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

Community Forum: Focus on Affirmative Action.

Taken before Nancy G. Gisch, a Notary
Public in and for the County of Washington,
State of Minnesota, on Thursday, the 19th day
of June, 1997, commencing at approximately 9:15
in the morning, at the Thunderbird Hotel &
Convention Center, 2201 East 78th Street, in the
City of Bloomington, Minnesota.

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CCR
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WHEREUPON, the following proceedings were duly had: --

* * *

MR. WEINBLATT: Welcome to all of you. My name is Alan Weinblatt. I am the appointed Chair of the Minnesota Advisory Committee to the U.S. Civil Rights Commission. Our committee is bipartisan and all of its members have been appointed by the U.S. Commission on Civil Rights to advise the Commission on Civil Rights issues in the state of Minnesota.

With me today are the other members of the Minnesota Advisory Committee. If you hear me use the word SAC, it's not that anybody's being terminated. It's that it's an abbreviation for the State Advisory Committee.

If we start on my right, at the end of the table is Angela Carter. Seated next to Ms. Carter is Terry Louie. On this end of the

1 table is Camilla Nelson. Next to Camilla is
2 Carol Wirtschafter. There is one member of the
3 committee in the building that is not yet in her
4 seat, Lupe Lopez, the veteran member of our SAC
5 who will be joining us shortly. Geraldine
6 Koslowski, to her left, Laverene Orwoll, and
7 then on the other side of the table, John Morrow
8 and Thomas Lawrence.

9 We are here today to conduct a community
10 forum on the subject of affirmative action.
11 This is a public meeting. It is open to the
12 media and the general public. And all of the
13 statements made by witnesses that are before the
14 committee and members of the committee will be
15 taken down and transcribed by our court
16 reporter.

17 We have a full schedule of people who will
18 be making presentations within a very limited
19 time available. Our meeting format will
20 allocate three to five minutes for an opening
21 statement from each of the presenters to our
22 committee. And the presentations will all be on
23 the subject of affirmative action. After the
24 opening comments have been made by the members
25 of a particular panel, then members of the

1 Advisory Committee will be afforded the
2 opportunity to ask questions of each of the
3 participants in that particular panel.

4 To me will fall the less than happy duty
5 of being timekeeper. I will keep strict times
6 not out of disrespect for a presenter, but out
7 of respect for the subsequent presenters, just
8 to make sure that everyone has an opportunity to
9 present us his or her views.

10 If time for a particular panel has
11 expired, members of the Advisory Committee will
12 be given the opportunity to -- to ask further
13 questions by submitting written questions to
14 panel members and our staff. Regional staff
15 person will be asking those questions by
16 presenting the written questions to our
17 presenters.

18 To accommodate persons who have not been
19 formally invited to present, but wish to make
20 statements to the Advisory Committee, we have
21 scheduled an open forum session today beginning
22 at 4:30. Any member of the public may address
23 the Advisory Committee at that time. And we
24 will -- depending on the number of people who
25 indicate a desire to make a presentation, I will

1 allow more or less time, depending on how much
2 total time we have.

3 Though some of the comments that
4 presenters may make today and some of the
5 positions they take may be controversial, we
6 will not allow statements to be made that defame
7 or degrade any person, any group or
8 organization. An individual or organization
9 that feels defamed or degraded by statements
10 made by anyone, presenter or panel member or SAC
11 member, will be given an opportunity to
12 respond.

13 Our topic today is particularly
14 appropriate in view of the initiative taken by
15 President Clinton on last Saturday night in his
16 speech at the University of California at San
17 Diego and the responses that that initiative is
18 sure to engender.

19 The Advisory Committee will take all
20 comments under consideration, and upon receipt
21 of the transcript of today's presentations will
22 begin deliberations with an end toward issuing
23 and distributing a report on the subject of
24 affirmative action in Minnesota.

25 In case there are persons who are not able

1 to make a presentation today orally, but wish to
2 have their views presented to the Advisory
3 Committee, our record will remain open until
4 July 19, 1997 for the purpose of committing
5 written statements.

6 A written statement that any person
7 desires to make to the SAC should be addressed
8 to the Midwestern Regional Office -- let me
9 begin again -- addressed to the United States
10 Commission on Civil Rights, Midwestern Regional
11 Office, Suite 410, Xerox Centre, 55 West Monroe
12 Street, Chicago, Illinois 60603. And if anyone
13 wants that address repeated or -- or
14 personalized, please see me at any one of our
15 breaks and I will give it again.

16 With that bit of background and very, very
17 sincere welcome, let me introduce and recognize
18 the two members of our first panel. As I
19 introduce persons during the day you will see
20 that the introductions are very informal because
21 it is the presentation that is the most
22 critical. And any other introductions or
23 background information we will ask the
24 presenters to give.

