS TO A
8 PERMANENT POPULATION SEGMENT THAT HAS BEEN IN THE COMMUNITY
9 FOR FOUR AND FIVE GENERATIONS.

10 MOVING ON TO COLLEGE WITH RESPECT TO THAT
11 ENROLLMENT, AFTER TEDIOUS CALCULATIONS THE DATA AVAILABLE IN
12 THE STATE WAS NOT READILY ACCESSIBLE FOR ANALYSIS. WE HAVE
13 FOUND THAT -- AND AGAIN I'M ON DATA THAT I HAVE PROVIDED
14 WITH YOU IN QUANTITY, OUT OF EVERY 10 HISPANIC HIGH SCHOOL
15 GRADUATES IN OHIO, ONLY THREE OF THESE ARE THE ONES THAT
16 GRADUATE, ONLY THREE ENROLL IN COLLEGE.

17 HIGHER EDUCATION ATTAINMENT HAS NOT APPRECIABLY
18 INCREASED FOR HISPANICS IN THE PAST FIVE YEARS. ENROLLMENT
19 NUMBERS AND DEGREE CERTIFICATES AMONG HISPANIC STUDENTS HAVE
20 TEMPORARILY LEVELED, AND HISPANIC STUDENTS IN OHIO HAVE
21 LOWER ENROLLMENT AND RETENTION RATES IN HIGHER EDUCATION
22 THAN OTHER RACIAL ETHNIC GROUPS IN THE STATE.

23 I ALSO WOULD LIKE TO ADDRESS BRIEFLY POVERTY AND
24 UNEMPLOYMENT IN OHIO AS WELL AS IN THE REST OF THE COUNTRY.
25 DATA SHOWS AN INCREASE IN THE HISPANIC MIDDLE CLASS. BUT

1 THE MAJORITY OF HISPANICS CONTINUE TO LACK THE SKILLS
2 REQUIRED FOR STABLE EMPLOYMENT THAT PAYS A REASONABLE WAGE,
3 PROVIDES REASONABLE BENEFITS AND OFFERS REASONABLE
4 OPPORTUNITY FOR ADVANCEMENT.

5 THE SKILL OF THE MAJORITY OF HISPANICS AND
6 AFRICAN-AMERICANS ARE DRASTICALLY OUT OF SYNC WITH THE
7 SKILLS REQUIRED BY GROWING SECTORS OF LOCAL LABOR MARKETS.

8 AS A RESULT SIGNIFICANT NUMBERS OF LOCAL
9 HISPANIC WORKERS ARE FALLING INTO THE RANKS OF THE
10 UNEMPLOYED OR THE WORKING POOR.

11 MANY HISPANIC MALES IN OHIO, FOR INSTANCE, HOLD
12 ONE OR MORE PART-TIME JOBS THAT OFFER NO BENEFITS AND THAT
13 IS THE CASE ALSO WITH MANY OF OUR WOMEN.

14 CLOSER RELATED TO THE EMPLOYMENT STATUS OF
15 HISPANIC GROUPS IS HISPANIC INCOME, OFFICIAL STATISTICS OF
16 THE SPANISH SPEAKING POPULATION SHOW ECONOMIC -- THAT ITS
17 ECONOMIC POSITION RELATIVE TO THE GENERAL POPULATION IS AND
18 HAS ALWAYS BEEN MARKEDLY LOW.

19 IN 1990, FOR EXAMPLE, THE PER CAPITA MEDIAN
20 INCOME FOR A WHITE AMERICAN WAS \$14,000, WHILE THE MEDIAN
21 INCOME INDIVIDUAL FOR THE HISPANIC WAS ABOUT \$9,200.

22 NOW, I WOULD LIKE TO ADDRESS THE ISSUE OF
23 AFFIRMATIVE ACTION MORE TO THE POINT. ON AUGUST 1ST, OF
24 1995, THE OHIO COMMISSION ON SPANISH SPEAKING AFFAIRS
25 UNANIMOUSLY APPROVED AN AFFIRMATIVE ACTION POSITION LETTER

1 WHICH STATES IN PART, THE COMMISSION ON SPANISH SPEAKING
2 AFFAIRS NOTES THAT THE HISPANIC/LATINO COMMUNITY IN THE
3 STATE OF OHIO HAS NOT EQUITABLY BENEFITED FROM THOSE
4 AFFIRMATIVE ACTION INITIATIVES AVAILABLE IN OUR STATE.

5 WHILE WE ARE UNQUESTIONABLY IN FAVOR OF SUCH
6 INITIATIVES, AND ARE IN CLEAR SUPPORT OF THOSE WHO HAVE
7 BENEFITED FROM THEM, WE MUST CONTINUE WITH OUR EFFORTS TO
8 ENSURE THAT THE HISPANIC/LATINO COMMUNITY SHARES IN THOSE
9 OPPORTUNITIES AND THAT SUCH INITIATIVES CONTINUE TO BE MADE
10 AVAILABLE WITHOUT DILUTION OR MISAPPLICATION.

11 NOW, IT SHOULD BE NOTED THAT THE COMMISSION'S
12 SUPPORT OF AFFIRMATIVE ACTION INITIATIVE IS GIVEN WITH THE
13 KNOWLEDGE THAT IN SPITE OF THE EXPERIENCES AND DATA CITED IN
14 THE PROCEEDING 10 PAGES OF MY REPORT, GIVEN TO YOU TO THE
15 COMMISSION, HISPANICS HAVE BEEN ROUTINELY AND PERHAPS AT
16 TIMES SYSTEMATICALLY EXCLUDED FROM CONSIDERATION BY
17 AFFIRMATIVE ACTION PROGRAMS.

18 IN AT LEAST TWO CASES, WHICH I WILL FOCUS ON AS
19 EXAMPLES, HISPANIC OHIOANS HAVE BEEN OMITTED AS HAVING
20 SUFFERED HISTORIC DISCRIMINATION.

