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UNITED STATES COMMISSION
ON
CIVIL RIGHTS

IN THE MATTER OF:
ILLINOIS CONSULTATION
FOCUS ON AFFIRMATIVE ACTION
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REPORT OF PROCEEDINGS taken in the
above-entitled matter, taken before the Illinois
Advisory Committee to the United States Commission
on Civil Rights, commencing on the 14th day of
March, A.D., 1996 at the Midland Hotel, 172 West
Adams, Chicago, Illinois at approximately 9:00 a.m.

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LL & HALSELL REPORTERS, Chicago, IL (312) 236-4984

1 PRESENT:

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3 CHAIRPERSON: MR. JOSEPH D. MATHEWSON

4

5 MEMBERS: MS. ROSE MARY BOMBELA

6 MS. CONNIE PETERS

7 MS. DORRIS ROBERTS

8 MR. TOM PUGH

9 MS. FAYE M. LYON

10 MR. PRESTON EWING

11 MS. JAMES E. SCALES

12 MS. JANIE KHOURY

13 MS. JAE CHOI

14

15 ALSO PRESENT: MR. PETER MINARIK

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1 CHAIRMAN MATHEWSON: Good morning. This
2 meeting of the Illinois Advisory Committee to the
3 United States Commission on Civil Rights shall come
4 to order. My name is Joe Mathewson, I'm the
5 Chairperson of the Illinois Advisory Committee to
6 the U.S. Commission on Civil Rights. State Advisory
7 Committees like this one are composed of individuals
8 who serve without compensation to advise the
9 Commission on relevant information concerning their
10 respective states on matters within the jurisdiction
11 of the Commission. The other members of the
12 committee who are present here this morning are, on
13 my left, James Scales of Carbondale, Rose Mary
14 Bombala of Chicago, Preston Ewing of Cairo, Tom Pugh
15 of Peoria, Dorris Roberts of Chicago, and Jae Choi
16 of Chicago, who is a new member and welcome to you.

17 The Committee acknowledges and
18 appreciates the support and assistance provided the
19 Committee by today's presenters. The Committee is
20 here today for a consultation on affirmative action,
21 to collect opinions and perspectives about the role
22 of affirmative action as a policy, tool, and civil
23 right. This meeting is for the benefit of the

1 Advisory Committee to learn the positions and
2 perspectives of the original presenters on the
3 subject of affirmative action. The proceedings of
4 this committee are open to the public and are being
5 recorded by a public stenographer. Information
6 obtained at this forum will be presented to the U.S.
7 Commission for its consideration.

8 We have a full schedule of individuals
9 who will address the Committee today. They will
10 appear in pairs for 30 minute periods. The time
11 allotted for each presentation must be strictly
12 adhered to. Each person and several others who could
13 not appear today has submitted to the Committee a
14 paper on affirmative action.

15 Our format calls for a five-minute
16 summary by each participant of his or her paper,
17 followed by questions from the Committee members for
18 the remainder of that half hour period. To
19 accommodate persons who have not been invited, but
20 wish to make brief statements to the advisory
21 committee on this or any other relevant civil rights
22 topic, an open session is scheduled today for 5:00
23 p.m. Although some of the statements made today may

1 be controversial, we intend to insure that invited
2 participants do not defame or degrade any person or
3 organization. However, if any person or
4 organization feels defamed or degraded by statements
5 made in these proceedings today, they should contact
6 our staff during the meeting so that an opportunity
7 for response can be made.

8 I want to thank all of the
9 participants for their willingness to share their
10 views with the committee. It's the committee's hope
11 that this dialogue and other such forums will lead
12 to an improved climate of racial and ethnic
13 tolerance in our nation.

14 The record of this meeting will close
15 next Monday, March 18th, 1996. Our first presenter
16 today is Robert Starks.

17 We're in a very -- our procedure at
18 this point, because Robert has to make a plane later
19 today, and we're delighted to have him appear early
20 and we'll follow basically the same procedure,
21 except it will be with one person instead of two.
22 So, welcome, Mr. Starks, and you have five minutes
23 to summarize your paper.

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ROBERT STARKS

Thank you very much. I appreciate the opportunity to testify before this Committee on such an important issue as affirmative action.

Affirmative Action, as you know, is under attack all over the country; the state, as well as the national level, and the political rhetoric is escalating on this issue. I'd like to just summarize my paper very briefly by reading the last section of it.

"Affirmative Action and a Just Society".

In my opinion, it's extremely necessary to have affirmative action in order to have a just society. Affirmative action is compatible with a just society, and a Democratic society. Indeed, it's the only available and workable remedy for inequality in a society at the moment. Until a reasonable alternative is found, this is the only remedy we have. MIT Economist Lester Thuoreaux in his 1980 book, "Zero Sum Society", defends affirmative action as follows: He says, and I quote, "If a fair race is one where everyone has an equal chance to win, the race is not fair even though it's now run with

1 fair rules." To have a fair race, it is necessary
2 to, 1. Stop the race and start over. 2. Force
3 those who did not have to carry weights to carry
4 them until the race has equalized; or, 3. Provide
5 extra aid to those who were handicapped in the past
6 until they catch up."

7 A fair race should be the ultimate
8 goal of any society. America has never been without
9 affirmative action, quotas, discrimination, and all
10 of the various so-called evils attributed to the
11 contemporary affirmative action as a solution. In
12 fact, America, if we look at the Constitution of the
13 United States, it's the most affirmative action
14 document in human history. Every word of the
15 original Constitution has a statement on affirmative
16 action for white males in America. So, the idea
17 that someone would insult me and other African
18 Americans by telling us that we should not be, we're
19 not entitled to or that it's not in the tradition of
20 America to have a quotas or affirmative action is,
21 indeed, a lie. Put in the historical perspective,
22 the U.S. Constitution includes a quota system,
23 complete with a time line, designed to allow a

1 target group, that is white males, to accumulate and
2 maintain both economic, political, and social power.
3 And, the last 30 years, we've had a half-hearted
4 notion of affirmative action in this country, and
5 there are some people who would like to see that
6 end.

7 I'd like to end this summary by just
8 quoting again the last, the same thing that I quoted
9 last time I was here when, in fact, we look at the
10 reality of America, the white males are 33% of the
11 population, yet they hold 80% of the tenured
12 professorships in American universities. They hold
13 80% of the U.S. House of Representative seats in the
14 Congress, they hold 90% of the U.S. Senate seats.
15 They hold 92% of the Forbes 400 positions and 97% of
16 the school superintendencies across the country.

17 Thank you very much.

18 CHAIRMAN MATHEWSON: We'll start questions
19 and follow this format. I'm going to start with Mr.
20 Ewing and then I'm going to go back and forth to
21 each member, alternating sides. And, I won't try to
22 impose a time limit on you, but please bear in mind
23 that everybody else should have an opportunity to

2
1 get a question into each person if we possibly can
2 do it. However, if we end up stopped at one point
3 or another with one person and have to move on to
4 the next, we'll pick up at that point wherever we
5 are, and the next member of the committee will start
6 the questioning of the next presenter or the next
7 pair of presenters. Mr. Ewing?

8 MR. EWING: No.

9 CHAIRMAN MATHEWSON: You have nothing?

10 MR. EWING: No.

11 CHAIRMAN MATHEWSON: Mr. Pugh?

12 MR. PUGH: Thank you. Your observation
13 about the Constitution didn't mention the Bill of
14 Rights in particular, but how do you mesh or how do
15 you bring us up to date as to where we are in
16 respect to affirmative action, as the government
17 presents it? Could you speak about where we are
18 right now?

19 MR. STARKS: Well, first of all, in terms
20 of the Bill of Rights, agreed the Bill of Rights, as
21 you know, was the first 10 amendments to the
22 Constitution, and specifically engineered and
23 designed by Thomas Jefferson as an equalizing sort

1 of measure because there were no, in his opinion,
2 individual rights bill into the original
3 Constitution. However, I must hasten to add that
4 even that did not cover African American people at
5 that time. Now, in terms of where we are now, nor I
6 should also add it didn't cover, for the most part,
7 white women, either. Where are we now? Again, I
8 think the quote from Lester Thoreaux, in my opinion,
9 is a very telling notion. It's what he's saying, in
10 effect, in the zero sum society, that is in a
11 society or an institution where it's a zero sum
12 game; that is everything that's gained by one group
13 is an absolute loss on the part of the other one,
14 has to take pause and look at how you equalize.
15 It's now simply enough to have fair rules because if
16 I were to, as he said, were to put weights on
17 Michael Jordan, 10 pound weights on each leg and
18 then go out and play with him with fair rules, in
19 the Chicago United Center, that would be a fair
20 basketball game. But, it wouldn't be an equal
21 basketball game because even though as great as he
22 is, if you put weights on him would, indeed, not be
23 an equal way of doing it. It would be better,

1 however if we were to look at how we could equalize
2 my, you know, my deficiencies with Michael Jordan.
3 That might not be a good example, but Michael could
4 probably do it with the weights on. But, the point
5 is that fair does not necessarily mean equal. And it
6 is, in my opinion, as a political scientist having
7 studied this whole notion of inequality that it's
8 the obligation of government, if it's going to
9 posture itself as a Democratic government, to do
10 everything it can to not only make the game fair,
11 but to also make it equal. And, I know that there's
12 a great deal of controversy in the country now about
13 the limits of government, but it seems to me that
14 that is one of the functions of government, to make
15 a level playing field and a level playing field, in
16 my opinion, is not only a fair playing field, but an
17 equal playing field.

18 CHAIRMAN MATHEWSON: Ms. Bombala?

19 MS. BOMBALA: I was, not having had the
20 opportunity to read your paper, I did have a
21 question, though. You mentioned this and your area
22 is urban studies, is that correct?

23 MR. STARKS: Uh huh.

1 MS. BOMBALA: How do you see this fight and
2 the need for affirmative action in terms of the
3 development of the innercity?

4 MR. STARKS: I think the most crucial area
5 in the innercity is economic development. Seems to
6 me that we've, in the last 30 years, we've made some
7 gains in terms of social inequality, in terms of,
8 you know, public accommodations and housing is
9 dismal. But, it's better than it was 30 years ago.
10 But, the most crucial area seems to me is in
11 economic development. How do we, in an equal
12 society, proceed without allowing privatization, for
13 instance, to undermine the gains that have been made
14 in equal access to economic resources? Because it
15 seems to me that privatization is one way in which
16 that can be, and is being, circumvented. Companies,
17 as you know, once privatization comes about,
18 companies can then skirt many of the affirmative
19 action laws and rules that are built into the Civil
20 Service Code that governments have to abide by.

21 Secondly, they can de-stablize
22 economically the workers because they don't have to
23 pay all the benefits and abide by union rules. So,

1 it seems to me that that's one of the areas that's
2 really very serious.

3 Lastly, I think it's very important,
4 and I think Mr. Mathewson can appreciate this more
5 than any of us, is the need to maintain the
6 regulation on banks so that African Americans, in
7 particular, and Hispanics, can have equal access to
8 lending in the banking community. And, as you know,
9 there's some proposals being proposed in the
10 Congress to limit and/or eliminate CRA. And that,
11 it seems to me, would be a tragedy, tragedy given
12 the need for minorities to have access to economic
13 resources.

14 CHAIRMAN MATHEWSON: Mr. Roberts?

15 MR. ROBERTS: Good morning, Mr. Starks. In
16 view of the fact that there are a number of
17 conservative Black organizations that are saying
18 that affirmative action has not worked, has not
19 served the purpose of the basic Black population,
20 how do you term or, they're saying now that what we
21 need to do is to restructure and refocus. What are
22 your opinions on that solution?

23 MR. STARKS: Well, first of all, let me

1 just say, for the record, that I think the idea of a
2 Black conservative is an oxymoron, at best and
3, stupid, at worse. Because one, when one, and I do
4 not mean to offend anybody when I say this, but the
5 reality is there. When one says one is a
6 conservative one, according to the dictionaries that
7 I've consulted, one assumes that one has something
8 to conserve. And, when one says one is a political
9 conservative in the context of the Republican Party,
10 one is assuming that the one who proclaims to be a
11 conservative is proclaiming to preserve the worse
12 that Black America has had to experience in this
13 country; i.e., anti-affirmative action, racism,
14 poverty, et cetera. But, seems to me it would be a
15 contradiction in definition for an African American
16 to want to conserve that that's oppressing a masses
17 of its people.

18 Be that as it may, we're in America,
19 people have the right to proclaim themselves to be
20 whatever they want. However, I think that I would
21 agree, to some extent, with what some of those who
22 proclaim to be Black conservatives have to say about
23 affirmative action. I would agree in principle that

1 there are some areas that need to be changed,
2 repaired, reformed. I think, however, that my
3 direction would be a little different. I would say
4 that it needs to be firmed up and made even
5 stronger. They would say that it needs to be
6 weakened. So, my basic conclusion is that it needs
7 to be fixed, not nixed.

8 MR. ROBERTS: Not to cut you off, but when
9 you say it needs to be restructured--not dismantled,
10 restructured.

11 MR. STARKS: Restructured, I would say
12 restructured, yes, but restructure it as to making
13 it stronger as opposed to making it weaker. I would
14 want to make it restructure to make it stronger so
15 that it can cover the larger number of people; i.e.,
16 make it, for instance the CRA, I would strengthen
17 the CRA and banking regulations so that we don't
18 have to dismantle and salvage inequalities, when it
19 comes to access to lending on the part of African
20 Americans and Hispanics, when it comes to buying a
21 house or opening a business. And, if this country
22 wants to make leaps and bounds in terms of closing
23 the gap of inequality, that would be one of the

1 quickest ways to do it, is to make sure that African
2 Americans and Hispanics, in particular, have equal
3 access to lending because that's a dismal and a
4 growing gap, according to the Woodstock Institute.

5 MR. ROBERTS: Would that include the
6 elimination of quotas?

7 MR. STARKS: Again, I take a slightly
8 different notion on quotas. I'm against quotas in
9 the sense that people define it. I'm not, however,
10 against time lines and targeted numbers, okay?
11 Because quota, to me, seems to me would be limiting.
12 I want an unlimited access. But, at the same time, I
13 would argue against the so-called notion of the
14 so-called color blind society, which is also another
15 oxymoron. How can you be color blind in a society
16 that's based on race? I mean, that's the most
17 innocuous thing that you could say.

18 CHAIRMAN MATHEWSON: All right. We're going
19 to have to move on at this point. We'll pick up the
20 questioning next with James Scales with our next
21 presenter. Thank you, Mr. Starks, nice to see you
22 again. As always, we appreciate your participation.

23 MR. STARKS: Thank you.

1 CHAIRMAN MATHEWSON: Our next presenters
2 are J. Stuart Garbutt and Patricia Mendoza. Would
3 you come to the table, please?

4 Good morning and welcome. Ms. Mendoza,
5 would you like to proceed first, please, and
6 summarize your paper in five minutes, please?

7 PATRICIA MENDOZA,

8 Sure, I'll try to keep it as close to five
9 minutes as I can. Good morning, I'm Patricia
10 Mendoza, Regional Counsel of the Mexican American
11 Legal Defense and Education Fund. Our acronym is
12 MALDEF. MALDEF is a national non-profit civil
13 rights organization in its 28th year of working to
14 promote the civil rights of Latinos in the United
15 States. We focus in the areas of education,
16 political access, immigrant rights, language rights,
17 and employment. MALDEF welcomes the opportunity to
18 address this group, and address the issue of
19 affirmative action.

20 All too often, Latinos are overlooked
21 in the debate over affirmative action as it focuses
22 in on African Americans and women. Nevertheless,
23 affirmative action is as much a Latino issue as it

1 is an African American or woman's issue. And, how
2 the debate over affirmative action is resolved will
3 have profound implications on Latinos, who are the
4 fastest growing minority, an economically vital
5 portion of the United States population.

6 In 1990, Latinos constituted 9% of the U.S.
7 general population. It's projected that by the year
8 2020, Latinos will grow to 20% of the U.S. general
9 population. Moreover, the Latino population is very
10 young. 40% of Latinos presently are under the age
11 of 19. Given these facts, it is inevitable that
12 Latinos will play a role in shaping American society
13 well into the 21st Century. However, what kind of
14 role and its relative importance depends on the
15 educational, employment, and economic policies
16 implemented today.

17 Given the increasing size of the Latino
18 population and its relative youth, educational
19 access is vital to the Latino community in our
20 society. Overcoming the barriers to equal
21 education, employment, and business access is key to
22 helping Latinos fulfill their potential and to
23 insuring their effective participation in the

1 economy.

2 Proposals to eliminate affirmative action
3 fail to acknowledge the institutional and racially
4 discriminatory barriers that continue to exist today
5 in society for Latinos and other minorities and
6 women. Critics of affirmative action argue that
7 affirmative action results in greater job insecurity
8 for whites and the over-representation of minorities
9 in educational institutions, businesses, and the
10 work force. However, the evidence suggests that the
11 opposite is true. Over 40 years after Brown vs
12 Board of Education, Latino students continue to
13 study in classrooms that are significantly
14 segregated. Nearly three-quarters of Latinos attend
15 schools that are predominantly minority. It is no
16 surprise that Latinos are more likely to drop out
17 than, to drop out of schools than whites. In 1993,
18 the Latino dropout rate was 27.5%, while for whites
19 it was 11%. Moreover, although the percentage of
20 Latino high school graduates going to college has
21 increased over the last two decades, Latinos
22 continue to lag behind the college participation
23 rate of whites, and the gap is widening. While half

1 of Latino students graduate from high school, only
2 about 9% of Latinos who enter college graduate from
3 college. And, in Illinois, the rate is slightly
4 lower, it's 8%.

5 Now, is it that Latinos are less
6 capable? Emphatically, I would argue no. But, the
7 reality is this; there is a disparity in the
8 educational opportunities that Latinos and
9 minorities have, and that of non-minorities. The
10 disparity begins with the educational system.
11 Unequal distribution of resources, a process that
12 too often shortchanges those who attend schools in
13 the poorer districts. This problem is further
14 exasperated for the Latinos due to the systems
15 ineffective response to the needs of limited English
16 proficient children. When students language
17 difficulties are not met with programs that
18 facilitate a translation from monolingualism to
19 limited English proficiency, or to bilingualism,
20 while simultaneously insuring that the participants
21 do not fall behind academically. Those students,
22 regardless of intelligence, are likely to perform
23 poorly. Poor performance leads students to being

1 tracked into lower ability groups in the primary
2 grades, and remedial program in the secondary
3 grades. Once these students are labeled low
4 achievers, their self-esteem is in serious jeopardy,
5 and their expectations placed on them by their
6 teachers, their parents and themselves is limited.
7 This position is further exasperated by the content
8 of remedial programs, which fail to teach the type
9 of higher order learning skills that normally
10 prepare students to perform adequately on
11 standardized tests. Continued tracking leads to
12 fewer math and science courses, exclusion from
13 gifted programs, and being disproportionately
14 subjected to suspensions and discipline.

15 Many opponents of affirmative action
16 argue in favor of improving conditions in the
17 schools that minority students attend instead of
18 relying on affirmative action to get them into
19 college. And, this is a position that no one can
20 disagree with. It is an idea that MALDEF and other
21 education advocacy groups support and promote.
22 However, the reality is that that's not what's
23 happening. Quite the contrary. Headstart programs,

1 state pre-Kindergarten programs, and funding in
2 general is being threatened due to limited financial
3 resources. The sad fact is that until a more
4 equitable method of funding schools is created,
5 poorer school districts will continue to have lesser
6 resources and our children will suffer. Given the
7 need for an educated populace and recognizing the
8 many barriers that Latinos and other minorities
9 continue to face in obtaining an education, the need
10 for universities to strengthen and expand
11 affirmative action to assist students in overcoming
12 many of the existing barriers to educational success
13 cannot be sufficiently underscored.

14 In the area of employment, Latinos
15 have not faired much better. Despite having the
16 highest labor force participation rate of any group,
17 the Latino unemployment rate is twice as high as it
18 is for whites. And, the trend is worsening. Latinos
19 also face a disproportionate concentration in low
20 paying and economically declining industries, income
21 discrepancies, more layoffs, and lower rates of
22 business ownership. This disproportionate impact
23 cannot be accounted for by looking at age,

1 education, gender, industry, or occupation. While
2 all workers earn more if they stay in school, the
3 return on educational investment is substantially
4 less for Latinos. While for every \$1.00 earned by
5 whites, Latinos make \$.59. This pay gap persists
6 even when age, education, and wage skills are taken
7 into account. In fact, instead of diminishing, wage
8 discrimination rose at every level of education.
9 Among high school dropouts, Latinos get \$.63 for
10 every \$1.00 whites receive. For Latino
11 professionals, the disparity increases to \$.53 per
12 \$1.00. Widespread evidence suggests that these
13 disparities adversely affect the Latino community,
14 and they are predominantly due to the persistence of
15 racial, ethnic, and national origin discrimination
16 in this country. The Glass Ceiling Commission
17 Report found that serious barriers to advancement
18 remain for minorities and women in American
19 corporations, including persistent stereotyping,
20 erroneous beliefs that no qualified women or
21 minorities are out there, and plain old fear of
22 change. The Commission reported that of senior
23 managers of Fortune 500's biggest firms, 97% are

1 white and 95% are male. And, that Latinos are
2 relatively invisible in corporate decision-making
3 positions. Labor market studies show that a
4 significant factor in the earning differential
5 between Latinos and whites is attributable to
6 employment discrimination. In a controlled
7 experiment, a study found that equally qualified
8 Latino applicants were turned down in favor of their
9 white counterparts for more than one job out of
10 every five in every type of job. Similar studies
11 documented an even higher discrimination rate in
12 Chicago, where it was found to be 33%.

13 Discrimination remains rampant in
14 every sector of our society. Racial discrimination
15 is not merely a vestige of the past, but has
16 reconfigured itself into a pattern of second
17 generation discrimination. For Latinos, this is a
18 volatile climate in which to attack affirmative
19 action. The public atmosphere in the wake of last
20 year's Proposition 187 ballot initiative in
21 California and other anti-immigrant proposals is
22 increasingly polarized, racially charged, and
23 fearful. We have witnessed widespread and increased

1 mistreatment of Latinos and other ethnic minorities,
2 both immigrants and citizens, running the gambit of
3 from denial of jobs and housing to the dissolution
4 from restaurants, banks, and other commercial and
5 public services.

6 CHAIRMAN MATHEWSON: I'm going to have to
7 ask you to conclude, please.

8 MS. MENDOZA: I'm concluding now. Many in
9 the Latino community will tell you they believe it's
10 open season for discrimination for people who look
11 or sound foreign. This should not be surprising.
12 Proposition 187 and other anti-immigrant proposals
13 have unleashed forceful and dangerous passions that
14 are not easily controlled. However, like it or not,
15 there's no us and them. We're in this diverse,
16 remarkable society together, and we will not prosper
17 as a nation without the contributed talent of
18 everyone.

19 Thank you.

20 CHAIRMAN MATHEWSON: Thank you. Mr.
21 Garbutt, welcome back.

22 J. STUART GARBUTT

23 Thank you, Chairman Mathewson, it's a

1 pleasure and I appreciate being asked to come back
2 and contribute to this panel's study on affirmative
3 action once again.

4 As Rose Mary Bombala knows, my
5 involvement with affirmative action goes back
6 professionally at least the beginning of my legal
7 career, but 20 years ago when I was general counsel
8 of the Illinois Fair Employment Practices Commission
9 and thereafter, the Illinois Department of Human
10 Rights, and that was at a time when the state was
11 first crafting the affirmative action regulations.
12 That, by the way, still exists, requiring
13 affirmative action by state government agencies and
14 public contractors in Illinois. And I, even though
15 I left the Department of Human Rights more than 10
16 years ago, I continue in private practice to
17 represent employers in all sorts of labor and
18 employment matters and concluding their compliance
19 with affirmative action requirements. So, over the
20 years, I've listened closely to the arguments and
21 criticisms about affirmative action as a matter of
22 public policy. And, it's one of those criticisms
23 that I'd like to address just briefly this morning.

1 One of the things we frequently hear said
2 about affirmative action is that it really stands
3 our non-discrimination laws on their heads by
4 forcing employers to focus on numerical imbalances
5 rather than on issues of individual merit. I think
6 that that's an argument that certainly warrants
7 closer inspection. I think, in fact, that it's
8 probably an argument based upon some flawed
9 premises. And one of those premises is that it sort
10 of pre-supposes that the reason why employers tend,
11 in many cases, to be numbers conscious is the
12 pressure exerted upon employers by affirmative
13 action requirements in the first place. It seems to
14 me that we ought not lose sight of the reason why
15 years ago governments embraced affirmative action in
16 the first place. My recollection of those times is
17 that affirmative action was not simply an instrument
18 of social welfare policy. There was a significant
19 element of defensive self-interest that was at the
20 heart of the government in establishing those
21 programs in the first place. We need to recall that
22 before there were affirmative action requirements,
23 there was Title 7 of the 1964 Civil Rights Act,

1 which is very much still with us today, as well as a
2 number of State Fair Employment laws, including in
3 Illinois. And, it was very early on a clearly
4 established proposition that under those statutes, a
5 numerical imbalance, a statistically significant
6 numerical imbalance not otherwise explainable
7 between the proportions which certain groups
8 represented within an employer's work force was very
9 potent evidence of discrimination. And, at the time
10 the affirmative action regulations were first under
11 study, I can recall that governments were being sued
12 and threatened with lawsuits for having allegedly
13 ignored discrimination within their own work forces
14 and ignored discrimination within the work forces of
15 private firms whom the government favored with
16 government contracts. That was one of the
17 motivations for affirmative action programs in the
18 first place; namely, to require government and
19 public contractors to be conscious of numerical
20 imbalances in the work force and do something to
21 analyze them and remedy them, if they needed to be
22 remedied, in order to insure that the government
23 wasn't fostering discrimination by its own business

1 practices. Now, in the years since that time, it
2 seems to me, in my experience at least, that
3 numerical imbalances in the work place and numbers
4 consciousness on the part of employers has become no
5 less important to employers out of a matter of pure
6 self-interest, wholly apart from affirmative action
7 requirements. In fact, there's been a couple of
8 developments over the last 10 years or more recently
9 than that, even, that seem to have made the
10 importance of attention to numbers by employers even
11 greater than it ever was before. One of these is
12 the 1991 Civil Rights Act, which increased the
13 stakes for employers and employees alike in
14 employment discrimination litigation far beyond what
15 they were before. As a result of the 1991 Civil
16 Rights Act, employment discrimination cases by and
17 large now are all jury cases, and compensatory and
18 punitive damages are available if an employee wins
19 and an employer loses. And, in that sort of an
20 environment, an employer that's concerned about its
21 bottom line and its exposure to employment
22 discrimination litigation, needs to be conscious of
23 the evidence that could condemn it at trial if one

1 of those cases were to go to trial. Namely,
2 numerical imbalances in the work place continue to
3 be very important, continue to be an open
4 invitation to lawsuits and therefore, is something
5 wholly apart from any affirmative action
6 requirements.

7 Prudent employers are very alert to
8 another factor that we all bemoan in the last
9 several years has been the pressure exerted upon
10 employers, both public and private, by rapid
11 technological advances and rapidly changing
12 circumstances in the marketplace. We've all seen
13 over the last several years many, many large
14 employers having to resort to massive layoffs and
15 restructuring of their work force in order to
16 eliminate real or perceived inefficiencies in their
17 businesses or adapt to changing circumstances in the
18 marketplace. What happens in these cases is that
19 rather than being confronted with perhaps one
20 potential plaintiff in a discrimination case,
21 employers are faced with a multitude of potential
22 claims and perhaps class based claims. And, even
23 worse than that, unlike in the usual garden variety

1 unemployment litigation case where you're dealing
2 with one individual, often in a discharge situation.
3 An employer in that sort of a situation frequently
4 can rely upon the employees own misdeeds as
5 justifying the reason to discharge that individual.
6 In a mass layoff case, by definition, an employer is
7 confronted with potential litigation by individuals
8 who, under the very nature of the circumstances,
9 would not have been discharged except for reasons
10 that were beyond their control. Again, in
11 situations like this where juries are going to be
12 deciding the extent to which employers ought to be
13 held liable for big money damages, any prudent
14 employer that's going to be conscious of the numbers
15 that would be evidence against it at trial and would
16 suggest whether or not there's discrimination going
17 on within the work force, that can be remedied and
18 ought to be remedied before it can ever do damage
19 and result in costly ligation. So, for a variety of
20 reasons, it seems to me that numbers consciousness
21 on the part of employers has its genesis in
22 circumstances that have nothing to do with
23 affirmative action requirements. And, if this is

1 the case, then, affirmative action does not deserve
2 to be the whipping boy for the fact that employers
3 have to be concerned by numerical imbalances in the
4 work place and take measure to do something about
5 those imbalances when they exist. Nothing about the
6 current debate over affirmative action is going to
7 change this particular reality for employers and
8 consequently, to the extent that the debate is
9 motivated over concern of numbers consciousness, I
10 think it's a worthy time to rethink that motivation.
11 Thank you.

12 CHAIRMAN MATHEWSON: Thank you, very
13 thoughtful statement. Mr. Scales?

14 MR. SCALES: Yes, good morning Mr. Garbutt
15 and Ms. Mendoza. My question is for Ms. Mendoza.
16 It's actually just a point of rhetoric. Most of the
17 affirmative action documents, if not all of them,
18 refer to the Hispanic/Latino, and I notice that you
19 specifically used the word "Latino". I would like
20 to know your definition between the two. And, are
21 you, in your documents, proposing a change to the
22 government?

23 MS. MENDOZA: In the term?

1 MR. SCALES: No. I tend to use them
2 interchangeably. It just seems, you know, as an
3 African American/Black, you know, it's whatever
4 happens to be the more politically correct term at
5 the time. And, my understanding at the time it's
6 Latino, but we use them interchangeably at times.
7 I've seen documents where we start out using one
8 term and end up using another.

9 MR. SCALES: Thank you.

10 CHAIRMAN MATHEWSON: Ms. Choi?

11 MS. CHOI: Yes. My question is for Mr.
12 Garbutt. Thank you for that statement. I learned a
13 lot of new things about how employers view
14 affirmative action and also sort of, I think this is
15 the first time that I've heard sort of something
16 equated with quotas with numbers conscious. You
17 mentioned prudent employers. I think Ms. Mendoza
18 mentioned a lot about the disadvantage that certain
19 groups have in this society today. And also, that we
20 don't always start out with the same amount of
21 skills going into the labor force. As technology
22 changes, and as we have seen the income gap
23 increasing in our society, wouldn't the non-prudent

1 employers, I mean, I think there's an assumption in
2 your argument that most, if not all, companies are
3 prudent. Wouldn't non-prudent employers, as we have
4 seen in the past, take advantage of a system where
5 there's no affirmative action or that thought of
6 affirmative action, and especially when your
7 argument is saying that there are threats of
8 lawsuits that's always tinging on their
9 consciousness, that they would be a little bit more
10 hesitant to continue the numbers imbalance game.
11 What about for those people who have no
12 wherewithall, or even that consciousness of
13 lawsuits, what about to those underprivileged
14 groups?

15 MR. GARBUTT: That's a real good question.
16 My comments really are probably from the perspective
17 of generally larger employers who tend, for one
18 reason or another, often having to do with the
19 dollar volume threshold for coverage for; for
20 example, by Executive Order 11246, that require
21 employers to have affirmative action programs. It's
22 often larger employers who do big money business
23 with the federal government that are subject, at

1 least to those requirements, and are more conscious,
2 therefore, about affirmative action obligations in
3 the first place. And also tend to be very conscious
4 about potential litigation because they employ more
5 people and their budgets for defending various kinds
6 of employment claims are a serious portion of the
7 overall corporate financial picture. Those sorts of
8 employers who have devoted that level of thought to
9 the subject, I find, at least in my practice, are
10 not very much engaged by the public debate over
11 affirmative action policy because they're pretty
12 well committed. If they're interested in minimizing
13 their liability for claims and serving their
14 shareholders and preserving the corporate coffers,
15 they're very interested in trying to root out
16 discrimination before it can be the subject of
17 litigation and being able to present a good face to
18 a jury, quite frankly, in the event they're sued
19 because there's no absolute guarantee against being
20 sued for any kind of an employment situation. But,
21 since these are jury cases now, it's become much
22 more important for an employer to be able to
23 translate what it has done in ordinary human terms

1 rather than esoteric legal terms that only a judge
2 is going to appreciate. And, what that means, by and
3 large, is you have to be able to convince average
4 people that you're a responsible citizen and that
5 you're concerned about the compliance with the law
6 and you've taken measure to insure that you're in
7 compliance with the law. And, if someone down the
8 line made a mistake, at least it wasn't a mistake.
9 It was a product of callous indifference on the part
10 of the corporate managers. That's really the spirit
11 of my remarks. I wouldn't dispute that there are
12 some employers who aren't concerned about any of
13 this. But, perhaps I'd suggest that they should be
14 concerned about how long they're going to remain in
15 business because damage awards in these kinds of
16 cases have become very significant. And, there have
17 been businesses that have been put out of business,
18 virtually put out of business by not attending to
19 these sorts of concerns.

20 MS. CHOI: You mentioned that we re-examine
21 affirmative action, how do we do that from your
22 standpoint? How do we re-examine it?

23 MR. GARBUTT: Well, I think that quite

1 frankly, the law that's developed over the last 10
2 years in terms of what differentiates a valid
3 affirmative action program from an invalid
4 affirmative action program doesn't need much
5 tinkering with. The Supreme Court, from way back in
6 the days of Kaiser Steel Company case, steelworkers
7 against Webber, set up a formula for determining
8 when affirmative action plans will pass legal
9 muster. Basically, again, one of the key ingredients
10 is that there's some statistical evidence that there
11 has been a statistically significant
12 under-representation of certain groups within
13 certain segments of the work force. And, that the
14 affirmative action program is tailored to address
15 that specific statistical imbalance. The courts
16 treat the statistics themselves as evidence of prior
17 discrimination and sufficient to trigger a need to
18 do something to remedy that discrimination. I think
19 that's a workable formula. It's worked fine for
20 practitioners in this area over the past 10 years.
21 The Attoran (ph) case that the Supreme Court decided
22 last year, it really just said that the same formula
23 will apply to federal set aside programs as has

1 always applied to state and local affirmative action
2 and set aside programs. So, I see that as a workable
3 formula. I don't think it needs to be readjusted in
4 any significant degree.

5 CHAIRMAN MATHEWSON: Janie Khoury has
6 joined us. She's also a new member of the committee.
7 Welcome. Any questions?

8 MS. KHOURRY: No.

9 CHAIRMAN MATHEWSON: Let me ask one here. I
10 guess you've already answer this, actually. Let me
11 ask Ms. Mendoza, you're both lawyers. In light of
12 the Attoran case last year, do you sense any legal
13 need or legal pressure to change affirmative action
14 or is it really still a matter of public policy to
15 be decided by the people and our representatives?