25 With us on our first panel this morning is

1 Margot Cross, of the Minnesota State Council on
2 Disability, and Cherian Puthiyottil,
3 representing and on behalf of the state of
4 Minnesota Council on Asian-Pacific Minnesotans.

5 Ms. Cross, perhaps you'd be willing to
6 make your first presentation. And then Cherian,
7 if you would follow in -- when she's done,
8 Cherian.

9 MS. CROSS: Thank you and good
10 morning.

11 MR. WEINBLATT: If you don't -- I
12 will only interrupt to make for -- make things a
13 little easier. In fact, I'm going to walk
14 around and bring the microphone closer to you,
15 if that's all right. Again, thank you.

16 (Discussion off the record.)

17 MS. CROSS: Again, thank you and
18 good morning. I do apologize for running late.
19 I not only had difficulty getting here, I had
20 difficulty getting in the building once I did
21 get here. And I'm going to be talking to the
22 manager as soon as I leave, and in very harsh
23 terms.

24 I want to start by saying that
25 historically people with disabilities have had

1 little opportunity to find and keep gainful
2 employment. Access has been limited, reasonable
3 accommodations denied, and potential employers
4 fearful of our disability and our capability.

5 Potential employers have had, for many
6 years, preconceived ideas about hiring people
7 with disabilities. Low expectations blended
8 with expectation for failure.

9 Affirmative action for people with
10 disabilities equals opportunity. It is not a
11 quota system, it is not forced hiring of
12 qualified or unqualified people. Affirmative
13 action is exactly what it means; to take
14 positive steps to be more inclusive. It
15 provides employers with an opportunity to
16 analyze their preconceived ideas and to look at
17 people with disabilities in a different light;
18 one that highlights abilities, not
19 disabilities. And it provides people with
20 disabilities opportunities for employment and
21 promotion we wouldn't otherwise have access to.

22 Affirmative action encourages employers to
23 engage in a variety of recruitment activities.
24 As many people with disabilities take different
25 avenues to find employment, recruitment

1 activities need to be varied, as well.
2 Affirmative action complements the Americans
3 with Disabilities Act. To tell an employer that
4 he or they cannot discriminate against an
5 individual with a disability is not the same as
6 providing that same employer with encouragement
7 to hire a person with a disability.

8 I'm sorry.

9 In addition, people with disabilities who
10 do find employment often find a cluster of
11 people with disabilities, women and other
12 minority individuals, at the entry point. It is
13 our experience that many people with
14 disabilities find little opportunity for
15 advancement and promotion. Affirmative action
16 works to eliminate this type of system
17 discrimination.

18 Most specifically affirmative action
19 levels the playing field. Again, it encourages
20 employers to focus on abilities, not
21 disabilities. And it provides opportunities
22 that individuals with disabilities wouldn't
23 otherwise have.

24 Each year Rehabilitation Services spends
25 millions and millions, if not billions of

1 dollars rehabilitating us, training us,
2 educating us, and providing us with skills so
3 that we can enter the work force. We are one of
4 the most highly trained protected classes in
5 this country. Yet our unemployment rate is
6 two-thirds of all people with disabilities. And
7 of that two-thirds, two-thirds are actively
8 seeking employment. We have one of the highest
9 unemployment rates in this country. And yet
10 this -- this country spends an incredible -- a
11 vast amount of money training us, educating us.

12 It's not an issue of whether we can do the
13 job. It's an issue of whether we can get the
14 job. And affirmative action provides some tools
15 for helping us get that job.

16 What would be our recommendations? We
17 need to collect the necessary data on people
18 with disabilities so that real goals can be
19 established. Establish actual hiring goals at
20 the federal level for people with disabilities,
21 because do they not currently exist at the
22 federal level. More training is needed on
23 affirmative action. Targeted recruitment should
24 be required. Tracking and reporting on disabled
25 job applicants and candidates for promotions

1 should be tracked and reported the same way that
2 it's currently being done for women and
3 minorities. And most importantly, a continued
4 commitment for a strong and vital affirmative
5 action program throughout this country.

6 Thank you.

7 MR. WIENBLATT: Cherian?

8 MR. PUTHIYOTTIL: Good morning. I
9 -- another person is supposed to be here. He
10 is now in Hawaii, so last night is planned.

11 Affirmative action -- last 30 years of its
12 history sometimes people may criticize we
13 haven't reached anywhere. But at least it
14 brought many people of color or the minority or
15 disabled to the doors.

16 In 1990 -- 1990 the Harvard University
17 business review article say that affirmative
18 action lead to the affirming the diversity.
19 There's a kind of mentality saying that it makes
20 the people of color or the minority or the
21 disabled people lazy and irresponsible if we
22 force the affirmative action. But the history
23 of this country, we take -- it takes many more
24 years to eliminate the already ingrained
25 prejudices and biases to reach the people of

1 color or the disabled people or the minorities.