21 IN A 1992 PREDICATE STUDY COMMISSIONED BY THE
22 CITY OF COLUMBUS, CANDIDLY ADMITTED ON PAGE 39 OF THAT
23 REPORT AND I QUOTE FROM THAT REPORT, "INSUFFICIENT EVIDENCE
24 OF DISCRIMINATION WAS COLLECTED AS PART OF THE STUDY TO
25 PROVIDE A STRONG BASIS IN EVIDENCE OF REMEDIAL ACTION FOR

1 HISPANIC, ASIAN AND NATIVE-AMERICAN OWNED FIRMS.
2 INSUFFICIENT AND ANECDOTAL EVIDENCE OF DISCRIMINATION WAS
3 COLLECTED FOR HISPANIC, ASIANS AND NATIVE-AMERICANS IN THE
4 COLUMBUS NSA, THAT WOULD SUPPORT THE QUANTITATIVE EVIDENCE
5 OF DISCRIMINATION FOUND FOR MINORITY" -- EXCUSE ME,
6 "MINORITY OWNED FIRMS OVERALL, ALMOST ALL OF THE INTERVIEWS
7 TO COLLECT QUANTITATIVE EVIDENCE OF DISCRIMINATION WERE WITH
8 BLACKS AND WOMEN."

9 IN FACT THE AUTHORS OF THE STUDY ATTEMPTED TO
10 DIVEST THEMSELVES OF THE ULTIMATE RESPONSIBILITY FOR
11 INCLUSION OR FOR THAT MATTER DIVESTMENT OF THESE OTHER
12 MINORITIES GROUPS, INCLUDING HISPANICS, ADDING ON THE
13 FOLLOWING PAGE: "IN FACT THE RESEARCH WAS INTENTIONALLY
14 DESIGNED TO REMAIN INDEPENDENT OF PREVIOUS STUDIES OF
15 QUANTITATIVE AND QUALITATIVE EVIDENCE OF DISCRIMINATION."

16 WE RECOMMEND THAT THE CITY EXAMINE THESE OTHER
17 SOURCES OF INFORMATION, IN ADDITION TO THE PREDICATE STUDY
18 IN WEIGHING THE QUANTITATIVE EVIDENCE NECESSARY TO PROCEED
19 WITH REMEDIAL ACTION.

20 SPECIFICALLY THE CITY MAY HAVE OR MAY BE ABLE TO
21 COLLECT ADDITIONAL QUALITATIVE EVIDENCE OF DISCRIMINATION
22 THAT WOULD DEFINITELY DETERMINE WHETHER REMEDIAL ACTION FOR
23 HISPANIC ASIAN AND NATIVE-AMERICAN OWNED FIRMS IS ALSO
24 APPROPRIATE.

25 THEREFORE, THE FINDINGS OF THE PREDICATE STUDY

1 EFFECTIVELY EXCLUDE PARTICIPATION BY HISPANICS, ONE OF THE
2 INTERESTING THINGS IS THAT THE CITY OF COLUMBUS DID NOT
3 SEARCH FOR, NOR DID IT OFFER THIS ADDITIONAL QUALITATIVE
4 EVIDENCE OF DISCRIMINATION THAT WOULD DEFINITELY DETERMINE
5 WHETHER REMEDIAL ACTION FOR HISPANICS AND OTHER GROUPS WAS
6 APPROPRIATE.

7 IN OTHER WORDS, THEY SAT ON THE FINDINGS OF THE
8 PREDICATE STUDY.

9 NOW, WE DID ONE THING AT THE COMMISSION
10 YESTERDAY, WE PICKED UP THE PHONE AND CALLED THE CITY OF
11 COLUMBUS AND THE EQUAL BUSINESS OPPORTUNITY OFFICE AND WE
12 ASKED ABOUT HISPANIC PARTICIPATION AND THEIR ANSWER WAS AND
13 I QUOTE, "WE DON'T KNOW HOW MANY HISPANIC ENTERPRISES ARE
14 DOING BUSINESS WITH THE CITY, SINCE WE DON'T TRACK THEM, DUE
15 TO THE FACT THAT THEY WERE NOT INCLUDED IN THE PREDICATE
16 STUDY.

17 NOW, IN THE CASE -- LET ME FOCUS ON THE CITY OF
18 CINCINNATI, THEY BECAME BOUND BY THE TERMS OF A DISSENT
19 DECREE REGARDING POLICIES AND PROCEDURES FOR HIRING POLICE
20 OFFICERS AND THE FEDERAL GOVERNMENT WAS INVOLVED IN THIS,
21 THEY WERE THE PLAINTIFF'S IN THE CASE, UNITED STATES OF
22 AMERICA VERSUS THE CITY OF CINCINNATI, OHIO AND OTHERS.

23 THIS CONSENT DECREE ESTABLISHED TERMS AS IN THE
24 CASE OF THE COLUMBUS PREDICATE STUDY, WHICH ARE EXCLUSIVE.
25 THE DECREE STATES ON PAGE 3, "IT IS THE PURPOSE AND INTENT

1 OF THIS DECREE TO ENSURE THAT BLACKS AND WOMEN ARE NOT
2 DISADVANTAGED BY THE HIRING, PROMOTION, ASSIGNMENT AND OTHER
3 EMPLOYMENT POLICIES AND PRACTICES OF THE CITY OF CINCINNATI
4 POLICE DEPARTMENT, AND THAT ANY PARTICULAR DISADVANTAGE TO
5 BLACKS AND WOMEN, WHICH MAY HAVE RESULTED IN PAST
6 DISCRIMINATION IS REMEDIED SO THAT EQUAL EMPLOYMENT
7 OPPORTUNITY IS PROVIDED TO ALL."

8 THE CONSENT DECREE FURTHER ELABORATES AS TO
9 HIRING AND PROMOTION GOALS FOR BLACKS AND WOMEN ESTABLISHING
10 PERCENTAGES TYING INTO THE 1980 RECRUIT LIST, WHICH IS 34
11 PERCENT BLACK AND 23 PERCENT FEMALE.