16 MS. MENDOZA: I still think that plans, as
17 they're properly fashioned, can still survive and
18 pass muster. The Attoran plan itself sustained the
19 challenge.

20 CHAIRMAN MATHEWSON: In what sense? You
21 say the Attoran plan because the company intended to
22 pursue additional contracts, is that what you're
23 saying?

1 MS. MENDOZA: I think that, yes, I think
2 that there's still, even under strict scrutiny, I
3 think the plans can survive.

4 CHAIRMAN MATHEWSON: Well, it seems that
5 way to me. It seems to me the Attoran case obviously
6 involves set asides that minority contracting or
7 subcontracting requirements, I'm not sure that they,
8 this Nevada case and the public policy in Attoran
9 necessarily impacts on affirmative action as it
10 relates to hiring or college admissions is another
11 area, okay.

12 Mr. Ewing?

13 MR. EWING: Mr. Garbutt, the switch from
14 trial before judge versus before jury, have you seen
15 any statistics that would imply that juries and
16 their decisions have been more pro plaintiff than
17 judges in their decisions in cases of alleged
18 discrimination?

19 MR. GARBUTT: I'm not familiar with any
20 statistics, although I wouldn't be surprised if
21 there are some. There are a lot of people who are
22 in the business of analyzing jury verdicts over
23 time, and seeing how they compare with any number of

1 things. I can tell you anecdotally and I've had
2 experiences and other lawyers have had experiences
3 where you feel that the jury, after being instructed
4 by the judge as to what the law is, basically takes
5 that instruction for what they think they're worth
6 and apply common sense logic to the situation. And,
7 if they tend to feel that an employer has been
8 brutal or insensitive, even though it may not be
9 discriminatory. That's the sort of legal defense
10 that may be a defense legally, but none of us want
11 to have to rely upon if the case goes so far as to
12 get to a jury. And that's, I think, the real
13 concern, that it's now a situation where the
14 ultimate winners and losers are going to be decided
15 by people applying the notions of ordinary fairness.
16 And, what strikes you as being proper as opposed to
17 improper rather than sure, I was bad and harsh, but
18 I wasn't discriminatory, if that's going to make the
19 difference in the focus for defending the case.
20 .Obviously, it's got to be.

21 CHAIRMAN MATHEWSON: Mr. Pugh?

22 MR. PUGH: Ms. Mendoza, I want to
23 complement you on the statistics you gave us dealing

1 with discrimination. During your presentation, you
2 mentioned bilingualism in passing. I would point
3 out for those who don't realize it, most don't, that
4 this Illinois committee about 20 years ago wrote and
5 published a bilingual pamphlet entitled "The ABC's
6 of Special Education", which was in English and
7 Spanish, which gave the children of Illinois,
8 Spanish speaking children of Illinois and their
9 parents the first look into or the first more full
10 understanding of a new law that had come into being.
11 Many laws affected special education. I can't say
12 that without mentioning the man to my left here who
13 wrote the pamphlet, Preston Ewing, and pushed it
14 into being. It was the heritage of this committee
15 having to do with bilingualism. I want you to tell
16 us the importance of bilingualism today, in view of
17 just your opinion on that and how it mixes with
18 affirmative action.

19 MS. MENDOZA: Well, there's not a direct
20 mix except that what I'm addressing is that we need
21 to, children in poorer school districts aren't
22 getting the same kind of attention because the funds
23 aren't there. So, you know, there's a big argument

1 that bilingual education isn't working. That's
2 probably true, it isn't working because it isn't
3 getting enough resources to work. We've seen
4 situations even here in Chicago where children are
5 grouped together, children of different levels are
6 grouped together with one teacher because there
7 aren't enough teachers to go around. So, clearly,
8 that teacher cannot cover the subject for all those
9 students. This is not the country school anymore
10 where you can put all the children of all age groups
11 in one classroom and expect them to all learn what
12 they're supposed to learn. But because they're not
13 getting that attention and that direction, it's
14 taking them a little longer to come along. And, I
15 can give you an example. MALDEF gives out a
16 scholarship. Last year, I just reviewed the
17 applications last year, and it brought tears to my
18 eyes to read these. This is the best that the
19 schools have got. We got applications from children
20 who were ranked number one at Farragut, number one
21 at Kelly, number one at Kelvyn Park and yet, you
22 read their essays and you see the desire for
23 education, the desire to get ahead, the desire to do

1 something better with their life than what their
2 parents did. And, in citing that their parents are
3 pushing them to do better and yet, you read these
4 applications and you look at the grammar, you look
5 at the spelling, and you realize that they're really
6 just going to begin facing challenges in college
7 because they're going to be facing students who have
8 had a solid background, who have had much better
9 resources at an earlier age. So, that's my focus, is
10 that if you don't provide them with the education,
11 with the resources at an early age, you cannot
12 expect them to compete on a level playing field when
13 they get to college. And, the problem is that if
14 you don't have some form of affirmative action,
15 you're going to have a very homogeneous population
16 in college. And that, I think, hurts everybody
17 because then you don't have a diversity, the
18 marketplace of ideas.

19 CHAIRMAN MATHEWSON: Thank you both very
20 much for your thoughtful remarks. We appreciate your
21 time and contributions.

22 Our next presenters are H. Paul LeBlanc III
23 and Lee Walker. Would you come forward, please?

1 Good morning, gentlemen. Thank you
2 both for coming. Mr. Walker, I know you won't be
3 tongue-tied, would you like to proceed, please?

4 This is a five minute summary, if you
5 weren't here when we started our session and laid
6 out the groundrules, five minute summary from each
7 of you and then we'll follow with questions.

8 LEE WALKER

9 Okay. That will help me because I don't
10 know if you have a copy of what --

11 CHAIRMAN MATHEWSON: We don't. If you can
12 just give us a five-minute oral summary of it, we'll
13 have an opportunity to read it in detail after this
14 meeting.

15 MR. WALKER: I will. I'll summarize.

16 CHAIRMAN MATHEWSON: Thank you.

17 MR. WALKER: Mr. Chairman, because I'm
18 pleased to accept this opportunity to discuss my
19 views, as well as talk about my 33 years of
20 corporate experience. Affirmative action may now be
21 the most controversial issue in America. But the
22 debate, in my view, tends to degenerate into finger
23 pointing and competing claims of who is the bigger

1 victim; Blacks, White women, angry White males,
2 Hispanics and others. The irony of these competing
3 claims is that affirmative action was initially
4 established for Blacks. The one competing group who
5 has received the least from the concept after three
6 decades, and that's not my opinion, it's the
7 conclusion of the recent report of the Federal Glass
8 Ceiling Bipartisan Commission.

9 Let me go right to the heart of why
10 I'm here. What's my view of affirmative action? The
11 recent Attoran decision made it clear, in my view,
12 that it's time to re-think this exclusive
13 anti-discrimination strategy, a concept most people
14 can no longer define. I agree that for Blacks, in
15 particular, it is time for us to seek what was
16 originally intended in 1961. That intent was to
17 insure equal opportunity from recruitment, hiring,
18 through upward mobility and based on merit.
19 Unfortunately, what we're calling affirmative action
20 today is not what was originally intended. This
21 debate has been roughly going on for 30 years. It
22 began when President Kennedy signed Executive Order
23 10925 in 1961. It was the first time the federal

1 government required employers to take affirmative
2 measures to insure non-discrimination. In 1963,
3 another executive order extended 10925 to
4 construction workers. These executive orders
5 resulted from community pressure on the President by
6 the late Lloyd Wilkins of the NAACP, the late
7 Whitney Young of the Urban League, and A. Phillip
8 Randolph representing the Black Labor Movement.
9 These executive orders stipulated that employers and
10 government contractors, in addition to accepting an
11 obligation not to discriminate, must take
12 affirmative measures to insure that such
13 discrimination does not occur. My argument here
14 today is that we have moved away from that.
15 Although the passage of the 1964 Civil Rights Act
16 was considered a victory by most, we've forgotten
17 about that. And, as we enter the 21st Century,
18 whether or not one agrees with the proposition that
19 it's time to re-think affirmative action, as I
20 argue, one conclusion is very clear. Affirmative
21 action as we knew it three decades ago has changed.
22 It is no longer, in my view, focused on racial
23 discrimination. Nobody is really seriously talking

1 about what happened to Blacks once they're hired as
2 it relates to upward mobility. The most recent
3 example happened in our area here in February of
4 1996. Discrimination charges against a Holiday Inn
5 in Oak Lawn, Illinois. A hotel was hiring Blacks
6 and Hispanics. The problem was they never had the
7 opportunity to work the front desk and meet the
8 public. Thus, the hotel, by law, was an equal
9 opportunity employer. They had minority employees.
10 According to the EEOC investigation, the hotel
11 management told the employees who questioned the
12 hiring practice that the hotel was not "ready for
13 hiring Blacks". After this case was headlined for
14 two days in the Chicago press, the Clinton
15 Administration announced that they were launching a
16 new strategy and filed suit against the Holiday Inn
17 franchise so as to send a message to that industry.
18 My question is, if affirmative action is doing all
19 that its supporters say it is, and only needs
20 mending, why launch a new strategy? For I agree, we
21 need a new strategy. The irony of this case is if
22 one of the hotel employees had spilled hot coffee on
23 one of the guests, that franchise would have paid

1 out millions. My question is, how much that hotel
2 will pay out for intentional racial discrimination?
3 Unfortunately, not too much. And, I would say, Mr.
4 Chairman, as painful as it might be to acknowledge,
5 I urge that we vigorously analyze the results of
6 what has happened in the last 40 years, I mean 30
7 years, and the glass ceiling documents this. For,
8 in my view, we're really arguing about personalities
9 and from a political point of view. But, if we talk
10 about affirmative action from a public policy point
11 of view, and look at the results, I do not want to
12 wait another 30 years to see Blacks end up being 3%
13 and Black women end up being 4%. We'll be waiting
14 another 600 years. I'm asking for, and I call it
15 affirmative opportunity. Action can mean anything.
16 Affirmative opportunity is precise. I said to a
17 young lady this week in a similar discussion, this
18 seems to be the week in Chicago for discussing
19 affirmative action, I said you will come out better
20 if you filed sexual harassment charges rather than
21 racial discrimination. An individual can damage
22 hundreds of individuals in terms of their careers
23 with bad ratings, all kinds of little hidden things

1 and nothing happens but a tap on the wrist if he or
2 she is caught. Sexual harassment, I know and I'm not
3 talking second hand, executives have lost their
4 jobs, lost their pensions, and it's been large sums
5 of money. What am I urging you to think about here
6 is making racial discrimination too expensive to be
7 dealing with. We saw it happen with Mike Tyson.
8 And, I'm not belittling sexual harassment or sexual
9 discrimination, but what I am arguing, and I blame
10 Blacks in particular, and the civil rights movement
11 and the Congressional Black Caucus for not keeping
12 their eye on racial discrimination. I'm not talking
13 about an umbrella to cover everything wrong that
14 some white male or Black male does with respect to
15 your careers. Racial discrimination is what this
16 whole thing was about, and that's where I would like
17 to see it come back to.

18 Thank you, Mr. Chairman.

19 CHAIRMAN MATHEWSON: Thank you, Mr. Walker.
20 Mr. LeBlanc, your five minute summary, please.

21 H. PAUL LEBLANC III,

22 I appreciate the opportunity to present my
23 views to you. I believe I should start off by

1 stating some of my biocies. First off, I am a
2 doctoral student in Speech Communications. And,
3 because of that, I have certain views that are
4 inherently part of my career. The other thing is
5 that I'm of a Cajun heritage. For those of you who
6 might not know what that is, that's Cajun in common
7 parlance. And, we have some unique characteristics
8 to our ethnic history that are very relevant here.
9 The basic argument that I posit in my paper is not
10 about the specific outcomes or results of
11 affirmative action as it has been practiced, but
12 rather to look at the ideals of the Constitution and
13 what it was meant to represent. Specifically, I
14 question the interpretation of the First Amendment
15 to the Constitution when it denies people the right
16 to choose their own value systems. The First
17 Amendment to the Constitution is about people's
18 right to choose their own religion and to express
19 those views through freedom of speech. That right to
20 choose one's own religion implies, by its very
21 nature, the right to choose one's own values. By
22 extension, that right allows people to choose their
23 own culture and their own ethnicity. And, the reason

1 why that is the case is because religion, if it
2 implies, if we look at the differences in people's
3 religious beliefs and background, it implies a
4 certain value structural priority. Also, cultures
5 have their own value systems and priorities in terms
6 of the values that members of those cultural ethnic
7 groups choose. I believe that there is a
8 correlation, not necessarily a direct correlation,
9 or necessarily one that's highly predictable, but
10 there's a correlation between religious values and
11 cultural values and ethnic values. And, people tend
12 to choose those values that they were socialized
13 into, whether it is a religious group, or a cultural
14 group, or an ethnic group. And, if that's the case,
15 then the protection of the First Amendment should
16 cover those choices, those ethnic and cultural
17 values.

18 I also believe and argue in the paper
19 that that includes language that individuals should
20 have the right, if they have the right to choose
21 their values and their beliefs, then they also have
22 a right to see those values and beliefs practiced
23 through their common symbol systems, and that

8

1 includes language. In particular, I make reference
2 to the State of Illinois', as well as several other
3 states, moves toward making English an official
4 language. As well as the federal government's move
5 to make English as the official language. That
6 reference comes from a couple of months ago you may
7 remember that Quebec was looking to gain
8 independence from the rest of Canada. And, the
9 reason why was for cultural identity, that was the
10 main reason. And, as you may know, Quebec has
11 people who speak French, as well as people who speak
12 English. And the problem that the French people were
13 feeling, was that they had no sense of identity.
14 And, this was a historical issue that went back 400
15 years. I believe that many of those moves, in
16 asking for that identity, occurs for
17 many ethnic groups. And, by extension, how that
18 works for affirmative action, and affirmative action
19 is indirectly related to this. How that works for
20 affirmative action is affirmative action is a
21 proactive measure to make sure that there is
22 equality across groups of people, whether it's
23 racial or ethnic or what not. If the Constitution

1 is meant to protect, and if it's a requirement of
2 our society to protect that diversity, then we also
3 need to promote those type of proactive measures
4 which are specifically designed to protect that
5 equality and
6 diversity.

7 I do offer a criticism of affirmative
8 action programs which, I believe, have already been
9 spoken to this morning by several of our colleagues,
10 and that is that sometimes affirmative action may
11 look at only racial differences without taking into
12 consideration the historical context which bring
13 those issues of discrimination about. And, that's
14 particularly the case for people of my ethnic
15 heritage in terms of their experience and their
16 historical background.

17 Thank you.

18 CHAIRMAN MATHEWSON: Thank you both very
19 much. Ms. Bombala is up.

20 MS. BOMBALA: I guess I have a question to
21 Mr. LeBlanc. Thank you for your comments. Are you
22 saying, then, that you're proposing that affirmative
23 action definitions of classes and groups to be

1 included is to be expanded rather than what the
2 definition is now?

3 MR. LEBLANC: Yes, right. I believe it
4 should be expanded. The variables used to determine
5 whether or not a given employer is adhering to that
6 need to be expanded to include ethnicity as a
7 separate category from race. Now, I know that it
8 already is, but if that is to be considered as a
9 primary variable, that helps take into consideration
10 the historical context of certain groups, which I
11 know my colleague here did refer to in his paper in
12 terms of certain ethnic whites.

13 CHAIRMAN MATHEWSON: Mr. Roberts?

14 MR. ROBERTS: Thanks to both of you for
15 your comments, and my comment is directed to Mr.
16 Walker. Based upon your experience, your activities
17 with the coalition, your involvement in and out of
18 Washington with these separate conferences on
19 affirmative action, in your estimation, can
20 affirmative action as it is now labeled be
21 restructured or should we come up with an all
22 together different act?

23 MR. WALKER: Rev. Roberts, I would argue as

1 we go into the 21st Century, we need to review the
2 results. This is 1996, and you've heard a lot of
3 budget discussions, you know, 2007. I don't think
4 we need to be looking at remedies from 1960 saying,
5 you know, should we continue using them? I think
6 that answer is obvious if you analyze the results.
7 I would argue a different question should be will
8 this present remedy produce the desired results in
9 the future? I would argue at present, the answer is
10 no.

11 CHAIRMAN MATHEWSON: Mr. Scales?

12 MR. SCALES: I don't have any questions,
13 just a comment. Mr. Walker, I find our analogy,
14 affirmative action and sexual harassment to be
15 rather interesting because I, too, have been
16 involved in some of these situations. And, it is
17 quite expensive. And, you do get people's attention
18 when you start talking about sexual harassment. So,
19 I thought that was a very interesting comment that
20 you made. And, Mr. LeBlanc, of course, I've worked
21 with him before, so I'm very familiar with his
22 views. Thank you very much.

23 CHAIRMAN MATHEWSON: Ms. Choi?

1 MS. CHOI: Mr. Walker, you talked about
2 desired results in the future, and Patricia Mendoza
3 of MALDEF had talked about the level playing field.
4 How do we know when we have reached that?

5 MR. WALKER: I would reframe that because I
6 think that leads us into social engineering. As I
7 was listening to my colleague here, in my view, we
8 have laws on the books. I think, and speaking for
9 Blacks in particular, and when I say that it's not
10 that I'm excluding others, I'm mentioning Blacks
11 because I'm seeing, you know, I'm looking at a guy
12 without feet while folks talking about no shoes.
13 And, I think someone else will take care of the
14 other. The 13th, 14th and 15th Amendments are
15 there. The 1964 Civil Rights Act is there. Brown
16 vs. The Board of Education, 1957 is there. We can
17 argue about, I think the decision was correct in the
18 Brown thing. We can argue about did they arrive at
19 it in the right way. I'm not arguing that we don't
20 have the right laws on the books. What I'm arguing
21 is the real intent of eliminating discrimination.
22 Affirmative action was only a remedy to insure that
23 the employer is going to do the right thing. Now,

1 being human as we are, the right thing is not
2 happening. And I'm arguing that as we go to the
3 future, we need to make discrimination, period,
4 expensive. But, what's really, in my view, splitting
5 this country right now is racial discrimination.
6 It's been racial discrimination for a long time, and
7 I don't have to take you over slavery. It is racial
8 discrimination today. And, I don't understand how,
9 you know, some proponents of affirmative action like
10 you say, you know, oh, gee, white males are
11 controlling 97% of the top positions. I mean, what's
12 new? You can walk in any city in America, walk in
13 any office building and discover that. We're not
14 arguing that. What I'm arguing is that on merit,
15 when I walk through the system, I want to be allowed
16 to go as far as my ability will take me. And, when
17 someone intentionally throws their foot out to trip
18 me, I want him to lose his wife, his house and his
19 six kids if necessary so the next person will not
20 put a foot out there to trip someone up. I don't
21 see this issue really that complicated. And, if you
22 go back and read the files of your own Commission
23 here, and listening to Senator Humphrey and I know

1 under a Republican president and a Republican Black,
2 we got quotas, et cetera. And, I know the intent, I
3 don't criticize that, see, I'm not criticizing an
4 individual having good intention. I do criticize
5 individuals for giving someone poisoning and once
6 you discover it's poison, don't give them an
7 antidote. And, what I'm saying here now, affirmative
8 action covers a multitude of sins. There are 160
9 different programs out there. I mean, anything a
10 white male does, he's breaking some law in
11 somebody's mind and they can connect to affirmative
12 action. And, we've got to move away from that.
13 It's my argument, and going to answer you again the
14 short way, I'm not looking for the level playing
15 field. Going back, the description, it doesn't
16 matter whether you're talking Christianity or some
17 other religion, there are all kinds of parables in
18 terms of some folks going blind, some have grown
19 tall or short, I'm not after social engineering. I
20 just want to be able to walk into the room, flick
21 the switch on, the light comes on.

22 As I went into the corporate world through
23 affirmative action, I had all great hopes in New

9

1 York City. I said gee, we have an American Express
2 Card here, that was a big thing, to have an American
3 Express Card. But, after three years, it didn't take
4 ten years, after three years we knew in New York
5 City that the white males' American Express Card had
6 a larger limit than ours. And, you cannot legislate
7 that because to break that glass ceiling out, there
8 is no law. You need someone to mentor you, you need
9 someone to be a friend of you. You are chosen to go
10 to the top, you don't work your way to the top.
11 And, I understand that, and I think corporate
12 America understands that. I think the only folks
13 using the term "affirmative action" are civil rights
14 folks anyway. I don't think you'll find that title
15 in any major corporation in this country in 1996.
16 You will probably find some type of saying,
17 "diversity manager". They've moved on. I think
18 only the government and other folks are discussing
19 this political wedge that's achieving something
20 else. And, I would argue that this group here is
21 the one place where we don't have to worry about
22 politics, but look at the public policy side of this
23 and say hey guys, if you try to trip somebody up,

1 we're going to put you in jail, period. And, that's
2 how we get the level playing field. By whoever
3 walks in the door, when they flick on that switch,
4 the light comes on. As we have it right now,
5 depending on who you are, the switch recognizes you,
6 say hey, I don't have to come on for you. And, this
7 is what I'm after.

8 CHAIRMAN MATHEWSON: Ms. Khoury?

9 MS. KHOURRY: Yes. Mr. Walker. Excuse me,
10 I lost my voice. You had made mention that you
11 would, you want the African-American community to
12 constantly be aware of discrimination. I'm just
13 wondering, you feel that might even be a hinderance
14 or crutch, instead of having them be acknowledged
15 for their merits? You say you want to be known for
16 your merits, and if anyone tries to trip you up,
17 then you want to get them. But, if you feel like
18 everybody is constantly aware of the discrimination
19 around them, they may not be, they may be tripping
20 themselves up on their merits. Does that make sense?

21 MR. WALKER: Oh, I can -- let me give you a
22 perfect example. I think since the Anita
23 Hill/Clarence Thomas hearings, and regardless of the

1 side you come down on that, males interacting with
2 females changed completely overnight. In terms of
3 hey, be careful here. So, I think we're dealing with
4 a perception, number one. We're dealing with a
5 perception and reality. I think males today think a
6 second time before they tell the secretary to get me
7 some coffee, let's say. It was tradition, you know,
8 and it's been tradition. It was wrong, but it was
9 tradition. But, I think that perception and that
10 culture is being broken at the moment. And, I'm
11 relating this to sex because I understand in this
12 town we have a law school that's developing a sex
13 law. I'm not opposed to that. What I'm arguing
14 for, folks, the trouble here is discrimination.

15 MS. KHOURRY: No, I think I didn't make
16 myself clear. What I meant was when people are
17 constantly aware of the discrimination and are using
18 that, you know, saying everything is discrimination
19 instead of working harder towards your, to show
20 their merits in their jobs or their working up the
21 ladder, the corporate ladder, do you feel like using
22 that discrimination as a crutch could be a
23 hinderance if it's not necessarily there, that's

1 what it seems like they're always focusing on that.

2 MR. WALKER: Some folks use that as a
3 crutch, but I, in generalization, I would throw that
4 out because I have, there's too much proof beyond
5 that kind of person who doesn't accept
6 self-responsibility. To me that's like, you know,
7 the welfare state, you know. You pay someone to do
8 certain things, and then you criticize them once
9 they do it. I hear what you're saying. There are
10 non-whites out there, if you say hey, you're not
11 getting this raise. That person says oh, it's my
12 color. And, I was looking in the paper here last
13 week, I think one of the questions on the Chicago
14 Policeman's exam had something to do with RSVP. And,
15 I thought it was utterly ridiculous for a city
16 legislature to say that was a biased question. How
17 was Blacks to know what RSVP means? I say this is
18 ridiculous. You see, so that's self-perpetuated,
19 and I hear what you're saying, but I wouldn't put
20 too much weight on it. What we needed is just for
21 folks to do the right thing. And, I think we know
22 what the right thing is. And, rather than get into
23 all these little sociological situations and every

1 study I've seen is indicating this. I mean, there
2 was a study in this town, I think taken by Dr.
3 Wilson and he talked to CEO's and he said, you know,
4 what's your perception of Blacks? He said, you
5 know, they're lazy, they're late. Now, this is the
6 guy at the top. Now, there's no law. I mean, the
7 guy at the top has already said hey, you know, this
8 is my perception of Black folks. And, it was the
9 same thing with respect to Hispanics. So, what I'm
10 arguing is that there is teeth there for stepping
11 across that line. Reality will change some of those
12 old cultural habits. And I'm not blaming the two
13 white males on this panel here for being white
14 because I can, you know, if you read Thomas Suel's
15 (ph) data, I can take you to the African continent
16 and you will see the same type of discrimination. It
17 just so happens in this country the guy who you know
18 who is on top is the white male. But, discrimination
19 is discrimination. The Soviet Union broke up over
20 this, and that was all white. So, I'm really arguing
21 for if you discriminate, you're going to pay for it.

22 MS. KHOURRY: One more comment, based on
23 what you just said, you made mention about the

1 Police Department. I think it was a month ago when
2 they had that special test for, to help minorities
3 rise up in the ranks, and they spent millions and
4 millions of dollars, and they had to re-work it
5 because not enough made the quota. How do you feel
6 about that?

7 MR. WALKER: Well, I'll tell you. After I
8 reached my 50th birthday and took early retirement
9 from Sears and said it was two things I'm going to
10 do, and one of those things was no longer to be
11 afraid to say what I thought the truth was. I find
12 it difficult to explain what's happening with
13 respect to the Policeman's exam, okay. I just find
14 it very difficult. I mean, every four years, we know
15 we have a, the election for President. I think the
16 folks on the police force, they know that there's an
17 exam. They know that that exam, in all probability,
18 is going to be written by someone white, and you
19 study, you study. And, if someone is giving white
20 males a copy of the exam, I think that needs to be
21 looked into. But, personally, if all I have read and
22 in speaking to some of the folks there and this gets
23 back to your, what you just asked me before, what

1 about those folks who say well, I'm not getting
2 ahead because of my color? You have the excuse. I
3 think it's a lot of excuses in here. If I use
4 myself as an example, I had been to a Black college
5 for two years when I tried to enter NYU. This was
6 prior to affirmative action, and I thank the Lord
7 for that. When I took the exam, NYU said to me, Lee
8 Walker, you came up short in College Algebra and
9 Writing and Reading Comprehension. I didn't like
10 that. I said these white folks, you know, they're
11 evil and racist. I know I can read. I was reading
12 250 words a minute. For two years, I walked around
13 saying I could read. And then, I said to myself,
14 Lee, do you want to enter NYU or do you want to
15 continue calling folks down there racist? The
16 answer was I want to enter NYU. And they had said to
17 me, you're going to have to take six months of
18 College Algebra and Reading Comprehension. I went
19 back and I took those six months and I can tell you
20 25 years later, it was the best thing that ever
21 happened, in my life. Coming through now, if they
22 had waived me from doing that, I would not have
23 ended up being able to start my own think tank and

10
1 be across the street here paying Loop rent. I
2 gained regardless of how many races there were at
3 NYU. I started off reading 250 words a minute and
4 after six months, I was reading 850 words a minute,
5 80% comprehension. So, I gained. To me, that has
6 nothing to do with affirmative action. I was not
7 prepared. It had nothing to do with my color. I was
8 unprepared to go into NYU. Now, you can argue well,
9 hey, you should have went to the City College of New
10 York. It's not as difficult as NYU. My heights were
11 higher, you know. My attitude was higher as to
12 where I wanted to go. So, I prepared myself that six
13 months, and I went back. And so, I hope in a long
14 way, the short way that sort of answers my feelings
15 about taking exams. Each executive at Sears takes an
16 exam. I can tell you, Sears did not change their
17 exams to fit some form, you know, for Blacks and
18 Hispanics. This is an exam that every executive at
19 Sears Roebuck must take this exam. If you're in data
20 processing, you take two. So, you know, so, I'm not
21 opposed to standardized tests. I would argue the
22 Black community was never opposed to standardized
23 tests. I came out of Alabama and I always said just

1 give me a chance to take the damn test, you know. We
2 can't pass tests, I would argue is something that
3 came out of the 1960's, you know. Tuskegee Institute
4 is standing, the Tuskegee Airmen, you know, they
5 jumped through those hoops to prove that Blacks can
6 fly a damn plane. Now, we're talking about I can't
7 study? So, I have no sympathy for someone that's
8 unprepared and doesn't get prepared, and then cry
9 discrimination. I have no sympathy at all.

10 CHAIRMAN MATHEWSON; Mr. Walker, just one
11 question. We'll make it the last before our break.
12 The idea of severe and forced enforcement of
13 discrimination, and severe penalties for
14 discrimination is certainly an interesting thought.
15 But, does our society, does our government have any
16 obligation to go beyond that to help people get into
17 a position in which they can allege foul if they
18 feel they didn't get fair treatment from a company
19 or from a college or whoever?

20 MR. WALKER: Mr. Chairman, I would say no.
21 I would say, you see, the government can't make us
22 feel proud. What the government owes us is an
23 atmosphere. The proper atmosphere to reach your

1 heights. I think we have the best government in the
2 world. If that government is not providing the
3 atmosphere, even either be for term limits or yank
4 that person out who is representing you, going into
5 the 21st Century, I do not see any role in terms of
6 what the government could do to make it easier other
7 than treat education the same level as we would look
8 at, I would say national defense. If I had to, you
9 know, say government, what do I want from you, that
10 would be making the atmosphere possible for have
11 nots to receive a quality education. And, that's
12 not new with me. Booker T. Washington said all
13 those things back in, you know, over a hundred yers
14 ago.

15 CHAIRMAN MATHEWSON: All right. We'll take
16 a break. Thank you both very much for participating
17 in our meeting, we appreciate your time and your
18 thoughts. We'll look forward to reading your papers
19 in detail.

20 Thank you for coming. We'll take a break
21 until 11:00 o'clock and we'll start promptly at
22 11:00 o'clock.

23 (WHEREUPON, a short recess was taken.)

1 AFTER RECESS

2 CHAIRMAN MATHEWSON: We'll reconvene. And,
3 one of our two 11:00 o'clock presenters is here,
4 fortunately and Ms. Puente, welcome, and would you
5 please give us a five-minute summary of your
6 statement, of which you have distributed. Everybody
7 should have a statement from Ms. Puente.

8 SYLVIA PUENTE

9 Right. We have prepared a summary, a
10 paper, I will not read the whole paper, but I will
11 lift obvious points I think are most salient. Good
12 morning. On behalf of the Latino Institute, a
13 22-year-old, non-profit organization whose mission
14 is to empower Latinos through leadership, training,
15 public policy analysis, research, and advocacy, I'm
16 pleased to provide a perspective on affirmative
17 action to the Illinois Advisory Commission to the
18 U.S. Commission on Civil Rights. I'm Sylvia Puente.
19 I'm Director of Public Policy and Advocacy for the
20 Latino Institute. Our paper is basically structured
21 so that we talk about what's affirmative action.
22 And from our perspective, affirmative action is a
23 public policy that seeks to remedy the inequalities

1 that exist along racial, ethnic, and gender lines,
2 and to reduce the disparities and gaps experienced
3 by minorities and women. From our perspective, as
4 long as inequality can be measured in its most
5 salient, along racial, ethnic, and gender lines,
6 inequalities of income, inequalities of poverty,
7 there will be a continued need for affirmative
8 action. I'm sure you'll hear from many other
9 speakers on what affirmative action is not, so I
10 won't go a lot into that, other than to say that
11 affirmative action was never intended to supercede
12 merit selection. We totally concur that the most
13 qualified individuals should have access. But, we
14 do believe that it's fair to take race, ethnicity,
15 and gender into consideration for remedial purposes
16 to achieve an equitable society. Especially since
17 many members of disadvantaged groups have not had
18 access to other forms of preferential treatment,
19 such as alumni, children of donors, old boys
20 network, and things of that sort. We do believe that
21 affirmative action is successful, and that it does
22 provide a way to expand opportunities for minorities
23 and women.

1 Just to highlight a few of the ways in
2 which, why we believe affirmative action continues
3 to be necessary due to existing discrimination and
4 inequality. My organization does conduct a fair
5 amount of research in terms of looking at this
6 position of Latinos in society, and one publication
7 that we release with both the Urban League and
8 Northern Illinois University highlights the
9 socio-economic status of Latinos, African-Americans,
10 and Whites over the last 20 years. And, the most
11 disturbing finding from that is that the income gap,
12 the gap of inequality, has actually widened between
13 Latinos and African Americans on the one hand, and
14 whites on the other.

15 Measuring indicators of income, poverty,
16 children in poverty, things of that sort over the
17 past 20 years, minorities have been on an economic
18 treadmill while the socio-economic status of whites
19 has, in fact, improved. So, the gap, despite our era
20 of affirmative action over the past 20 years, the
21 income gap and the poverty gap has actually widened.
22 And, our belief is that as long as that gap
23 continues to exist, there will be a continued need

1 for affirmative action. The paper that I have gives
2 some more specific examples in terms of employment
3 disparities, education disparities, I won't go into
4 all of those. But, part of our analysis is to say
5 here's what the numbers say, and by any measure,
6 these inequalities exist.

7 In terms of affirmative action, who
8 benefits and who should benefit, I'd like to offer
9 our perspective on how we see the beneficiaries of
10 affirmative action. And, I think that when we talk
11 about affirmative action, we know that affirmative
12 action, any type of affirmative action policy
13 benefits an individual, benefits the "disadvantaged
14 group" to which that individual belongs, and
15 benefits larger society. While the most direct
16 beneficiary of affirmative action policy is the
17 individual, the individual is critical to closing
18 the documented gaps and inequalities that exist in
19 the areas of education, employment, and contracts.
20 Closing these gaps can only be accomplished one
21 person at a time. However, through this process,
22 there are also benefits to the disadvantaged groups
23 and to a larger society. And, consider each

1 individual a particle of sand. Affirmative action
2 policies exist to eventually fill a hole with these
3 particles of sand so that our society becomes one of
4 proportionate representation. While individuals are
5 closing this gap, disadvantage as a group also
6 benefits. However, with the growing number of
7 individuals from disadvantaged groups being lifted
8 up, the disadvantaged group in turn is also lifted
9 up so that these individuals have contributed to
10 closing the societal inequalities or gaps that
11 exist. By contributing to the closing of these
12 gaps, we're a little closer to achieving apportioned
13 discrimination. Therefore, the status of the entire
14 disadvantaged group is improved, as is larger
15 society. For example, in the area of education,
16 affirmative action often assists in providing an
17 individual with the opportunity to receive an
18 education. An African American or Latina may gain
19 entry into a prestigious university and receive
20 scholarships for tuition. Given the scenario, it's
21 clear that affirmative action benefits the specific
22 individual. However, it's clear that that individual
23 will contribute to society by virtue of contributing

1 to a more educated segment of the population,
2 thereby closing the gap that continues to exist in
3 education between minorities and whites.