2 It's -- I am from India. In 1951 in India
3 we passed -- by law we are born into the caste
4 system. But today, after 40 years of people --
5 the low caste people who reach higher level
6 because of that court. At the beginning it --
7 it is necessary. Down the road you can
8 eliminate that.

9 Some people might say, oh, some talented
10 people it is questioning their prestige or the
11 quality or the talents, but all are not inborn
12 talented. They need an environment where they
13 can show their merit or they can develop their
14 capacity.

15 From my own experience, if this
16 affirmative action was not there, many people
17 who are prejudiced because -- because of my
18 background and because of the affirmative action
19 I got a chance to prove my merit or my
20 capacity.

21 So the affirmative action is a stepping
22 stone, but with that we have to push off the
23 train or the -- the lower courts to affirming
24 diversity. Diversity is -- is a -- is a
25 blessing, not a problem. And it is not because

1 of the demographic changes that is, but because
2 of the humanity. And affirmative action, it is
3 -- it might be giving a kind of prestige for
4 United States in the world population about, oh,
5 yeah, they are doing something. But
6 intentionally we need to accept the diversity
7 and respect other people's values. Here if we
8 learn of -- if the history states our religious
9 superiority and the individual value of the
10 western culture, that makes affirmative action
11 extremely necessary to bring equality, equal
12 acceptance of diverse individuals.

13 Think about. Look at the black partner in
14 the prestigious law firms. Look at the black
15 astronaut sailing beyond the skies. Look at the
16 blacks scholars sculpting the future with his or
17 her own genius. Look at the black couples or
18 colored people landing in a park -- landing in a
19 park that was closed for them one time.

20 No Promised Land yet, but look at what we
21 have become. Consider all that we might yet be,
22 if we would only arise and do. The real
23 affirmative action; adapting to diversity.

24 Thank you.

25 MR. WIENBLATT: We also welcome to

1 this meeting of the Minnesota Advisory Committee
2 Lester Collins on behalf the Minnesota Council
3 on Black Minnesotans.

4 Mr. Collins, welcome. And you're on.

5 MR. COLLINS: Let me first of all
6 say good morning to you all. And my apologies
7 for running late. My son just got married over
8 the weekend. And my 92-year-old father and
9 80-year-old mother were leaving this morning. I
10 thought they were going to do that sooner than
11 they did, but we kind of lingered with the new
12 grandson and a few things.

13 I'm going to certainly read my comments as
14 quickly as I can. I would probably take them
15 more spontaneously, but I think so that I don't
16 wander any more than I have, I'll try to read
17 them as quickly as I can.

18 This is a good time to be talking about
19 affirmative action; the President's speech on
20 Saturday, Glenn Loury's, appearance at the
21 Center for the American Experiment here last
22 week, and a recent bill introduced into the U.S.
23 Senate proposing the discontinuance of all
24 federal affirmative action programs. I think
25 all underscored a vitality of the affirmative

1 action debate.

2 At his San Diego speech on Saturday,
3 President Clinton challenged opponents of
4 affirmative action to show him a better way to
5 fairly distribute the opportunities to achieve
6 status and material success in American
7 society. Today's uneven distribution of such
8 opportunities in favor of primarily white men
9 does not reflect conscious discrimination
10 repeated thousands of millions of times over,
11 but it certainly does reflect the fact that
12 unequal opportunities for education,
13 professional achievement and promotion reflect
14 the long-standing path of exclusion of people of
15 color and women from high status positions in
16 our economy and our society.

17 Glenn Loury, the conservative African
18 American Director of Boston University Institute
19 on race and social division made a strong case
20 in his speech last week for the need for
21 affirmative action. Loury outlined how
22 opportunities are not distributed according to a
23 strict higher -- hierarchy of merit, but follow,
24 instead, lines of contact, exposure, awareness,
25 and influence that to a large extent can be said

1 to be inherited. This inheritance, of course,
2 is not a matter of genetics, but reflect the
3 different socioeconomic circumstances and
4 networks that each individual is born into.
5 People born into situations rich in material,
6 educational and associational resources will be
7 able to cultivate, then to trade on their
8 talents and to be rewarded accordingly. People
9 born into situations where affluence,
10 educational achievement and influential friends
11 and relatives are perhaps rare or nonexistent
12 will more often lack the chance to develop their
13 talents, to find their talents reinforced and
14 encouraged or to get their talents refined and
15 perhaps even rewarded.

16 To a great extent the uneven distribution
17 of opportunity throughout American society
18 reflects this nation's racial history. Wide
19 acceptance of the idea that white men should not
20 monopolize economic power and by themselves
21 control commerce and government is barely a
22 generation old. Meanwhile, the several
23 centuries of slavery, disenfranchisement and
24 segregation that immediately proceeded our
25 current times of enlightenment, if one will,

1 · have left a continuing legacy of dispossession
2 and dependence for far too many descendants of
3 the slaves and for sharecroppers. While the
4 laws enforcing America's apartheid, if you will,
5 could be and were erased virtually overnight,
6 the social and economic consequences of
7 America's racial history have proved much more
8 difficult to correct.