12 AS IN THE COLUMBUS CASE HISPANICS ARE OMITTED
13 FROM THE GOALS AND ARE PERCEIVED AS A MINORITY OF
14 CONVENIENCE, BEING INCLUDED WHEN THE ENTITY IN CONTROL OF
15 THE INVESTIGATION CHOOSES TO DO SO.

16 EXPERIENCE WILL SUGGEST THAT THE HISPANIC
17 COMMUNITY THAT NOTWITHSTANDING ITS RECOGNITION AS A BONAFIDE
18 MINORITY WITHIN THE NATIONAL CONSCIOUSNESS AND WITHIN THE
19 FEDERAL SYSTEM THAT AT THE STATE LEVEL, THE DISADVANTAGES
20 OF DISCRIMINATION ARE OURS TO ACCEPT AS A CONSEQUENCE OF
21 BEING A PROPORTIONATELY SMALLER MINORITY THAN WITHIN THE
22 NATIONAL ARENA.

23 AS THE COLUMBUS CITY COUNCIL STATED LAST YEAR
24 WHEN APPROACHED FOR ADDITIONAL FUNDS FOR COURT SPANISH
25 LANGUAGE INTERPRETERS, QUOTE, HISPANICS, WE DON'T HAVE ANY

1 HISPANICS HERE, THIS IS CENTRAL OHIO, CLOSE QUOTES.

2 BASED ON THE 1990 U.S. CENSUS, HISPANICS
3 COMPRISE 9.3 PERCENT OF THE MINORITY POPULATION OF OHIO, THE
4 6.4 PERCENT WHICH IS INDICATED IN MY REPORT TO THE
5 COMMISSION, THAT HISPANIC COMPANIES REPRESENT OF ALL
6 CERTIFIED MBE'S, SHOWS A DISPARITY OF 3.1 PERCENT, THE
7 FIGURE 6.4 PERCENT SHOULD BE 9.3 PERCENT.

8 THIS MEANS THERE SHOULD BE A TOTAL OF 132
9 HISPANIC COMPANIES NOW REGISTERED AND CERTIFIED BY THE EQUAL
10 EMPLOYMENT OFFICE, INSTEAD OF THE 92 VALID HISPANIC
11 COMPANIES NOW REGISTERED.

12 NOW, IN CONNECTION WITH THAT THE COMMISSION
13 CONDUCTED -- DID A BRIEF TELEPHONE SURVEY AMONG HISPANIC
14 MBE'S IN JUNE OF '95 AND WE WERE SURPRISED THAT ALMOST HALF,
15 THAT IS 45 PERCENT OF THE SURVEY RESPONDENTS DID NOT BELIEVE
16 THAT THEY HAD DERIVED ANY BENEFIT FROM MBE CERTIFICATION.

17 ANOTHER GROUP OF RESPONDENTS, 21 PERCENT WAS NOT
18 SURE ABOUT ANY POSITIVE GAIN FROM THE MBE STATUS AND ONLY
19 ONE OF THREE RESPONDENTS COULD SAY, YES, THEY HAVE BENEFITED
20 FROM THE PROGRAM.

21 IRONICALLY, MORE THAN HALF THIS GROUP HAD NEVER
22 RECEIVED A REFERRAL FOR A CONTRACT FROM THE MBE OFFICE.
23 WHEN ASKED IF BUSINESS HAD ANY MAJOR CONTACT WITH THE MBE
24 OFFICE EVER IN THE PAST YEAR, 55 PERCENT OF THE COMPANIES
25 SAID NO. NO COMPANY COULD RECALL RECEIVING AN ON-SITE VISIT

1 FROM A REPRESENTATIVE OF THE MBE OFFICE.

2 ONLY 1 OF 5 BUSINESSES HAD RECEIVED A CALL FROM
3 THE EEO REGARDING QUESTIONS ABOUT THEIR APPLICATION OR THE
4 NEED TO VERIFY INFORMATION.

5 I WOULD LIKE TO CLOSE WITH THE FOLLOWING
6 STATEMENT: THE POSITION OF THE COMMISSION ON SPANISH
7 SPEAKING AFFAIRS BASED ON ITS AUGUST 1ST, 1995 LETTER IS NOT
8 IN FAVOR OF THE ELIMINATION OF AFFIRMATIVE ACTION
9 INITIATIVES, PER SE, AS A RESPONSE TO LOWER PARTICIPATION BY
10 HISPANICS, OR INAPPROPRIATE SUPPORT OF HISPANIC BUSINESSES
11 BY THE MANAGERS OF THE GIVEN PLAN.

12 THE FACT THAT OTHER MINORITIES MAY HAVE
13 BENEFITED TO A GREATER EXTENT DOES NOT SUPPORT THE ARGUMENT
14 FOR ELIMINATION OF AFFIRMATIVE ACTION AS LONG AS THIS
15 GREATER BENEFIT WAS NOT ENJOYED AT THE EXPENSE OF HISPANIC
16 PARTICIPATION.

17 A BETTER ALTERNATIVE WOULD BE THE PROMOTION OF
18 HISPANIC BUSINESSES AND THE ENCOURAGEMENT OF THEIR
19 PARTICIPATION IN AFFIRMATIVE ACTION INITIATIVES. THIS
20 INCLUDES VIGILANCE, PARTICULARLY IN AFFIRMATIVE ACTION PLANS
21 IN THE AREAS OF EMPLOYMENT AND EDUCATION, WHERE MORE
22 ASSERTIVE REPRESENTATION OF HISPANIC LEADERSHIP IS
23 ESSENTIAL, LESS WE BE BURIED IN THE FOREST OF MINORITIES.