4 In the area of employment, an
5 individual is benefitted by wages, status, and
6 position. However, the position contributes to
7 raising the economic status of the community to
8 which they belong.

9 Similarly, in the area of contracts,
10 while there are clear benefits to the individual
11 business person, the existence of minority firms
12 also contributes to closing the gap of inequality
13 that exists between the disadvantaged group to which
14 the individual belongs, and larger society. These
15 benefits are derived even if the business person
16 themselves is no longer economically disadvantaged.

17 Within this affirmative action debate,
18 specifically in the arena of education, there's a
19 question of the equity of treating; for example, a
20 Latino doctor's son who is attending in an elite
21 prep school in the same way one would treat a poor
22 Latino boy living in the barrio and attending a
23 substandard high school. In this kind of situation,

1 it's important to realize while both young men may
2 reap individual benefits from affirmative action
3 policies, their achievement is also substantial gain
4 for his or her community. It's through these gains
5 that disadvantaged groups and larger society reap
6 the benefits of affirmative action policies.
7 Traditionally, affirmative action policies have
8 treated both of these young men in the same way.
9 However, at this juncture in the affirmative action
10 debate, the Latino Institute would like to suggest
11 that the economic status of the individual must also
12 be considered. Therefore, we suggest that a
13 two-prong test be used; that of race and ethnicity,
14 as well as economic disadvantage. In order to
15 insure sound implementation of affirmative action
16 and to insure that economically disadvantaged
17 individuals benefit, both prongs must be examined
18 together.

19 In the area of employment, we continue
20 to support the notion that it's fair to insure that
21 qualified minorities and women be given additional
22 consideration when jobs become available. It's fair,
23 we believe, to take race, ethnicity, and gender into

1 consideration for remedial purposes to achieve an
2 equitable society, especially since these groups
3 have not had access to other forms of preferential
4 treatment.

5 In the area of contracts, we believe
6 that a system of checks and balances must be applied
7 through the implementation of affirmative action.
8 One such form of checks and balances would be to
9 develop and/or implement criteria or compliance
10 standards. Examples of these criteria for making
11 awards to contractors might include a business'
12 track record and commitment in hiring minorities
13 from the community, to providing community support.
14 Ideally, all businesses, minority and non-minority
15 or not, would comply with these compliance
16 standards. However, many minority businesses are
17 already pre-disposed to this type of activity, given
18 the existing networks and work within the community.

19 To conclude, and I have a couple of
20 recommendations. Although affirmative action
21 generally benefits the individual, the final result
22 of such policy will inevitably benefit the
23 collective from which this individual stems. What

1 this means is when a Latina graduates from Stanford
2 University, she has not only contributed to her
3 personal education goals, but also to the
4 educational gains and economic status of all
5 Latinos, as well as the educational status of all
6 Americans. This, in turn, allows our country to
7 compete in the ever widening global economy. Before
8 the existence of affirmative action, minority groups
9 were virtually invisible in many employment sectors,
10 and educational institutions. With the advent of
11 affirmative action policy, gains have been made and
12 minorities and women have become more visible in all
13 facets of our society. However, these gains have
14 not been sufficient, and equalities and
15 discrimination continue to exist. As long as these
16 inequities continue to exist, affirmative action
17 will continue to be a necessary policy to achieve
18 that to which we aspire, a truly egalitarian
19 society.

20 Specific recommendations that the
21 Latino Institute would like to offer are in the area
22 of education. We support the utilization of a
23 two-pronged test in students admission to

1 educational institutions, that of race and
2 ethnicity, and that of economic disadvantage.

3 In the area of employment, we continue
4 to support the notion that it's fair to insure that
5 qualified minorities and women are given additional
6 consideration when jobs become available.

7 And finally, in the area of contracts,
8 we support criteria which consider a business' track
9 record and commitment to hiring minorities from the
10 community and their efforts to provide community
11 support.

12 Thank you for the opportunity to
13 present to you. I also have attached our two-page
14 fact sheet on why we believe affirmative action is
15 necessary. Thank you.

16 CHAIRMAN MATHEWSON: Thank you. Jeryl
17 Levin, as our other presenter for this half hour,
18 our format is we ask you to summarize your paper in
19 about five minutes, please, and then we'll address
20 questions to both of you.

21 MS. LEVIN: That will be fine.

22 JERYL LEVIN

23 Well, first of all, I'm not, I'm the

1 Executive Director of the Illinois Ethnic Coalition.
2 However, I took it upon myself to write this paper
3 from my own point of view, and it does not express
4 the opinions of the various people from diverse
5 backgrounds who make up the Board of the Illinois
6 Ethnic Coalition. We are exploring the issue this
7 year. We're asking a lot of questions about it, but
8 we don't have a, because we're such a diverse group,
9 we don't have a specific concensus on affirmative
10 action.

11 Also, as I guess a white female who
12 would be one of the protected class under
13 affirmative action, you may find my position or my
14 questions surprising. But, I have been doing a lot
15 of thinking over a couple of years. A lot of
16 reading on the issue, and the more I read, the more
17 questions I have, the more confused I become. And,
18 I'm uncertain whether I should have even agreed to
19 do this today. But, given that, basically, what I've
20 done in my paper is looked at the history of
21 affirmative action and looked at projections on
22 where we're going. The Year 2020 Census, the Year
23 2030 Census, what America will look like.

1 Intermarriage, which is increasing every year. I
2 have some numbers in the paper. It's 14 to 17%, with
3 Asian and Latino groups. It's 3% with African
4 American groups. The way that a lot of sociologists
5 look at intermarriage, I think very telling about
6 how we look at race, and that is we look at marriage
7 across racial and ethnic lines with whites instead
8 of across racial and ethnic lines with other
9 Americans.

10 So, keeping that in mind, I tried to
11 think in the Year 2020 what the country would look
12 like given the changing demographics and what
13 affirmative action in its present form, and I'm not
14 really even sure what that comprises, will say about
15 who and what we are as Americans. I believe that
16 affirmative action has gone through a lot of
17 different changes, depending on the various
18 administrations. It's hard for me to believe that
19 President Nixon, who greatly strengthened
20 affirmative action under the Philadelphia Plan, but
21 who had a platform of opposition to Civil Rights
22 when he was running, really had the best interest of
23 the country at heart in taking diversity into

1 account. I believe that affirmative action has been
2 a response to the threat of urban riots, which is
3 always omnipresent and always powerful, and has been
4 used with civil rights groups, CORE especially, as a
5 sword.

6 I also believe that we have some
7 dueling narratives in the United States that speak
8 to this inability to deal with race; and that's we
9 have the narrative of slaves. The issue of slavery
10 has never been resolved in this country. We don't
11 talk about it. We say that was 400 years ago, it's
12 gone, it doesn't matter. But, we also have the
13 narrative of all these other people who have come
14 from different places and have undergone oppression,
15 discrimination, repatriation, internment camps, the
16 stories go on and on and on. Unfortunately, they
17 don't become a part of the American myth or the
18 American story. When I opened up a textbook in the
19 1960's in elementary school, I didn't read about my
20 people who were Jewish, nor did I read about any
21 other people of color. And, I don't think that can
22 be separated from affirmative action because this
23 conversation is very, very large. I believe that

1 affirmative action initially was a demand, was a
2 movement that was propelled by Blacks for social
3 justice in America. Women were not included under
4 affirmative action legislation until 1971. The
5 Women's Movement, the Suffrogette Movement was a
6 completely different and parallel movement that
7 found its nitch in the umbrella of affirmative
8 action, as did I think the movement with Latino
9 identity, with Asian identity, with white ethnic
10 identity. Everybody screamed in the 1960's. In
11 fact, it wasn't until 1971 that Mexican Americans
12 were considered a distinct group of Latinos,
13 according to the Census. They had previously been
14 considered white. And, Arab Americans are still
15 considered white. So, what are we going to do about
16 a middle eastern category? Is, everybody gets under
17 this umbrella of identity politics, and we all want
18 our separate identity and, which we advocate
19 political freedoms and rights. So, placing
20 affirmative action in the context of the Civil
21 Rights Movement, and taking it back to the first
22 language that appeared on affirmative action, which
23 was in Executive Order 10925, which was signed by

1 President Kennedy. And it was, it established
2 Kennedy's Commission on Equal Opportunity. The
3 language is very specific about affirmative action.
4 It's mentioned once in that Executive Order. It
5 says, "The contractor will take affirmative action
6 to insure that applicants are employed and employees
7 are treated during their employment without regard
8 to their race, creed, color, or national origin."
9 It's very specific. The Civil Rights Act of 1964
10 appropriated the same language. It did not expand
11 the definition of affirmative action. And, one of
12 the authors, who I was reading, really summed it up
13 very nicely. And, I summed it up in this report
14 that 1964 was the last time affirmative action would
15 have a clear and circumscribed meaning.

16 I think that the various Supreme Court
17 decisions and legislations that have re-defined
18 affirmative action or expanded it or limited it have
19 also muddied the waters for we, as Americans, to
20 understand what it's even about. Affirmative action
21 is simply what Kennedy said it was then, we will not
22 discriminate based on color, creed, gender, or
23 national origin. Then, why do we use terms like

1 goals and timetables, quotas, quality of results,
2 adverse impact, disparate impact, race norming,
3 institutional racism, discrimination, reverse
4 discrimination, minority set asides, on and on and
5 on. Is this also affirmative action? Is
6 affirmative action a commitment to diversity, a
7 commitment that our institutions, public and
8 private, will look like America? If that's
9 acceptable language, then how do we insure that just
10 the good will and motivation to do this is enough?
11 We have to have affirmative action, and we have to
12 count heads to make sure that that affirmative
13 action, in its present form, is valid. So, the
14 problem with counting heads is that whose head do we
15 count and how do we put them in this little box that
16 says you're Black, you're White, you're Latino,
17 you're Asian, you're a Woman? Well, the latter part
18 is pretty clear. So, we come up with race on one
19 hand, as this political concept, this way that we
20 advocate for rights. And, on the other hand, race
21 also takes into account ethnicity, which is almost a
22 cultural thing, and I explore that a little bit
23 later when I talk about intermarriage in this paper,

1 and about how ethnicity, how race with intermarriage
2 translates to ethnicity, translates to culture,
3 translates to highbred culture. In terms of if one
4 of my parents is Italian American and the other is
5 African American, and what I choose to take from
6 each of those identities and call my own and become
7 a whole person with that identity.

8 So, I think that affirmative action is so
9 generic and so broad, that to have a debate about
10 it, we first have to set up the terms of that debate
11 and figure out what we're talking about because I
12 cannot figure out if I'm for or against unless I
13 know what it is I'm for or against. Am I for
14 diversity? Am I for equal opportunity? Am I for
15 non-discrimination? Of course I am. In my paper, I
16 do go into a little bit how the various presidential
17 administrations, Democratic and Republican, have
18 used affirmative action to further their own
19 political agendas, going back to the Nixon
20 Administration, I believe that the greatest gains, if
21 we can call what's been made today as gains in terms
22 of set asides or quotas or other things that fall
23 under this great, big umbrella of affirmative

1 action. President Nixon definitely solidified that,
2 but Detroit was burning in the background. And, I
3 believe that's why he did it.

4 CHAIRMAN MATHEWSON: Ms. Levin, can you
5 conclude your summary, please, so we can get into
6 questions?

7 MS. LEVIN: I am. In conclusion, I give
8 some statistics on intermarriage, projecting what
9 racial and ethnic identity will be like in the Year
10 2020 and beyond, and how as a country, we're going
11 to deal with this on the Census which advocates the
12 rewards to cities or the non-rewards, depending on
13 the time. And, what are we going to do? Are we going
14 to have 5 million categories on the Census or is
15 someone really going to start addressing the issue
16 of race and ethnicity in the United States, which I
17 don't feel has been addressed in a way that leads us
18 down the road to making a better country and being
19 truly inclusive. And, that really summarizes what
20 I've said in these ten pages.

21 CHAIRMAN MATHEWSON: Thank you very much.
22 Mr. Ewing?

23 MR. EWING: One of the arguments that is

1 popular in being presented in opposition to the
2 generic definition of affirmative action or the
3 unclear definition of it. One of the arguments
4 that's been presented is that America has dedicated
5 enough time and enough efforts to eliminating the
6 negative impact of racism in America and, therefore,
7 there's no longer a need for these type of programs.
8 And those who are benefitting or hope to benefit or
9 who were designed to be the beneficiaries of the
10 program should now sit back and trust the
11 decision-makers to no longer be racist. What's your
12 feeling on that?

13 MS. LEVIN: Well, that takes an awful, it
14 depends on where you're coming from, you know, and
15 what eyes you see things through. If I was seeing
16 things through Black eyes, I could not buy that
17 argument, I could not buy that. I'm seeing things
18 through white eyes, and maybe, you know, maybe I
19 believe, maybe I'm optimistic, maybe I believe that
20 people aren't racist anymore. Actually, I know
21 better. So, I don't buy into that argument at all.
22 But, I do have a point, and that is does affirmative
23 action benefit individuals. And, in doing so, are

1 we expecting the individuals, like you pointed out,
2 to go back into their own community and then create
3 jobs in their own community, which then gives the
4 cycle even, you know, further momentum or what's the
5 expectation, or is it just an individual reward?

6 MS. PUENTE: I would argue that I just
7 think we need to point out two examples that while
8 we may say there's no longer overt discrimination,
9 whatever we do or believe on a particular issue,
10 when we have a society at its most basic fundamental
11 level within our education system, which is still,
12 we can see clearly the inequalities in our education
13 system, and the kinds of opportunities afforded to
14 children in our educational center, within our urban
15 centers, and throughout the region, how do we foster
16 equality when we have in place an education system
17 that does not provide a system which equitably
18 educates everybody?

19 MS. LEVIN: And, affirmative action has not
20 addressed that at the most basic level, beginning
21 from Kindergarten, although Headstart programs may
22 be considered that. We're talking about college,
23 that's the big debate. But, that's too late, in my

1 mind.

2 CHAIRMAN MATHEWSON: Mr. Pugh?

3 MR. PUGH: Sometime back when the late
4 Harold Washington was running for Mayor of Chicago,
5 I was doing an article on the subject of the Chicago
6 Mindset. And, the Chicago Mindset that I was
7 working on was that white mindset, you might say,
8 the white prejudice in Chicago was kind of
9 epitomized across the country. Maybe Chicagoans
10 didn't realize that, but I asked Washington the,
11 question about how he was doing vis-a-vis the
12 Hispanic vote and he said well, he didn't really
13 expect to get much of the Hispanic vote because, you
14 know, they think they're white, he said.

15 MS. PUENTE: My organization is working
16 extensively and analyzed Census data, and Latinos do
17 fall into a category. First, there's the racial
18 designation, then there's the ethnic definition. In
19 a place like Chicago, more than half of all Latinos
20 checked other race. They're given the options
21 White, Black, and Other Race. More than half
22 checked Other Race. So, I think that that's one
23 indication of that, of a response to your question.

1 MR. PUGH: I didn't finish the question,
2 but I appreciate the response. The question was
3 about to go on, would be to go to Ms. Levin, and say
4 you pointed out the lack of inclusion of certain
5 ethnic groups. I think you mentioned, how shall I
6 describe them, Arabic, Muslim, whatever that group
7 is?

8 MS. LEVIN: You can describe them that way.
9 Talking about a middle eastern category. Would that
10 also include Israelis who immigrate to the United
11 States?

12 MR. PUGH: That's my question. We know
13 historically Americans have discriminated against
14 Jews in stronger, more vicious ways than they have,
15 than any other group with the exception of Blacks,
16 and they're not covered by any categories. My
17 question is, finally, after all this, is what parts
18 of what we generally include as affirmative action
19 are important to your organization, the salvaging of
20 it, preserving of it, if we're going to eliminate
21 certain pieces of governmental action in the area of
22 anti-discrimination or in the area of affirmative
23 action, what ones are basically ones should we cling

1 to? We find ourselves having to have budget cuts
2 that say we can only worry about certain things.
3 What things should we worry about, the basic?

4 MS. LEVIN: Really good question. I'm not
5 sure I have the answer for it.

6 MS. PUENTE: My organization's fundamental
7 premise, and this is interesting, considering the
8 diversity of the different ethnic groups being
9 discussed here, is that inequality can be measured
10 and defined along racial and ethnic lines. Then,
11 that's an area that needs affirmative action.
12 African Americans in the Chicago metropolitan area
13 have a median family income which is 52.7% that of
14 whites. Latinos have a family income which is 68.5%
15 that of whites. When we see that kind of a disparity
16 where it's in income and we can show the same kind
17 of disparity in poverty, we can show the same kind
18 of disparity in educational attainment, as long as
19 one of the defining characteristics for that wide of
20 a gap, that chasm of inequality exists, affirmative
21 action policies must be addressed to minimize and
22 close that disparity.

23 MR. PUGH: Programs, then, you're saying

1 programs would change the economic relationship.

2 MS. PUENTE: Economic, education, poverty,
3 yes.

4 MR. PUGH: Mindsets, back to my original
5 question, are mindsets important? Should we have
6 programs that worry about mindsets?

7 MS. LEVIN: In terms of mindsets, what
8 specifically, in terms of how each group perceives
9 the benefits coming down to them or perceives them
10 apart of affirmative action.

11 MR. PUGH: Why do white men discriminate
12 against Black men? Is it a mindset that makes them
13 do it? A prejudice, I guess, forget the word
14 "mindset", use the word "prejudice". Should we have
15 prejudice fighting programs or should we have --

16 MS. LEVIN: I think we have prejudice at
17 all levels of people's interactions with each other,
18 you know, it's very hard for me to quantify that
19 sort of thing.

20 MR. PUGH: Should the government have
21 programs that fight them, that's my question?

22 MS. LEVIN: I think the government needs to
23 have programs that fight them because the government

1 is the big culprit. But, conversely, if you look at
2 how ethnic groups have ascended through the economic
3 ladder in this country, the base of accession after
4 many white ethnics climb that ladder through factory
5 jobs and so on, in each group filled their own
6 particular nitch, you cannot make generalizations
7 about any group. I think they all fit in the nitch.
8 But, after whites climbed the working class ladder,
9 sent their kids to school, sent the second
10 generation, third generation to colleges and for
11 some white ethnics, it took longer than others, that
12 bottom was pulled out. African Americans and
13 Latinos were next on that ladder, and those jobs
14 left. There was nothing to replace them. Government,
15 to a large extend, filled that void for African
16 Americans mainly, and now we're looking at cutting
17 affirmative action in government and who are we
18 talking about, really? Who are we talking about? I
19 have a quote, and I found that I read in the
20 "Sun-Times" which states with me, I read it two
21 years when they were finding all this mail
22 everywhere at the Post Office, and people were
23 burning, postal workers were burning mail and a

1 woman wrote into the "Chicago Sun Times" and said,
2 "White people may look at the Post Office and see a
3 bloated and inefficient bureaucracy. Black people
4 look at the Post Office and see jobs." So, you're
5 asking an awfully big question, and I've studied how
6 various ethnic groups have ascended economically,
7 and it's a huge question. It's a huge issue that I
8 don't know necessarily is really in the public
9 consciousness.

10 MS. PUENTE: And, I would argue to the
11 extent that it's part of our human nature to
12 associate with those most like us, and I think that
13 the only way we get beyond those existing boundaries
14 is to specifically sit down and dialogue and have
15 experiences with other individuals who are not like
16 us, who are members of different racial and ethnic
17 groups. So, to the extent that I think attention
18 being paid to programs which promote experiences
19 where individuals from different groups can interact
20 together so they have a better understanding of each
21 other, that's also something to consider in
22 government's response to affirmative action.

23 MS. LEVIN: I don't know if government is

1 the one I trust, necessarily, to dictate the terms
2 of how we relate to one another. My Board likes to
3 be able to do that without government assistance.

4 MR. PUGH: I threw the government in
5 because this is the government panel here.

6 MS. LEVIN: Sorry.

7 CHAIRMAN MATHEWSON: Ms. Bombala?

8 MS. BOMBALA: I'm just going to say to Ms.
9 Levin, you might be interested to know there's a
10 bill in the General Assembly this session to develop
11 a category of multi-racial. So, I don't know if your
12 group is involved in that. So, that probably will
13 help part further the division. But, I think that,
14 in terms of your discussion, I mean, I don't know
15 where a lot of the points of disagreement are. If
16 your affirmative action, I think has been broadened
17 to cover a lot of different issues as a term that
18 are really public policy issues and not necessarily
19 always affirmative action issues, and I think that
20 that's where some of the confusion lies.
21 Affirmative action is a remedy for discrimination,
22 and past discrimination. And, if we can agree that
23 in fact, there's yet and still discrimination in

1 this country, then I believe that remedies are still
2 necessary and important to pursue. In terms of
3 different societal issues, in terms of different
4 public policy issues, and how are we going to become
5 the great society that we were, was in the '60's
6 where it's a color blind society, I think those
7 bring into mind other public policy issues that, to
8 date, no other country in the world has necessarily
9 been able to fulfill in total. And so, I think that
10 in terms of your paper and your discussion, I would
11 ask you to look at those two as two separate kinds
12 of issues and not to denigrate one simply because
13 the second tests --

14 MS. LEVIN: Oh, no, I'm not denegrating
15 either of them. Historically, I think affirmative
16 action was the bones that a black/white society,
17 before it considered itself a multi-racial society,
18 threw out for reparations for slavery. That's my
19 historical context. We can have a lot of
20 disagreements for that, and I still think that that
21 cloud hangs over the head of America. And--

22 MS. BOMBALA: But, I think one of the
23 things that I would see is that it's in terms of

1 affirmative action, we have this, I work for an
2 agency that deals with discrimination in terms of
3 affirmative action. One of the battles we have is to
4 not expand categories too broadly so that it ruins
5 and, in fact, changes the focus of the program from
6 what it is as a remedial program for discrimination.
7 And, I think that many times through our efforts to
8 broaden the categories to, that would, in fact,
9 weaken the program from what it is intended, is
10 actually meant to be.

11 MS. LEVIN: It depends on what America would
12 look like in a few years.

13 MS. BOMBALA: So, the categories for
14 discrimination and for affirmative action are, in
15 fact, different. And, I think many times that gets
16 to be a confusing issue for people in the general
17 public.

18 CHAIRMAN MATHEWSON: Okay. We're going to
19 have to terminate this discussion. Thank you both
20 very much for coming here. We'll look forward to
21 reading your papers. We appreciate your
22 participation.

23 The next presenters are Sam Rosenberg

1 and Nancy Kreiter. Welcome to both of you. And, I
2 understand Ms. Kreiter has a plane to catch.

3 MS. KREITER: No, I don't. But, I'll be
4 glad to claim it. I cannot tell a lie.

5 CHAIRMAN MATHEWSON: Whatever. Would you
6 like to proceed first? This is a five minute
7 summary we're asking you to give us of your written
8 statement, and then we'll proceed to questions.
9 Five minutes each.

10 MS. KREITER: Thank you.

11 NANCY KREITER,

12 On behalf of Women Employed and the
13 Coalition for Equal Opportunities in Illinois, I'm
14 here today to voice unequivocal support for
15 affirmative action policies and programs that remain
16 critically important to combat persistent
17 discrimination, promote diversity, and create a
18 level playing field for those who would otherwise
19 not have equal opportunity to go to college, get a
20 job, or win a contract.

21 Affirmative action is fair, it's
22 necessary, and it works. My presentation primarily
23 concerns the impact of affirmative action on women's

1 employment patterns. Affirmative action
2 requirements and programs have been an essential
3 component of women's progress in employment. The
4 concept of affirmative action, the development of
5 specific plans and performance measures to increase
6 the representation of women and minorities in job
7 categories in which they are under-represented was
8 adopted only after it became clear that government
9 policies of passive, non-discrimination were not
10 sufficient to provide equal opportunity.
11 Affirmative action has evolved into a fair and
12 equitable policy, widely applied to public and
13 private employment with bipartisan political
14 support, affirmed in principle and practice by the
15 Supreme Court. However, the current debate on
16 affirmative action has been a distorted one which
17 has created confusion about what affirmative action
18 is or is not.

19 Affirmative action does not mean
20 preferential treatment, quotas, or the hiring of
21 unqualified people. In fact, these activities are
22 specifically prohibited under federal regulations.
23 Affirmative action is a tool, a tool that affords

1 qualified individuals a fair and equal opportunity
2 to compete for employment on the basis of their
3 merit, not their gender or race. Outreach
4 recruitment and training are examples of affirmative
5 action practices implemented to insure that all
6 applicants and employees compete on an equal
7 footing. Affirmative action thus opens doors to
8 qualified individuals who might otherwise be
9 excluded because of prejudice. Once people get the
10 opportunity, they must prove their own merit for
11 jobs and promotions.

12 There's ample documentation that
13 affirmative action programs have been responsible
14 for significantly increasing the employment
15 opportunities of women in jobs from which they have
16 been excluded historically. Since 1970, the
17 percentage of officials and managers who are female
18 has risen from 16% to over 40%. The percentage of
19 women in graduate business schools has risen from 4%
20 to 34%, and women in law schools have increased from
21 13% to 43%. Furthermore, the number of women owned
22 businesses has increased by 43% in just the past
23 four years, and these businesses employ 15.5 million

1 persons in the U.S., 35% more people than the
2 Fortune 500 companies employed worldwide.

3 Some of the most impressive increases
4 in women's participation were achieved in specific
5 industries and occupations which were targeted by
6 organizations and the Office of Federal Contract
7 Compliance Programs early on; in higher education
8 institutions, the banking industry, and non-retail
9 sales. The progress has been significant, but much
10 remains to be done. Many occupations remain
11 segregated by sex with women vastly underrepresented
12 in many higher paying fields. Women comprise only
13 8% of police officers, 8% of engineers, and 16% of
14 architects. Wmen remain concentrated largely at the
15 lower levels of employment. While women make up 46%
16 of the work force, they represent only 5% of top
17 management at Fortune 2000 companies. White men, on
18 the other hand, comprise 43% of the work force, but
19 hold 95% of senior management positions.

20 The gender gap in earnings persists,
21 and it's worse in the Chicago area than the nation,
22 as a whole. Affirmative action is clearly not
23 completed its task. Discrimination, occupational

1 segregation, and the wage gap persist. If we're
2 truly committed to insuring equal opportunity for
3 all individuals to compete and excel in today's
4 workplace, it's critical to preserve affirmative
5 action. It's proved to be a useful, remarkably
6 successful tool to open the doors of opportunity to
7 those who have been excluded. It has not caused
8 rampant reverse discrimination. It does not require
9 quotas. When implemented carefully and correctly,
10 affirmative action is fair, and it works. We urge
11 the Illinois Advisory Committee to the U.S. Civil
12 Rights Commission to take a lead role in putting an
13 end to one of the most divisive political debates
14 that the nation has experienced. Together let us
15 shift the focus to constructive initiatives to
16 narrow a persistently unfair wage gap, to shatter
17 unacceptable glass ceilings, and to chip away at the
18 all too apparent brick walls that shut out women and
19 minorities from higher paying jobs. Thank you.

20 CHAIRMAN MATHEWSON: Thank you. Mr.
21 Rosenberg, welcome back.

22 MR. ROSENBERG: Thank you, it's good to be
23 back.

)

SAM ROSENBERG

1
2 My paper is entitled "Affirmative
3 Action, Still Needed After All These Years".
4 Affirmative action in employment is extremely
5 controversial. The most vocal critics argue that
6 it's no longer needed. Labor market discrimination
7 has disappeared, and as a result, today's
8 beneficiaries of affirmative action may not
9 themselves have ever experienced employment
10 discrimination. And, white males today, who are not
11 themselves, who may not themselves have ever
12 benefitted from the existence of racial
13 discrimination in the labor market, are being forced
14 to pay for the sins of their forebearers.

15 Affirmative action is tantamount to
16 reverse discrimination. Not only is affirmative
17 action said to be inappropriate policy for a
18 non-existent problem, it is also thought and filled
19 with economic deficiency. Requiring employers to
20 use racial criteria in hiring and promoting workers
21 likely leads to less qualified individuals being
22 hired or promoted or, so the critics argue.

23 It is my opinion that the critics are

1 wrong, that discrimination along racial lines still
2 exists, thereby necessitating affirmative action
3 policies to remedy not past discrimination, but
4 current discrimination. Furthermore, such
5 discrimination interferes with the overall efficiency
6 of the economy, and thus affirmative action is
7 needed both on equity grounds and efficiency
8 grounds.

9 In the paper that I will present to
10 you, give to you, there are three sections. The
11 first section provides the results of audit studies,
12 employer interviews, and large scale statistical
13 analyses which document the continued existence of
14 discrimination. I think my presentation should put
15 to rest the notion that discrimination is a thing of
16 the past.

17 And, with these data as a base, the
18 second section provides theoretical support for
19 affirmative action as a policy for remedying
20 discrimination and improving economic efficiencies.

21 And, the third section presents
22 evidence that many African Americans have benefitted
23 from affirmative action policies. So, it is more of

1 an academic paper than a position paper. So, I'll
2 just quickly go through it and you can read it at
3 your leisure.

4 Essentially, starting with the audit
5 studies, the most famous audit studies have been one
6 by the Urban Institute in Washington, D.C. And,
7 essentially, what they did is they take individuals,
8 a white young man and an African-American young man,
9 who were the same, looked the same, had the same
10 speech patterns and same behavior pattern, and they
11 gave them the false resume. And the false resume
12 said they had the same educational background, the
13 same work experience and the like, and they sent
14 these people out in Chicago and Washington, D.C.
15 And, lo and behold, what they found is that while
16 many employers did not discriminate, about 20%, in a
17 sense, did. And, the discrimination took place at
18 both the interview process, the interview itself,
19 and the hiring process. And, in most instances,
20 when either one member of the pair got an interview
21 or got a job, more often than not it was the white
22 member of the pair, less so the African American
23 member of the pair.

1 Now, there are problems with audit
2 studies, and it's a small sample, but it suggests,
3 if you believe them, that racial discrimination
4 exists today.

5 Second, I present some information on
6 employer interviews that were done in Chicago. And,
7 the people who did the interviews comment in their
8 paper they were shocked at how easily employers
9 spoke to them about racial questions. Racial
10 questions combined with social class questions. I
11 wasn't just race, it was race and social class, how
12 easily they spoke about that with interviewers and
13 how often they talked negatively about African
14 Americans, particularly African Americans from inner
15 cities who may have lived in low income projects.

16 Furthermore, many large scale
17 statistical studies have been done of the wage
18 differential and of differentials in hiring and
19 promotion. I've done some of them myself. And, what
20 they show, I think quite clearly, is that
21 controlling for all sorts of factors that might
22 influence your likely being hired or promoted, your
23 education, your age, your seniority, there still is

1 something left unexplained when you compare the
2 experiences of African Americans and whites, both
3 men and women within racial groups. Now, that which
4 is not explained can reasonably be interpreted as
5 discrimination.

6 The next part of the paper looks at
7 the question of economic deficiency and the need for
8 anti-discrimination policies. Very quickly, if there
9 is discrimination on racial grounds, then African
10 Americans are not able to reach their full potential
11 in the labor markets. And likely they'll make
12 decisions about their educational choices, the
13 training choices and the like, that will likely lead
14 to less education and less training than otherwise
15 would be the case in a non-discriminating
16 environment. To the extent that takes place, the
17 individuals lose, but society loses as well, not
18 being able to utilize its labor force to the
19 fullest.

20 Suggesting the need for
21 anti-discrimination policy. The third part of the
22 paper runs through studies that have been done of
23 affirmative action. Narrowly construed, that is

1 comparing employment levels of African Americans and
2 whites in federal contractors and non-federal
3 contractors, using the notion of affirmative action
4 as it's presented in the executive order of Johnson
5 and Nixon. And, what these studies show, quite
6 clearly, is that in federal contractors, the rate of
7 growth of employment of African Americans in the
8 1970's when affirmative action was enforced more
9 strongly than today was more rapid than for whites.
10 The studies also show that the rate of growth for
11 employment in the better jobs among the contractors
12 was more rapid for African Americans than for
13 whites. What the studies also show is those firms
14 where the government came in to investigate, the
15 rate of growth of employment was even faster than
16 other contractors, suggesting that affirmative
17 action has had a positive role when strongly
18 enforced.

19 Now, affirmative action is not a
20 panacea for the problems that African Americans face
21 in the labor market. The unemployment rate
22 differential between Blacks and Whites was more than
23 2 to 1 in the 1970's when affirmative action was

16
1 being enforced. It rose somewhat in the 1980's, but
2 still, to the extent that, the height that it was in
3 the '70's suggests that affirmative action only had
4 limited benefit on a limited number of people. It
5 doesn't suggest it shouldn't exist, but it does
6 suggest it's not entirely the answer. And, the
7 evidence on unemployment differentials remaining
8 high and stable suggests to some people that all
9 that affirmative action has done is shift the
10 employment of African Americans from non-contractors
11 to contractors, to federal contractors. It has not,
12 in a sense, led to increased employment
13 opportunities to African Americans throughout the
14 economy. I don't believe there's any evidence to
15 support that, but that's a statement that's being
16 made more often now than in the past.

17 In conclusion, I would argue that now,
18 more than 30 years after the passage of the Civil
19 Rights Act of 1964, many African Americans continue
20 to experience discrimination in the labor market,
21 and an anti-discrimination policy is needed for the
22 government to utilize. And, affirmative action,
23 strongly enforced, should be a central plan in that

1 policy. It should not be a panacea for African
2 Americans needing full time, long-term jobs paying
3 decent wages and providing chances for advancement,
4 but it's a start, an important start. And, without
5 it, I suspect what you'll see is existing race based
6 inequalities in the labor market will continue to be
7 produced in the next generation, and society will
8 continue to pay the costs associated with not
9 utilizing the potential skills and capabilities of
10 the labor force.

11 CHAIRMAN MATHEWSON: Thank you. Mr.
12 Roberts?

13 MR. ROBERT: To Ms. Kreiter. Your support
14 for affirmative action, we have been informed by
15 several panelists that prior to 1971, women were not
16 included as a part of the initial executive order.
17 Your support with the women's group, do you feel
18 that; for example, there are back women in the group
19 that you represent?

20 MS. KREITER: Yes, there are many.

21 MR. ROBERTS: Women Employed. Does this
22 serve the dual purpose of major corporations? For
23 example, there's an opening for a female, there's an

1 opening for a Black, and this is one of the
2 criticisms that has come into force or indeed, this
3 criticism dates back to 1971. Your group sends a
4 Black Woman to fill a vacancy. That also fills,
5 fulfills your organization's goal of women employed.
6 But, do you see that as being, as justifying the
7 criticism that is coming based upon one person being
8 able to fulfill two goals for that corporation?