9 The US Commission on Civil Rights has
10 defined affirmative action to mean any measure
11 beyond simple termination of a discriminatory
12 practice adopted to correct or to compensate for
13 the past, for present discrimination or to
14 prevent discrimination from reoccurring in the
15 future.

16 Under their definition it would be hard to
17 imagine an era of life or an American life where
18 education, housing, employment, contracting,
19 government, where affirmative action measures
20 could not legitimately be brought to bear for
21 the sake of redressing past discrimination which
22 permeated every aspect of social, economic and
23 civic activity.

24 Opponents of affirmative action state
25 correctly that strict equality of opportunity

1 would be completely colorblind. I hope to live
2 to see the day when equality to -- equality so
3 understood would not need to overlook any
4 unequal distribution of opportunity on the basis
5 of race. We are not yet there. So the
6 discontinuance of measures designed to correct
7 past discrimination is not a luxury that people
8 of color and, for that matter, people with
9 disabilities can afford or can well afford.

10 The emergence of the last generation of a
11 sizeable African American middle class, however,
12 raises a difficult question about the proper
13 objectives of the affirmative action program,
14 some might say. Should affirmative action
15 operate in favor of affluent people of color or
16 should it be more sensitive to the questions of
17 class. If affirmative action operated only to
18 protect and perpetuate a middle class of color
19 while creating the illusion of a racially
20 healthy society at the expense of truly
21 disadvantaged African Americans, then
22 affirmative action would be a fill policy.

23 Because the proper emphasis of affirmative
24 action policy should be to extend opportunity to
25 qualified people who would not otherwise have

1 access to it, the challenge of affirmative
2 action in the future will be to penetrate
3 further down the class scale in order to
4 identify, cultivate, and reward talent among
5 those whose disadvantages are primarily
6 socioeconomic. In former times there was a
7 nearly universal correspondence between
8 membership in a racial minority and
9 socioeconomic disadvantage. And this is not
10 quite true today. When the disadvantages of
11 poverty, poor education, and the lack of access
12 to opportunity are no longer concentrated among
13 people of color, then and only then will there
14 be no benefit to affirmative action.

15 Thank you.

16 MR. WIENBLATT: Thank you.

17 All right. Let's open it up now to any
18 questions or observations by members of the
19 Advisory Committee to any of our three
20 presenters.

21 If no one else is going to start, I -- I'd
22 like to have Ms. Cross address a question that
23 might be particular to the community that you
24 represent. And that is, with respect to
25 discrimination and the lack of affirmative

1 action in the communities of color or those
2 based upon gender or those based upon national
3 origin, the violation or the cure we have
4 focused on historically has been group-wide.
5 That would seem to be less than beneficial or
6 even appropriate with respect to the community
7 of the disabled.

8 And so my question to you is: Is there
9 commonality among disabled persons that -- that
10 can be addressed under the label of affirmative
11 action? Are disabilities so unique to an
12 individual that it's an individual matter or are
13 there common experiences that all disabled
14 persons or most disabled persons experience that
15 -- that create a -- create them as a group?

16 MS. CROSS: Hopefully I've
17 understood the question. Okay? As a group,
18 individuals with disabilities have one common --
19 common experience and that is of
20 discrimination. And many times it takes
21 different forms. Discrimination many times can
22 -- can be simply not be able to get into a
23 building, not being able to get the material you
24 need in the format that you need it. It --
25 there -- there clearly is that one experience

1 now.

2 People with disabilities come from all
3 socioeconomic groups, we come from all
4 communities, we come from both genders, we're
5 clearly part of every community. And sometimes
6 we -- we experience discrimination both on basis
7 of disability and on the basis of race or
8 gender.

9 But disability in and of itself -- the
10 experience of disability will inevitably lead to
11 the experience of discrimination. And that is
12 the one common experience in the community.

13 Now, that was -- was that even in the
14 ballpark?

15 MR. WIENBLATT: Fine.

16 MS. CROSS: Okay. Thank you.

17 MR. WILDERSON: Let me ask
18 somewhat the same question, but ask you to
19 expand upon that just a little -- a little
20 more. And I'm asking for your opinion.

21 In the discrimination that people with
22 disability receive, is that discrimination based
23 upon, in your opinion, the perception that the
24 person cannot perform certain tasks or is it
25 mainly in the physical limitations that people

1 are unwilling to correct so that you can perform
2 the task?