24 THANK YOU, CHAIRWOMAN RAMOS.

25 CHAIRWOMAN RAMOS: DO WE HAVE ANY

1 QUESTIONS? OKAY. WE THANK YOU BOTH FOR BEING HERE AND WE
2 LOOK FORWARD TO ACTUALLY READING ALL YOUR PAPERS AND THE
3 REPORT WILL BE OUT, I UNDERSTAND IN THE FALL, AND YOU'LL BE
4 ABLE TO HAVE COPIES OF THOSE REPORTS. THANK YOU FOR COMING.

5 I WOULD LIKE TO WELCOME YOU HERE, YOU RETURNED
6 -- I BELIEVE YOU SPOKE TO US AT THE PREVIOUS MEETING. WHAT
7 WE ARE DOING IS IF YOU COULD GIVE US A FIVE MINUTE OVERVIEW
8 OF YOUR PAPER AND WE WILL ASK SOME QUESTIONS.

9 MR. MASUGI: WELL, THANK YOU IT'S AN HONOR
10 FOR ME TO APPEAR HERE AGAIN, AND MY WRITTEN PAPER WILL DEAL
11 WITH A MORE TECHNICAL PROBLEM OF AFFIRMATIVE ACTION AND
12 EMPLOYMENT LAW AND I'LL HAVE THAT TO YOU WITHIN TWO WEEKS,

13 TODAY WHAT I WANTED TO DO, THOUGH, WAS JUST
14 DISCUSS FOR A MINUTE THE PLACE OF AFFIRMATIVE ACTION, IN
15 HISTORICAL PERSPECTIVE AND JUST CONSIDER WHERE WE ARE TODAY
16 ON THIS ISSUE.

17 AS OHIOANS, AT LEAST FOR THOSE OF US FROM THE
18 CLEVELAND END OF THE STATE, WE JOYFULLY NOTE THE BEGINNING
19 OF BASEBALL SEASON THAT, AND THAT REMINDS US TO RETURN TO
20 OUR CIVIL RIGHTS CONTEXT THAT THIS SEASON MARKS THE 50TH
21 ANNIVERSARY OF THE RACIAL INTEGRATION OF MAJOR LEAGUE
22 BASEBALL.

23 NOW, TAKE THAT TOGETHER WITH A LESS HAPPY
24 ANNIVERSARY, THE 100TH ANNIVERSARY OF THE NEXT MAY 18TH,
25 JUST A COUPLE WEEKS OF THE INFAMOUS PLESSY V. FERGUSON

1 SUPREME COURT OPINION THAT RADICALLY ENFEEBLED THE
2 RECONSTRUCTION AMENDMENTS.

3 ONE HUNDRED YEARS AGO THE SUPREME COURT HELD
4 THAT IT WAS PERFECTLY REASONABLE FOR A STATE TO IMPOSE
5 RACIAL SEGREGATION ON PERSONS WITHIN ITS JURISDICTION
6 THROUGH ITS LAWS, BY MAKING THE ASTOUNDING ASSERTION THAT
7 BLACKS SHOULD NOT TAKE OFFENSE AT STATE SEGREGATION LAWS.

8 THE SUPREME COURT WEAKENED THE 14TH AMENDMENT OF
9 EQUAL PROTECTION OF THE LAWS. AS WE ALL KNOW BROWN V. BOARD
10 OF EDUCATION IN 1954 DECLARED THAT SEGREGATION LAWSUITS
11 INDEED VIOLATED THE CONSTITUTION.

12 YET THIS OPINION DID NOT DECISIVELY CHALLENGE
13 THE REAL EVIL CONTAINED WITHIN THE PLESSY CASE, THE BROWN
14 OPINION RESTED ITS CONCLUSION ON HIGHLY DUBIOUS
15 PSYCHOLOGICAL EVIDENCE AND NOT PRINCIPALS OF
16 CONSTITUTIONALISM AND HUMAN DIGNITY. THE REASONABLENESS
17 STANDARD OF PLESSY V. FERGUSON REMAINS THE LAW OF THE LAND.

18 SEGREGATION MAY HAVE BEEN REASONABLE BACK IN
19 1896, WHILE IT'S CLEARLY NOT REASONABLE TODAY, WITH SOME
20 EXCEPTIONS AS WE SEE, FOR AS WE ALL KNOW IT REMAINS THAT THE
21 GOVERNMENT HAS CONTINUED TO LEGISLATE UPON THE BASIS OF
22 RACE, AS THE RANGE OF PREFERENCE PROGRAMS ALIVE AND WELL IN
23 GOVERNMENT REFLECTS.

24 CONTEMPORARY SCHOLARSHIP WITH SOME HAPPY
25 EXCEPTIONS TREATS THE COLOR BLIND STANDARD AS A GHOST.

1 THIS IS THE COLOR BLIND STANDARD, OF COURSE, RAISED BY
2 JUSTICE HARLAN IN HIS FAMOUS DISSENT IN THE PLESSY CASE.
3 SUCH SCHOLARSHIP IS THE IGNORING OF THE COLOR BLIND STANDARD
4 THAT HAS HAD VERY BAD EFFECTS ON GOVERNMENT POLICY.

5 CONSIDER OUR OWN VERY USEFUL BRIEFING PAPER
6 PROVIDED US BY THE CIVIL RIGHTS COMMISSION, WHICH SAYS THIS
7 IS JUST ONE EXAMPLE FROM THE VERY FIRST PAGE, THE FIRST
8 MAJOR RECONSTRUCTION LEGISLATION ENACTED SPECIFICALLY FOR
9 THE BENEFIT OF AFRICAN-AMERICANS WAS THE 1865 FREEDMAN'S
10 BUREAU ACT.

11 THE ACT PROVIDED IN PART FOR PROVISIONS,
12 CLOTHING AND LAND FOR LEASE OR SALE EXCLUSIVELY FOR
13 DESCENDENTS OF SLAVES. YES, THE FREEDMAN'S BUREAU ACT DID
14 INDEED -- WAS INDEED FOCUSED, OF COURSE, ON THE SLAVES, ON
15 FREEDMAN, BUT IT IS MISTAKEN, I THINK, TO REGARD IT AS
16 ESSENTIALLY FOR THE PURPOSE OF AFRICAN-AMERICANS.