9 MS. KREITER: You talking about the
10 double-counting?

11 MR. ROBERTS: As far as head counting is
12 concerned.

13 MS. KREITER: Well, I can't really respond
14 to that in terms of the goals of my organization
15 because when I look at affirmative action, we look
16 at affirmative action, we don't look through a
17 single lens, a single gender lens. I think that
18 historically, and we've heard how the executive
19 order came about. There's no question that
20 affirmative action was initially a concept to deal
21 with racial discrimination, employment
22 discrimination in this country. And actually, the
23 first executive order went back to FDR, to the war,

1 to ask defense contractors to allow Black males to
2 be employed in making weapons. And, it grew from
3 there. I believe that women were added to the
4 executive order in much the same way they were added
5 to the Civil Rights Act of 1964 during the debates.
6 When, in fact, you looked at discrimination in
7 employment in this country, and you realize that
8 women and minorities fates were inextricably wound
9 together in terms of stereotypes and barriers to
10 advancement that were being put up; albeit different
11 stereotypes and different barriers, many are the
12 same. I think there are definitely ways to abuse
13 affirmative action. And abuses of affirmative
14 action should not be tolerated, and they shouldn't
15 be allowed. However, I also know that those
16 employers who made good faith efforts to embrace
17 affirmative action principles and are trying to use
18 their resources in the most business efficient way
19 for them are not looking to double counting. They're
20 not looking to fulfilling goals to make it a number
21 game. What they're looking to is to cast a wider
22 net, get a bigger pool of qualified individuals to
23 select from and then make that decision based on

1 that qualified pool. If they look at a specific
2 department, a specific job, whatever you want, and
3 find under representation of minorities or women or
4 perhaps a minority woman, and those people are in
5 the pool, then yes, they're going to say well, that
6 will satisfy a diversity goal we have, and it's
7 already qualified. When you are doing the
8 utilization analysis that is required of federal
9 contractors, it is very difficult actually to double
10 count because you must look at the pool of qualified
11 women, Black women, Black males, white males, et
12 cetera. It is broken down and compared against labor
13 force data so that if you are trying to reach out
14 and make the right effort, you have to show that
15 you're represented and there's parity across the
16 board.

17 So, I think there's a lot in this
18 debate has to do with charges like that, that from
19 my standpoint, I would just love to say, show it to
20 me, show it to me. Where are all these white males
21 who have lost their jobs because of preferential
22 treatment to women and minorities? Where are all
23 the contracts that are going to minority and women

1 vendors that have been taken away? Where is all
2 this double counting? I think you can find an
3 individual example here and there, and then that's
4 blown up by the media, by those who oppose it. But,
5 I think if you do careful study, as we have just
6 heard analyzed, and if you really, really look at
7 the data and if you are involved with the employers
8 who are voluntarily taking those actions, you know
9 that that's not going on in any wide scale in this
10 country.

11 CHAIRMAN MATHEWSON: Mr. Scales?

12 MR. SCALES: I think you've addressed my
13 question, but I'm going to ask it anyway to see if
14 there's a different angle. Initially when you
15 started out, you talked about affirmative action
16 being a tool to, you know, a fair tool. And, the
17 issue I wanted you to address in its concept of
18 being a fair tool, could that also give some
19 explanation as to why the numbers of women and
20 minorities in the work force is low? Now, I'll give
21 you an example of what I'm talking about. If it is
22 only a tool, and I use it as a tool to widen the
23 group, it didn't say I had to select a minority, a

1 woman, but it's only a tool, then I could widen my
2 pool, meet everybody's expectations with my
3 broadened pool, and still go ahead and accept a
4 white male, correct?

5 MS. KREITER: Well, I think it depends on
6 the circumstances. You can widen your pool, I think
7 it has a two-fold answer. Under strict, and back
8 again to utilization analysis, looking at under
9 representation, setting a goal based on what's
10 available and then making a choice. And if you do
11 not, if you cannot show availability at doing the
12 technical analysis that's required of you as a
13 federal contractor, you've reached out and you've
14 done outreach and recruitment, technical analysis
15 and training, all that, yes, you could end up with a
16 white male. However, if you widen that pool and you
17 create a pool, a diverse pool of candidates, and
18 then you go one step further to say do I have an
19 affirmative action requirement here? Am I, is this
20 job, this position fall within an under-representng
21 category? The answer is yes, I'm way
22 under-represented on Black males. Then, no, you
23 cannot take someone with substantially equal

1 qualifications, a white male, and demonstrate that
2 that was a good faith effort to the government.

3 Now, that's the very technical sense
4 of doing it. There are all sorts of ways of
5 casting a wide net. You can cast a net with a, you
6 know, your left hand instead of your right, and get
7 a really little net there. You can say what
8 constitutes qualifications that are not job related
9 in the least, and keep it very narrow. And, I think
10 that what we have found in the most recent years
11 with the government's glass ceiling initiative is
12 kind of assumptions, management career assumptions
13 about women, about minorities that have even shocked
14 upper management in this country because they hadn't
15 really focused on how they did succession planning
16 or how the network, communication network worked
17 within a corporation, or how they really did do
18 recruitment. Did they only recruit from within? Did
19 they only recruit from without? What did they ask
20 from executive recruiters? And so, those are all
21 the elements that become further refinement of the
22 tools of affirmative action. When I say a tool, I
23 mean it's, it goes back to, you know, there's no

1 business worth their salt in this country who
2 doesn't use measurements to look at profits, to look
3 at production, return on capital, whatever, to see
4 what kind of progress and to bench it. And,
5 affirmative action in using a goal and using a
6 timetable is exactly the same thing to measure the
7 progress of achieving a diverse and equally
8 accessible course. I don't know if that answers
9 your question.

10 MR. SCALES: No, actually it did. And,
11 there was a two-fold part to it. The other part, of
12 course, was the under-representation issue. But,
13 you've already spoke to that, so thank you, Mr.
14 Chairman.

15 CHAIRMAN MATHEWSON: Thank you. Ms. Choi?

16 MS. CHOI: Yes. Ms. Kreiter, earlier this
17 morning we had an employer representing attorney who
18 talked about the self-regulating type of numbers
19 consciousness of corporations because they're
20 looking at their bottom line and without
21 affirmative, even without affirmative action, they
22 will do it anyway. So, his argument was why have
23 affirmative action, it's just sort of a nonsensical

1 tool because the market is regulating itself.

2 Respond to that from your perspective.

3 MS. KREITER: I think it goes with the last
4 answer I gave, you know. First of all, I don't buy
5 the argument that employers do this anyway because
6 of the bottom line. I think the data and the studies
7 show that federal contractors do it way more than
8 those that are not under any requirements to do so.
9 We certainly know, within the Fortune 1000
10 companies, that there are a hierarchy of companies
11 that have embraced affirmative action from early on,
12 those that have revised it, those that have gotten
13 sued, those that have gotten religion late in life,
14 and those that haven't yet. I don't think there's
15 any evidence in this country that says absent
16 anti-discrimination laws, absent affirmative action
17 to remedy past discrimination and to prevent, to
18 prevent greater discrimination, that employers,
19 governments, whatever entities, universities would
20 just go along their merry way. And, because of the
21 bottom line, do the right thing. I mean, it goes
22 back to something Sylvia Puente said from the Latino
23 Institute, we all know that we choose our friends,

1 we hang out with those who we feel most comfortable
2 with, and that's okay. That's fine. But, if you're
3 receiving federal dollars or state dollars, if you
4 are a public entity in any way, if you're getting my
5 tax dollars, that's not an okay way to make business
6 decisions. You can't promote because that's who you
7 feel comfortable with on the golf course, in a poker
8 game, in the locker room, whatever. There has to be
9 some assurances for equal access for all people to
10 compete in the level playing field. And, I don't
11 agree that the playing field is level yet. When we
12 have a level playing field, which unfortunately I
13 don't think I'll be around to see in this country,
14 then I would agree with that attorney who would say
15 we're there, you know, take off all the
16 measurements, whatever. I don't think anybody is
17 going to know unless they measure. It just doesn't
18 make business sense, not to me.

19 MS. CHOI: I have another question for Mr.
20 Rosenberg. You talked about the importance of
21 keeping affirmative action because of discrimination
22 that happens today, not in the past. But, I think we
23 would all agree that discrimination is perhaps a

1 little less now than it was maybe in the '50s or
2 '60s. And, affirmative action policy has worked to
3 help some people. But, in my opinion, the reason why
4 affirmative action is such a hot issue now is
5 because we're all looking at scarcity and thinking
6 that we're going to divvy up the pie based on race
7 and gender, and that's the only factor. Sylvia
8 Puente talked a little bit about economic
9 disadvantage. Can you address some of your thoughts
10 about how we can incorporate economic disadvantage
11 with race discrimination and gender discrimination
12 as a policy, as a public policy that we could work
13 with in the future?

14 MR. ROSENBERG: Surely. Let me first state
15 that I agree with you that discrimination is less
16 now than in the '50s or early '60s for sure. But
17 that it's less now doesn't mean that it doesn't
18 exist.

19 MS. CHOI: Sure, I knew that as an Asian
20 American, I know that absolutely.

21 MR. ROSENBERG: And, that is why I made the
22 point that affirmative action needed not merely to
23 remedy the legacy of past discrimination. But,

1 again, I think the fact that we're dealing with
2 scarcity, I think you're right. And, in my paper, I
3 talk about how affirmative action plans succeeded
4 more in firms that had rapid employment growth than
5 those that did not. It's a lot easier to do it
6 when you're growing. You're right, it's a fight
7 over scarce positions. It's not just scarce
8 positions, it's scarce, good positions. And, it's
9 also surrounded by a situation where positions that
10 were thought to be good positions five or ten years
11 ago, stable, long term positions are no longer
12 stable, long term positions. Even the shelters that
13 you could find in the labor market are more porous
14 than before.

15 How to define economic disadvantage
16 with race and gender. My own opinion is that class
17 questions should be considered, that people don't
18 start out equally. And here, I walk a fine line and
19 maybe a line I'll fall off of. I'm not certain that
20 a wealthy, a child from a wealthy African American
21 background, from a fancy suburb who went to a fancy
22 private suburban school should necessarily get
23 preference in the labor market or in college

1 entrance. I'm not sure about that. Of course, that
2 individual continues to face some discrimination by
3 virtue of the color of the skin. Perhaps that
4 individual had a more privileged background than
5 somebody else who was white who came from a poor
6 background. So, I think optimally, I would like to
7 see some combination of race and class questions
8 combined in an affirmation action plan. But, that's
9 extremely difficult, it's extremely difficult.

10 MR. ROBERTS: Can I tack on to her
11 question?

12 MS. CHOI: I'm finished, but I don't think
13 I've gotten an answer.

14 MR. ROSENBERG: Let me give you an example
15 of how to do it. Looking in terms of education; for
16 example, which I didn't touch in my paper, in
17 education, we know we give schools, give preference
18 on race and ethnic grounds, we know that.

19 MS. CHOI: Or numbers consciousness.

20 MR. ROSENBERG: Numbers consciousness. I
21 work in education. Perhaps they should also give
22 preference based on the economic background of the
23 family; that an individual who came from a poor

1 background who had to work 30 hours a week while
2 going to school in Chicago. Maybe he couldn't get
3 as high grades as somebody else who came from a
4 wealthy background who didn't have to work, who
5 could have joined the football team and do the extra
6 curricular activities that sets them apart from
7 somebody else. You have to give some preference to
8 the individual from the lower class background who
9 had to work, who had more difficulty in getting the
10 grades and doing the activities as somebody else.
11 That's the way to do it. I think it's easier to do
12 it in education than in employment. In employment,
13 how do you say the individual is from a lower class
14 background, and at what point do you cease to give
15 preference based on that? Age 20, age 30, age 40?
16 I'm not sure. And, I don't have the answer. So,
17 perhaps I haven't answered it adequately for you.
18 But, I do't want to suggest that I know exactly how
19 to do it. But, I think one should think about it.
20 And, I think if one does that, it will take the heat
21 off the debate around affirmative action.

22 MS. CHOI: I personally feel that if we
23 incorporate the economic disadvantage of all this,

1 that there will be a little less confusion and a
2 little less hotness about it. Because I think we're
3 all for people who are not economically able to have
4 assistance and get up there. But, I think when we
5 just talk about it based on race, I think that's
6 when Americans begin to get a little hot about it.

7 MR. ROBERTS: Which was the portion of the
8 question that I wanted to tack onto. You indicated
9 that it was passed in 1964, aimed at a specific
10 group, which were African Americans. Now, based
11 upon what Ms. Levin had said when she was here, it
12 has become a total mixing pot now. Affirmative
13 action, as it was originally designed, was designed
14 to bring a certain class or group up to the level of
15 maybe the level playing field, as we say, or to add
16 opportunity. Under those situations now, being that
17 you support affirmative action, do you feel that it
18 should be totally renovated, should have another
19 name, or another focus that would take in Hispanic
20 and Asian Americans, or can we see it successfully
21 legitimized or can we reach our goals successfully
22 under -- most people think back to the original, and
23 we are looking at that perspective, what was

1 happening or what was supposed to happen originally
2 and now we have found that we're in, we have several
3 different other groups, women, Latinos, all coming
4 under the umbrella. Shouldn't it be a complete
5 renovation of affirmative action as we know it?

6 MR. ROSENBERG: Well, I think it's trickier
7 because in 1964, that's correct, it was aimed mainly
8 at African Americans. But, women were incorporated
9 under affirmative action --

10 MR. ROBERTS: In 1974.

11 MR. ROSENBERG: Yes, 1971. So, I think the
12 issue with women is different than the issue of
13 Asian Americans today or Hispanics today. Women are
14 in there, they've been in there since 1971. I would
15 say this, that if it is apparent that there is
16 blatant discrimination against individuals, blatant
17 employment discrimination, that's what I'm talking
18 about, against individuals based on their ethnic
19 origin or what have you, Hispanics or Asian
20 Americans, then I would argue that society has an
21 obligation, both to the individuals and to the
22 society as a whole to do what it can to eliminate
23 that blatant discrimination. And so, the groups I

1 would include in my affirmative action program would
2 be those where the evidence is clear that they have,
3 they're facing strong limitations in the labor
4 market. So, perhaps broaden it somewhat from just
5 the focus on African Americans and women to other
6 discriminated against groups. That doesn't mean,
7 then, in my opinion, that it opens it up to every
8 minority group in the society, for it is not the
9 case, I don't think, that every minority group in
10 the society today is facing blatant discrimination
11 in the labor market. So, that's what I would say.

12 MR. ROBERTS: Do we reach that by complete
13 renovation or --

14 MR. ROSENBERG: Well, I think that one
15 wouldn't have to completely renovate. One would have
16 to broaden the protection, the groups coming in
17 under the existing program. To talk about complete
18 renovation is a different question. That issue is
19 whether, in fact, the existing system is working
20 well to benefit African Americans and women, or
21 whether it, itself, should be renovated based on the
22 criterion of other minorities. But, based on the
23 fact that it hasn't worked as well as it should for

1 people it's designed to protect.

2 CHAIRMAN MATHEWSON: Ms. Khoury, you want
3 to get in a quick question? We're running over, but
4 please take a shot, if you want to.

5 MS. KHOURY: Actually, I just want to make
6 a comment. My question would have been to Ms.
7 Kreiter, is that how you say your name?

8 MS. KREITER: Kreiter.

9 MS. KHOURY: But, it's been answered. I
10 just wanted to comment that your facts are very
11 thorough. I'm just curious, how long have you been
12 with the Women Employed Institute?

13 MS. KREITER: 20 years.

14 MS. KHOURY: You definitely know what
15 you're talking about.

16 MS. KREITER: Thank you.

17 CHAIRMAN MATHEWSON: Thank you both very
18 much for your thoughtful participation. We'll look
19 forward to reading your papers.

20 We'll break for lunch and we're due to
21 resume promptly at 1:30.

22 (WHEREUPON, the meeting was
23 recessed for lunch at 12:10 p.m.)

1 AFTER RECESS

2 CHAIRMAN MATHEWSON: Will the meeting
3 please come to order? I'm Joe Mathewson, the
4 Chairman of the Illinois State Advisory Committee to
5 the U.S. civil Rights Commission. We're starting
6 into our second session, second half day here on
7 affirmative action. We are delighted to have your
8 participation, both of you, and we thank you for
9 coming. And, we thank you for preparing your papers,
10 which we will read with interest.

11 Mr. Compton, would you like to lead
12 off with a short summary of your prepared statement,
13 please?

14 JAMES COMPTON

15 Thank you very much, and to each of
16 you members of the Commission on behalf of the
17 Chicago Urban League, we appreciate this opportunity
18 this afternoon to be here.

19 Throughout its entire history, the
20 Chicago Urban League has been dedicated to the
21 elimination of racial discrimination whenever and in
22 whatever form it might appear. Lawsuits filed in
23 February by the Builders Association of Greater

1 Chicago against both the City of Chicago, as well as
2 the County of Cook seeking to overturn their
3 minority and women business affirmative action
4 programs represent legally the latest obstacle to
5 the fulfillment of that mission. The Urban League
6 believes that narrowly tailored and historically
7 justifiable affirmative action programs such as
8 those operated by the City and Cook County remain
9 one of our strongest bullwarks against this
10 discrimination directed at minority and women owned
11 businesses.

12 There can be no question of the need
13 for continued affirmative action programs, both to
14 redress historical discrimination, as well as to
15 prevent future discrimination. Any reading of our
16 history would support this. Much of the City and
17 County's set aside programs address problems in the
18 area of construction, an area that the Chicago Urban
19 League has been working since the mid 1960s.

20 Until affirmative action was made
21 non-voluntary, those efforts were largely a failure.
22 In 1966, a voluntary program of recruitment of
23 minority journeymen resulted in the addition of only

1 430 workers to a Chicago area construction work
2 force which, at that time, numbered over 100,000.
3 Following direct confrontations on job sites, a
4 second voluntary program called "The Chicago Plan"
5 was initiated in 1970. Over that 16 month period in
6 which "The Chicago Plan" operated, the United States
7 Department of Labor's audit verified less than 100
8 new minority construction workers. A new Chicago
9 Plan enacted in 1972 resulted in the hiring of only
10 266 minority construction workers. "The Chicago
11 Reporter" observed that between 1972 and 1974, 96%
12 Cook County plumbing contracts went to three
13 non-minority contractors, and that no minority
14 contractors received awards for road work or
15 construction subcontracts. Clearly, purely
16 voluntary strategies for addressing discrimination
17 did not work. The need for affirmative action
18 programs can be clearly documented statistically by
19 observing the disparity between the proportion of
20 minority firms operating in a market providing the
21 particular service or commodity and the proportion
22 of minority firms receiving contracts from a unit of
23 government. These studies regularly find that

1 minority firms are under-represented among the
2 contractors of the unit of government when compared
3 to their overall availability in the marketplace.

4 In 1993, Predicate Study developed for
5 Cook County stated concisely the need for mandatory
6 affirmative action programs. MWBE's continue to be
7 at a competitive disadvantage in seeking county
8 contracts and subcontracts because of the continuing
9 effect of historical discrimination. And, MWBE
10 participation, especially in the award of prime
11 contracts, continues to fall short of their
12 availability to perform County work. Moreover, so
13 long as the County's efforts are limited to
14 persuasion and monitoring, no amount of good
15 intentions can insure sustained results.

16 The experience of other local
17 governments demonstrates that voluntary programs and
18 other race and gender neutral measures are not
19 sufficient. Mandatory programs are essential to
20 overcome the kinds of deep-rooted obstacles to full
21 minority economic participation. Implementation of
22 set aside programs by local governments has clearly
23 led to increased utilization by local governments of

1 minority contractors. In 1984, the year prior to
2 implementation of the City of Chicago's set aside
3 program, City contracts with racial minority vendors
4 and subcontractors totaled only \$51 million. In the
5 three years following implementation of the program,
6 minority contracting increased to \$132 million in
7 1986, \$160 million in 1989. Spending with women
8 owned businesses increased from \$12 million to \$39
9 million over the same period. In 1979 to 1989, City
10 contracting with minority prime contractors
11 increased substantially. In 1979, less than 1% of
12 all city payouts went to minority firms. By 1989,
13 minority firms constituted 12.8% of the total
14 payouts to vendors of services and 10.5% of payouts
15 to construction services, and 14.7% payouts for
16 product purchases. In 1988, the Cook County Board
17 enacted its set aside ordinance. From its
18 implementation in 1988 through 1991, the County
19 increased from \$3.3 million to \$9.3 million prime
20 contract awards to minority vendors. Awards to
21 women owned businesses increased from less than \$1
22 million to over \$11 million in the four year period.
23 Surveys conducted by the Chicago Urban League of

1 minority contractors who sought business with local
2 governments in the late 1980s and early 1990s
3 provide detailed examples of problems securing
4 contracts with governments due to overt
5 discrimination and structural barriers that resulted
6 in disparate impact on minority contractors. Due to
7 the lack of time, I'm going to skip over much of the
8 discussion on that, but you surely have it there for
9 your availability in reading.

10 However, I do want to conclude by
11 saying, let me reiterate that we are convinced that
12 these types of discriminatory practices do continue
13 to manifest themselves, and that affirmative action
14 programs provide an essential protection against
15 them. To remove affirmative action programs in our
16 local governments at this time, we believe, would be
17 tantamount to sanctioning a return to the good old
18 days that never really were so good for the
19 disadvantaged among us.

20 Thank you very much.

21 CHAIRMAN MATHEWSON: Thank you, Mr. Compton.
22 Mr. Khan, could you give us a five-minute summary of
23 your prepared remarks?

1 MOIN MOON KHAN

2 Thank you for providing me this
3 opportunity to say a few words on issues pertaining
4 to the American Muslims in Illinois. The U.S.
5 Commission puts far reaching offenses on individual
6 liberty and pursuit of happiness. But, when it comes
7 to different persons, groups, persons or groups
8 identity, it puts some restrictions. If a person
9 speaks Spanish Hasdid (ph) or Harmo native (ph)
10 language, he will be a Hispanic. Here, language
11 certifies ethnicity.

12 People whom immigrated from the Asian
13 continent determined their ethnicity on the basis of
14 geography. African Americans and European Americans
15 inherit their identity in terms of color. Jewish
16 Americans are identified on the basis of their
17 religion and race. On the other hand, American
18 Muslims are lumped together in various ethnorities
19 while at the same time, they are separate and
20 distinct group. Their children are as American as
21 Apple Pie, and they often resent being lumped
22 together in their parents categories.

23 In the absence of their own separate

1 identity, it's hard to track down the cases of
2 discrimination. Cases of discrimination against
3 Muslims, they're always an African American,
4 European American, Albanian, Bosnian, Palestinian,
5 Jordanian, Indian, Pakistanian or else. If they
6 want to do some political work, they always face
7 ethnomization process. Because the U.S. Census does
8 not provide any data on the religious basis,
9 American Muslims cannot establish any local service,
10 local social service organizations and expect a fair
11 amount of funding from government or private
12 agencies.

13 An estimated 6 million Muslims call
14 the United States of America their home. The
15 diversity that exists in the 1 billion Muslim
16 population all over the world is proportionately
17 reflected in this country as well.

18 Around 400,000 Muslims live in
19 Illinois. 40% of the Illinois' Muslim population is
20 of the African American heritage; 25% are of Arab
21 ancestry; 20% are Indians and Pakistanis; 4% are of
22 Turkish heritage; and 11% are of other origins.

23 Religious discrimination is a reality

1 in this country.

2 Because Muslims are an ethnic and
3 immigrant group, like dozens of other ethnorities of
4 the United States, they face similar problems as
5 other do. However, their agonies and pains are
6 harsher and yet unreocgnized by virtue of being
7 religiously associated with people in the Middle
8 East. American Muslims are frequent victims of
9 inferences, in sinuations, allusions, suggestions,
10 conclusions, implications, and references.

11 How the major news media and prominent
12 policy experts unfairly blamed Muslims for the
13 Oklahoma bombing is a flagrant example of prejudice.
14 Within a couple of days, more than 200 cases of
15 harassment and sterotyping were recorded.

16 Before the Oklahoma tragedy, the local
17 American Muslim community experienced its share of
18 looting and destruction when the Chicago Bulls won
19 the National Basketball Association championship in
20 1991, 1992, and 1993. Data pertaining to 1991 are
21 very sketchy. However, following statistics from
22 199w and 1993 will reveal how Muslim businesses were
23 hurt along with business of other minorities. There

1 were 89 stores owned by Arab Americans and a lot of
2 them are Muslims, were destroyed. Asian Americans, 55
3 stores were destroyed. A lot of Indian and
4 Pakistanis of Muslim heritage come in this block.
5 So, 89 and 55. Other stores, I have put a data
6 here, I have a list of these statistics to Mr. Peter
7 Minarik.

8 The Oklahoma tragedy turned out to be
9 a milestone in the history of the Muslim community.
10 The myth of fair reporting was completely shattered,
11 and Muslims got united to launch a peaceful
12 resistance against stereotyping. They not only
13 started reaching out to the news media, but also the
14 local elected officials and other ethnic groups. In
15 the past years, Muslims have closely worked with the
16 Christian and Jewish communities on several
17 projects. They realized that when the eyes don't
18 see, the heart does not smile. They know that
19 mountains cannot meet, but leaders can. Trouble
20 makers and hate mongers cannot meet, but trouble
21 shooters and tolerant people can sit together and
22 analyze the problems.

23 Also, it is an old proverb is that

1 constant vigil is the price of freedom and liberty.

2 When the lights go out, the mice begin to dance.

3 Muslims have started keeping the lights on.

4 They also have realized that a single
5 log does not warm the fireplace. To fight
6 discrimination and racism, they ought to work
7 together and with others. Today's forum organized by
8 the U.S. Commission on Civil Rights is certainly
9 going to help fight the latent institutional and
10 individual prejudice and discrimination. An ocean of
11 hatred cannot be emptied with a single can. Thank
12 you.

13 CHAIRMAN MATHEWSON: Thank you very much.

14 Preston, you're up first.

15 MR. EWING: I don't have any questions at
16 this time.

17 CHAIRMAN MATHEWSON: Let me just ask one
18 question. You stated, sir, certainly thoughtful and
19 informative, do you have any thoughts on the current
20 status of affirmative action policies, law in the
21 context of the active political debate over the
22 future of affirmative action programs as they might
23 relate or perhaps don't relate to Muslim Americans?

1 MR. KHAN: I have alluded to that point,
2 but because Muslims are not a distinct group who can
3 get any kind of benefit on the basis of affirmative
4 action, so if they are like Asian American or
5 African American or whatever category, naturally
6 they can gain benefits from those. But, so far as I
7 know, whatever provisions are there, they cannot get
8 any. So, that's why I did not pay much attention to
9 that. However, I have put together an extensive
10 report on violations or cases of prejudice or those
11 things which have been essentially recorded by some
12 groups.

13 CHAIRMAN MATHEWSON: Okay. Thank you very
14 much.

15 MR. EWING: I have a question now. Mr.
16 Compton?

17 MR. COMPTON: Yes.

18 MR. EWING: I've always been curious about,
19 and have met people who had titles with especially
20 the federal government of contract compliance
21 officers. And still in many of those situations,
22 despite the existence of these people, it appeared
23 that the work forces have not reached those level of

1 quotas on construction projects that had been
2 promised. What has been the experience of your
3 organization with that?

4 MR. COMPTON: Well, when left along and no
5 intervention, this is certainly true. We've had an
6 experience just two years ago with the City of
7 Chicago who was having difficulty in their road
8 construction program and called us to, as a
9 contractor with them to work with the City and to,
10 with community groups and organizations around the
11 City as subcontractors to address that. And that
12 did, in fact, enhance and increase minority and
13 women participation. The outreach, a lot of these
14 organizations were geographically based, and could
15 go right to people. So, you know, that
16 intervention, plus the fact that the City was
17 cognizant of its problem and asked for some
18 expertise, I mean, they did not have, and I think we
19 had a research report documenting they did not have
20 the appropriate mechanisms and computer systems to
21 actually monitor and to keep head count and all
22 that, which we fortunately, with the expertise of
23 Mr. Ned Theodor here designed. And, one of the

1 recommendations we made to the City is that they had
2 to put in both the hardware and software and people
3 expertise to do simple monitoring and to keep up
4 with their own construction program. So, I guess the
5 point is that without intervention and some positive
6 kinds of actions taking place, these, the increases
7 in participation is just not going to occur. In
8 fact, it will be just the opposite.

9 MR. EWING: Thank you.

10 CHAIRMAN MATHEWSON: Mr. Pugh?

11 MR. PUGH: Mr. Compton, I really appreciate
12 your precise information in regard to the Cook
13 County and Chicago experience.

14 MR. COMPTON: Thank you.

15 MR. PUGH: Just generally, could you say a
16 few words about the impact of the federal
17 regulations dealing with this, as you've measured
18 them over time in Chicago? What measurements, if
19 any, could be coming?

20 MR. COMPTON: Nick, have we done much with
21 the feds?

22 AUDIENCE MEMBER: The bulk of our work has
23 been state and local.

1 MR. COMPTON: State and local, both of
2 ours, but that gives us food for thought. Maybe we
3 ought to look into the federal.

4 MR. PUGH: Let me throw a thought out.
5 I've been, for 25 years, been coming to not this
6 Civil Rights Commission, I'm from Peoria, meetings
7 in Chicago. I've seen three brand new federal
8 buildings being erected, and I've seen them half
9 filled with Blacks, Hispanics and women employees.
10 I don't think the same thing would be true if I
11 walked into three adjacent office buildings as far
12 as you know, as far as employment is concerned. I
13 see, you know, functionally, I mean, I say
14 functionally over-simply, I see extraordinary impact
15 of minority employment being carried forth by the
16 federal government.

17 MR. COMPTON: Yes, and I think --

18 MR. PUGH: Fair statement?

19 MR. COMPTON: I think that's a fair
20 statement, and not only in terms of numbers, but
21 also in terms of the quality of the jobs being held.
22 I mean, we periodically do research on minorities
23 and women in policy and decision-making policies in

1 both the private and public sectors. And,
2 invariably, the public sector will be better than
3 the performance of the private sector in that
4 regard.

5 MR. PUGH: Extraordinarily better?

6 MR. COMPTON: Yes, significantly better.

7 MR. PUGH: And, I guess what I'm putting
8 forth is an argument for the effectiveness of at
9 least the federal affirmative action programs.

10 MR. COMPTON: Yes. And government, I would
11 say in general, certainly the federal government, I
12 mean that's one of the reasons the Chicago Urban
13 League and the National Urban League, have opposed
14 efforts to dismantle the federal authority in
15 certain of these areas because the federal
16 government has historically been more aggressive and
17 more positive in these arenas.

18 MR. PUGH: Would that also be true, or
19 would the federal government be much further ahead
20 than the local government in Chicago and Cook
21 County?

22 MR. COMPTON: Well, Chicago, I think, is an
23 exception so far as its own program is concerned.

1 Generally, I would say you're right as far as the
2 federal being superior to most local states. Chicago
3 is an exception, and Chicago is being challenged,
4 too, currently upon its affirmative action and set
5 aside program. But, Chicago went about trying to
6 meet the current laws in a very methodical kind of
7 manner, and thusfar has been able to operate within
8 the letter of the law and still make some progress
9 where other locals have found that their programs
10 with current laws have been deemed to be illegal.
11 So, I think Chicago should be commended in its
12 ongoing efforts that began about the mid 1980s,
13 1983, 1984, thereabouts, 1985. But, it's
14 unchallenged as I indicated in my statement. So,
15 you'll have to see how that plays out. But, the
16 Mayor has been quite strong in his position.

17 CHAIRMAN MATHEWSON: Rev. Roberts?

18 MR. ROBERTS: For Mr. Compton. Based upon
19 the theories that many of the conservative groups
20 are coming up with, like think tanks, et cetera,
21 that affirmative action as we now know it should
22 either be restructured, revised, or redone. What is
23 your opinion on that? The Urban League, I think

1 most of us see it kind of as a conservative
2 organization vis-a-vis a Bush or some of the other
3 organizations dealing with direct action. What's
4 your opinion towards the conservative thought,
5 conservative Black thought that now we should
6 refocus?

7 MR. COMPTON: We don't subscribe to that
8 thought at all. I mean, we take just the opposite
9 position, regardless of --

10 MR. ROBERTS: Maybe I didn't say it right
11 by saying refocus, restructure.

12 MR. COMPTON: Well, I think any program
13 could always undergo review and evaluation. And,
14 that would include affirmative action. So, we don't
15 oppose any evaluation of the current affirmative
16 action program and where they might be improved,
17 where they have been deemed to be ineffective or
18 even abusive, we would not support that. But, the
19 concept of affirmative action, we definitely support
20 and see a real and documented need for such.
21 Dismantling of it, we would not support at all. You
22 know, we have, the National Urban League was to have
23 its national conference this summer in Los Angeles,

1 but because of the position of the Governor,
2 Governor Wilson, on affirmative action, we pulled
3 out of Los Angeles, decided to go to New Orleans,
4 only to have the Governor there come out three weeks
5 ago with his anti-affirmative action. But, we did
6 go back in there, we threatened to take it out, went
7 in there and did negotiate with the Governor and
8 some of the provisions in his executive order that
9 he had put out, he retracted on. Now, if he just,
10 whether he retracted it or retracted it only through
11 a certain time frame, only time will tell. But, that
12 states our position.

13 CHAIRMAN MATHEWSON: Okay.

14 MR. ROBERTS: Okay. Maybe this is another
15 thought, the affirmative action program was directed
16 at Blacks, basically from the concept. Now that the
17 umbrella has included other groups, the conservative
18 thought is that maybe we shouldn't have or maybe the
19 direction should not have been such as to include
20 the other groups, that it diluted the thought from
21 which it was intended. It diluted the goals of the
22 plan.

23 MR. COMPTON: Well, I mean, you know, our

1 position is that anyone can, who finds himself a
2 victim of discrimination needs the appropriation
3 protections and programs. So, that inclusion of all
4 people, regardless of ethnicity, race, gender, can
5 be carried out. Certainly, you're correct that when
6 affirmative action was first initiated, it primarily
7 was directed to the African American community. The
8 woman's movement came about, and legitimately so.
9 Then, we incorporated women. Then, other racial and
10 ethnic groups found themselves in a position of
11 being discriminated. So, my position, the position
12 of the Urban League, we're an inclusive
13 organization, not exclusive. So, you know, our
14 business is about inclusion of all people and not
15 limiting it to a certain segment of the population,
16 which historically has been white male.

17 CHAIRMAN MATHEWSON: Mr. Scales?

18 MR. SCALES: No questions, Mr. Chairman.

19 CHAIRMAN MATHEWSON: Ms. Choi?

20 MS. CHOI: Yes. I have a question for Mr.
21 Compton.

22 As I understand what you're saying, is
23 that leave it to the good will and motivation of the

1 government agencies or corporations, discrimination
2 will persist.