3 MS. CROSS: Oh, it's clearly
4 both. If -- historically it has been
5 perceived. Discrimination against people with
6 disability is -- is very similar to the
7 discrimination that women historically have
8 experienced. The experience of low -- of not
9 being able to -- to -- of wanting to protect us
10 in many instances, of not -- of not wanting us
11 to -- to get a promotion for fear that we might
12 fail. Just this -- this inherent misperception
13 that we can't -- we can't fulfill the job
14 responsibilities. So there is this -- this
15 misperception. There is this assumption that
16 people with disabilities can't participate on an
17 equal level with nondisabled people, similar to
18 the way women used to -- used to -- used to feel
19 that women couldn't participate on an equal
20 level with men. But -- so that's a large part
21 of it. And that is cert -- clearly something we
22 still experience today.

23 But clearly another part of it is, you
24 know, if -- if I'm hired for a position and --
25 and there are certain accommodations that need

1 to be made -- either the desk needs to be raised
2 or the bathroom needs to be made accessible or
3 there needs to be maybe a ramp put in a part of
4 the building that -- that I need to be able to
5 get to -- sometimes employers are very, very
6 reluctant to provide those accommodations.

7 MR. WILDERSON: Thanks. Let me
8 just follow up on this. For some other groups
9 there have been the perception that because of
10 their skin color, because of a lot of other
11 things, that the -- the dominant people employed
12 -- they felt uncomfortable with them being in
13 the same marketplace with them. Does people
14 with disabilities have -- felt that they make
15 other people uncomfortable and therefore may not
16 have the opportunities open for them? Is that --

17 MS. CROSS: Absolutely. You've
18 hit the nail on the head. I think the number
19 one reason people with disabilities aren't hired
20 in today's work force is because potential
21 employers feel uncomfortable around us. They
22 don't know what to say. I've gone into job
23 interviews where we spent 90 percent of the
24 interview talking about my wheelchair. You
25 know, not my qualifications, not my ability, not

1 -- not what experiences I bring to this, but
2 boy, isn't it just -- look at those -- you know,
3 the wheelchair and how does that work and what
4 does that do and how do you get around and, you
5 know, do you drive, you know, where do you live,
6 is your place -- you know, fulfilling their need
7 because they maybe didn't have a lot of exposure
8 of -- towards or with people with disabilities,
9 but clearly I didn't get the job. And -- and I
10 think that's real commonplace -- is employers
11 are very uncomfortable around people with
12 disabilities.

13 MR. WILDERSON: Mr. Chairman, I'm
14 not going to -- but I want to ask one more
15 question.

16 MR. WIENBLATT: One more.

17 MR. WILDERSON: So therefore when
18 you talked about one of the recommendations that
19 you would make in the area of training, it would
20 be -- it would be directed at addressing those
21 kinds of attitudes that you just alluded to; is
22 that correct?

23 MR. CROSS: Yes, sir. Those --
24 those attitudes and -- and, of course, the other
25 prejudices people carry with them, as well.

1 MR. WILDERSON: Thank you.

2 MS. CROSS: Thank you.

3 MS. NELSON: I have one additional
4 question again for Margot.

5 Do you find that discrimination is equally
6 rampant among people with what I refer to as
7 invisible disabilities, those that aren't
8 apparent -- apparent by view?

9 MS. CROSS: Yes, but in a
10 different way. People who can pass, people who
11 have invisible disabilities many times don't
12 identify themselves as an individual with a
13 disability, so many times their hiring rate is a
14 bit higher. But once they are on their job,
15 they need the accommodation or once they are on
16 the job and -- it becomes evident that they are
17 disabled, then there's post hiring issues and
18 problems that often lead to termination or
19 leaving the job. But yes, there is
20 discrimination.

21 And -- and I honestly feel, in my own
22 opinion, that people with invisible disabilities
23 have a far more difficult time in the employment
24 setting than those of us with visible
25 disabilities. We deal with our disability

1 issues up front with the employer. I've got to
2 go to the bathroom. I've got to be able to get
3 to my desk. You know, those are issues that we
4 can deal with. But people with hidden
5 disabilities, invisible disabilities have a far
6 more difficult time trying to explain what --
7 what their disability is and how it affects them
8 in the workplace. And people just don't want to
9 understand many times. They -- they are
10 hesitant to even believe people, that they have
11 disabilities.

12 MS. NELSON: Thanks. I really
13 appreciate that response. I am one of those
14 people with an invisible disability. And I
15 found exactly what you said to be true.

16 And then I have a question. I'd
17 appreciate an answer from both Mr. Collins and
18 Mr. Puthiyottil.

19 Considering -- and -- and this is sort of
20 the trend coming east from the west. Considering
21 the growth in the nation's immigrant population
22 and the fact that immigrants are also
23 considered, by virtue of national origin, people
24 of color and able to take advantage of
25 affirmative action programs, there are actually

1 some instances where, you know, people of color
2 are all grouped to be called the -- the new
3 majority and are forming all sorts of
4 alliances.