17 IN FACT, THE DEAL OF SCHOLARSHIP HAS BEEN
18 PUBLISHED TO INDICATE THAT THE FREEDMAN'S BUREAU BENEFITS
19 WERE AVAILABLE FOR POOR WHITES AS WELL.

20 IT WAS NOT SIMPLY A RACIALLY BASED LEGISLATION.
21 THERE'S AT LEAST A CONSIDERABLE SCHOLARLY DEBATE ABOUT THIS
22 THAT OUR REPORT DOES NOT ACKNOWLEDGE.

23 THE SECOND UNHAPPY EFFECT OF THE WAY THIS IS
24 STATED IS THAT IT MAKES IT APPEAR AS THOUGH YOU WEREN'T FOR
25 AFFIRMATIVE ACTION FROM THE BEGINNING.

1 YOU WERE IN FAVOR OF SLAVERY OR OPPOSED TO ANY
2 OF THE RECONSTRUCTION MEASURES, AND THAT'S SILLY. THIS WAS
3 SIMPLY A CIVIL RIGHTS MEASURE, NOT NECESSARILY AN
4 AFFIRMATIVE ACTION MEASURE, WHATEVER ELSE WE MIGHT MEAN BY
5 THAT.

6 SO THE FACT REMAINS WE HAVE YET TO EMBRACE THE
7 FAMOUS COLOR BLIND CONSTITUTION STANDARD DEFENDED BY JUSTICE
8 HARLAN, THE SOLE DISSENTER IN THE PLESSY CASE.

9 AND WHEN WE THINK ABOUT THIS, HARLAN'S FAMOUS
10 DISSENT, WE SHOULD REFLECT ON WHAT HE'S SAYING AND WHAT HE'S
11 NOT SAYING.

12 THE ADVOCATES OF A COLOR BLIND CONSTITUTION ARE
13 NOT SAYING THAT SOCIETY CAN EVER BE COLOR BLIND IN SOCIAL
14 MATTERS, A CHOICE OF A MARRIAGE PARTNER, A CHOICE OF A
15 NEIGHBORHOOD IN WHICH TO LIVE, CHOICE OF FRIENDS, RACE HAS
16 HAD A FORCE, AND OFTEN TIMES IT IS UNFORTUNATE AND IT STUNTS
17 HUMAN DEVELOPMENT. RACE FUNCTIONS AS A BLINDER, PREVENTING
18 US FROM SEEING EACH OF US AS A CREATION OF GOD.

19 HARLAN THEN WAS NOT BEING UTOPIAN, WHAT HE WAS
20 SAYING IS I BELIEVE THAT THE RULE OF LAW CAN BE AN
21 INSTRUMENT FOR US FRAIL HUMAN BEINGS TO REALIZE WHAT
22 EQUALITY OF HUMANITY.

23 THE QUALITY OF RIGHTS IMPLICIT IN THE RULE OF
24 LAW CAN BE A MEANS OF MAKING US FLAWED CREATURES MORE
25 CIVILIZED. THAT IS THE VERY WORKINGS OF THE RULE OF LAW

1 THAT FORCES US TO LOOK UPON EACH OTHER AS HAVING
2 RESPONSIBILITIES AND HAVING RIGHTS, HAVING DUTIES AS WELL AS
3 PRIVILEGES.

4 BUT LAW IN ITS IDEAL WORKINGS, SUCH AS I'VE
5 SKETCHED HERE CAN ONLY BE EFFECTIVE ONLY TO THE EXTENT THAT
6 IT IS COLOR BLIND IN ITS TREATMENT OF PEOPLE AS HAVING
7 RIGHTS OR AS IT'S BEING RESPONSIBLE REGARDLESS OF THEIR
8 COLOR.

9 AND IN THIS REGARD CONSIDER HARLAN'S
10 CONTEMPORARY OF FREDERICK DOUGLAS, WHO DIED A FEW YEARS
11 BEFORE PLESSY, WHO URGED ALL AMERICANS TO RENOUNCE THE
12 NOTION OF RACIAL PRIDE AND TAUGHT AMERICANS OF ALL RACES THE
13 ESSENTIAL SIGNIFICANCE OF CHARACTER FOR CITIZENSHIP, THIS IS
14 A COLOR BLIND, RACE BLIND NOTION OF CHARACTER. I REPEAT
15 DOUGLAS WAS VERY CRITICAL OF THE NOTION OF RACIAL PRIDE.

16 I HAVE URGED SCHOLARS WHO WRITE ON THE PROBLEM
17 OF CHARACTER, FAMILY AND POVERTY AND WELFARE TODAY, SUCH AS
18 MARVIN OLASKY, WHO I JUST HEARD UP AT ASHLAND UNIVERSITY,
19 I'VE URGED THEM EXCERPT THE WRITING OF DOUGLAS AND OTHER
20 19TH CENTURY BLACK AMERICANS ON THESE IMPORTANT
21 CONTEMPORARY, POLITICAL AND SOCIAL THEMES AND PRESENT THEM
22 IN A QUOTE.

23 BUT AWAITING THAT PUBLICATION LET US KEEP IN
24 MIND THAT OTHER ANNIVERSARY I BEGAN MY REMARKS WITH, THE
25 50TH ANNIVERSARY OF THE INTEGRATION OF MAJOR LEAGUE

1 BASEBALL.

2 IT'S HARD FOR ME TO PHANTOM THAT EQUAL AMOUNTS
3 OF TIME SEPARATE JACKIE ROBINSON, THE LIVING EMBODIMENT OF
4 THE LESSONS OF FREDERICK DOUGLAS, FROM THE PLESSY CASE AND
5 FROM US AMERICANS TODAY.