3 MR. COMPTON: That's exactly my position.

4 MS. CHOI: We've heard this morning from an
5 attorney who had said because of the threat of
6 lawsuits, that companies are now more numbers
7 conscious and are politially correct. And, because of
8 the bottom line, that they will do diversity anyway.
9 What's the mood of 1996 today? Let's say we don't
10 have affirmative action. Do you think that the
11 corporations, government agencies will, out of
12 self-regulations and out of good will and
13 motivation, will adhere to diversity as it reflects
14 the society today?

15 MR. COMPTON: No, I don't think. I think
16 there might be incremental improvements based upon
17 certain factors of availability and other factors
18 that, demographic factors. But, I don't think left
19 alone and left solely to their own patterns of
20 behavior, that you'll get significant improvement.
21 I mean, even with affirmative action, we still have,
22 you know, the glass ceiling concept. We still have
23 particularly ceilings and holds on mobility. I

1 mean, if you go into a corporate structure, the
2 closer you get to CEO, the fewer women and
3 minorities you're going to see until you get to the
4 very top, you won't see any. So, I think, you know,
5 left alone, that's not going to happen in the
6 foreseeable future. So, I do think that there has to
7 be mechanisms and incentives also, I mean, just not
8 a stick kind of thing, but there ought to be some
9 kind of incentives to encourage.

10 MS. CHOI: Does the Urban League engage in
11 litigation, suing corporations that do not adhere to
12 affirmative action guidelines or lawsuits?

13 MR. COMPTON: Normally, we do not. Now, we
14 are more likely to be a friend of the court in that
15 kind of position as opposed to initiating lawsuits.
16 We will do the research that would be utilized in a
17 suit, whether it's by an individual or an
18 organization that specializes in that. We do a lot
19 of that. But, we're not in the business of suing
20 ourselves. I mean, that's not one of our activities.
21 We develop the research, we provide testimony, a lot
22 of that type of work as opposed to going into court
23 initiating a suit. Now, we have joined others in

1 suits, yes.

2 CHAIRMAN MATHEWSON: Ms. Khoury?

3 MS. KHOURY: Yes, I have a question for Mr.
4 Khan. Do you feel that the Muslim Americans can fit
5 under the umbrella of affirmative action and how do
6 you feel they could benefit, if they were?

7 MR. KHAN: Well, affirmative action, I will
8 confer to what Mr. Compton has defined, and its
9 impact and its goal is to help all those groups of
10 people who feel in any way victims or feel
11 oppressed. And certainly, I would like to see that
12 Muslims should also get that type of protection. And
13 secondly, because most of the time they are, they
14 have, either they have not approached the U.S. Civil
15 Rights Commission or they have not approached the
16 elected officials, or somehow they were just so much
17 more overwhelmed by the oppression, that they didn't
18 have any time to come together and cry out. And,
19 that's why nobody thinks that there is a problem.
20 There is a very big problem, as I indicated to you,
21 that there were two important milestone cases. One
22 was Oklahoma bombing and you have seen how the
23 media, news media, they're just taking the kind of

1 prejudice, you know, attitude against Muslims and
2 they have been writing and although it's changing
3 now, the Muslims, they're taught if they're not
4 going to speak out, they're not going to work
5 together, they're not going to work with other
6 groups. This onslaught will go on because of what
7 media is doing. It's not new. They have done against
8 Jews, they have done against the Blacks, they have
9 done against the gays and lesbians, they have done
10 against the women. This is the Muslim's turn. So,
11 they know that and they realize that hey, this is
12 not any kind of plot or anything. This has been
13 going on, now they're coming to the forefront. So,
14 they have to suffer and they have to fight for it.

15 MS. KHOURY: Thank you.

16 CHAIRMAN MATHEWSON: Okay. Well, thank you
17 both very much for your reflective and thoughtful
18 remarks today. We look forward to reading your
19 papers. I appreciate you appearing here.

20 MR. COMPTON: Thank you.

21 MR. KHAN: Thank you.

22 CHAIRMAN MATHEWSON: Welcome and thank you
23 both for coming here. I know you're both very busy

1 people. We appreciate you coming here and preparing
2 your papers. We haven't seen them but as you know,
3 our format is to ask each of you today to give us a
4 five-minute oral summary of your paper. And then
5 after you've both done that, we will have questions
6 from the committee the remainder of the half hour.

7 HEDY RATNER,

8 Chairman Mathewson, members of the
9 Illinois Advisory Council, I thank you for the
10 opportunity to present my opinion on affirmative
11 action to the Illinois Advisory Council. I'm Hedy
12 Ratner, co-director of the Women's Business
13 Development Center, Presidential appointee to the
14 National Women's Business Council, and Illinois
15 Governor's appointee to the Illinois Women Business
16 Ownership Council and Steering Committee Member of
17 the Coalition for Equal Opportunity, a broad-based
18 organization of both religious, women's, minority
19 organizations, as well as legal rights
20 organizations. We were enormously pleased with the
21 depth of President Clinton's support for equal
22 opportunity and against discrimination; i.e.,
23 affirmative action. We're not using the term

1 affirmative action these days, we're talking about
2 access to competitive opportunities, access to
3 economic opportunities. We're feeling that the term
4 is in disrepute, but certainly the concept is still
5 extremely important and valuable, and needs to be
6 supported and strengthened. We believe that
7 affirmative action policies and programs remain
8 critically important to combat persistent
9 discrimination, promote diversity, and create a
10 level playing field for those who would otherwise
11 not have an equal opportunity to go to college, get
12 a job, or win a contract. The Coalition for Equal
13 Opportunity and all of us know that affirmative
14 action is fair, it is necessary, and it works, is an
15 essential element of this nation's policies of equal
16 employment, education, and economic opportunities.
17 We believe that it is important for all of us to
18 coalesce together for the common goal of
19 strengthening and supporting economic opportunities
20 at all levels in the public and private sector.
21 And, as an ardent and vociferous advocate of both
22 affirmative action and President Clinton's
23 impassioned support of it, I would like to add to

1 the dialogue on this issue. We've all heard the
2 classical arguments in support of affirmative
3 action. We need a level playing field, we need to
4 redress for past and present discriminatory neglect
5 and abuse. These are, of course, truisms, but I
6 want to offer another perspective for the body
7 politic. The drama is not in the numbers or in the
8 law, but in the logic. Here are four such points.
9 One, the great part owing to affirmative action, 50%
10 of small businesses in the United States are now
11 owned by women and minorities. No one will doubt
12 that this is an important, literally an essential
13 segment of our economy. Doesn't it make sense that
14 in contracts awarded, there should be more pieces of
15 the pie to more people rather than larger pieces for
16 a few? That's especially healthy for our economy.
17 It means more wages and taxes paid by more people.
18 More employment, more money in circulation, more
19 purchasing power by more people.

20 Two, women business owners, women
21 entrepreneurs do business differently because of who
22 we are and how tough it was for us to get where we
23 are. Women employers show greater humanity and

1 greater flexibility in the work place. That
2 manifests itself into policies such as flex time,
3 family and medical leave, policies that consider the
4 importance of child care, care for aging parents and
5 other sensitive occurrences that most company
6 policies do not address or ignore all together. You
7 may argue that this contributes nothing to the
8 bottom line. To that, I would argue the opposite.
9 An organization's most productive asset is its
10 people, and employees who are shown loyalty,
11 compassion, and fairness and policies that reflect
12 these variables are far more productive than their
13 counterparts, the companies that operate strictly by
14 the tradition.

15 Third, women and minorities hire more
16 women and more minorities. One of the most
17 significant problems with discrimination is the lack
18 of economic access. Women and minorities have
19 traditionally been denied that access, but access is
20 provided by women and minority employers.

21 Fourth, the word "qualified". The
22 Random House Dictionary of the English Language
23 defines the word "qualified", having the qualities,

1 accomplishments, et cetera, which fit one for some
2 functional office. People who oppose affirmative
3 action cite that unqualified people are getting the
4 jobs, promotions, and contracts. We who support
5 affirmative action are also opposed to awarding
6 jobs, promotions, and contracts to unqualified
7 persons. What's been totally overlooked in the
8 value of an entire canopy of arguments for and
9 against, is the fact that the beneficiaries of
10 affirmative action must be qualified. Not sneaked
11 in to accommodate a lower standard, but qualified.
12 In Chicago, unlike most inner cities, there's a
13 commitment to affirmative action policies. A direct
14 result of Mayor Daley's support and aggressive
15 leadership. And in Cook County, it's the same.
16 That's led the way to increased, but far from
17 sufficient, public and private sector support for
18 policies that are equitable and fair for qualified
19 individuals and businesses. In other words,
20 affirmative action.

21 Opponents say affirmative action is
22 not necessary. Others say we already have it, citing
23 the great numbers of women and minority business

1 owners. What they fail to point out is that despite
2 the increasing number of small businesses owned by
3 minorities and women, the aggregate of assets and
4 sales of these companies are outrageously lower than
5 those owned by white males. These companies in the
6 minority and women owners need encouragement,
7 strengthening, and support by word and by deed in
8 order to add to the economy to create jobs, to
9 increase employment, to develop a new and diverse
10 leadership, and for all the economic and
11 sociological reasons this great nation should
12 recognize.

13 And, I would be happy to comment on
14 some of the current local state and federal
15 policies.

16 CHAIRMAN MATHEWSON: Let's wait until the
17 question session on that, if that's all right.
18 We're going to interrupt for just a moment.

19 (Off the record.)

20 CHAIRMAN MATEWSON: Okay, thank you. We're
21 back in business. Professor Heckman?

22 JAMES HECKMAN

23 My name is James Heckman, I'm an

1 Economist at the University of Chicago, the
2 Department of Economics and the Harris School of
3 Public Policy. I have been working on the problem of
4 understanding the impact of government and
5 government regulations on the economic and social
6 status of minorities for about the past 10 years.
7 And the research that I conducted played, was
8 heavily cited in the recent report issued by the
9 Clinton Administration in its support of affirmative
10 action policies.

11 What I'd like to do today is just
12 briefly summarize the evidence that I've assembled
13 and the evidence that I think is reigning evidence
14 in the economic and social science community, more
15 generally, about the impact of affirmative action
16 and what the history has been of the impact of
17 affirmative action and civil rights legislation. I
18 would make a very important distinction, which I
19 make and which I think has not been made in much of
20 the recent discussion between the earlier period,
21 which I call the Civil Rights period, which I think
22 came to an end roughly around the time of 1966 and
23 1967. But, with some stretch could be said to have

1 come to an end in 1970, and a period of affirmative
2 action, which I date from the time the Executive
3 Order 11246 was issued by President Johnson, and a
4 whole set of programs was put into effect that
5 suggested goals and timetables for improvemnet of
6 minority status. Initially, the goals were focused
7 primarily on Blacks. The group, the focus was
8 changed over time to include a much larger group of
9 rights, minorities defined including women. So, I
10 think what I'd like to talk about today, just in the
11 brief time I have, is what the concensus evidence is
12 about the effectivenss of this kind of legislation
13 and what kind of effect it has had and what its
14 costs have been and what its benefits have been. I
15 think if one looks closely at the effect of these
16 laws, and one looks at what the firm social science
17 evidence is, the strongest evidence is that the
18 evidence would support the view that the civil
19 rights era, the period that I would start, date from
20 the period really from the Supreme Court decision in
21 1954, Brown vs Topeka Board of Education, the Civil
22 Rights movement and then, of course, the 1964 Civil
23 Rights Act, Voting Rights Act, and the like have

3
1 played without doubt, a substantial role in
2 elevating the status of Black Americans. One can
3 see a very discontinuous change in the position of
4 Black Americans in the work place, especially in
5 areas in the south and certain industries in the
6 south who had been traditionally excluded. I think
7 the evidence will also show that since the period
8 around 1970, one finds very little evidence of an
9 increase in relative improvement of Blacks' status,
10 certainly since about the period of 1975. And, the
11 evidence that the law has had any kind of decisive
12 effect in elevating or promoting the status of
13 Blacks as a group, or women as a group, or other
14 minorities, I think is at best very, very mixed.
15 There are certain areas where there have been
16 deliberate attempts to try to integrate, say, police
17 forces and civil service organizations where one can
18 clearly see the effectiveness of affirmative action
19 policies. But, I do think it's important to note
20 that the broad range of evidence doesn't support any
21 notion that the affirmative action programs dating
22 since the early 1970's have had any dramatic effect.

23 On the other hand, I think it's also

1 fair to point out that the evidence does not show
2 that these programs have had any significant costs,
3 either. There's a certain amount of cost that has
4 been allocated to these programs. The allocation of
5 this cost is a very difficult task, since many
6 government programs have been put in place since the
7 period of The Great Society in the mid 1960s. But,
8 estimates of \$20 to \$40 billion a year for the
9 paperwork and various kinds of costs associated with
10 compliance with affirmative action regulations, I
11 think do have some credibility. They're quite small.
12 Any notion that affirmative action has slowed down
13 U.S. productivity, has harmed output, has caused
14 costs to rise is simply not supported by any
15 evidence of which I'm aware. So, I think that the
16 evidence that, as I summarize it, and I think as
17 many other social scientists who look closely at
18 this evidence would summarize it, is the following:
19 During the period of the Civil Rights era in the mid
20 1960s, you had an unusual opportunity for the
21 federal government to come in and clarify a
22 situation which was extraordinarily vague. Contrary
23 to what many people think, the Civil Rights laws,

1 the early 1964 Civil Rights law, was actually a
2 pro-employer law. Employers and shop owners, people
3 who were operating motels, all with some obvious and
4 very well publicized exceptions, welcomed the
5 opportunity to essentially change a way of life that
6 essentially, I think, had retarded southern economic
7 development. And, I think without doubt, that the
8 Civil Rights law that was directed towards the south
9 had, its greatest effects in the south and
10 encouraged building and industrialization in the
11 south. I think it's important to recognize is that
12 the feature of the law that made it so effective was
13 it was a pro-business law. And, I think what is
14 also important to notice is that since 1970 in the
15 period of affirmative action, there were two
16 features that make affirmative action post 1970
17 different from the civil rights period, pre 1970.
18 The first is that the economy is fundamentally
19 different. And the second, is that the law has now
20 taken a somewhat different position. The position
21 is no longer "pro-employer". Some of the obvious
22 wrongs that were clearly remedied by the 1964 Civil
23 Rights law have been remedied. And now, I think the

1 struggle is with the declining labor market,
2 especially for unskilled workers, and with the
3 over-representation of minorities in unskilled
4 sectors. But, I think the law has essentially been
5 awash. It has not had a substantial effect
6 positively, it has not had a substantial effect
7 negatively on the group. But, it no longer has the
8 pro-business feature to it. It's essentially a law
9 which it it, I think, very important for its
10 symbolism which, I think, has very little economic
11 cost. And, frankly, very little economic benefit.
12 I personally, with certain exceptions in certain
13 areas, would not attribute much of the economic
14 progress of women and even minorities, other
15 minorities to the civil rights, to the affirmative
16 action era. I think there's no evidence that
17 supports that.

18 On the other hand, the notion that we
19 want to keep a commitment open to civil rights to
20 prevent blatant discrimination, to encourage
21 equality of opportunity, and to promote qualified
22 people in the American workplace, I think is an
23 important and honorable intention and should be

1 maintained. But, I also think it's not, it's value
2 is symbolism, is much greater than its value in
3 actually constructing, and creating the economic
4 reality. . That's the general concensus, and I'd be
5 happy to elaborate on specific points.

6 CHAIRMAN MATHEWSON: Thank you very much.
7 Mr. Ewing?

8 MR. EWING: I'll pass.

9 CHAIRMAN MATHEWSON: Mr. Pugh?

10 MR. PUGH: Professor Heckman, your
11 measurements of the improvement of the condition of
12 Blacks since 1975, for example, how can you quantify
13 what impact affirmative action has upon this, what's
14 leveling the improvement of the general condition of
15 Americans of all races changed a hell of a lot since
16 1975?

17 MR. HECKMAN: Well, I think that it's very
18 important to recognize that the American labor
19 market has changed since the mid 1970s. And, if you
20 look a the relative position of Black Americans
21 since the period 1975 to 1995, you don't see any
22 substantial advance, certainly nothing of the
23 magnitude that you saw in the period, say, 1965 to

1 1975 where I think you could properly attribute, you
2 could see in any kind of statistics that the median
3 income of Black Americans as opposed to white
4 Americans measured by either family income measures,
5 or measured by income of full time workers, measures
6 of occupational advance, a number of different
7 measures, occupation, college enrollment rates, all
8 those indexes showed great improvement in this civil
9 rights period. Post 1975, you see a slowing down,
10 stagnation in the economy. This is true across the
11 board for many unskilled, low skilled, middle class
12 workers, too. The growth in real income that's
13 occurred has been very, very small, as part of a
14 general problem of the decline of productivity in
15 the U.S. workplace. Now, as I said earlier, there
16 is absolutely no evidence that affirmative action or
17 this type of regulation has played any role in the
18 slowdown. But, the point is that this slowdown has
19 made it very difficult for any groups to advance in
20 real terms. And, at the same time, this slowdown has
21 had its greatest effect on people near the bottom of
22 the skill distribution. And, for historical
23 reasons, reasons that had to do with well documented

1 discrimination against Blacks in schooling, against
2 the quality of schooling that they received that, in
3 fact, many minorities were not able to essentially,
4 were essentially placed in a position to be in the
5 lower skilled rungs of the labor market. That has
6 wrought an enormous damage to Americans of all
7 backgrounds; white and Black, but it just turns out
8 that many minorities are over-represented still
9 among the low skills group. So, I think this is a
10 much larger economic phenomenon. It's much larger
11 than the American economy. It's a phenomenon going
12 on throughout Europe, Japan, around the world. So,
13 I think one should recognize the basic force that
14 has driven the statistics in the U.S. economy. They
15 are not, I think, affirmative action on this law
16 had, really very hard to document, has had much of
17 an effect one way or the other.

18 MR. PUGH: Do you think that if affirmative
19 action programs had been repealed in 1975, the
20 condition of Blacks would be as good as it is today?

21 MR. HECKMAN: I think that the major
22 factors determining Black income today have very
23 little to do with affirmative action programs.

1 MR. PUGH: Is that an answer, the answer is
2 you don't think --

3 MR. HECKMAN: I think the repeal, however
4 you see, offers something different. You have to
5 separate out the reality of the law from the
6 symbolism of the law. I mean, the symbol is such
7 that it states as an open public policy that there
8 will not be blatant discrimination. And, I
9 certainly don't want to come out against that. I
10 think historically one cannot deny that there was
11 anything but blatant discrimination, and that the
12 1964 Civil Rights Act played a very important role
13 in overcoming it, and helping many friends of civil
14 rights overcome the disadvantage that the historical
15 situation had created. So, I think the symbolism
16 would have been very poor to have repealed these
17 laws. So, my view is once you view these for the
18 symbolic value, not from the point of view of their
19 economic value or for their value in terms of
20 fundamentally changing. To reverse the law now at
21 this point, though, is to say well, we want to turn
22 our backs or somehow we want to turn away from the
23 commitment to civil rights. And, if we're

1 interpreted that way, I would certainly not support
2 it. So, I think it would have a bad symbolic
3 content. But I think practically speaking, if you
4 could get rid of the symbolism and ask what is it
5 that explains the improvement in Black economic
6 progress? What is it that creates opportunity, I
7 think we have to look not at affirmative action
8 solutions, but have to look at solutions not at the
9 final destination point, but family situations,
10 situations that have to do with education, things to
11 do with preparing people for the workplace rather
12 than how people are treated in the workplace today.

13 MR. PUGH: Affirmative action in the
14 broadest sense, not in the legal sense.

15 MR. HECKMAN: Well, that's what I'm worried
16 about. The term affirmative action is used so
17 broadly and so vaguely that yes, in the very
18 broadest sense of that term, the idea that there
19 would be open commitment to individuals,
20 irrespective of race, sex, age, any factor, I think
21 that's a policy that should be, should always be
22 written into any, implicitly as part of the American
23 doctrine, the credo. But, on the other hand, I

1 think that one is going to be very misguided or
2 hopes will be raised falsely to think that these
3 programs will have substantial improvement above and
4 beyond their impact in certain areas. I think as I
5 said earlier in the testimony, the police board, I
6 think is a clear example, firefighters, certain
7 kinds of government activity where there was very
8 clear evidence of discrimination against minorities.
9 I think there's no doubt that affirmative action
10 played a role in integrating those. But, if you
11 look at the aggregate, what are we looking at?
12 What's going to help the income of Blacks and
13 Hispanics and other minorities? 20 years from now,
14 I think it's going to be preparing them for the work
15 place, getting better schools, better opportunities
16 that make people ready to compete in an open field.

17 CHAIRMAN MATHEWSON: Ms. Bombala?

18 MS. BOMBALA: I apologize for missing part
19 of your part of the testimony, but I did have a
20 question. Mr. Heckman, your study does speak
21 basically to employment and not contracting?

22 MR. HECKMAN: Well, contracting would be one
23 aspect of it, in the sense that it would generate

1 some employment, yes.

2 MS. BOMBALA: What I'm, I guess what I
3 wanted to ask is that it has been my understanding
4 that there had been documented proof that
5 affirmative action in contracting had, in fact,
6 contributed to the financial enrichment of the
7 minority community as business owners.

8 MR. HECKMAN: Well, I think you have to be
9 careful, contracting has several different aspects.
10 The whole Office of Federal Contract Compliance, for
11 example, is the notion of using this regulatory
12 mechanism of contract awards for compliance. Those
13 studies have shown very limited effect in
14 contracting, I have no doubt --

15 MS. BOMBALA: That's employment under
16 contracting. I'm talking affirmative action as in
17 minority/female contracting goals, in terms of
18 contracts, having a specific number of what's
19 commonly called set asides, but it's not set asides,
20 goals in terms of contracting with vendors that are
21 minority owned.

22 MR. HECKMAN: There's no question that
23 contracting of the kind you described has had an

1 effect. I mean, it almost has to, by definition. If
2 you mandate a certain fraction of all contracts
3 being let to a certain group of people, and the laws
4 obey, that's going to have an effect. Yes, it has.
5 How significant that has been in promoting the
6 middle class and of promoting Black economic
7 progress is much more controversial if you look at
8 it in the aggregate.

9 CHAIRMAN MATHEWSON: Ms. Ratner?

10 MS. RATNER: I'd like to speak to that from
11 a woman's perspective and women owned business
12 perspective. I'm not sure of the years, but between
13 1975 and 1995, 3% of the small businesses, 5% of
14 small businesses were women owned in 1975, and we're
15 anticipating that 50% of all small businesses will
16 be owned by women by the Year 2000. Certainly, the
17 revenues generated by those companies are quite
18 small compared to white male owned businesses. Only
19 30% of those businesses currently do employ others.
20 However, what we're seeing is that those are, the
21 developed businesses are a direct result of the
22 various affirmative action programs that have been
23 initiated, both on the local, state, and federal

1 level. And, they've had a major impact on the growth
2 of women owned businesses, not only in terms of the
3 numbers, but in the nature of the businesses that
4 women have entered and expanded in. I don't have
5 the statistics with me, but the number of women who
6 are going into so-called non-traditional businesses
7 in manufacturing and in construction, rather than
8 what was considered the stereotyped woman owned
9 businesses, which were small retail operations or
10 small consulting or service businesses, has changed
11 radically as a result of the existence of the
12 affirmative action minority, womens business
13 enterprise programs, both in the public and private
14 sector. I certainly respect Dr. Heckman's
15 statistics on those issues, but all I know is the
16 reality that we see here. And some of the census
17 statistics that were just released six months ago
18 that now there are close to 7 million women owned
19 businesses in the United States. Revenues
20 generating \$1.4 trillion. 1975, we didn't have
21 those statistics.

22 MR. HECKMAN: Can I just make another
23 point? I think there's no doubt, as I said earlier,

1 that these programs have an effect. However, I
2 think it is also clear that if one looks at, for
3 example, African American entrepreneurial activity,
4 and you look since 1965, it's still true that there
5 is a disproportionate under-representation, if you
6 will, if you just cull constant factors that have to
7 do with wealth, education, and so forth of
8 entrepreneurship among African Americans, the male
9 and female. And, I think this is even after a
10 period of long affirmative action. This just
11 stresses the point that affirmative action can make
12 a difference. I'm not denying that it's going to
13 shift things in a certain direction. But, I think
14 when you look at the determinant of minority
15 entrepreneurship, I don't know if it's overt
16 discrimination in the sense that affirmative action
17 is designed to remedy as much as it is other factors
18 that might affect access to lending that could be a
19 forum for other factors that I think are more basic,
20 which are not fully understood. I think if one,
21 what I worry about is that the affirmative action
22 may divert -- an emphasis on affirmative action may
23 divert attention away from some of the more basic

1 problems and the solutions to those problems. That's
2 why I emphasize that there's no cost in maintaining
3 many of these programs. I think that's important to
4 stress. The symbolism is very important to keep.
5 But, I think one shouldn't say that these programs
6 themselves will necessarily tackle the economic
7 fundamentals of the situation. And I'm very much
8 worried that we divert attention away from the real
9 problems of why there may be an undersupply of
10 entrepreneurship in certain communities. And,
11 that's why I think it's important to recognize that
12 laws can have stated effects, and so if I ask
13 everybody to drive on the right side of the road or
14 the left side of the road, everyone will do that.
15 So, there will be compliance. But, the real
16 question is how are we going to effect long term the
17 supply of minority entrepreneurs in the industry as
18 a whole, although I don't think that one can argue
19 that affirmative action, at least historically, has
20 played a major role in changing that disparity,
21 moved it up a bit, but by any kind of sociological
22 or economic study, minority entrepreneurship is way
23 too small. The rates are far too low for African

1 Americans as they are for, say, other groups in the
2 society.

3 MS. BOMBALA: Professor Heckman, I was just
4 going to say that I agree with you, to a certain
5 extent. I think that the focus on affirmative
6 action as the terror and all of, or you know, the
7 complete answer for the plight of minority
8 population in this country is wrongly placed. I
9 think the issue is that affirmative action programs,
10 which the law really only cover a very small portion
11 of the employment in this country since it's
12 basically government and those people who contract
13 with government. So, the vast majority of employers
14 are not, in fact, affected by this legislation. So,
15 thinking that sometimes it's given much more impact
16 and seen as such a, in a negative light when, in
17 fact, while it does its work very well, I think in
18 the sectors it's in, it really does not affect the
19 majority of the employers in this country.

20 CHAIRMAN MATHEWSON: Mr. Roberts?

21 MR. ROBERTS: I'm still stuck on a question,
22 1964 and the origination of the affirmative action
23 based upon the remedy to Blacks, Afro Americans.

1 What is your opinion, both of you, as to the
2 dismantling, restructuring of affirmative action as
3 we now know it?

4 MS. RATNER: I would like to answer in
5 terms of policies in affirmative action. In Chicago
6 and Cook county, there's now a challenge to the
7 minority women business enterprise program by the
8 Builders Association of Greater Chicago.
9 Interestingly, many of its members have benefitted
10 greatly by the programs, the construction programs
11 in the city and in the county. And, I'm absolutely
12 understanding of the Association for General
13 Contractors who brought the suits, the Supreme
14 Court, came to the Supreme Court on Richmon Crowson
15 and Attoran as well, coming to Chicago and Cook
16 County, which is the urban area with the very
17 strongest goals for minorities and women in the
18 nation, 25% minority, 5% in the City of Chicago for
19 construction contracts, 30% minority, 10% for women
20 business enterprises. In the State of Illinois, 5%
21 minority, 5% women business owners. So, if the
22 Association of General Contractors wishes to
23 eliminate, set the precedent to eliminate all

1 minority women business enterprise programs, I think
2 they're probably right coming in. But, I think that
3 they're absolutely wrong because the position that
4 they have taken is that the city and county have not
5 established a narrowly tailored program that
6 responds in fact to the Supreme Court rulings. We
7 are saying that in fact, they have, in terms of the
8 issues of public policy that need to be looked at
9 and reviewed and changed. I think that because of
10 those Supreme Court decisions, that the federal
11 agency, because of Attoran must, in fact, review and
12 change some of the public policies around minority
13 womens business enterprise and procurement policies
14 of the various federal agencies, especially as it,
15 six months ago the rule of two, which was one of the
16 only two federal set asides and was eliminated
17 because of the Attoran decision. Now, we're looking
18 at, I think, the, that race conscious programs have
19 to be expanded to include others who are socially
20 and economically disadvantaged. So, I believe that
21 there are changes that must be made in order to
22 respond to the unfortunate Supreme Court decision on
23 that. Does that answer --

1 MR. HECKMAN: Well, again, I keep coming
2 back to the question, how far can we generalize from
3 what successes were experienced in the period in the
4 1960s? I think that that's an open question. It's
5 an important question, but I think there were
6 certain features historically of the 1964 civil
7 rights era, the period in the 1960s that simply
8 aren't upon us now. The blatant discrimination, the
9 sort of social equilibrium that I think
10 characterized much of the south, the segregated
11 south, and a lot of the north as well in terms of
12 informal practices which, I think now would be
13 simply unacceptable. And that's why I think it's
14 important to keep a commitment that the American
15 named Gunder Nearall I think 50 yesrs ago when he
16 published in American Dilemma correctly challenged
17 the segregation system as it operated at that time,
18 and I think an open commitment to civil rights has a
19 very important role. And, it's not just a symbolic
20 role, it's a commitment to essentially obey the law
21 and respect individuals dignity. I do think, as I
22 said repeatedly, though, already, I don't want to
23 keep beating the same drum, but it's an important

1 point to emphasize that some of the easy gains that
2 we did experience, some of the clear discrimination
3 that was eliminated is gone. And, I think it may be
4 that in the heart of hearts, people do still suffer
5 tremendous, deep-seated hatred. But, I think at
6 this point, it's no longer possible to operate in
7 the kind of blatant and discriminatory way that
8 certainly did characterize American society. But, I
9 also think that at some point, especially in the
10 affirmative action era, enough zealotry may have
11 gone to push the sense that the rules of going from
12 the equal opportunity period of the civil rights era
13 to a period of favoring certain groups. And, the
14 chemistry and the timing of this when it occurred
15 was very unfortunate. Because as I said, when
16 affirmative action law really gets going, when we
17 start seeing a lot of very strong cases, we see at
18 the same time the labor market for unskilled workers
19 is taking a nosedive. A scapegoat can easily be
20 created, and affirmative action laws can be one of
21 them. And, for some reason, people are feeling
22 certain groups are being favored in periods of hard
23 times as opposed to other times. And, it's very easy

1 to say, well, you know, I lost my job or part of the
2 reason why I lost my job is because of affirmative
3 action or some kind of explicit regulation against
4 one group. I think it's very difficult to document,
5 that was numerically important. But, again there's
6 another element of symbolism which I think is
7 important to recognize. I think the Clinton
8 administration has recognized this in terms of if
9 you look at the report that was issued this past
10 summer, essentially said yes, we really want equal
11 opportunity. We really, as you said, we really want
12 to have equal opportunity for everyone and not to
13 push certain numerical goals and objectives which, I
14 think, were pushed at an earlier period. It's a very
15 very difficult task, I think an impossible task. I'm
16 not trying to evade a serious question. I think in
17 1940, relative to the U.S. south, if you look at the
18 way that people couldn't walk into certain stores,
19 couldn't go into certain theaters, couldn't work in
20 certain occupations, there's no doubt that was
21 discrimination. But, in 1996, if we ask ourselves
22 what should be the right proportion of people in
23 this occupation or that, it's a very, very difficult

1 problem. I'm not sure that half of all store owners
2 should be women, or that we should stop at half. It
3 might be 80% should be women, maybe 20%. And, in
4 the early stages of affirmative action just about
5 this time that the civil rights, that the
6 affirmative action law was put in, and just the time
7 that the market was turning sour, just when this law
8 was sort of being put into place and sounded out, an
9 awful lot of uncertainty was created, I think, about
10 the fact that we really didn't know what the right
11 proportions would be. If you look at the case law,
12 the discussions about what the right pools were for
13 a given firm in discrimination cases, there's some
14 very serious questions. Even firms that I think did
15 not intend to discriminate, not to say that all
16 firms did not intend to, but that many firms simply
17 did not know what the relevant pool would be. What
18 is the relevant labor market for the firm? It's a
19 very serious challenge. And that why, I think, this
20 softer approach, this notion of definite equal
21 rights, definitely keeping the commitment to civil
22 rights is an important part of our country's law.
23 On the other hand, I think the notion, what I would

1 call a pretense, that we know exactly what the right
2 proportion should be of X, Y, or Z of any work
3 place, any environment, I think that even though
4 those guidelines are well intentioned to be very
5 honest, among ourselves, those are the hardest
6 things on the earth to justify. You read any of the
7 cases when people argue about what relevant pools
8 are, you look at the discussions in the social
9 science journals, there's no clear idea that because
10 10% of a population happens to be this, that 10% of
11 everything should be that. We can't say that. So,
12 that's why I think the softer approach represents, I
13 would hope, a recognition of the gains of civil
14 rights and stepping back from some zealotry, some
15 zealous pursuit of affirmative action that was
16 misguided by a sense that one knew what the right
17 percentage should be. I'm not sure what the right
18 percentage of women working should be. It's a huge
19 debate, as many people know, that many people have
20 argued, well women working in the work place would
21 cause serious social harm. Others say too few women
22 are working. It's a very difficult issue. It
23 involves values which is, I certainly don't want to

1 say that I know the answer to that. I think it's a
2 question that was raised by the affirmative action
3 "quota" system when it was really enforced in its
4 limited period of time, being stated in a very
5 zealous way.

6 CHAIRMAN MATHEWSON: Mr. Scales?

7 MR. SCALES: I guess, sir, I hear what
8 you're saying. However, I want to go back again to
9 an earlier conversation about the numbers. You said
10 well, 10% may not be the right number, it might be
11 higher, it might be lower. But, even with the soft
12 approach, aren't employers still going to feel that
13 they're in some kind of a numerical gain? And
14 especially if we start looking at expanding some of
15 the categories to include other people? And, in
16 particular, I'm making reference to, I don't know if
17 you're familiar with this concept of work force 2000
18 where they're going to try to balance across the
19 board the American work force, which I can't
20 understand how they're going to do that when we're
21 still identifying categories. But, isn't that still
22 going to force employers into a numerical situation?