5 Do you see this as having an impact on
6 affirmative action? And, if so, what would be
7 your response to people who consider that growth
8 and -- and figures a threat to the other
9 majority?

10 MR. COLLINS: I think that
11 certainly strategically it would be well.
12 Particularly this morning you have invited
13 specifically so-called councils of -- of color,
14 disability council and certainly the economic
15 status on women. I think as relates to the
16 immigrant population certainly it is growing,
17 you know, significantly here in Minnesota and,
18 as you have said, throughout the country.

19 I do think -- I hadn't quite heard the
20 term new majority, but I guess I, myself, have
21 termed it certainly differently and have heard
22 it differently described.

23 I think there's no doubt that the -- the
24 perception of -- of this growth -- I don't want
25 to use the word invasion, but it isn't, you

1 know, at all that. But I think that what we're
2 dealing with is actually, in many respects, a --
3 a threat or perception of job loss and
4 opportunity based on -- excuse me -- based on
5 numbers. And I think that the growth in many
6 respects, I think, certainly does pose to many,
7 I think, what might be, you know, a -- a
8 threat. The unfortunate part about that is,
9 again, I think we recounted back to -- to a
10 certain extent training at all levels. I mean,
11 both in our -- our educational systems and in
12 the job or corporate settings, et cetera. So I
13 think there definitely is a -- is an impact.
14 And -- and I think much of what we're dealing
15 with, California throughout the country, I
16 think, has a lot to do with that perception of
17 this -- this new majority and the increasing
18 population of individuals with color, et
19 cetera. And a threat essentially to just the
20 ability of those who have generally not had to
21 consider them.

22 MR. PUTHIYOTTIL: That -- that
23 perception that they are stealing the
24 opportunities or something is -- it is --
25 certain times it is changing. When a new

1 immigrant population from Southeast Asia came,
2 there was a hue and cry they are going to steal
3 job opportunities, but gradually people
4 understand that is not the way it is. It is a
5 kind of opportunity for people in this country
6 to use their talents. If I mention about the --
7 the Asian population -- recent might be, but the
8 Asia populations as a whole less discrimination
9 because of certain perception about their talent
10 or skills or something. But we are also with
11 the people of color in this country who has been
12 experiencing this for a long time. So is a -- a
13 threat -- more than a threat. I -- if I may use
14 the word lack of ignorance about the people come
15 to this country. That is -- that is a
16 blessing. And you take the history. This
17 country is -- is a country of immigrants. And
18 many people came here in different times and
19 different boats. That is the difference. It's
20 a -- it's a perception point, what you are
21 asking, but gradually it is not a threat. It is
22 a blessing many people -- they usually
23 understand that.

24 MR. WIENBLATT: Mr. Collins, if I
25 might, in his Saturday night speech at the

1 University of California-San Diego, President
2 Clinton challenged those who might oppose
3 affirmative action to come up with an
4 alternative. In your best judgment -- and I
5 will ask the same question of the other two
6 panel members -- are there alternatives and, if
7 so, what?

8 MR. COLLINS: I'm impressed that
9 no matter what it is that we are dealing with,
10 and perhaps how -- no matter how effective it
11 is, I'm of the belief that reviewing it, looking
12 at it to sharpen it, to measure it, you know,
13 perhaps differently -- I mean, can always be
14 done.

15 What those alternatives specifically to
16 affirmative action would be, other than
17 education, other than dealing, you know, away
18 from, you know, myth and theory and dealing with
19 -- with the facts of what it essentially has
20 accomplished away from perceptions of -- of
21 perhaps reverse discrimination and all those
22 kinds of things, I think I would not -- I guess
23 I'm not prepared or as prepared as I would like
24 to be in terms of what those alternatives may
25 be.

1 Can it be improved, perhaps modified? I
2 think the answer to that certainly, you know, is
3 yes. I'm just not prepared, I mean, in terms of
4 with those four, five, six things would be in
5 the midst of the -- the kind of week or et cetera
6 that I've kind of had. I'd certainly like to
7 answer that. But modify, change, improved --
8 the answer is certainly yes.

9 MR. PUTHIYOTTIL: Appointing a
10 commission alone won't solve the problem. The
11 -- the education system in country, if you
12 analyze -- it is supporting the superiority of
13 one race. It has been going on for years. And
14 this society somehow or other taught the people
15 here, we are the best and superior. That is
16 good. But at the same time we have respect and
17 open our eyes; there are people in our races and
18 other cultures that also equal with abilities
19 and capacities. That we have access -- that's
20 only through the education. Our education
21 lacking the understanding of other cultural
22 wealth and the -- the -- the advantage of other
23 races. So commission alone won't solve the
24 problem. Kind of mental attitude change through
25 a rigorous education. That's a -- that's a

1 must. And we have to start with the children.
2 All the older generation is very difficult to
3 change what they have learned. At least we
4 should start with the children, understanding
5 and respecting other cultures and respecting the
6 values of other cultures.