6 JACKIE ROBINSON IS EXACTLY MID-POINT BETWEEN US
7 AND PLESSY V. FERGUSON, WHICH TO ME IT'S JUST ASTOUNDING.
8 BOTH A MOMENT OF SADNESS AND JOY.

9 AND JUST TO CLOSE, CONSIDER RACIAL ATTITUDES
10 TODAY, THE INSTITUTE FOR POLICY RESEARCH AT THE UNIVERSITY
11 OF CINCINNATI HAS RELEASED OHIO POLLING DATA INDICATING
12 DRAMATIC OPPOSITION TO RACIAL PREFERENCES, OVERWHELMING
13 AMONG WHITES AND CLOSE TO EVENLY SPLIT AMONG BLACKS.

14 LOOK, FOR EXAMPLE, AT ANOTHER SHOCKING EXAMPLE,
15 THIS COVER OF LAST SUNDAY'S NEW YORK TIMES, AND THE CAPTION
16 HERE, FOUR YOUNG MEN AND WOMEN AT VAN NUYS HIGH SCHOOL IN
17 CALIFORNIA, THESE FOUR TOP SENIORS APPLIED TO THE HARVARD
18 CLASS OF 2000, WHICH ONE GOT IN.

19 THIS IS VERY INSIDIOUS, BECAUSE WHAT THE COVER
20 IS ASKING YOU TO DO IS TO DECIDE AMONG THESE FOUR ATTRACTIVE
21 LOOKING PEOPLE WHICH ONE GOT INTO HARVARD, AND WHAT IS THAT
22 GOING TO MAKE YOU DO, THEY DON'T HAVE THEIR GRADE AVERAGES
23 POSTED AROUND THEIR NECKS OR THEIR SAT SCORES, YOU HAVE TO
24 LOOK AT THEIR RACE, AND YOU GUESSED RIGHT.

25 AND THAT'S -- THAT IS THE PROBLEM OF AFFIRMATIVE

1 ACTION TODAY IS THAT WE'RE FORCED TO MAKE JUDGEMENTS ON THE
2 BASIS OF APPEARANCE.

3 WHAT WE NEED TO DO IS TO RECOVER IN SOME MEASURE
4 POSSIBLE THE COLOR BLIND CONSTITUTION PRINCIPLE AND TO
5 REMEMBER THE JACKIE ROBINSON EXAMPLE.

6 I HAVE KIND OF AN EDITED VERSION OF THE HARLAN
7 DISSENT HERE FOR THOSE OF YOU WHO DON'T HAPPEN TO HAVE IT
8 HANDY I'LL BE HAPPY TO DISTRIBUTE AND TAKE ANY QUESTIONS YOU
9 MIGHT HAVE.

10 CHAIRWOMAN RAMOS: THANK YOU. DO WE HAVE
11 ANY QUESTIONS?

12 MR. BATTLE: I'D LIKE TO HEAR A LITTLE BIT
13 MORE ABOUT THE ILLUSTRATION THAT YOU JUST USED WITH JACKIE
14 ROBINSON AND IN THE CONTEXT MR. MASUGI THAT, I, BEING AN
15 AFRICAN-AMERICAN MYSELF HAVE ALWAYS LOOKED AT THE USE OF
16 JACKIE ROBINSON IN ANY KIND OF PRESENTATION AS NOT BEING
17 WITHOUT GREAT RISK, BECAUSE IN THE EYES OF AN
18 AFRICAN-AMERICAN, THE JACKIE ROBINSON SYNDROME ITSELF
19 BESPEAKS OF HAVING TO BE A SUPER MAN --

20 PROFESSOR MASUGI: OH, THAT'S WONDERFUL.

21 MR. BATTLE: -- IN ORDER TO BE LOOKED AT
22 JUST QUALIFIED TO GET IN. SO HAVING SAID THAT.

23 PROFESSOR MASUGI: YES, THAT'S -- THAT'S
24 AN OBVIOUS SORT OF POINT. I MEAN, DOES ANYONE TO GAIN THE
25 RIGHTS OF ANY ORDINARY PERSON HAVE TO BE A SUPER STAR, SUCH

1 AS JACKIE ROBINSON TRULY WAS.

2 AND WHY IS IT THAT I -- I MEAN ANY ONE HERE FROM
3 A RACIAL OR ETHNIC MINORITY GROUP HAS HAD THAT EXPERIENCE OF
4 BEING TOLD OVER THE DINNER TABLE ONE TIME OR OTHER, LOOK,
5 YOU HAVE TO DO TWICE AS WELL TO RECEIVE EQUAL RECOGNITION OF
6 SOMEONE WHO IS NOT MINORITY.

7 I THINK THAT CAN BE A TERRIBLY CRIPPLING THING,
8 IT CAN BE INSPIRING, BUT NO ONE SHOULD HAVE TO SUFFER THAT
9 BURDEN, NO ONE SHOULD HAVE TO SUFFER THAT MONKEY ON ONE'S
10 BACK.

11 WHAT I WAS SAYING BY THE ROBINSON EXAMPLE IS
12 THAT HERE WE HAVE A LIVING EMBODIMENT OF THE PRINCIPLE OF
13 FREDERICK DOUGLAS' ACHIEVEMENTS AND WHAT YOU CAN DO IS SHAME
14 YOUR MOST -- YOU CAN SHAME YOUR ENEMIES.

15 AND THESE MORAL TOOLS SUCH AS SHAME, DIGNITY AND
16 RECOGNITION THAT EQUAL WORK DESERVES EQUAL RECOGNITION, ALL
17 THESE SORTS OF THEMES, THE FREDERICK DOUGLAS THEMES ARE
18 EMBODIED IN REALLY A MARVELOUS WAY IN ROBINSON'S CAREER.