23 MR. HECKMAN: Well, again, I think it's a

1 question of rhetoric and reality. I think that the
2 truth of the matter is, it's very hard to specify
3 those quotas, those targets, those goals in any
4 medieval sense. Now, there's some definitions that
5 would say that in the study state that if people are
6 given full opportunity and there were no cultural,
7 social, motivational differences among groups, that
8 basically it's a toss up of the coin. 10% of your
9 population is this, then 10% of just about
10 everything we did. In small firms, but we know we
11 have a situation where we're nowhere near tossing
12 the coin. We're nowhere near in terms of cultural
13 opportunities the advantages one group gives to the
14 children, it's a much richer idea of a work place, I
15 think, has to be accepted. So, the softer approach,
16 I think, represents a retreat from this notion that
17 it must be 10%. And, here, I say the Work Place
18 2000 is a statement saying that yes, to the extent
19 that equally qualified individuals, that's the way I
20 would interpret it, people equally qualified should
21 be equally represented, independently. But, I think
22 it's a definite step back from the notion that we
23 must have a precise statement in Wyoming, 10% of all

1 farmers should be Black. Or, for that matter, in
2 states where no Hispanic population, they should be
3 represented. I think it's very difficult in terms
4 of the social science evidence to actually give
5 precise figures. So, I agree with you that, and I
6 think that was the difficulty that was discovered in
7 the mid 1970s by honest people trying to specify
8 what the right fraction should be. So, I agree with
9 you. I think it is, but again, I think the question
10 is even if you do shave it a little way and say
11 well, we want to have a little bit more of this or
12 that, I think the costs of that are much more in the
13 sort of national good will in the sense of fair play
14 and the labor market as a whole. You're not going
15 to find it so much on the ledgers of firms, you're
16 not going to say that total U.S. output is
17 substantially lower from doing it. So, if we choose
18 to do it, I would say we can do it, it's going to
19 cost us a few billion dollars, but it's not going to
20 be anything near the multi-trillion dollar cost some
21 people have assigned.

22 MS. RATNER: I'd like to respond on the
23 numerical issue also. I understand that because of,

1 again, the Supreme Court decision, the Attoran
2 decision which now affects federal agencies as it
3 affects state and municipal agencies, the Justice
4 Department is now utilizing year old census data to
5 do what is essentially a national disparity study
6 and as you know, as a result of Richmon Crowson,
7 municipal agencies and state agencies that were
8 required to establish the disparity and
9 discrimination that existed among business owners in
10 various trade categories, in order to establish a
11 goal program for their agency. In Chicago, there
12 was a disparity study done in the city, in the
13 Chicago Public Schools, the Chicago Park District,
14 Metropolitan Water Reclamation District, Cook
15 County, lawyers were making an awful lot of money in
16 the last few years on that issue. And now, the
17 state has also looked to do a disparity study to
18 establish goals to justify the establishment of
19 goals. Now, essentially from the Attoran decision,
20 a Supreme Court decision utilizing Bureau of Census
21 data, when you mentioned 10% of all lawyers in
22 Kansas should be Black, that may not be appropriate
23 where in Kansas there isn't that population, enough

1 African Americans that are qualified to be lawyers
2 or in Wyoming where the issue is a large percentage
3 of Native Americans where perhaps that the programs
4 that are in that community should be based in fact
5 on the demographics. And, I believe that there is,
6 expressing some of this data in a regression
7 analysis, saying but for discrimination, women and
8 minorities of various categories would be in these
9 businesses. So, I think that that statistical data,
10 unfortunately, has to be done in order to retain the
11 programs that currently do exist. So, there are
12 many ways that they are attempting to do it. It's
13 again, I think, costly, but I think essential.

14 CHAIRMAN MATHEWSON: Ms. Choi?

15 MS. CHOI: Do we have time?

16 CHAIRMAN MATHEWSON: We don't. Go ahead.

17 MS. CHOI: Mr. Heckman, I find your
18 testimony fascinating, especially in view of the
19 fact that so many people who advocate affirmative
20 action say that it's been such a great progress for
21 a lot of disadvantaged groups, and here you're
22 saying since 1974, it really has had very little
23 effect. The testimony previously, previous

1 testimony, Jim Compton from the Urban League came
2 in, said there were so many increases of dollars
3 that went to minority contractors from \$39 million
4 to \$180 million. What happened to all that money, I
5 mean.

6 MR. HECKMAN: That's a drop in the bucket.
7 If you look at the total income of Black Americans,
8 you're talking \$140 million gain. I'm not denying
9 that there are these small features. Where you want
10 to make progress is in the work place, in jobs, sort
11 of creating sort of main, where the mass of the
12 workers are.

13 MS. CHOI: So, a few individuals have
14 benefitted from affirmative action?

15 MR. HECKMAN: Definitely, no question about
16 it.

17 MR. PUGH: Very few, since 1975.

18 MR. HECKMAN: Well, I think if you look at
19 the average, it's not accounted for much. Very
20 little of the movement in Black income is due to
21 this. It's certainly true that it's helped to
22 create on one end, a Black middle class that wasn't
23 there before. I think you can't deny that, to the

1 extent that there are these contractors now, there's
2 a group of people who are favored in the market and
3 in certain ways, there's no denying that is
4 existing. The question is, does that translate into
5 a substantial numerical group for Blacks as a whole?
6 The answer is no. On the other hand, I'm not going
7 to say it was the affirmative action that caused the
8 slow down in Black economic improvement. I think it
9 has much more to do with the labor markets, the
10 changing nature of technology and trade patterns in
11 the world, of which affirmative action is a tiny
12 ripple of a giant solution.

13 MS. CHOI: What's the outlook of the future
14 for people with very little technology and very
15 little education?

16 MR. HECKMAN: Very bleak, very bleak, I
17 think, unless there's some major change in the
18 technology. Unless we become much more flexible in
19 dealing with unskilled workers. The patterns in the
20 last 20 years have shown substantial declines of
21 real incomes of people holding less than college
22 degrees, high school degree education have declined
23 15% to 20% for males, not so much for women. For

1 women during this period have held to gains. It's
2 been a real growth in the wages of women as a group.
3 The declines are an interesting balance between
4 males and females.

5 MS. CHOI: Then, women gained more as a
6 group from affirmative action, or are there other
7 factors?

8 MR. HECKMAN: Well, I actually place a much
9 greater emphasis on factors like the feminist
10 movement. If you look at just the changing
11 movement, changing college majors of the
12 professional women, say between 1970 and 1990,
13 they're dramatic. The number of women going to
14 professional schools. Education was a major
15 undergraduate emphasis in the early 1970s, and no
16 longer is. There are certain opportunities. I'm not
17 going to attribute too much of that to direct
18 affirmative action. These represent direct career
19 choices, I think. I think it's very difficult to
20 pinpoint that affirmative action per se -- also, it
21 as an enabling factor, it helped. But, I would say
22 the forces there were far more basic and had to do
23 with, I think, women themselves instead of a desire

1 to simply state what they wanted out of life.

2 MS. CHOI: What's the softer approach to
3 affirmative action you keep mentioning that?

4 MR. HECKMAN: Equal opportunity. Just
5 what's been said, making people, treating people as
6 people, individuals, forgetting about the labels,
7 saying we don't, you know, we don't need 10% or 20%
8 or 30% of this group, just simply say a qualified
9 person can come in, period.

10 MS. CHOI: But, when groups and
11 institutions don't adhere to that concept?

12 MR. HECKMAN: Then, you violate civil
13 rights laws. I'm not saying you shouldn't. But, on
14 the other hand, I think we lack the knowledge to
15 actually make a very precise statement as you were
16 saying. That we can say something like X percent of
17 this group should be here, you know. It requires a
18 knowledge of social engineering which I don't think
19 we have. I would say yes, somebody blatantly
20 discriminates against an individual, well qualified
21 individual, similar credentials, then I think that's
22 a clear case of a violation of the civil rights
23 laws. Certainly would favor anything. Abolishing

1 civil rights laws, I think that's a major
2 disincentive of acquiring skills, especially if its
3 on a group characteristic, not an individual
4 characteristic.

5 CHAIRMAN MATHEWSON: Ms. Khoury, you want
6 to slip a word in here edgewise?

7 MS. KHOURY: No.

8 CHAIRMAN MATHEWSON: All right. Preston?

9 MR. EWING: First of all, I think you have
10 to recognize that the affirmative action programs
11 protected some of the gains that had been made, and
12 had these things not been in place, the statistics
13 would not have been as good as they are. I can
14 accept the fact that there wasn't the growth period,
15 but it protected some numbers by those sort of
16 aggressive actions. And then, I think you also need
17 to state, I think you have a responsibility to
18 state, I don't hear this coming, is that the
19 affirmative action is just one of several things
20 that are needed to correct the challenge that
21 America faces with racism in various aspects of
22 American life. Of course, educational opportunities
23 need to be improved and things of that nature. But,

1 history has shown that even when people were
2 qualified, they didn't get the positions. And, that
3 was one of the reasons for affirmative action. And,
4 a softer approach, those kind of words kind of
5 disturb me because, you know, I think back to
6 separate but equal and how America was then trusted
7 to be fair, even though it had separated people.
8 But, to be equal in their treatment of them and the
9 distribution of resources. So, I don't see the
10 continued existence of it as being a threat to the
11 progress that America wants to make. Of course,
12 there's some objections to it, and you pointed it
13 out, is that there's less for people to compete for
14 in employment opportunities. So, therefore, some
15 have nots will look at others in a group and say
16 well, maybe they're getting some favored treatment.
17 But, I think it's dangerous to talk about a
18 softening of the approach to the challenge that we
19 face because that can be interpreted by both or all
20 people involved to be an abandonment of a
21 commitment. And, that's why I was sort of a little
22 nervous about some of the things that you were
23 saying, because we haven't even brought a large part

1 of our population up to believing in equal
2 opportunity. I didn't have a question, I just
3 wanted to --

4 MR. HECKMAN: Just let me respond. I take
5 it as a question, just in one sense. By a softer
6 approach, I simply meant this, I think there was a
7 period when people really thought they knew by
8 running regression equations we could sort of say
9 there's a clear discrimination here that wasn't
10 here, not at the level of an individual firm, an
11 individual lawsuit where you get a lot of
12 information about the case in particular, but in the
13 aggregate as a whole. You can say well, we know
14 this, this industry that, and I think that to the
15 extent that there was this trust in social science,
16 knowledge that you could actually predict what the
17 right fraction should be, whether it was Black
18 Americans, whether it was women, I think that's sort
19 of a hard line approach that I'm saying, that the
20 Clinton administration always pulled back from, and
21 that's what I meant by the softer approach, not the
22 notion of abandoning the commitment to equal
23 opportunity. I couldn't agree more. On this narrow

1 question you raise about protecting the gain, it's a
2 very good question. I mean, you could always say
3 that part of the beauty of the civil rights law and
4 the evidence on the civil rights law in the 1960s is
5 that we can see very dramatic effect. The law was
6 passed, it was targeted towards the south, the
7 greatest gains came in the south for Black Americans
8 in the south. Most of the economic advances in that
9 period actually was concentrated in the south, not
10 in the country. Now, in the period of the mid 1970s
11 and late 1970s, we have this problem, it's true, the
12 laws may have helped, it might have been even worse,
13 no question. However, some work by Donna Hewlett
14 Segalman suggests that there's a mix here, that some
15 aspects of the law have worked in a
16 counterproductive way. The very fear of being sued
17 may make it difficult for you to hire. The big rash
18 in the early 1980s when they were starting to have
19 layoffs by firms of a lot of cases in which involved
20 class action cases, cases about hiring, firing,
21 discrimination. So, the notion is well, if it's
22 difficult to lay somebody off, then you might not
23 want to hire them in the first place. Now, again,

1 I'm not going to say there's firm evidence, but I
2 think your question is dead right. The evidence is
3 very, very mixed, and that's why I'm not going to
4 say it's caused a great deal of harm, a great deal
5 of good. On the cost side, you know, we're talking
6 some billions of dollars, a lot bigger than this
7 \$140 million you talked about.

8 MS. CHOI: Well, that was only in Chicago.

9 MR. HECKMAN: It's still, I think, a fairly
10 small amount.

11 CHAIRMAN MATHEWSON: Okay, thank you both
12 very much. This has been excellent. We'll read your
13 papers with great interest.

14 I have now let this run over to the
15 point that I'd like to shrink our 30 minute break
16 down to 5 minutes, and we'll do that. Please be
17 back in 5 minutes, our next speakers are here.
18 Thank you.

19 (WHEREUPON, a short recess
20 was taken.)

21 AFTER RECESS

22 CHAIRMAN MATHEWSON: Our groundrules,
23 believe it or not we do have them, call for a brief,

1 about five minute oral summary, if you would, of
2 your written paper. As you know, we have not yet
3 seen your papers or had a chance to read them, but
4 we will, after the meeting. But, if you would give
5 us an oral condensation of it for about five minutes
6 each, then we will go to questions from the
7 committee.

8 Mr. Baker, we haven't heard from
9 business yet, either, large or small business, so
10 maybe this is a good time to hear from you.

11 ROLAND C. BAKER

12 I don't know how much information
13 you've been given about me beforehand, so I guess
14 first, I should tell you a little bit about me. I'm
15 Roland Baker. I'm a corporate executive. I work
16 with the First Penn Pacific Life Insurance Company,
17 which is based in Oakbrook Terrace, Illinois. And,
18 that's a subsidiary of Lincoln National Corporation.
19 It's number 48 on the Fortune 50 in terms of assets
20 in corporate America. Obviously, we market
21 financial services, primarily insurance. The
22 Lincoln National Corporation in total has over 4000
23 employee associates and markets a variety of

1 accumulation life insurance products, as well as
2 property casualty coverage through a subsidiary in
3 Indianapolis, American States Life in Indianapolis,
4 Indiana. I started in corporate life at least full
5 time in the insurance business in 1965, just as all
6 of the equal employment opportunity legislation came
7 to be. Although I graduated from college, I happen
8 to have a Masters Degree in Business from the
9 University of Southern California, having received
10 that in 1962. So, I've been a long time in
11 corporate life. And, it is from that perspective
12 that I speak to you today and write the particular
13 paper that you will receive later. I want to make
14 three points.

15 CHAIRMAN MATHEWSON: What's your current
16 responsibility?

17 MR. BAKER: I'm President of First Penn-
18 Pacific Life Insurance Company, and one of the 30
19 months senior executives in the Lincoln National
20 Corporation. Chief executive officer of its
21 subsidiary, First Penn-Pacific. As I said earlier
22 here, based in Oak Brook Terrace, Illinois. Three
23 points I'd like to make. First, affirmative action

1 is simply good business.

2 Secondly, if I may, is that
3 affirmative action is not a quota system. But we
4 view it, and certainly I do, as a goal oriented
5 process. And, my final point that you will see in
6 the paper presented today is that affirmative action
7 programs can and they very well should be practiced
8 so that there are no unqualified persons entering
9 your business work force, because that would serve
10 to the detriment of other employees, the firm, its
11 shareholders and its customers.

12 Now, going back to point number one,
13 the fact that affirmative action or the opinion that
14 affirmative action is good business, it's probably
15 been said already here today several times that
16 there are some significant changes occurring in the
17 population as we move toward the Year 2000. And,
18 they have to do with diversity. By the Year 2000, 1
19 in 4 Americans is going to be of African or Asian or
20 Hispanic descent. Two-thirds of the world's
21 migration will be to the United States. African,
22 Asian, and Hispanic Americans will have annual
23 purchasing power of more than \$650 billion. Which,

1 by the way, exceeds the gross national product of
2 Canada. English will no longer be the majority
3 language in California, with Texas and Florida not
4 too far behind by the Year 2000. And, from a 1990
5 base, the last census, the Asian American, African
6 American and Hispanic American population are
7 projected to increase by 67%, 35%, and 23%
8 respectively. The European American population is
9 projected to increase by only 2%. And, lastly, but
10 certainly not least, two-thirds of new entrants in
11 the work force are going to be women. So, no matter
12 what segment of the economy one finds himself as a
13 business person, it could be capital goods, it could
14 be consumer products, it could be entertainment,
15 financial services, as is myself, enterprises that
16 don't take into consideration and capitalize on the
17 diversity in our society are going to be themselves
18 materially disadvantaged. So, affirmative action is
19 a good business sense.

20 Continuing to just highlight my paper,
21 go to my second point. Not a quota system, but a
22 goal oriented process. And, the goal of affirmative
23 action programs as we practice them in the company

1 that I work for, of course, as I've tried to
2 practice throughout my career, one entering into a
3 supervisory and management position, is to bring
4 women and minorities to positions in companies where
5 they can maximize their potential as full
6 participants in our socio-economic system. So,
7 we're talking about more than non-discrimination.
8 Our program is designed to provide positive action
9 so that -- so as to guarantee that equal
10 opportunities are given to all of our employee
11 associates. We emphasize a location, and we
12 encourage placement of these persons where their
13 respective group are under-represented. By way of
14 recruiting from all types of sources, public and
15 private, that might have knowledge of qualified
16 available individuals. We are directed, through our
17 corporate policy, to fully utilize and develop
18 previously under-utilized and under-developed
19 potential human resources. We've set specific
20 objectives to identify and remedy under-utilization
21 of minorities and women, to establish realistic
22 goals and timetables to correct, identify
23 under-utilization of minorities and women, pledge

1 good faith efforts to maintain a balanced work force
2 through all of our hiring activities. We provide an
3 ordering system to evaluate the effectiveness of the
4 plan, and we make a reasonable effort to accommodate
5 the known physical or mental limitations of any
6 employee or applicant unless you really can't make
7 an accommodation because the individual can't
8 effectively perform the essential functions of the
9 job, or unless the employment of the individual in
10 the specific job will endanger his or her safety or
11 the health and safety of other workers. And, unless
12 such accommodation might impose undue hardship on
13 the conduct of the company's business.

14 Now, I personally reject the hard and
15 fast counting of heads and a calculation of
16 percentages as the sole basis in determining a
17 providing of equal opportunity because that's a
18 quota system. That's a scheme, that's faulty on two
19 grounds. First, our businesses are not made more
20 successful by mandating certain numbers of employees
21 of certain ethnicity. Businesses have to be
22 committed to employing the highest quality human
23 resources available. Surely, historical racism has

1 severely limited the pool of qualified women and
2 minorities. They have been victims of denial of
3 access to quality education as a high potential
4 training and development programs. But, many firms,
5 including the one for which I work, are committed to
6 finding quality associates with great diversity and
7 developing them to the highest potential. That's
8 good business. It's good for all the stakeholders,
9 it's good for the employees, the management, the
10 shareholders, and the community. Only ill will or
11 incompetence and perhaps failure can result from
12 companies hiring less than qualified individuals to
13 meet a rigid goal, based on absolute numbers or
14 percentages.

15 Let me move to my last point, in the
16 interest of time, because you no doubt have a theme,
17 and I can perhaps be more specific if you ask me
18 questions.

19 Let's go to the third point.
20 Affirmative action programs can and must be
21 practiced without placing unqualified persons in
22 positions, to the detriment of other employees, the
23 firms' shareholders and its customers. It has to be

1 practiced without that unacceptable notion of a
2 quota system. Key to this is our government's
3 executive and legislative arms, looking to good
4 faith development and implementation of
5 comprehensive programs to bring minorities and women
6 to full participation in our free enterprise system.
7 Then, though, when discrimination is, in fact, found
8 to exist, we must insist that the judicial system be
9 charged to act explicitly based on well defined law
10 and penalties for violation. I have read so much
11 and heard so much about cases or allegations of
12 discrimination being brought against firms and the
13 resolution of those allegations take years and years
14 to get resolved or adjudicated. That, of course,
15 hampers the entire system. It thwarts companies, it
16 hampers them from moving forward in addressing and
17 engaging in affirmative action because the long
18 term, the longer it takes to resolve problems leaves
19 the laws and the set of practices and procedures
20 that were to go along with those laws. And,
21 businesses, when faced with such an issue, generally
22 choose to take the safest approach, which many times
23 is to do nothing, take no action for fear that you

1 too will become embroiled in such litigation.

2 We have a representative of our
3 company that's been serving on the Presidential Task
4 Force fomred by the U.S. Department of Labor to deal
5 with some of these issues, and the committee that my
6 associates served on recommended that the President
7 first direct the Secretary of Labor to, as I just
8 suggested, enforce all the federal employment laws
9 fairly, and use those companies that are successful
10 in their affirmative action efforts as benchmarks.
11 The corporate world follows the corporate world.
12 The corporate world uses benchmarks as a key item in
13 addressing or in competing with other firms in its
14 indudstry. The Committee also recommended the
15 President direct the Department of Labor to
16 establish a collaborative effort with corporate
17 America through educational seminars to provide a
18 better understanding of the Office of Contract
19 Compliance Programs and agencies and their roles.
20 And, lastly, the committee recommended that the
21 President instruct the Department of Labor to become
22 more user friendly by reducing the paperwork and
23 layers of bureaucracy for required labor reports and

1 affirmative action. Certainly, I concur with those
2 recommendations, and I will just stop here. I think
3 that may be my five minutes.

4 CHAIRMAN MATHEWSON: Thank you.

5 MR. BAKER: I'll give you an opportunity to
6 ask any questions.

7 CHAIRMAN MATHEWSON: Very good. Mr.
8 Herring?

9 CEDRIC HERRING

10 I, too, am glad to be with you this
11 afternoon. By way of introduction, I'm Cedric
12 Herring. I'm a professor at the University of
13 Illinois and at the University of Illinois at
14 Chicago in both the Institute of Government and
15 Public Affairs and in the Department of Sociology.
16 And, I'm a Professor of Sociology and Public Policy.
17 Also a former President of the Association of Black
18 Sociologists. Let me start off by suggesting to you
19 that I do have a paper that's available to you for
20 more details about some of the things I will mention
21 here. But, let me start off with a question for
22 you. What would you guess would be the response of
23 a typical American or a citizen of Illinois to a

1 public policy that does, in fact, substantially
2 increase the incomes of those from impoverished
3 backgrounds does, in fact, help shatter the glass
4 ceiling that women experience? Does, in fact,
5 prevent corporations from engaging in socially
6 undesirable and, in fact, illegal activities? Does,
7 in fact, add to the productivity of America's work
8 force and costs the average taxpayer virtually
9 nothing? Well, despite thinking that with such a
10 policy that everyone would be in favor of it, as you
11 know, there's quite a bit of controversy that's
12 mounting about affirmative action and what it
13 actually accomplishes, what it actually demonstrates
14 along those lines. What I will do is share with you
15 some information from research that I have done, and
16 that other people have done, that talks about some
17 of the impact of affirmative action. Let me add
18 this thing also, that when we talk about affirmative
19 action, there's a tendency for people to talk about
20 the past and to talk about how it is to compensate
21 for things that happened in the past and things
22 along those lines. What I want to underline is the
23 idea that we also have to have affirmative action to

1 deter employers and others from engaging in
2 discriminatory practices in the here and now. What
3 I will talk about is the claim that affirmative
4 action these days is unnecessary or there are many
5 different opponents to affirmative action who made
6 several different claims. For example, some people
7 suggested its unnecessary. Others claim that it is
8 unfair, that it is ineffective in reducing levels of
9 inequality for the targeted groups. Some opponents
10 have challenged affirmative action because it
11 purportedly does little for those who are "among the
12 truly disadvantaged". And, at the same time,
13 unfairly stigmatizes qualified minority candidates
14 who have to endure the perception that they were
15 selected only for the sake of quotas and things
16 along those lines. Other people talk about the
17 notion of reverse discrimination and still others
18 claim that affirmative action in some sense is a
19 drag on employers or on the economy.

20 What I'd like to do is just say that
21 there is very little basis for these claims in fact.
22 For example, many opponents of affirmative action
23 say that it's unnecessary because discrimination is

1 only a thing of the past, and does not hamper the
2 opportunities of women and people of color in the
3 present. But, research from the Fair Employment
4 Council of Greater Washington, the Legal Assistance
5 Foundation of Chicago, the Urban Institute out of
6 Washington, and researchers out of the University of
7 Colorado provide clear and convincing evidence that
8 job discrimination in Chicago, Denver, San Diego,
9 Washington, et cetera, does, in fact, exist. And
10 these studies, what these researchers did was they
11 provided, they matched Black, Latino, male and
12 female--Black, Latino, white male and female job
13 seekers with comparable credentials, and they sent
14 them to employers. And what happened is, they not
15 only sent them to employers, but they also sent
16 resumes and all kinds of credentials. And, in some
17 of these cases, the situation was set up so that
18 minority candidates actually had superior
19 credentials to those of their white counterparts.
20 And, what happened is astonishing to most Americans
21 who want to believe we are in an age where there's
22 no discrimination. What happens in more than one out
23 of five times, that is in excess of 20% of the time,

1 Blacks and Latinos met with discriminatory behavior
2 on the part of employers. There is research that
3 also comes out and I'm sorry that Professor Heckman
4 left because coming out of his own University, one
5 of the preeminent sociologists, public policy
6 scholars, Professor William Julius Wilson, also
7 interviewed employers who quite clearly had no
8 qualms with admitting, readily admitting that they,
9 for whatever reason, feel the need to discriminate,
10 in particular against Black males. So, to say that
11 discrimination is a thing of the past is myth. You
12 know, for specific groups, they unfairly bear the
13 brunt of discrimination, and it happens more than
14 one out of five times in, you know, these labor
15 markets that we're talking about.

16 Other people claim, and I heard
17 Professor Heckman repeat this claim, that
18 affirmative action is ineffective in enhancing the
19 positions of women and people of color. As he called
20 it, a drop in the bucket and the people were talking
21 billions and millions, you know, these are numbers
22 that, to me, seem fairly substantial. What I would
23 suggest is that this notion that affirmative action

1 is ineffective is, I know there's no support for
2 this notion. If, in fact, we look at EEO-1 Reports,
3 they show that affirmative action has, in fact,
4 played a major role in improving the economic
5 positions of minorities and women. Firms that
6 promise to employ more minorities and women do, in
7 fact, end up hiring and promoting more minorities
8 and women in subsequent years. But, these goals are
9 not fulfilled with the strict rigidity of quotas.
10 Minorities and female employment have increased much
11 faster to contractor establishments that have
12 affirmative action commitments than those that do
13 not have such commitments. And, according to data
14 from national sources like the General Social
15 Survey, what we also are able to do is find people
16 who work for affirmative action employers versus
17 those who do not. And, we find that Blacks and women
18 and Latinos with comparable credentials who, where
19 the only difference really is do they work for an
20 affirmative action employer or not. What we find are
21 some substantial differences. For example, for
22 racial minorities who work for affirmative action
23 employers, same kind of credentials as those who

1 don't, their earnings are more than \$5,000 more per
2 year. And to you, maybe that's not a lot of money.
3 But, for people like me anyway, \$5,000 is
4 substantial. When we talk about women, the gains
5 are even more in excess of \$6,000 per year. When
6 again, the credentials are the same, and the
7 difference is that you're looking at affirmative
8 action versus non-affirmative action. I would also
9 add that this is true even though what we find is
10 that white males who work for affirmative action
11 employers do not suffer. I mean, in fact, their
12 earnings without controlling for these other
13 factors, are actually higher than white males who
14 work for non-affirmative action firms. But, once we
15 control for other characteristics, we see that
16 there's no penalty that white males pay for working
17 for such firms. So, it is clear that affirmative
18 action has been quite effective in enhancing the
19 position of women and people of color without there
20 being any kind of subsequent penalty for white
21 males.

22 There is also the perception that
23 affirmative action helps the wrong women or helps

1 the wrong people of color because it doesn't help
2 those who are truly disadvantaged. Well, again,
3 contrary to this kind of speculation are real
4 numbers that suggest that, in fact, it is people
5 from impoverished backgrounds, it is people from
6 impoverished backgrounds who, in fact, benefit the
7 most from working in affirmative action context.
8 So, the numbers that I was telling you about earlier
9 actually are slightly higher when we're talking
10 about people from modest means to begin with.

11 The other claim, and I'll try to get
12 thorough this fairly quickly. Another claim is that
13 affirmative action stigmatizes minorities and women
14 because it leads to the belief that they were
15 chosen, that they are less qualified, less
16 intelligent, less hard working than white males, et
17 cetera. But, the reality is that when affirmative
18 action brings whites into greater contact with
19 people of color, it enables whites to see that
20 people of color are, in fact, intelligent and hard
21 working. Indeed, it is white men who work where
22 there are no provisions for affirmative action who
23 are the least favorable in their impressions of

1 Blacks' and Latinos' level of intelligence and work
2 ethic. And so, it can't be that it's affirmative
3 action that's driving these kind of attitudes and
4 beliefs.

5 Another belief is that affirmative
6 action is tantamount to reverse discrimination
7 because white males suffer economically. I've
8 already addressed this to some degree by talking
9 about how, when we looked at what happens in this
10 specific context, it just does not hold up and there
11 are no cases in which when we're talking about
12 comparing the incomes of white males to those of
13 women or to Black or to Latinos, et cetera, no
14 matter what kind of context we're talking about, we
15 cannot find evidence of the incomes or earnings of
16 these minority groups eclipsing the earnings of
17 white males under any circumstances. So, it's very
18 hard, again, to make the claim that it's affirmative
19 action that's making white males suffer these days.
20 The claim about affirmative action being a drag on
21 employers and the economy. No. What the reality is
22 is that affirmative action has, in fact, decreased
23 discrimination and has had the net benefit for

1 employers of leading to more effective and efficient
2 use of pools of talent that actually exist out
3 there. Because what happens is that groups that were
4 previously excluded from the labor pool get access
5 and it gives employers the benefit of having more
6 people to choose from. And so, they can be more
7 rational in terms of trying to achieve that bottom
8 line. And so, it enables them to reallocate the
9 jobs to, reallocate women and people of color to
10 jobs that are more suitable to their skills. And so,
11 what, in essence, can happen is they can become more
12 productive relative to white males. And that's, in
13 fact, what has happened over the last 20 years or
14 so.

15 I'll just sum by saying this, there is
16 this apparent paradox that occurs whenever there's
17 this discussion about affirmative action that many
18 people are well aware that women and people of color
19 hve been the victims of discrimination. Yet, if you
20 are willing to acknowledge the need for affirmative
21 action even when, in fact, we are able to
22 demonstrate that affirmative action has had many of
23 the kinds of positive consequences that we would

1 like to see it have, without it having the negatives
2 that many people would try to suggest occurs. There
3 are several additional arguments that could be
4 invoked to justify the existence of affirmative
5 action if people want to hear these very quickly,
6 the need for compensatory justice for victims of
7 discrimination. When we talk about any other kind
8 of litigation, we believe that when a person has
9 been wronged, that somehow they're supposed to be
10 compensated for being wronged. When we talk about
11 affirmative action, however, somehow that goes out
12 the window. We can also talk about the need to truly
13 equalize opportunity so genuine merit can be
14 demonstrated. In other words, if we can remove
15 impediments, we can actually see what the levels of
16 talent the different groups have. But until we have
17 a level playing field, that cannot happen. We can
18 also talk about the need for proportional
19 representation so that women and people of color's
20 collective needs, interests, and sensitivities can
21 be better served to have more black lawyers,
22 doctors, professors, whatever could, in fact,
23 enhance American society and at a minimum, maybe it

1 could also help to serve as role models. And, I
2 won't get into all those things, but there are many
3 other kind of spillover effects that can come from
4 affirmative action.

5 And, fourthly, I would suggest that
6 affirmative action also can be used to monitor and
7 guard agaisnt current and future discriminatory
8 behavior. And, from the less lofty perspective of
9 enlightened self-interest, better minority
10 representation can also enhance marketing savvy,
11 vis-a-vis minority consumers help to pacify minority
12 challenges to the policy decisions of predominantly
13 white male governments or agencies and, in general,
14 help to keep a lid on what many people consider a
15 volatile, bubbling caldron. So if, in fact, public
16 leaders are sincere in their concerns about helping
17 women and people of color realize equal
18 opportunities, they will need to understand that
19 having the fact and positive effect of affirmative
20 action are not enough. They also need the courage
21 to continue pushing for strategies that are, in
22 fact, effective and affirmative action is one such
23 strategy. Thank you.

1 CHAIRMAN MATHEWSON: Thank you. Mr. Baker,
2 a quick question for you first, please. You stated
3 that it's important that the government maintain a
4 commitment, even assuming should we say enlightened
5 or whatever, progressive corporations like yours are
6 doing, the kinds of things that you talk about, you
7 were saying that even so, the key factor to success
8 of these kinds of efforts to bring minorities and
9 disadvantaged citizens into the economy is the
10 government commitment to bring qualified people to
11 the work place or into the work place.

12 MR. BAKER: Not government commitment, our
13 commitment, that's a corporate commitment because we
14 want qualified people. That's not the government's
15 job.

16 CHAIRMAN MATHEWSON: Okay. Then, did you
17 say something else about to help or support or
18 participation of government in this process?

19 MR. BAKER: What I said, what I think is
20 most important about the government's role is it has
21 to do with the, any law related to civil rights,
22 when an injustice is found, the government must move
23 swiftly and strongly as with regard to punishment.

1 CHAIRMAN MATHEWSON: I understand that.

2 MR. BAKER: And, I would be dissatisfied
3 with the way the government machinery is working in
4 this area. And, in most of the other civil rights
5 areas.

6 CHAIRMAN MATHEWSON: Outside of
7 enforcement, just as a matter of public policy, what
8 other role do you see for the government in this
9 process?

10 MR. BAKER: Well, first and foremost is, of
11 course, the providing of equal opportunity itself.

12 CHAIRMAN MATHEWSON: And, how does
13 government do that, I mean, government at all
14 levels?

15 MR. BAKER: The government is an enterprise
16 just as we and you take all those things I said
17 about getting qualified people, about making
18 opportunity known to qualified people, about finding
19 qualified people that could be trained and developed
20 to their highest potential. That's our
21 responsibility because a human resource is just as,
22 possibly more important an asset than say a piece of
23 capital equipment.

1 CHAIRMAN MATHEWSON: Are you talking about
2 getting people or getting access to people who are
3 trained or qualified or maybe that are trainable or
4 qualifiable perhaps?

5 MR. BAKER: And, facilitating further
6 training and more qualification so that every human
7 resource, whether government or the free enterprise
8 system, has an opportunity to reach his or her
9 fullest potential.

10 CHAIRMAN MATHEWSON: And, what's the role
11 of education in this process? What's the place of
12 education?

13 MR. BAKER: It's clearly and obvious that
14 that's where it starts. And, without the, let's call
15 it the manufacturing component, starting with the
16 home, and then the schools, you do not have quality
17 human resources. That's one of our problems today.
18 There are a couple of you who may remember me, but I
19 lived and worked in this area from 1981 to 1987 in
20 Schaumburg, western, northwestern suburb here. And,
21 we moved the company from State and Adams to
22 Schaumburg. And, we thought we would be getting a
23 higher quality of employee associate. Here's what

1 we found. Still, we had to have set up in our own
2 company remedial training so that people could
3 become effective as insurance policy service people,
4 how to correspond orally and in writing, how to
5 answer the telephone. Not only were we dealing with
6 high school graduates, we were dealing with
7 community college graduates. So, what we ended up
8 doing was going out aggressively seeking elementary
9 school teachers who were home, had been home for
10 awhile, getting their children through the first
11 years of their lives and we hired them part time
12 because, obviously, they had the communication
13 skills which ordinarily you would expect to find in
14 a high school graduate. And, I was disgusted,
15 really, because I had better communication skills
16 when I came out of St. Ansum School at 61st &
17 Indiana at age 13 or 12 and it's very disappointing
18 how the education system is failing.