7 MS. CROSS: I wasn't quite
8 prepared for this question. And I must agree
9 with my -- with my esteemed colleagues here. I
10 clearly think education is critical. And we
11 need to start early and vigorously, rigorously,
12 teaching our children that differences are to be
13 celebrated, not feared. Different cultures are
14 to be -- are to be respected, not disrespected.
15 There is certainly a lot we can do in the area
16 of education.

17 I'm grade -- I'm afraid greater minds than
18 mine have considered your question. And I don't
19 know that they have come up with an answer,
20 either.

21 I know that the current system has
22 potential. The affirmative action program, as
23 our -- affirmative action laws, as we know
24 them. I -- I know that they are -- in my
25 opinion there would need to be more

1 enforcement. There -- needs to be finer tuned.
2 It needs to be -- the leadership behind the
3 affirmative system needs to be increased. I
4 know at the state level when I work with other
5 affirmative action officers from other state
6 agencies -- I mean, many times that's one of 20
7 different responsibilities they have. And it's
8 -- it's just very difficult to get the -- the
9 authority they need to make sure what happens
10 happens. So I think we need to change how we
11 view it. I think we need to -- to put some
12 power behind it.

13 Other than that, I'm afraid I have no
14 answers at this time. Thank you.

15 MS. ORWOLL: Margot, does your
16 council deal with mental disabilities, also?

17 MS. CROSS: Yes, ma'am, it does.

18 MS. ORWOLL: And in regard to
19 that, our system of mainstreaming children would
20 have all sorts of problems. How are you seeing
21 that? Is it working well or not? Would you
22 have any comments on that?

23 MS. CROSS: It's -- it's working.
24 Is it working well? I -- it really depends --
25 depends on the individual school system. I know

1 many children with -- with disabilities that
2 might manifest themselves as a -- a behavior
3 disorder or as disruptive in a classroom are
4 being labeled as -- as bad. Are being, you
5 know, troubled -- identified and labeled as
6 trouble, troublesome kids. It's -- it's not
7 working in all school districts. It's working
8 in some. And a lot of that depends on, again,
9 the leadership and who's -- who is establishing
10 the climate and what's happening there.

11 MR. WIENBLATT: Mr. Louie.

12 MR. LOUIE: This is a question
13 that picks up on Ms. Collins' -- Collins'
14 statements as referring to lead Loury.

15 Do you think that -- any -- any -- any of
16 the other panelists can also address the
17 question.

18 Do you think that affirmative action could
19 deal effectively with lack of opportunities for
20 people in relation to class as opposed to race
21 or minority groups? And do you think that
22 proponents or the critics of affirmative action
23 who will point out that we don't deal with the
24 issues of class are really sincere about that,
25 that they really want to deal with the issues of

1 class?

2 MR. COLLINS: I think it perhaps
3 is clear, but I just want to make sure that my
4 mention even of Glenn Loury was not necessarily
5 an endorsement of -- of where Glenn Loury is.

6 It's -- it's interesting, just as an aside
7 as it relates to the issue of -- of what we call
8 the minority heritage placement after what was
9 and often the opponents to the placing children
10 of -- of color within their family systems. The
11 arguments almost -- in my opinion, almost
12 support the very opposition that they have.

13 I think in the case of Glenn Loury -- I
14 think that much of what would be his perhaps
15 opposition to affirmative action to me seems to
16 be the very support, you know, to its necessity
17 or the reason why it would be. In that regard,
18 I think that your question, particularly as
19 relates to class -- I do think that -- no, I
20 don't trust that in many cases that argument or
21 the whole idea that that would be the -- the
22 case. I think in many cases it is a scapegoat
23 or -- or a way of not addressing or dealing with
24 the reality of both the ethnicity or racial
25 issue. But I certainly believe that from the

1 standpoint of a class situation, socioeconomic,
2 et cetera, that we need to be looking at -- at
3 all sides of that situation as we consider this
4 issue.

5 My concern is, as I -- I did mention, that
6 we do have a growing, you know, middle class, I
7 think, within all of our populations, particularly
8 of color. They're not growing nearly as they
9 should be. My concern is for those individuals
10 who are not and are threatened never to become
11 so-called middle class, you know, citizens. And
12 we, I, have responsibility. That was a former,
13 you know, instructor or, you know -- at
14 Macalester. Still is there.

15 My charge, my education was very clearly
16 given to me provided on the basis of providing
17 opportunities for those who lack that
18 opportunity, to make sure that they got it.