19 AND I RECALL THAT THIS WAS NOT A GOVERNMENT
20 PROGRAM, THIS WAS THE OTHER THING THAT APPEALS TO SOMEONE
21 SUCH AS MYSELF, THIS WAS THE BRANCH ROOKIE, WANTED A GOOD
22 BALL CLUB AND IT WAS IN HIS SELF-INTEREST TO DO SO AND
23 EVENTUALLY IT BECAME IN THE SELF-INTEREST OF ALL THE OTHER
24 BASEBALL TEAMS TO DO SO, TO FIND MORES IN SOME OF THE CITIES
25 THAT THEY HAD TO PLAY IN.

1 AND OBVIOUSLY THE OPENING UP OF THE SOUTH TO THE
2 MAJOR LEAGUES IMPLIED -- RESULTED IN OTHER PROBLEMS AS WELL,
3 OR YOU COULD SAY THAT THE MAJOR LEAGUES DIDN'T MOVE SOUTH
4 PRECISELY BECAUSE THEY KNEW THEY WOULD RUN INTO SUCH
5 PROBLEMS.

6 AND THIS IS SOMETHING THAT CAN BE STUDIED, I
7 THINK, WITH A GREAT DEAL OF SERIOUSNESS. AT THE RISK OF
8 GETTING MYSELF INTO TROUBLE, I'LL THROW OUT EVEN MORE
9 TROUBLE.

10 MR. BATTLE: DON'T WORRY ABOUT THAT.

11 PROFESSOR MASUGI: I'LL THROW OUT THIS
12 PROVOCATIVE -- DELIBERATELY INTENDED TO BE PROVOCATIVE
13 QUESTION; TO WHOM DO WE AS AMERICANS OWE MORE IN TERMS OF
14 QUESTIONS OF RACE AND JUSTICE, MARTIN LUTHER KING OR JACKIE
15 ROBINSON?

16 I MEAN WE OWE THEM BOTH, BUT THIS IS SOMETHING
17 TO BE CONSIDERED, WHAT DOES THAT PROVE, THE FACT THAT WE CAN
18 EVEN -- AT LEAST, I, IN MY BRAZEN WAY CAN EVEN ASK THIS
19 QUESTION, BUT WHAT DOES THAT PROVE.

20 MR. BATTLE: THAT'S RHETORICAL, I GUESS.

21 PROFESSOR MASUGI: YEAH.

22 CHAIRWOMAN RAMOS: DO YOU HAVE A QUESTION?

23 MR. WILSON: YES. PROFESSOR MASUGI, IF I
24 COULD ASK YOU TO CLARIFY, I'D LIKE TO HEAR YOUR ANSWER TO
25 SOMETHING A PREVIOUS PRESENTER SAID, AS A KIND OF DEFENSE OF

1 RACE BASED PREFERENCES IN COLLEGE ADMISSIONS: HE SAID, LOOK,
2 IT'S NOT LIKE COLLEGES HAVE EVER OPERATED ON A PURE MERIT
3 SYSTEM IN ADMISSIONS, THEY NEVER HAVE, THEY DON'T TODAY.

4 JUST EVEN PUTTING THE RACE QUESTION ASIDE,
5 ATHLETES GET SPECIAL TREATMENT, SPECIAL PREFERENCES IN
6 ADMISSIONS, CHILDREN OF ALUMNI, ET CETERA.

7 SO HE ESSENTIALLY WAS SAYING, LOOK, WE'VE NEVER
8 BEEN OPERATING WITH A PURE MERIT SYSTEM, AND SO HE WAS
9 SOMEWHAT BEMUSED BY THE USE OF THE MERIT ARGUMENT, I
10 BELIEVE, AGAINST AFFIRMATIVE ACTION, WHEN IT'S NEVER BEEN AN
11 ARGUMENT BEFORE.

12 PROFESSOR MASUGI: RIGHT, RIGHT. AND I AM
13 TOO, I MEAN AS YOU CAN TELL A CRITIC OF MANY ASPECTS OF
14 AFFIRMATIVE ACTION OR I SHOULD SAY MANY FORMS OF AFFIRMATIVE
15 ACTION. BUT I -- I HAVE NEVER LIKED THE MERIT ARGUMENT FOR
16 PRECISELY THAT REASON.

17 BECAUSE I HAVING BEEN A VETERAN OF ACADEMIC WARS
18 AND PROFESSOR FOR MANY YEARS, WHEN I HEAR THE WORD MERIT I
19 REACH FOR MY REVOLVER.

20 I MEAN THIS IS A JOKE, WHAT -- WHAT, THIS
21 FACULTY AT "X" UNIVERSITY, LET'S NOT GET SPECIFIC HERE, IT
22 MIGHT BE A LITTLE DANGEROUS, THIS FACULTY WAS CHOSEN ON THE
23 BASIS OF MERIT.

24 I MEAN THIS IS SCARCELY TO BE BELIEVED AND WHAT,
25 UNQUALIFIED MINORITIES ARE LOWERING THE ACADEMIC STANDARDS

1 AT OUR UNIVERSITY, PREPOSTEROUS, THEY ARE ALL WHITE MALES.
2 NOW, THEY ARE BEING PERFECTLY INCOMPETENT WITHOUT ANY
3 AFFIRMATIVE ACTION OR ANYTHING ELSE, RIGHT?

4 BUT HERE THIS DOESN'T -- THAT REALLY IGNORES THE
5 REAL PROBLEM HERE. WHEN YOU SAY, WELL, LOOK, WHAT ABOUT
6 ATHLETES, WHAT ABOUT ALUMNI, ONE CAN SAY IT'S NOT A GREAT
7 DEFENSE, BUT I'M NOT DEFENDING IT ON THE BASIS OF PURE
8 MERIT, I WOULD NEVER TRY TO.

9 LOOK, ATHLETES ADD SOMETHING TO THE UNIVERSITY,
10 YOU MAY THINK IT'S KIND OF DUMB, BUT THEY DO ADD SOMETHING
11 TO THE UNIVERSITY.