19 CHAIRMAN MATHEWSON: Mr. Ewing?

20 MR. EWING: I have no questions.

21 CHAIRMAN MATHEWSON: Mr. Pugh?

22 MR. PUGH: I don't have any questions, bur
23 Mr. Herring, the previous speaker mentioned figures

1 that some of us found difficult to, not Mr. Baker,
2 but Professor Heckman, and I've since got his full
3 paper here.

4 MR. HERRING: Equation and all.

5 MR. PUGH: Yes, and as a professor, can I
6 read you just two sentences and ask you, I think
7 it's real vital to establishing what perhaps the
8 facts might be. He's talking about, this is the
9 middle of his paper, he's talking about regional
10 data that reveal Black progress was most pronounced
11 in the south. In the south, the adjusted relative
12 wage rose from 60% in 1964 to 88% in 1984. The
13 increase in the north during the same period from
14 88% to 97% was considerably less dramatic. Now, I
15 don't know how economists do arithmetic, but once
16 you advanced to 97% sounds almost unbelievable. Am
17 I wrong in assuming that?

18 MR. HERRING: That we're comparable at this
19 point is that what your question is?

20 MR. PUGH: Yes.

21 MR. HERRING: If, in fact, that were true,
22 that's exactly what that would mean. The problem is
23 that the way economists do things doesn't seem right

1 to me, either. In fact, what they will do is this,
2 when it comes to talking about everything else being
3 equal. In other words, when a person is trying to
4 establish that discrimination exists and some people
5 will say let's take everything else, let's make
6 everything else equal, and some economist will never
7 believe that it's always anything but
8 discrimination. And so, what they will do is they
9 will throw everything conceivable into an equation
10 and say and now we have 97% but that 3% still isn't
11 discrimination, it's some factor that we can't
12 identify. But, when they find you can actually find
13 some circumstances in which; for example, if you're
14 talking about extremely young people or people just
15 out of high school and living in the north and from
16 certain family backgrounds, and other kinds of
17 qualifiers, you actually can find people who look
18 very comparable. The problem is that when people
19 age and as people go through their life cycle, you
20 get these disparities between Blacks and whites, for
21 example, that economists just scratch their heads.
22 And so, we don't know why that happens. So, in other
23 words, what you might have there is a best case

1 scenario where you can account for all but the 3%.
2 But, there are many economists who would still say
3 that that's still not discrimination, and that still
4 would not require any kind of affirmative action.
5 That's best case scenario. And, on the other hand,
6 when you find massive gaps and, you know, talking
7 about 68%, once you've controlled for everything
8 conceivable and you still don't need affirmative
9 action, and I don't quite understand the logic
10 behind that myself. I don't know if that answered
11 your question or not, but --

12 MR. PUGH: It answers my question. Mr.
13 Chairman, I would also apologize to Professor
14 Heckman. I couldn't ask his question while he was
15 here. He may want to make a comment on it, if that's
16 proper.

17 MR. BAKER: Mr. Chairman, may I just make a
18 brief response?

19 CHAIRMAN MATHEWSON: Sure.

20 MR. BAKER: The statistics using the
21 assumptions that whatever the assumptions were that
22 the professor used could be quite accurate. But, the
23 fact remains that there's still a lot of

1 discrimination in our free enterprise system. So,
2 97%, 85%, 60%, it doesn't matter, there's still
3 material discrimination in our system in this
4 country.

5 CHAIRMAN MATHEWSON: Ms. Bombala, we're
6 running late here, so let's try to expedite if we
7 can.

8 MS. BOMBALA: Just a really quick question.
9 You're talking about the role of government, then,
10 Mr. Baker, in terms of regulations towards
11 affirmative action, equal opportunity. We have the
12 equal opportunity legislation. Do you, therefore,
13 feel that's sufficient and we can trust all firms to
14 be as enlightened as yours in terms of diversity.

15 MR. BAKER: No, you absolutely cannot, you
16 absolutely cannot, and that's my point. Which is,
17 you violate the law, there should be swift and very
18 definite justice. That's it. And, I don't think
19 we've had that. We've had reams and reams of
20 legislation regulation, laws and et cetera. But,
21 when it gets right down to your looking across the
22 desk at me, considering me for hire and you don't
23 hire me, and I'm imminently qualified. There has

1 not been speedy and effective and very definite
2 redress.

3 CHAIRMAN MATHEWSON: Mr. Roberts?

4 MR. ROBERTS: I'm back to my basic
5 question, but, and it's directed at both of you.
6 This question about your personal involvement, your
7 personal experience, you indicate 1965 you went to
8 Penn. Penn, at that point, is a white company?

9 MR. BAKER: Well, in 1965, I went into the
10 insurance business full time. I worked with
11 Beneficial Standard Life Insurance Company in Los
12 Angeles.

13 MR. ROBERTS: But, you're originally from
14 the Chicago area.

15 MR. BAKER: I was born in Chicago, but
16 actually moved to California when I was 13, and this
17 is my third experience with Chicago. But, yes, I've
18 worked for all, let's call them majority owned
19 enterprises.

20 MR. ROBERTS: Going back to affirmative
21 action, conservative think tank thoughts, some
22 others say we should dismantle affirmative action as
23 we know it. The organization was for benefit of a

1 certain group; i.e, Black, African Americans, an
2 umbrella has become too inclusive, too diverse.
3 Now, in order for the original group that it was
4 intended for, actually continue to maintain the
5 gains that was made up to 1971 when it become a
6 vehicle for the female enterprises. How do you see
7 what would you call a reorganization or revamping,
8 restructuring of affirmative action as we now know
9 it? Partially you answered the question just when
10 you were answering that question as to the impetus
11 that should be put on, actually putting teeth into
12 the law.

13 MR. BAKER: Yes, that's really what I
14 sincerely believe, and that's the foundation of my
15 comment. Other than the fact that I know businesses
16 are being hurt today and they're going to be hurt
17 significantly in the future if they don't realize
18 things like the following: Let's take my business,
19 for example. I now that in terms of percentage of
20 its group, Asian Americans have a high percentage of
21 their population earning more than \$75,000 a year
22 than any other segment of the population. I would
23 not be a smart businessman if I did not go into that

12 1 market and I would learn how to communicate with
2 that marketplace. I would learn how to advertise, I
3 would learn everything I could and not only that, I
4 would consult with experts in that market. If I
5 don't, I'm going to be losing all of the economies,
6 the profits, et cetera, as a business person from
7 not learning all I can about that particular segment
8 of the population. And, it applies to every other
9 ethnic group. Put bluntly, the white middle class
10 population today is as big as it's ever going to
11 get, relatively speaking. So we had better learn
12 all about diversity, and we'd better learn how to
13 all live much more effectively and harmoniously
14 together, and business people because our country
15 runs on free enterprise. And so, there is the
16 effective administration of justice on this side of
17 the argument, as well as there is the true free
18 enterprise or business side of it. And, I think I've
19 given you my impression of how I look at both.

20 MR. HERRING: Just two real quick things.
21 I'll make them very brief. That, for whatever
22 reason, I think we have to help business realize
23 what's in its best interests because for some

1 reason, we have many businesses that don't act
2 rationally and do, you know, there are employers
3 that for whatever reason, do discriminate and bypass
4 people who are perfectly qualified. So, we need to
5 point out to them that with a gentle nudge to stop
6 them from walking over a cliff just like we have
7 market regulations for other kind of things. Some of
8 this might be more necessary than just voluntary.
9 There was actually another point that I was about to
10 make, and I'm embarrassed to say that I'm forgetting
11 it now.

12 MR. ROBERTS: But, instead of calling
13 affirmative action affirmative action, is there any
14 other thing you would call it, okay, in 1965 it was
15 FEPC, Equal Opportunity, 1969 forward it's
16 affirmative action. What now could we call
17 whatever?

18 MR. BAKER: I believe that affirmative
19 action has taken so much negative heat, as it were,
20 that it's time to get away from it because everyone,
21 the uninformed, misinformed, the bigotry of the
22 country has interpreted it as quotas, providing
23 unfair advantage to unqualified people, et cetera, et

1 cetera. Everything negative. I say it is our
2 commitment and it should be society's, this entire
3 society's commitment to provide equal opportunity
4 for all its citizenry. And, one more time, when you
5 do not, and when you do it in a discriminatory
6 fashion, you break the law and you should be dealt
7 with accordingly. We haven't done that.

8 MR. HERRING: Actually, I don't know
9 whether changing, what you call changing anything
10 substantially if, in fact, you do not deal with the
11 root problem. And, in fact, what people would say is
12 the root problem is, you know, you go through
13 economic stagnation, you go through declines in the
14 economy and all of a sudden, people look for
15 scapegoats and they want to blame immigrants or they
16 want to blame Blacks or they want to blame women or
17 they want to blame this group or that group. I'm
18 saying basically, what you have to deal with is the
19 underlying problem. And, it doesn't really matter a
20 whole lot what you call it because you call, it
21 something different five years from now, we'll be
22 having the same discussions about that new thing
23 that you call it. The other thing that I wanted to

1 add, it came back to me, is the one thing that I
2 would change about affirmative action if I were
3 going to amend it or mend it and not end it, is
4 where the burden of proof is. It use to be that the
5 burden of proof was on the person who was accused of
6 being a discriminator to prove that they were not.
7 We came along with many court rulings that said no,
8 okay, let's drag this out and let's drain people of
9 their resources and let's put the burden of proof on
10 the person who is making the charge of
11 discrimination. Often, I mean, this is a person who
12 could be jobless because they didn't get the job
13 that they were qualified for, going up against a
14 large corporation. I would say the one change that
15 would be most substantial, and most dramatic, and
16 most effective would be changing the burden of proof
17 back to where it use to be.

18 CHAIRMAN MATHEWSON: Ms. Choi?

19 MS. CHOI: Yes, Mr. Baker. I was interested
20 in you mentioning Asian Americans as a market. I
21 know that as an Asian American, I take that to
22 heart. I'm wondering about your comment as
23 corporate world using benchmarks. How do other

1 corporate sectors deal with that, and how can we,
2 sort of a role model or a mentor confront that? Do
3 you find that in your corporate experience that
4 companies that sell products to diverse groups of
5 people act differently, whereas perhaps as Mr.
6 Herring had mentioned, that some corporations that
7 may not sell products to people, that they make ABC
8 Widgets that maybe sell to another bigger
9 corporation or a part that really doesn't have a
10 human factor in it, that their diversity quotas
11 are -- I take the word quota back, that their
12 diversity or their numbers consciousness is a little
13 bit different?

14 MR. BAKER: Well, I must say that, first of
15 all, that the vast majority of my experience has
16 been in the financial services industry, and most of
17 that is marketing to individual consumers, maybe
18 through an intermediary. But, nevertheless, to
19 individual consumers. But, if you look at major
20 equipment manufacturers, some of the leaders, IBM,
21 Xerox, all of the high technology firms are pretty
22 much at the vanguard in terms of providing equal
23 employment opportunity. But, certainly, it's

1 critical and it's a very sensitive issue that
2 consumer goods, manufacturers, especially if you're
3 going to deal with items associated with various
4 groups, African Americans, hair care products, you
5 must be comforted. If you see an African American
6 marketing representative going to a large department
7 store, or Revlon marketing Black hair care products
8 and that's good. And, I think more and more the
9 African American community, Hispanic community, and
10 all our ethnic communities are looking for that
11 because there are, as I said, over \$600 billion of
12 market is there for minorities for various products.
13 But, I don't see a stark difference, at least in my
14 experience, between the capital goods industry and
15 consumer goods industry.

16 MS. CHOI: That's comforting to find out.

17 MR. BAKER: I don't want to give you too
18 much comfort. I'm here to discuss my experience
19 primarily. I haven't seen it to say that I don't
20 want you to be too comfortable.

21 MS. CHOI: Mr. Chairman, I have a 30 second
22 comment.

23 CHAIRMAN MATHEWSON: 30 seconds.

1 MS. CHOI: We have heard 15 speakers this
2 morning regarding affirmative action, and we've
3 heard all of them say don't dismantle it, keep it,
4 maybe change it a little bit. I wonder where all
5 this talk about dismantling is coming from, just for
6 the record. Just for thought, I wanted to make that
7 comment.

8 CHAIRMAN MATHEWSON: Good question. Not
9 from this room today, anyway. Thank you both very
10 much for your participation. We look forward to
11 reading your papers.

12 Angela Im and Linda Mills, would you
13 come forward, please?

14 Welcome, thank you for coming this
15 afternoon. You're going to be a one man band?

16 MS. IM: One woman band.

17 CHAIRMAN MATHEWSON: Yes, thank you. So, I
18 think that it will help us get back on track here,
19 actually. I think we'll spend 15 minutes with you.
20 If you could start with a five-minute summary of
21 your written statement. Then, we'll have questions.

22 ANGELA IM

23 Okay. Great. Thank you. My name is

1 Angela Im. I'm the past chair of the Legislative and
2 Judicial Development Committee for the Asian
3 American Bar Association here in Chicago. I'd also
4 like to thank you for inviting me to present and
5 participate in these important hearings. I want to
6 start by echoing what the 15 other speakers before
7 me must have said, and that is to state that I'm an
8 avid fan of affirmative action. And, although
9 speakers before me, I too will acknowledge that some
10 problems may exist in the implementation, but
11 overall, where affirmative action policies have been
12 appropriately implemented, it has been a tremendous
13 success. And, it is largely to be credited to the
14 inroads that women and minorities have made to date.
15 And, indeed, I would argue that the most serious
16 problem with affirmative action programs is that
17 it's not been sufficiently expansive in depth or in
18 breath, especially with respect to Asian Americans.

19 Let me start by saying Asian Americans
20 are generally perceived to be hard working, highly
21 educated, successful in their occupations, polite,
22 non-confrontational, law abiding, resourceful,
23 detail oriented. In addition, we respect our

1 elders, we take care of our children, and generally
2 we're just all around "good models" of citizenry.
3 And, if you believe Charles Murray and his book,
4 "The Bell Curve", Asian Americans are just the
5 smartest folks around. So, why am I here today
6 lauding affirmative action. And, more importantly,
7 why will I later argue for the expansion to include
8 Asian Americans?

9 Well, I'd like to spend my few minutes
10 with you today kind of giving you an answer to that
11 question. Let me start by giving a little bit of
12 history. And that is that Asian immigration has its
13 roots in the early 1800s when Chinese immigrants
14 first arrived in Hawaii to work in the sugar
15 plantations. And then, in California during the
16 gold rush to work in the mines and build the
17 railroads. And, other Asian Americans followed
18 thereafter in waves of immigration. But, our very
19 presence in the United States has been a fight
20 against racist policies. The very first race based
21 U.S. Immigration law was targeted toward Asians.
22 Now, it was aptly named the Chinese Exclusion Act.
23 It was passed by Congress in 1882. It expressly

1 prohibited the immigration of Chinese laborers. In
2 1907, Congress excluded Japanese laborers. And, in
3 1917, Congress prohibited, decided to include the
4 rest of the Asian countries. And, if that wasn't an
5 adequate protection enough, in 1924, the National
6 Origins Act banned the immigration of aliens
7 ineligible for citizenship. And, of course, that is
8 significant because in 1970, the Naturalization Law
9 limited naturalized citizenship to free white men.
10 So, therefore, if you take the two laws together,
11 the National Origins Act, which banned aliens who
12 were not eligible for citizenship, and you combine
13 that with the earlier act that limited it to free
14 white men, essentially Asians were just prohibited,
15 precluded from entering the country. That did not
16 change until the Immigration Reform Act of 1965.

17 I'd like to go back and talk about
18 that Naturalization Law of 1970. That Act was
19 challenged. And, when it was challenged in 1979, the
20 Federal Court reasoned that a Chinese person was not
21 a white person, and that the Congress had explicitly
22 retained the word "white" in order to exclude the
23 Chinese from the rights or naturalization. And, in

1 1922, the Supreme Court limited naturalization to
2 Caucasians, but a year later when they were
3 confronted with an Asian Indian who felt, who was
4 defined as a Caucasian, they said well, that can't
5 be right. And said that the word "Caucasian" had to
6 be defined from the perspective of the common man's
7 experience. And, of course, that was the common
8 white man's experience. So, I find it interesting
9 that we were constantly finding exceptions.

10 Asian American citizens who became
11 citizens by birth fared no better. Voting
12 restrictions denied Asians the ability to
13 participate in the body politic. For example, the
14 California Constitution of 1926 prohibited, provided
15 that no native of China, no idiot, or insane person
16 could vote. Well, Asians were also excluded from
17 mainstream civic society by decisions such as that,
18 which prohibited Asians from testifying in court.
19 And, in a 1954 decision, the California Supreme
20 Court said that it was a reversible error for a
21 Chinese witness to testify against a white man.

22 Racist laws also dictated with whom
23 Asians could marry. California misassignment

1 statutes declared that marriages between an Asian
2 and a white person was illegal and void. Of course,
3 Asians had good company in that marriages within
4 African Americans and whites were also declared
5 illegal.

6 Asians were also excluded from white
7 public school classrooms. In campaigns to add
8 Asians to the already excluded races of that as
9 Native Americans and Blacks, a group called The
10 Native Sons of the Golden West asked its members,
11 would you like your daughter to marry a Japanese?
12 If not, demand that your representaive in the
13 legislature vote for segregation of whites and
14 Asiatics in the public schools. In 1927, the U.S.
15 Supreme Court upheld the separate, but equal
16 doctrine of Asians in education.

17 Today, now, much has been written and
18 discussed about the success of Asians, especially
19 evidence by our higher rates of advanced education.
20 And, what's not discussed is the fact that according
21 to the Federal Glass Ceiling Report, Asians receive
22 a lower rate of return on their educational
23 investment. And, controlling for English fluency and

1 citizenship, Asians with comparable or even higher
2 level of education earn less than white counterparts
3 in the same occupation. Moreover, while in some
4 professions such as the sciences, Asians may,
5 indeed, be represented in larger numbers than would
6 be, than their overall percentages in the
7 population, we are still greatly under-represented
8 in a lot of other areas such as the humanities and
9 the sciences.

10 In the legal profession, although
11 Asians have made great inroads into law schools,
12 we're vastly under-represented in most prestigious
13 legal jobs. At the 25 largest law firms in Chicago,
14 only 9, 9 out of about 3000 partners at these 25
15 largest law firms are Asian Americans. Although
16 Illinois is home to the five largest concentration
17 of Asians in the U.S., there's only one state court
18 judge and only one federal administrative judge who
19 is Asian American.

20 The Federal Glass Ceiling commission
21 found major barriers to advancement to exist for
22 Asian Pacific Islanders. And, what they concluded
23 was that the reason for these barriers was

1 widespread acceptance of popular stereotypes that
2 Asian Pacific Islanders are not affected by the
3 glass ceiling. There's widespread acceptance of the
4 stereotypes that Asian Americans make superior
5 professionals and technicians, but are not suited to
6 management and leadership. And, there's just
7 generally benign neglect and ignorance of the
8 complexity needs and differences about Asian
9 American groups.

10 You know, I started out with that list
11 of wonderful accolades about Asian Americans. I have
12 a list here from the Leadership Education for Asian
13 Pacifics, LEAP, which is a public policy think tank
14 based out in LA. They have this long list of Asian
15 stereotypes. I wanted to read some of them to you.
16 Some of the more popular stereotypes about Asian
17 Americans is that we are anal retentive, we're
18 anti-social, clamish, boring, conforming, docile,
19 exotic, inarticulate, inflexible, industrious --
20 well industrious, I'm sorry, naive, nerdy, no
21 management skills, not creative, no interpersonal
22 skills, we have poor English skills, poor people
23 skills, we're socially inept, we're subservient,

1 unaggressive, un-American, unclean, and
2 unimaginative. It's no wonder that we have a hard
3 time breaking through the glass ceiling. I don't
4 know how much of my five minutes is left because
5 I've got a lot more.

6 CHAIRMAN MATHEWSON: Not much. Why don't
7 we stop at this point, if we would, please, because
8 we have to keep going, and other people are
9 following you. Let's open it up to questions at
10 this point. Maybe we'll give you a chance to make
11 your remaining points.

12 Mr. Ewing?

13 MR. EWING: I don't have any questions, but
14 thanks for the history lesson.

15 CHAIRMAN MATHEWSON: Mr. Pugh?

16 MR. PUGH: I appreciate the history lesson,
17 too, and I asked, you mentioned the lack of Asian
18 American attorneys. California, Los Angeles Court
19 got 9 judges named Ito. Is that a good stereotype,
20 by the way, the Judge Ito stereotype sweeping
21 America, pro or negative?

22 MS. IM: Well, I think that I find it
23 interesting that the highest profiled Asian in the

1 entire country is Judge Ito. And, in a lot of --
2 during the trial, it seemed interesting that it
3 wasn't just a matter of the Black and white race,
4 but now we have to interject, somehow we had to
5 bring Asians into it. And, in a lot of the cartoons
6 that we saw coming out of that were cartoons about
7 Judge Ito dropping bombs or, you know, blowing up
8 things or, you know, --

9 MR. PUGH: The answer is negative?

10 MS. IM: We needed the profile, I'll tell
11 you that. It was necessary to see an Asian American
12 in a position of authority in the kind of position
13 that he was placed. But, a lot of people used that,
14 used his racial background, including, I think the
15 biggest example, of course, is Senator Alphonse
16 Damato. I think that Senator Damato's mimickery of
17 Judge Ito, who happens to be a third generation
18 Asian American, who speaks English without an
19 accent, I mean, English is clearly his first
20 language and maybe his only language, and to attack
21 him in the manner that he did, saying that, by
22 pretending that Judge Ito could not, did not have
23 proficient skills in the English language,

1 especially as a Judge and as an attorney, I just
2 think it shows the depth to which Asian Americans
3 face discrimination. I think, I don't know if I
4 made the point, but the reason for the history
5 lesson is just that Asian Americans have been
6 excluded from affirmative action programs generally.
7 If the basis for affirmative action programs is
8 evidence of past discrimination and ongoing
9 discrimination, I think that Asian Americans
10 definitely do fit both of those tests.

11 CHAIRMAN MATHEWSON: Ms. Bombala?

12 MS. BOMBALA: No.

13 CHAIRMAN MATHEWSON: Mr. Roberts?

14 MR. ROBERTS: No questions.

15 CHAIRMAN MATHEWSON: Mr. Scales?

16 MR. SCALES: Just a statement, Ms. Im,
17 which I think you've made very well, and that is I'm
18 just going to change your wording a little bit. I
19 don't think the Asian American has been excluded, I
20 think, as far as affirmative actio nis concerned,
21 you have been included when it's necessary; i.e.,
22 the trial, the Simpson trial and Judge Ito.

23 CHAIRMAN MATHEWSON: Ms. Choi?

1 MS. CHOI: I'm going to ask a question to
2 Ms. Im that perhaps other, that, you know, is not
3 polite to ask another Asian American, but I think
4 being an Asian American, I can ask that and I can
5 sort of echo some of the sentiments of other
6 minority communities. Affirmative action has been
7 historically going back to sort of ABC's of it, in
8 certain years by executive order saying that it's a
9 past remedy for a past wrong for a certain group.
10 Why now Asian Americans? Why are they included in
11 this if the stereotype is such they're doing well,
12 they're okay, why should Asian Americans be included
13 in this picture, in this formula, especially when
14 there's scarcity?

15 MS. IM: I'm actually glad that you asked
16 that question because the Supreme Court has said
17 that in striking down affirmative action programs,
18 that affirmative action programs cannot be over
19 inclusive and over broad. Meaning, you cannot take
20 generalized data and say ah hah, there's, you know,
21 there are only, you know, 5% of the attorneys are
22 minority. And, therefore, we must hire more
23 attorneys into this legal department. The Supreme

1 Court has made it very clear that you cannot take
2 generalized data and apply it to the specifics.
3 And, I think to include -- and, I think that the
4 same argument can be made for why you cannot take
5 generalized data about the success of some Asian
6 Americans to exclude Asian Americans on whether
7 there's evidence of discrimination. And so, that
8 you must do a case-by-case,
9 profession-by-profession, employer-by-employer study
10 and say, you know, is there discrimination going on?
11 Has there been discrimination by this employer in
12 this area? And, I think that if you were to do
13 that, there's clearly certain areas where Asian
14 Americans are over-represented. And, I use that term
15 in the way that it's generally understood. Meaning
16 that we are represented in greater numbers than our
17 overall population percentage. But, there are other
18 areas where we are clearly not. And, for example, I
19 think education. Overall in the education area, as
20 some would argue that we are over-represented if we
21 are only three or four percent of the population,
22 why are we comprising 11%, 12%, 15%, in the
23 California schools, you know, upwards of close to

1 50%. And, the answer is that some Asian Americans
2 are making inroads, but there are other Asian
3 American groups that are not because of language
4 barriers. The more recent immigrant groups are not,
5 and that if you would take a look, you would find
6 that within some of the newer Asian immigrant
7 groups, because of discrimination based on accent or
8 language, that they are facing discrimination. And,
9 affirmative action is appropriate for some within
10 the Asian community. You can't just
11 over-generalize.

12 Secondly, Asian Americans, you know,
13 again, the danger of using generalized statistics is
14 that yes, the gentleman who came before me talked
15 about Asian Americans have the highest percentage of
16 people who make over \$75,000. But, Asian Americans
17 also experience the highest poverty rate. So that if
18 you were to look into some of the Asian refugee
19 groups, you would find the most extreme rates of
20 poverty going to the 60% and 70% of the entire
21 community like the Huns (ph), the Cambodians, the
22 Vietnamese, very severe illiteracy rates. So that,
23 again, you cannot over-generalize.

1 CHAIRMAN MATHEWSON: Is that what you meant
2 when you started out saying you felt affirmative
3 action was a big success, and your only complaint is
4 that you felt it should be broader and more
5 extensive as it relates to Asian Americans, is that
6 what you meant when you made that statement?

7 MS. IM: Yes. Yes, because I think that
8 basically, what has happened is that people have
9 bought into the stereotypes to such a degree that
10 Asian Americans aren't even, I mean, we're at best
11 an after-thought and that we're not considered and
12 when people sit down to draft out the affirmative
13 action programs, they sit down to do the research
14 and find out if there's discrimination past or
15 ongoing. The Asian citizens are just kind of tossed
16 out the window based on these overly generalized
17 data.

18 CHAIRMAN MATHEWSON: Several of our
19 speakers today, both lawyers and non-lawyers, have
20 called for more effective enforcement and faster,
21 mor certain enforcement of anti-discrimination
22 statutes. As a lawyer, do you subscribe to that and
23 would faster and more certain enforcement of

1 anti-discrimination statutes do the trick as far as
2 Asian Americans are concerned?

3 MS. IM: I think that it's important to
4 have, but enforcement alone is not sufficient. For
5 one, I think that it culturally alienates -- over
6 60% of Asians in this country are immigrants and so,
7 the legal system is still a little bit foreign. And,
8 secondly, it's, you know, it's not, it's
9 counter-cultural to a lot of our cultural beliefs
10 and upbringing. So, I think that it's culturally a
11 foreign kind of vehicle.

12 Secondly, I think that it's just, it's
13 not a feasible alternative to affirmative action in
14 terms of getting widespread relief for the Asian
15 community because Asian Americans just are going to
16 be very reluctant to do so. You know, it's really
17 interesting, I equated it to out in the western
18 suburbs there's a large increase of Asian Americans,
19 especially out in Naperville and some of the faster
20 growing suburbs. And, there has been some vandalism
21 in the Korean community. And, the way that the
22 community has responded is by cleaning things up and
23 just remaining quiet because they don't want to

14 1 stick out, they don't want, because they're afraid
2 that if they speak out, that they will be ever
3 increasingly targeted. And, I think that
4 especially in employment situations when you're
5 talking about a person's livelihood at stake, to be
6 the squeaky wheel to go out and file that lawsuit
7 and to face the risk of not being employable, I
8 think that's a tremendous risk, especially if you
9 think about the cultural barriers and the social
10 barriers to finding other employment.

11 CHAIRMAN MATHEWSON: Well, then, how is it,
12 as a matter of public policy, do we achieve progress
13 and even ultimately success?

14 MS. IM: I'm not saying that, the
15 enforcement mechanisms certainly have to be there.
16 And, they're certainly a vital tool. I'm just saying
17 that they can't, we cannot rely upon them if we're
18 talking about the level of under-representation, for
19 example, in the legal community with the kind of
20 statistics that I know, you can't remedy that by
21 saying that we're going to be filing lawsuits. For
22 example, the EEOC is so backed up right now, in
23 order to file an employment discrimination suit, you

1 still have to file a claim with the EEOC. And, the
2 Equal Employment Opportunity Commission, I think
3 they're backlogged by two or three years. What's a
4 person supposed to do while they're waiting for
5 their claim to be settled, you know, and go through
6 the administrative process? And, again, you're
7 talking about a persn's livelihood being at stake.
8 So, I think that you need both. You need better
9 enforcement mechanisms, which is retroactive kind
10 of a process, and you need affirmative action, which
11 is much more proactive. And, the two together have
12 to be in place in order for there to be better
13 representation of women and minorities, if possible.

14 CHAIRMAN MATHEWSON: Does effective
15 affirmative action for Asian Americans require a
16 breakdown among the various ethnic groups that fit
17 under that large heading?

18 MS. IM: Yes, I believe so. I think that
19 the classification, I don't claim to be an expert in
20 this, but I think that the classification of Asians
21 in that umbrella category of Asian is a doube-edged
22 sword in some respects. It has, the Asian countries
23 an the Asian culture are so diverse, I mean, you

1 would never in Asia link the Chinese, the Japanese,
2 the Indians, I mean, we're so diverse, we have very
3 different histories. We have very different
4 languages. So, to put us all together under that
5 umbrella, you know, is, there's really no basis
6 other than the fact that we may, in some categories,
7 look alike and have some geographic basis for it.
8 But, aside from that, we also have very different
9 histories in the United States. And so, there really
10 isn't a good reason for lumping us together as one
11 group because we're very diverse. The reason I say
12 it's a double-edged sword, though, is we are so few
13 in number, that if you were to break us all up and
14 say well, the Korean Americans and the Japanese
15 Americans and the Philipinos, we're so few in
16 number, I think that whatever political clout that
17 we've achieved by our immense group would be
18 diminished, and so I, you know, I'm fearful in the
19 sense of dividing up the Asian community by our
20 individual ethnic groups just because we're too few
21 in number, that would be divisive. On the other
22 hand, I think it would go a long way towards
23 recognizing that we're very diverse.

1 CHAIRMAN MATHEWSON: Okay, thank you for
2 coming, and we look forward to reading your paper.
3 We appreciate your participation.

4 Okay. Yvonne Lau and finally Thelma
5 Crigler.

6 Welcome and thank you both for
7 appearing and participating in this procedure today.
8 And, Ms. Crigler, since you've been here first all
9 day --

10 MS. CRIGLER: No, I'll go last because I
11 don't want to tape myself. I don't have enough to
12 tape both of us.

13 CHAIRMAN MATHEWSON: All right. Ms. Lau,
14 you're on.

15 Okay. If you didn't hear our
16 groundrules, I know you did, Ms. Crigler, it's a
17 five-minute summary, please, five-minute oral
18 summary of your paper. Then, we'll defer to each of
19 you. We'll move on to questions from the committee.

20 YVONNE LAU,

21 Thanks for having me. I'm Yvonne Lau
22 and I direct the Asian American Studies program at
23 Loyola as past President of the Asian American

1 Institute, which is a research and education
2 ethnicity group. I do appreciate you inviting me
3 here today. To put this in a nutshell, I'm going to
4 echo what Ms. Im said and what the other panelists
5 have been saying. I support affirmative action
6 today. I'll give you brief highlights of some of the
7 overall rationals for the supporting affirmative
8 action. And then, I'm going to do a special focus on
9 higher education, which is my specific area.

10 Asian Americans' experience really
11 reflects a history of institutionalized
12 discrimination and a contemporary status of being
13 under-represented, under-utilized, and under paid.
14 To be mindful of today's schedule, I'll not give you
15 a history of the legacy of discrimination, but focus
16 on highlighting the recent experiences of Asian
17 Americans, especially in the education field.
18 Suffice it to say that 150 year history of Asians in
19 America, Asian Americans have been subjected to
20 institutionalized discrimination, anti-Asian
21 sentiments, and violence, discriminatory
22 immigration, education, and work related laws.
23 While affirmative action programs have significantly

1 enhanced opportunities for women and minorities,
2 equal opportunities have yet to be attained. As
3 national statistics indicate, while white men
4 represent almost half of the college educated work
5 force, they represent 90% of officers in American
6 corporations. 85% of tenured college professors,
7 for example, and dominate other fields. For Asian
8 Americans, our representation in various occupation
9 niches remain limited. Ms. Im also mentioned the
10 Federal Glass Ceiling Commission, and I'll just say
11 that in that study, they also found that Asian
12 Americans made up only about .3% of senior level
13 managers in Fortune 1000 industrial and Fortune 500
14 companies. Asian American males were quoted in that
15 study as saying they feel while they have sufficient
16 educational credentials, they're really viewed as
17 superior professionals, but not as management
18 material.

19 U.S. born Asian American men are also
20 about 7% to 11% less likely to be in managerial
21 occupations than white men with the same education,
22 work experience, marital status, English abilities,
23 et cetera. Whites with college degrees make almost

1 11% more than Asian Americans with college degrees.
2 White high school graduates make about 26% more than
3 Asian American high school graduates. And, while
4 Asian Americans have disproportionately invested in
5 education as their sole mobility ladder seeking
6 higher degrees and more education, the return on
7 their investments are not proportional. In fact,
8 one study showed that U.S. born Asian American
9 doctoral scientists and engineers earn only 92% of
10 that of white doctoral scientists and engineers.

11 Asian Americans also are largely
12 invisible from public sector jobs. In this country,
13 only about 1.4% of the public school teachers are
14 Asian Americans. From anecdotal sources, Asian
15 Americans are scarcely found in key arenas,
16 including law enforcement, firefighting, or
17 teaching. For instance, in our Chicago school
18 system, out of about 560 school principals, only 1
19 is Asian American. In the Illinois State Board of
20 Education agency, with 723 employes, minorities make
21 up only 15% of the staff and yet, Asian Americans
22 are a mere 2% of the staff. Fortunately, we do have
23 some examples of where affirmative action has

1 worked. Paul Gessopi, who was the Vice Chairman of
2 the EEOC, has commented that while he worked for the
3 City of Chicago, they were able to overcome the
4 dramatic exclusion of Asian Americans through
5 targeted recruitment. As a result of special
6 outreach, new hires who were Asian Americans grew
7 from less than 1% to 4%. So that the setting of
8 goals were deemed necessary as far as city
9 departments are concerned.