12 I DON'T KNOW, A CHESS PLAYER, PEOPLE WITH
13 VARIOUS DIFFERENT TALENTS ALL ADD SOMETHING OF SOME SORT TO
14 THE UNIVERSITY. SOME SORT OF ARGUMENT CAN BE MADE THAT THE
15 SONS AND DAUGHTERS OF ALUMNI CAN ADD SOMETHING, OR SAY IN
16 THE SPHERE OF EMPLOYMENT, WHAT ABOUT BEING A VETERAN?

17 WELL, IN A CERTAIN SENSE IT'S IRRELEVANT TO ANY
18 PARTICULAR JOB. BUT IN ANOTHER SENSE, WELL, YOU CAN SAY
19 THIS FELLOW DID SOMETHING FOR THE SOCIETY, THIS WOMAN, THIS
20 VETERAN. SO WHY SHOULDN'T SOME SORT OF PREFERENCE BE GIVEN,
21 I MEAN IT'S DEBATABLE.

22 I DON'T KNOW THAT I SUPPORT SUCH A THING, BUT
23 THERE IT IS, THERE'S SOME REASONABLE ARGUMENT THAT CAN BE
24 MADE IN EVERY CASE. WHAT IS THE REASONABLE ARGUMENT FOR
25 SAYING THAT SOMEONE OF A PARTICULAR RACE DESERVES SOME SORT

1 OF BREAK.

2 AND THERE YOU GET INTO PROBLEMS, BECAUSE I THINK
3 ONE OF THE RESPONSES IS, WELL, THIS PERSON PRESENTS A
4 CERTAIN PERSPECTIVE OF SOMETHING DIFFERENT THAT THE COLLEGE
5 OTHERWISE WOULDN'T HAVE.

6 I'M VERY SYMPATHETIC TO THAT ARGUMENT, BUT ONLY
7 UP TO A POINT, I MEAN THIS PERSON AGAIN, WHO'S BEING GIVEN A
8 BOOST, IT'S REALLY HARD FOR ME TO THINK THAT IT'S ONLY ON
9 THE BASIS OF RACE, BUT WHAT IS THIS PERSON ADDING TO THE
10 WHOLE THING?

11 YOU CAN SAY, WELL, THIS PERSON WILL HAVE CERTAIN
12 BENEFITS, DERIVE CERTAIN BENEFITS FROM IT AND SO FORTH AS
13 WOULD ANYONE ELSE, BUT WHAT IS THIS PERSON POSITIVELY
14 ADDING.

15 AND THEN ULTIMATELY, THEN, I THINK YOU BEGIN TO
16 TREAT THAT PERSON AS KIND OF AN INSTRUMENT FOR THE PURPOSES
17 OF ALL THOSE, SAY USE THE EXAMPLE OF BEING BLACK, ALL THOSE
18 WHO WERE NOT BLACK, THIS PERSON IS SORT OF A MODEL FOR ALL
19 THOSE WHO AREN'T BLACK, SOURCE OF INFORMATION OR SOMETHING
20 OF THAT SORT, I DON'T THINK THAT'S A GOOD POSITION TO PUT
21 THAT PERSON IN.

22 I THINK IT'S IMPORTANT FOR A WHOLE VARIETY OF
23 REASONS THAT UNIVERSITIES IN PARTICULAR, I WON'T ADDRESS THE
24 EMPLOYMENT SITUATION RIGHT NOW, BUT UNIVERSITIES LOOK
25 SOMETHING LIKE THE GREATER SOCIETY.

1 NOT THAT I HAVE LEGISLATION OR ANYTHING LIKE
2 THAT, BUT THAT WOULD BE A GOOD IDEA. WHAT DO WE MEAN BY
3 GREATER SOCIETY? I TEACH AT A UNIVERSITY WHICH IS
4 OVERWHELMINGLY WHITE, AND I THINK THAT IS REALLY A BAD
5 EXPERIENCE FOR THESE STUDENTS WHO COME FROM SMALLTOWN,
6 LARGELY WHITE SMALLTOWN, OHIO.

7 AND I THINK THEY WOULD BE MUCH BETTER OFF HAVING
8 A MORE URBANE SORT OF ENVIRONMENT, BUT HOW TO DO THAT THAT'S
9 VERY TRICKY, AND I WOULD NEVER GET INTO STATISTICALLY DRIVEN
10 SORTS OF MODELS OF HOW TO PRODUCE AN IDEAL LEARNING
11 ENVIRONMENT COMMUNITY, THAT HAS TO BE DONE VERY CAREFULLY.

12 AND I THINK WHEN YOU'RE AT THAT POINT YOU'RE
13 BEYOND WHAT WE ORDINARILY THINK OF AS AFFIRMATIVE ACTION.

14 CHAIRWOMAN RAMOS: DO WE HAVE ANY OTHER
15 QUESTIONS? NOW, WE WANT TO THANK YOU FOR COMING DOWN HERE
16 AND WE LOOK FORWARD TO READING YOUR REPORT, WE WILL HAVE THE
17 REPORT OUT HOPEFULLY IN THE FALL.

18 PROFESSOR MASUGI: OKAY. I LOOK FORWARD
19 TO SEEING THE REPORT, THANK YOU.

20 (THEREUPON, THE OHIO ADVISORY COMMITTEE TO
21 THE U.S. CIVIL RIGHTS COMMISSION ON AFFIRMATIVE ACTION
22 HEARINGS WERE CONCLUDED.)

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CERTIFICATE

I, CHERYL D. EDWARDS, DO CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS TAKEN BY ME IN THIS MATTER BEFORE THE OHIO ADVISORY COMMITTEE TO THE U.S. CIVIL RIGHTS COMMISSION, AND CAREFULLY COMPARED WITH MY ORIGINAL STENOGRAPHIC NOTES.



CHERYL D. EDWARDS, PROFESSIONAL
COURT REPORTER.

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