10 Extending these issues into higher
11 education, I'd like to be able to give you a clear
12 picture of where Asian Americans stand in terms of
13 status of students, faculty, and staff.
14 Unfortunately, general data about Asian Americans in
15 higher education is very scarce, much less
16 affirmative action related data. This really
17 reflects their confused status as minority group
18 members, where often their presence is overlooked in
19 minority reports compiled by individuals at
20 institutions or state agencies like the State of
21 Illinois' Board of Higher Education. There are
22 minority reports, for example, omit Asian Americans
23 from any analysis. We do have some basic counts. We

1 know in 1994, Asian American enrollments in higher
2 education were 650,000. Asian American faculty
3 represent about 5% of full time faculty. In
4 Illinois, 5% of the students are Asian American who
5 are enrolled in schools here. Asian Americans are
6 often the largest minority faculty group, but only
7 in divisions like Engineering and Health Sciences.
8 As other people I'm sure have mentioned, it's really
9 important to disaggregate the data of Asian
10 Americans by ethnicity, nativity, generation,
11 language and class. Evidence of this need for
12 subgroup distinctions comes from noting that amongst
13 full time faculty, foreign nationals; for example,
14 constitute 40% of the Asian American numbers. Only
15 2.8% of all higher education faculty are Asian
16 Americans with U.S. Citizenship. Further, data from
17 another study of minority doctorates indicate that
18 disproportionately fewer doctorates were awarded to
19 Asian Americans in the Social Sciences, in the
20 Humanities, and in Education.

21 I guess a critical area for me from my
22 perspective is the whole analysis of the study of
23 Asian American faculty and administrators because

1 despite the major increases in student enrollment,
2 faculty and professional staff positions have not
3 risen at the same rates. The gains that have
4 occurred within full time faculty slots has been
5 disproportional in non-tenture track positions.
6 Positions that are less secure, less prestigious and
7 lower in pay. And also, there's the severe
8 under-representation of Asian American
9 administrators. Several studies have found that only
10 1% of executive and managerial positions in higher
11 ed are held by Asian Americans. This lack of
12 presence in upper administration contributes to the
13 omission of Asian Americans from policies and the
14 absence of Asian Americans in dialogues on race
15 relations on college campuses. So basically, we
16 have two forms of discrimination that are usually
17 experienced by Asian Americans on college campuses.
18 First of all, Asian Americans are an increasingly
19 large segment of many student bodies. There's not a
20 corresponding increase in Asian American faculty,
21 administration, and support staff. In the Chicago
22 area, as some of you I'm sure know, Asian Americans
23 are entering major Chicago area campuses at very

1 large rates. And yet, while Asian Americans do
2 outnumber other minority faculty, they remain
3 severely under-represented in specific disciplines,
4 and generally throughout the undergraduate colleges
5 of Arts and Sciences. Asian American faculty are
6 usually relegated to the teaching science or math.
7 A survey of ten major Chicago area universities
8 found that Asian American faculty have the lowest
9 tenure rate of all faculty. And, in addition, the
10 Asian American faculty are not generally observed in
11 administrative positions.

12 Secondly, the other form of
13 discrimination is that affirmative action programs
14 designed for all minorities tend to exclude Asian
15 Americans. Affirmative action in higher education,
16 as you know, can probably extend from special
17 admission programs for students, special grants, and
18 graduate fellowships aimed at facilitating the
19 tradition of Asian Americans into a field where
20 their participation has been discouraged or
21 under-represented or reflects some sort of community
22 need. It might also include targeted recruitment
23 and outreach efforts for the faculty, for the staff

1 during a search to insure that qualified Asian
2 Americans are part of the pool. Because of this
3 high percentage of Asian Americans on college
4 campuses and the relatively high number of Asian
5 Americans in faculty positions, there is this
6 perception that discrimination does not exist
7 against Asian Americans. These perceptions are
8 untrue. Asian Americans are still encountering real
9 discrimination on college campuses. Students with an
10 Asian ancestry are often held to higher standards
11 than other students because of their race. They are
12 stereotyped as high academic achievers and so are
13 usually excluded from many support services that are
14 an opportunity to minority students.

15 This neglect by institutions really
16 persists during a period of major demographic
17 changes in our population. As Ms. Im has already
18 noted, far from being a homogeneous group, Asian
19 American students vary significantly by nativity,
20 ethnicity, class, and other dimensions. To overlook
21 the rising differences of English language
22 proficiency or past educational experiences among
23 diverse Asian American groups relegates them to a

1 false status of being uniformly of a minority or
2 auto-minority. This appears in both the education
3 and employment sector so that both Asian American
4 students and Asian American faculty are affected.

5 Many institutions do not consider
6 Asian Americans as a disadvantaged minority. At U
7 of I, for example, the affirmative action programs
8 for students are limited to admission policies
9 alone. And, as I talked to some of my colleagues
10 there, they mentioned that Asian Americans are
11 definitely not part of any targeted recruitment
12 effort. And, as I think Mr. Scales has already
13 mentioned, while institutions conveniently include
14 Asian Americans numbers in their minority reports,
15 governments and other sources, institutions seldom,
16 in particular, acknowledge or attend to the needs
17 and concerns of Asian Americans on campus. While
18 it's very -- while presently the repercussions of
19 this institutionalized inattention are difficult to
20 document because, as I mentioned the lack of
21 national longitudinal studies. Anecdotal evidence
22 suggests that an increasing number of today's Asian
23 American students are facing troubling retention

1 rates. And, the growing dropout rates compared to
2 Asian American cohorts a decade earlier.
3 Preliminary data indicate that larger cohort is
4 academically at risk students are found among Asian
5 Americans. And, with few professionals available to
6 them, few role models that are sensitive to the
7 cultural nuances underlying their problems, Asian
8 American students may be deterred from seeking help
9 from basic counseling or advising services. And, as
10 I mentioned, this relatively smaller ratio of Asian
11 faculty and administrators really exacerbates their
12 accessibility to role models. Even at institutions
13 where there appear to be significant Asian American
14 faculty members, it's really important to
15 disaggregate the data by school and discipline.

16 I guess the other thing I just wanted
17 to mention is this whole thing about affirmative
18 action programs is that, since I'm sure as you know,
19 originally they were designed to eliminate
20 institutional employment barriers. In higher
21 education in many cases, they are now being used as
22 a barrier for Asian Americans. Part of this has to
23 do with the fact, as I mentioned, that there are

1 very few programs that actually include Asian
2 Americans in their affirmative action efforts. For
3 example, at UIC, we have a situation where they have
4 the policy, I guess I call it minority faculty
5 initiative where they've established a minority
6 recruitment pool of something like \$600,000 in
7 recurring salaries to support the minority faculty.
8 The campus will basically match, on a dollar to
9 dollar basis, up to \$20,000 share of recurring
10 salary money for tenure or tenure track faculty who
11 are African American, Latino, or Native American.
12 And, there's a memo that states that actually, for
13 the purposes of this pool, the classification of
14 minority will be based on ethnicity rather than
15 gender. Further, Asians will not be considered
16 minorities, only Blacks, Hispanics, and Native
17 Americans. The efforts by UIC and other
18 institutions to attract minority faculty are
19 certainly laudable. But, such efforts may have a
20 discriminatory impact on Asian faculty candidates.
21 If Title 7 of the Civil Rights Act of 1964 precludes
22 discrimination in employment with respect to
23 compensation because of an individual's race, it

1 appears that Asian Americans, because of their race,
2 are being excluded from additional funding; i.e. a
3 compensation or equipment modeling just because
4 they're Asian. So, basically, in terms of my
5 recommendations, I feel that Asian Americans should
6 not suffer discrimination because of their race on
7 the campuses of higher ed. Affirmative action
8 programs that provide preferential treatment to
9 individuals because of their race, and exclude Asian
10 Americans because of their race and so-called
11 success in the absence of a court finding of
12 intentional discrimination, should be re-examined
13 for their legality and fairness. Faculty and staff
14 and special recruitment programs should be evaluated
15 for their inclusiveness and equity. Affirmative
16 action personnel on college campuses should include
17 Asians Americans, the impact of affirmative action
18 as related to the personal characteristics.
19 Restriction of Asian Americans from such positions
20 perpetuates the institutional pattern of
21 discrimination encountered by Asian Americans on
22 college campuses.

23 The third point is that higher

1 education institutions should really review their
2 tenure and promotion practices to address the low
3 tenure rates of Asian American faculty, and
4 disproportionate number in non-tenure track
5 positions and the glaring under-representation among
6 high level administrators.

7 Finally, I guess because of the
8 confusing and sometimes contradictory criteria
9 underlying really who is eligible for affirmative
10 action programs, the impact of affirmative action
11 programs on Asian Americans should be carefully
12 assessed and monitoring possible goals and
13 timetables may be needed to fight discrimination,
14 but these are not quotas. And of course, because of
15 the diversity of our community, studies should also
16 include analysis of affirmative action policies and
17 practices and their differential impact on various
18 Asian American groups, including the ones I
19 mentioned of nativity, ethnicity, occupational
20 specialty or language proficiency. Within higher
21 ed, for example, affirmative action programs may
22 have different repercussions for Asian Americans in
23 liberal arts colleges or professional schools like

1 law or medical school. It may have different
2 implications for native born versus refugee
3 students, for faculty versus staff positions. All of
4 these variables would have to be considered before
5 we can fully rely upon affirmative action programs
6 as vehicles for advancement of civil right. As I
7 commented earlier, although I do support affirmative
8 action programs, some of them may not be fulfilling
9 their objectives and may have to be realigned. Race
10 and gender should be used as criteria in these
11 areas, for minorities and women continue to be
12 under-represented. Affirmative action does not
13 conclude quotas or the lowering of hiring or
14 selection standards. Similarly, Asian Americans --

15 CHAIRMAN MATHEWSON: Could you conclude your
16 statement?

17 MS. LAU: Similarly, Asian Americans should
18 not be held to higher standards than minority
19 members, or cast as preferring minority members.
20 Affirmative action programs and policies should seek
21 to promote diversity and to remedy past or curent
22 discrimination and to restrict future
23 discrimination.

1 Thank you.

2 CHAIRMAN MATHEWSON: Thank you. Ms. Crigler?

3 THELMA CRIGLER,

4 Okay. I first want to tell you a
5 little bit about my background. I've been in
6 affirmative action and equal employment opportunity
7 since September 2nd, 1980. I remember the date. I
8 currently work for the Chicago Transit Authority.
9 My title is Equal Employment Opportunity
10 Coordinator. And, what my paper and what I'm going
11 to say today does not express the sentiments of the
12 Authority because I'm here on my own behalf.

13 If you notice in my paper, I have a
14 quote in the beginning that, an understanding of the
15 history of our own culture gives some inkling of the
16 categories of possibilities within which, for the
17 time being, we are born to live. Why I put that in
18 there is because I felt that what I was seeing with
19 the current debates was almost history repeating
20 itself. That when -- how can I put it? I saw it
21 going back to the civil war when the debates were
22 going on about whether the African American slaves
23 were really people, whether they should be given

1 equal rights. And so, I went on and I did a little
2 reading and I remember the paper I had read done by
3 the Commission on Civil Rights called "Affirmative
4 Action in the 1980s, Dismantling the Process of
5 Discrimination". It was written November, 1981.
6 And, they have a quote in there and they say that
7 affirmative action is based on the nature and extent
8 of race, sex, and national origin discrimination,
9 the problem it was created to remedy. Discussions
10 of affirmative action must first divorce this remedy
11 from the historic and continuing problem of
12 discrimination against minorities and women. I
13 don't think we can forget history. I just don't
14 think we can forget it. I said discrimination
15 against blacks is rooted in the history of America,
16 beginning with the founding fathers declaration of
17 independence, which was interpreted in 1857 in the
18 Dread Scott Decision not to include the African
19 race. It continued with the Civil War in Lincoln's
20 Emancipation Proclamation. I read that Lincoln was
21 not for equality. He was quoted in a speech in 1863
22 as stating he was not in favor of the social and
23 political equality of the white and Black races.

1 From there, it continued with the enactment of The
2 Black Code in 1865, and with the disappearance of
3 traditional Black jobs due to the influx of white
4 immigrants between 1830 and 1860. And, although a
5 Civil Rights Act was passed in 1875, it still
6 continued with the Supreme Court declaring the Act
7 unconstitutional with the civil rights cases in
8 1883. The Court said that Congress had no power to
9 prohibit discrimination practiced by private
10 individuals. It also continued in 1890 in Pleasy
11 vs. Ferguson where the court saying that the 14th
12 Amendment was not intended to enforce social
13 equality. Discrimination against Blacks then became
14 a frenzy during the 1890s with thousands of Blacks
15 being lynched and with white Americans reliance on
16 its Jim Crow laws. From there, it goes on to
17 continue with the federal government itself
18 declaring segregation in its facilities in 1913, and
19 I understand President Wilson stated it was for
20 Blacks own good. And from there to the 1930's crash
21 where one out of every four blacks was on government
22 relief. And so, discrimination continues.
23 It continues when Blacks spend most of their lives

1 apart from other groups and are not exposed to the
2 same elements of life. I brought that up because I
3 remember working for Mayor Byrne on one of her
4 summer programs, and I had talked to some of the
5 children that were applying. They were from the west
6 side and all areas of the south side. And, none of
7 them had never even seen Lake Michigan. It blew my
8 mind. It continues with the wide disparities of
9 median income of whites and Blacks, and the
10 statistics are in my paper. It continues when two
11 white authors profess that Blacks are less
12 intelligent and score lower on tests because of
13 heredity. It continues when inner city schools
14 receive less funding. It continues when a large
15 percentage of Black wives must work compared to
16 white wives, and when most Black families are
17 headed by single females who, on the average, earn
18 less than their white counterparts. Those statistics
19 are also in the paper. It continues when the
20 unemployment rates of Blacks is double that of
21 whites. And so, it continues when Blacks who excel
22 are the exceptions or when Blacks are scrutinized
23 more closely on their job performance than whites.

1 It continues when poverty for whites is considered
2 to be not a typical situation. But, for Blacks, it
3 is the way they are.

4 And, finally, I'm going to end with
5 some quotes. 1965, President Johnson said, "You do
6 not take a person who, for years, has been hobbled
7 by chains and liberate him, bring him to the
8 starting line of a race and then say you are free to
9 compete with all others, and still justly believe
10 you have been completely fair." And, as Andrew
11 Hacker wrote a book called "Two Nations, One White,
12 One Black, One Hostile", et cetera, et cetera,
13 states "No matter how degraded their lives, white
14 people are still allowed to believe that they
15 possess the blood, the genes, the patrimony of
16 superiority. No matter what happens, they can never
17 become Black. White Americans of all classes have
18 found it comforting to preserve Blacks as a
19 subordinate cast. And so, it is my belief that the
20 federal government is still obligated to continue
21 the task of dismantling the process of
22 discrimination. And to quote the late Justice
23 Thurgood Marshall, "To fail to do so is to insure

1 that America will forever remain a divided society."

2 Thank you.

3 CHAIRMAN MATHEWSON: Questions, Mr. Ewing?

4 MR. EWING: Well, I looked through your
5 paper here as you were reading.

6 MS. CRIGLER: Small thesis.

7 MR. EWING: I can see that you were quite
8 comprehensive in your research and your recall and
9 your statements. Is there anything with special,
10 with respect to the subject of affirmative action
11 that you would like to recommend in the form of an
12 addition or a deletion?

13 MS. CRIGLER: No. The program, to me, is
14 fine the way it is, except that I believe when it
15 was first initiated, the one thing that was lacking
16 and that was to train managers and corporations and
17 institutions to appreciate diversity. And now, we're
18 finally getting into the diversity aspects of it.
19 And, I think if maybe that had been done in the
20 beginning, we wouldn't be here today talking about
21 dismantling affirmative action, or there's no need
22 for it any more because I think people would learn
23 that there's nothing wrong with being different. As

1 a matter of fact, it brings a richness to the
2 employment process. You have a richness of ways of
3 communicating, ways of looking at different
4 problems. All I can say is that I think affirmative
5 action needs to stay. I don't think there's a quota
6 system. We don't use it at the Chicago Transit
7 Authority. I don't know of any company that uses
8 quotas unless it's been imposed by the Court. And,
9 it's only been imposed by the Court when it's
10 blatant discrimination that they're not just going
11 to allow minorities or women into the company.

12 CHAIRMAN MATHEWSON: Mr. Pugh?

13 MR. PUGH: In your presentation and your
14 really, I think excellent paper which I've looked
15 at --

16 MS. CRIGLER: Thank you.

17 MR. PUGH: You do us a favor of taking our
18 mid away from the narrow focus of legalism of
19 affirmative action and make us realize that
20 affirmative action as a program is just an element
21 of a larger problem of discrimination. And, I think
22 that's the major thing that we shouldn't lose sight
23 of. But, while it may be easy to -- not easy but

1 maybe easier to segregate out a piece of anti-
2 discrimination program, elements of affirmative
3 action programs that haven't worked as well as they
4 might and pick on them and chop at it, it doesn't
5 chop away from the bigger need to fight
6 discrimination. And, you made us look directly at
7 that, and I appreciate that.

8 MS. CRIGLER: Society has a moral
9 obligation, I really do think because through
10 affirmative action, you achieve equal employment
11 opportunities. You have been a victim of
12 discrimination, and I know how it feels.

13 CHAIRMAN MATHEWSON: Mr. Roberts?

14 MR. ROBERTS: Based upon your presentation,
15 let's go back to affirmative action, equal
16 opportunity, affirmative action, what was it, equal
17 opportunity, fair employment practices, affirmative
18 action, what is your, in your opinion, if there was
19 a restructuring, what would it be?

20 MS. CRIGLER: You talking about the
21 terminology?

22 MR. ROBERTS: Yes.

23 MS. CRIGLER: We're fighting with that at

1 work, trying to come up with a new name. Our unit is
2 called the affirmative action unit, and I've been
3 thinking about all kinds of names. And earlier when
4 you said that, I thought about multi-cultural
5 equity.

6 MR. ROBERTS: Multi-cultural equity?

7 MS. CRIGLER: And, for me, equity means
8 access.

9 MR. ROBERTS: We waited all day for that,
10 multi-cultural equity, okay.

11 CHAIRMAN MATHEWSON: Mr. Scales?

12 MR. SCALES: Yes. Now, we've opened the
13 door for the last part. You've done an excellent job
14 of setting the stage for Americans moral obligation
15 and the last, this section and the one before, we've
16 heard from our Asian American colleagues for a
17 suggestion that affirmative action be, in itself, be
18 more equitable in terms of consideration of all
19 people. We listened at the history of the Asian
20 American and we, having gotten the history of the
21 African American, we see the parallelism of how bot
22 groups have been treated. I'm assuming, then, that
23 you would be in agreement with our Asian American

1 colleagues that affirmative action, at least from
2 this standpoint, should be restructured to include a
3 left-out minority group.

4 MS. CRIGLER: I don't see any groups being
5 left out, from my standpoint, and from where I work.
6 I'm not trying, you know, to dispute you, but we're
7 focusing at CTA on recruiting Asian Americans, and
8 our problem is that our industry we have, we're
9 viewed so very negatively; crime on the buses, no
10 one wants to be a bus operator or a train driver.
11 And, our problem is recruiting Asian Americans. But,
12 I don't see groups being left out as a whole. From
13 what I understand, the Illinois Department of Human
14 Rights states that if a group population is 2% or
15 less, they cannot be included in a plan. But, I
16 don't see that here in Chicago.

17 MR. SCALES: I would probably back off and
18 say that's probably true, from where you're sitting
19 right now. But, I think from where some of the
20 others are sitting, that probably is not true. From
21 personal experience on several occasions, I have
22 represented Asian Americans who have applied to
23 graduate school and graduate school funding, and

1 I've had it returned to me in terms of I'm not
2 representing a minority. So, when those kinds of
3 statements are made, then yes, there's going to be
4 people who feel they're being left out. And, when
5 taken to affirmative action, the answer was that's
6 not within the pervue of this agency.

7 MS. CRIGLER: Okay. I'd like to make one
8 comment about the proposed changes in the EEO
9 definitions. Whil I think it's, how can I put it,
10 it's good to include all ethnic groups. And,
11 everybody, if we have too many categories, it's just
12 goint to dilute the purpose because Blacks can have
13 categories. We're Jamacian, we're African. As a
14 matter of fact, I call myself Black. I don't
15 consider myself African American because I've never
16 set foot in Africa, right. I consider myself Black.
17 But, all ethnic, there's so many ethnicities, I
18 mean, I don't think it should be all inclusive. I
19 really don't. It would just dilute the purpose.

20 CHAIRMAN MATHEWSON: Ms. Choi?

21 MS. CHOI: Ms. Crigler, I really enjoyed
22 your heartfelt testimony, but I want to go back to
23 what you just said about not being all inclusive.

1 Where do you benchmark that?

2 MS. CRIGLER: Well, what I'm saying, I
3 think the current categories; White, Black,
4 Hispanic, Asian, and Pacific Islander are enough.
5 and, under those, each one, you can have your
6 ethnicities. But, I mean --

7 MS. CHOI: Are you referring to racial
8 categories?

9 MS. CRIGLER: The categories, now
10 Washington is looking into whether they should be
11 expanded. And, what I'm saying is different
12 ethnics -- under white, you have different ethnics,
13 under Blacks you have different ethnics, under
14 Hispanics, you have the Latin Americans, you have
15 the Cubans, you have Puerto Ricans. And, if
16 everybody -- how can I put it? Talking about
17 paperwork, that would be paperwork for days. If
18 you're talking about using number consciousness,
19 that means we'd have to go do statistics on every
20 single ethnic group in the United States. And, I
21 just feel that they're fine like they are.

22 MS. CHOI: Yvonne, I have a question for
23 you. We've heard any number of times today that

1 affirmative action plans merely set goals and
2 targets, but I think it's such a complex issue,
3 things are nice as long as we don't get into the
4 details. when we get into the details, things get a
5 little sticky. If it's not about rigid quotas, how
6 do you feel about people saying that there are too
7 many Asians in higher education. And certain
8 schools, for example, in Berkeley there's too many
9 Asians. How do you feel about that and how is that
10 in the spirit of non-discrimination based on race?

11 MS. LAU: Well, that really reflects the
12 whole underlying informal cultural, you know, that
13 that sort of, I think sort of prevents even formal
14 affirmative action policies from actually being put
15 into practice. You know, I think that that's why I
16 mentioned that in terms of my recommendations, that
17 a lot of programs have to be carefully monitored
18 because even if we're explicitly included in these
19 minority definitions, sometimes I know examples
20 where Asian Americans informally are really not
21 sought after, you know, since affirmative action
22 also speaks to, you know, just really increasing the
23 pool of qualified candidates and doing all sorts of

1 outreach efforts. But, you know, these are, of
2 course, dependent on the institution and some
3 institutions are much more inclined to follow the
4 policies to the letter, and some really overlook the
5 definitions. So, I think the attitude that; for
6 example, that there's so many Asian Americans in
7 higher ed, and I know in the UC system, the Asian
8 Americans are now the largest in the so-called
9 minority group. But that, in many ways, that
10 reflects our demographics because our college aged
11 cohorts, they're coming of age now, right, because
12 prior to 1965, we weren't allowed to immigrate here
13 in large numbers. And so, of course, our whole
14 demographic profile is one where an 18 to 24 year
15 old cohort is present, and that's why there's so
16 many Asian Americans just by that factor. and so,
17 it's like, I think your question which is more about
18 the attitudes of people.

19 MS. CHOI: Well, I guess to me, and I take
20 this very seriously because I personally have two
21 children who will be going to college in God knows
22 how many years, 15 years.

23 MS. LAU: Start saving now.

1 MS. CHOI: But, I find it very frightening
2 when I hear that it's not about numbers and it's,
3 you can't discriminate based on race. But, when you
4 say to me logically, and I may be wrong in my logic,
5 when you say that we are limiting the number of
6 Asian, Asian Americans coming into this institution
7 because there are too many that, to me, seems
8 discriminatory.

9 MS. LAU: No, no, exactly. And, I think
10 that these informal mechanisms have already started.
11 We've been hearing more anecdotal evidence of Asian
12 American ceilings in more elite institutions, you
13 know, and very specifically in many graduate
14 professional schools, you know, where there are,
15 there's a perception that maybe 2%, 3%, that was
16 okay. But, now at 10%, 15%, that's really too many,
17 you know. So, that I think that while it's very hard
18 to document, especially with private institutions,
19 there's already evidence that there are these quotas
20 that are already affecting Asian American
21 applicants.

22 MS. CHOI: We talked earlier today about
23 prudent corporate citizenry. How sort of the bottom

1 line makes these corporate sectors sort of go after,
2 being the numbers consciousness citizen that it is.
3 We had an insurance executive talk about the bottom
4 line profit, that they're the market, so of course
5 we're going to go and cater to them. What's the
6 incentive for higher education institutions, if
7 there are not these affirmative action guidelines?
8 What makes them prudent? Is it out of the goodness
9 of their heart?

10 MS. LAU: No, I mean, I think that
11 certainly they would be concerned if they realized
12 that they would be losing 10% to 20% of their
13 tuition monies by decreasing the pool of Asian
14 American applicants, you know. But I think,
15 unfortunately, a lot of higher education
16 institutional culture is such that most people
17 perceive Asian Americans as being a rather passive
18 group. They don't really see them as being active
19 consumers who can actually, I guess, vote with their
20 pocketbook or actually choose not to go to certain
21 schools, you know; that they feel that Asian
22 Americans will tolerate whatever systemic inequities
23 there might be. So, I think that there's, -I mean,

1 just like I think in other avenues, Asian Americans
2 are not seen as very demanding consumers, you know.
3 That they may, for instance, contribute to political
4 campaigns, but they don't expect certain things in
5 return or they don't ask for anything. And so,
6 everything must be okay, you know, so that there's
7 the accountability that higher education
8 institutions have to the Asian American student
9 consumer, I don't think, is that high. It hasn't
10 really been proven yet, unless they are perhaps
11 ready to engage in some active politics and maybe,
12 you know, start a rally on the campus and actually
13 do engage in protest politics.

14 MS. CHOI: Thank you.

15 CHAIRMAN MATHEWSON: Mr. Pugh has a
16 comment.

17 MR. PUGH: This afternoon, this morning
18 we've heard several, more than one speaker talk
19 about the problem of changing the name of
20 affirmative action. I've been there and I've done
21 that. We started out with integration as a word.
22 It had a certain fault to it, and so we went to
23 desegregation which, while it meant something

1 different, became a substitute word. then, we came
2 along to affirmative action. Well, incidentally,
3 before we got to affirmative action, some of my
4 Black friends were screaming that what we really
5 needed was equal exclusion applying to white people.
6 So, we've been through all of this. I think I'm
7 going to make a great defense for affirmative
8 action. And, I want to, you know, thank everybody
9 who has been here today for supporting affirmative
10 action. I don't think we need to change the name, I
11 think we just need it effective.

12 CHAIRMAN MATHEWSON: Thank you both very
13 much for participating in this and for presenting
14 your papers to us. We'll look forward to reading
15 them.

16 MS. CRIGLER: I also don't think we should
17 take our minds off the fact that discrimination is
18 out there, and I don't think it's intentional. I
19 think it's stupidity. Discrimination is out there,
20 and it's stupidity. To give you an example, a white
21 male supervisor asked a young Black employee, what
22 do you call it when it rains on the Million Man
23 March? Thinking it was funny, he answered himself,

1 said Oh, Gorillas in the Mist. That was not funny
2 to this Black employee. It was stuidity. so, I'm
3 not saying that discrimination is intentional, but
4 it happens.

5 MR. EWING: But, there are forces that are
6 alive that keep certain things a live. At birth,
7 nobody is born with negative racial attitudes, but
8 our society is such that it begins to teach them.
9 And so, it becomes the question of the degree to
10 which many people are indoctrinated into that line
11 of thinking. So, there's sort of a permanence of
12 this challenge, and it will be with us. So, there's
13 no system or technique that will be a giant eraser
14 and wipe it all away. It's a lifelong, ongong
15 process.

16 CHAIRMAN MATHEWSON: Thank you both very
17 much. We will close this session of our consultation
18 at this point, and the record will remain open until
19 Monday, when it will close.

20 Other papers are still due here, and
21 we, the Committee, has scheduled at this point a
22 public session to hear other people on other topics.
23 Let the record show tha no person is in the audience

1 at this point, only staff members and people who hve
2 made presentations to the committee already. We will
3 wait a few minutes to see whether anybody comes in a
4 little bit after 5:00.

5 Let me just make one or two comments
6 briefly, and then people who need t go may. A couple
7 of us should remain to see whether anybody comes in
8 the next 15 or 20 minutes, perhaps. Tomorrow, our
9 schedule is this: We will meet for a press
10 conference at the Hillside Holiday Inn on the
11 Proviso West matter, and that's scheduled to start
12 at 10:00 o'clock. As soon as the press conference
13 concludes, we will have a meeting to talk about
14 planning. We will talk about revisiting the Chicago
15 Police matter. We will be receptive to ideas,
16 suggestions from members of the committee about
17 other topics, and at this point, I think it's fair
18 to say that the staff and I are particularly
19 interested in looking at possible topics outside the
20 City of Chicago, outside the metropolitan area where
21 we have been concentrating our focus and our
22 activities, I would say, for the last year or two.

23 Also, let me suggest that you come

1 tomorrow with any, let's put it this way, we can put
2 this part of it off, actually at some point after we
3 have read the papers that are being submitted today,
4 and through Monday. I would like to have your ideas
5 and suggestions and thoughts about what this process
6 adds up to, what we have heard, and what we thought
7 about the presentations on affirmative action. And,
8 I don't mean to limit it to the presentations
9 because we all have every day knowledge and
10 experience and ideals and thoughts about affirmative
11 action. I would like you to put your thoughts in
12 writing at some point after you've read all the
13 papers, and simply address a note or a memo or a
14 letter to Connie with a copy to me, if you would,
15 please, expressing yourself about what you think the
16 committee can say as a body in our published report,
17 which will consist primarily of these papers that
18 are being submitted to us. But, I don't want to be
19 just a conduit for these papers. I would like us to
20 say to try to arrive at some kind of conclusion,
21 some kind of thoughts about public policy, about
22 where the nation goes from here in regard to
23 affirmative action and equal opportunity. At this

1 point, I don't anticipate any formal meetings to
2 discuss this, or any votes on any formal
3 resolutions. I think it would be helpful to the
4 staff as they draft a, whether it's to be a forward
5 or a summary or a conclusion, ut at some point in
6 this published report, I would like very much to see
7 something in print by the Committee and the best way
8 I think right now anyway, the best way to achieve
9 that is for each of us to try to begin to put our
10 thoughts together and, after we've read all the
11 papers and had a chance to digest them, which may
12 take a little time. There's no time limit on this
13 process at this piont, but we don't want it to go
14 too long, either. Try to put down your thoughts in
15 writing and send them to Connie and to me to help
16 the staff draft some sort of summary or conclusion
17 or statement by the committee. Now, after that
18 statement is drafted, we certainly will circulate
19 it, as we have with other draft statements prior to
20 publication so that members of the committee can
21 have an oppportunity to suggest changes or to make
22 comments on that draft. But, that's the process that
23 I envision we will follow over the next few weeks to

1 try and come out with a good report with, obviously,
2 a lot of good thought to the papers contained in it.
3 But also, our own thoughts and if possible, our own
4 recommendations.

5 MR. PUGH: I agree with everything. I
6 would say that we should consider the paper that
7 came, either from Peter, Connie, or from the U.S.
8 Commission or from all three of them put together.
9 The background paper that we had however long ago, a
10 year ago was it?

11 MR. MINARIK: It was last may, you talking
12 about that 12 page proposal?

13 MR. PUGH: About putting elements of that
14 as a piece of the report because it has a value, I
15 think, of putting a value, something, it was of such
16 value, I presented it to the Illinois legislature as
17 an important background on affirmative action. And,
18 I think that's not covered in the testimony today as
19 such, and that inclusion or some part of it might be
20 very useful.

21 CHAIRMAN MATHEWSON: Who produced that?
22 Did we produce it for the Commission or did they do
23 it for us?

1 MR. MINARIK: I wrote that project
2 proposal.

3 CHAIRMAN MATHEWSON: The project proposal?

4 MR. PUGH: That's what I thought it was.

5 CHAIRMAN MATHEWSON: Let's revise it,
6 that's good, that's a good idea. All right. At this
7 point, we'll keep the meeting open and the record
8 open for at least a few more minutes in case there
9 are public persons who want to appear before us.
10 But, if there are those of you who need to move
11 along, feel free to do so. I'll stay a few minutes
12 and I think others will.

13 MS. LAU: I wanted to add the fact that,
14 maybe I'm such an avid fan of affirmative action,
15 because I'm the beneficiary of an affirmative action
16 program. I'm currently employed by Motorola and was
17 recently in the job market and got my position
18 primarily because I, as I was strting to do my job
19 search, I contacted the President of the Asian
20 American Bar Association and they were contacted by
21 Motorola asking to find qualified attorneys for
22 their position. And, the reason I wanted to
23 interject this is because affirmative action in a

1 lot of respects has been looked upon as, you know,
2 hiring unqualified people that, you know, that we're
3 lowering our standards somehow. And, I think that I
4 really disagree with that statement, not only
5 because I'm wearing the affirmative action monitor,
6 but also because I just don't think that it's true
7 when there are positions open and people are out
8 there looking to hire a minority person or a woman,
9 they're not going out onto the street and finding
10 the person who sells a newspaper and say hey, can
11 you come in, you know, you're a minority, you're a
12 woman, can you come in and work in our legal
13 department or can you be our marketing person, or
14 can you be our Vice President? I mean, they're just
15 not going out there and finding the first person on
16 the street, and they're not finding anyone who walks
17 in the door. The pool of applicants from which they
18 are selecting happens to be qualified, and I just
19 want, I can't reiterate that statement enough. And,
20 I think that if affirmative action programs did not
21 exist, and a crucial part of the affirmative action
22 program is outreach, it's instead of just
23 advertising or publicizing the information through

1 the old networks or just the mainstream vehicles,
2 that may not reach the minority communities or the
3 women's community. Affirmative action should, by
4 putting, by nudging employers to go beyond that and
5 put a little bit extra effort to search out
6 qualified candidates. They're able to draw in
7 people that otherwise might not. And so, it seems to
8 me that that's a crucial factor of affirmative
9 action that just can't be ignored. So, I just wanted
10 to add that, for the record.

11 (Off the record)

12 AFTER RECESS

13 CHAIRMAN MATHEWSON: The record is closed.
14 Let the record show no one has appeared to testify
15 during the public session. Thank you all for coming.

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CERTIFICATION

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I, VERNETTA MCCREE, A Certified
Shorthand Reporter doing business in the State of
Illinois, certify that I reported in shorthand the
testimony taken in the above-entitled matter, and
that this constitutes a true and accurate
transcription of my shorthand notes so taken as
aforesaid.

Vernetta McCree

VERNETTA MCCREE, CSR.