19 I think that affirmative action has the
20 same charge and responsibility that once I have
21 received some benefits and -- so think that
22 again I would be the first generation, you know,
23 of individual attending college, perhaps -- and
24 I've often said -- by the way, as an aside
25 matter, I graduated from Macalester in three

1 years. It certainly wasn't because I was
2 smarter than, you know, anybody else there. I
3 recognized that what people call riots or
4 whatever, I -- I look at in terms of
5 insurrection or however you may want to describe
6 them. I knew the cost in terms of lives. So,
7 yeah, I played football, I even partied, but I
8 studied, you know, very hard for the advancement
9 and those that -- you know, whose shoulders, you
10 know, and lives were sacrificed for me to be
11 there.

12 I'm sure I didn't answer your question,
13 but I think, yes, there is certainly the whole
14 -- well, I'll leave it at that. Yes.

15 MR. WEINBLATT: I -- I want to
16 thank the members of the panel. You have given
17 us a -- a strong insight into what some options
18 are. We would hope that our work today would
19 avoid a problem that occurred similarly about
20 130 years ago. It took about two years for the
21 word of the emancipation proclamation to get to
22 certain remote parts of our nation. We would
23 hope that it will not take any longer than two
24 years for the word on the values, the
25 consistency of affirmative action with our

1 American values to get passed around our
2 country.

3 We appreciate your appearance.

4 MR. COLLINS: Thank you.

5 MR. WIENBLATT: All right.

6 MR. MINARIK: Cherian, thank you
7 very much. Mr. Collins, thank you very much.
8 Ms. Cross, thank you very much.

9 MR. WIENBLATT: Our second panel
10 today will include Aviva Breen, Legislative
11 Commission on the Economic Status of Women, and
12 Joseph Day, State of Minnesota Indian Affairs
13 Council. Okay.

14 Our first presenter in this panel will be
15 Aviva Breen from the Minnesota -- the
16 Legislative Commission on Economic Status of
17 Women.

18 MS. BREEN: Thank you very much.
19 Good morning. And thank you for inviting me.
20 I'm sorry I wasn't here from the beginning so I
21 don't know what quite what the format is. Two
22 minutes. I'll talk as fast as I can and then --

23 MR. WIENBLATT: Two and a half.

24 MS. BREEN: Two and a half.

25 Actually, I -- I think responding to

1 questions might be -- it might be more helpful,
2 but I will just make a few -- a few comments.

3 It's clear that affirmative action is
4 something that has been extremely helpful to
5 women in improving their economic status and
6 their general condition. So -- so to begin with
7 its obviously been an integral part of whatever
8 success women have had as they have expanded
9 their participation in the labor force, and
10 particularly in Minnesota, but -- but throughout
11 the country. And I'm going to speak more
12 specifically about Minnesota because that's
13 really where my focus is.

14 The issue for women is not getting into
15 the labor force. We have an extremely high
16 participation of women in the labor force and we
17 have historically, but we also have a highly
18 occupationally segregated labor force in
19 Minnesota. And that has changed very little
20 over the last -- as many years as we've been
21 keeping data. And definitely the situation has
22 improved, but I was looking over some of the
23 numbers this morning and, you know, women have
24 doubled their numbers in a number of
25 occupations, so they have gone from 4 percent to

1 8 percent or 8 percent to 16 percent.

2 The wage gap exists and it exists -- well,
3 it's an improvement over the years when we wore
4 the little buttons that said 59 cents. Now we
5 can wear buttons that say 73 cents, but -- but
6 the wage gap is there and it continues to be
7 there. Women are making their way in a -- in a
8 variety of places. The number of women-owned
9 businesses has expanded enormously. Women have
10 looked often at their opportunities in the labor
11 force and decided perhaps opportunities would be
12 better in another -- in another place or in
13 another way. And they have reached whatever
14 they can reach and have moved on to -- to taking
15 charge of their own -- of their own future in a
16 different way. But that has not necessarily
17 improved their economic condition.

18 So with respect to -- to the situation
19 overall affirmative action has been extremely
20 critical. There hasn't been any evidence that
21 we can see that -- or I should put it the other
22 way. The evidence we have is that where there
23 has been any enforcement mechanism, whether it's
24 been contract compliance or other reporting
25 requirements, there has -- there have been more

1 opportunities. It's very clear that where there
2 is enforcement something happens. And where
3 there isn't enforcement something might happen,
4 but -- but it's really far more -- far more
5 random. And so it's, you know -- women are in
6 all the categories that you're looking at; they
7 are in the disability community, they are in the
8 communities of colors, so they are -- they are
9 facing often multiple barriers, not -- not
10 necessarily only one. And there's no evidence
11 that we have that there is any disadvantage in
12 any situation where there has been affirmative
13 action, where there have been affirmative action
14 hires or promotions or anything, that -- that
15 productivity is low or output is lower or it's
16 -- it -- we can only find positive improvements.

17 But there is really a long way to go. I
18 -- I'm sure you have looked at the state
19 affirmative action report that just came out
20 which we just received a little while ago. And
21 I meant to bring it with me, but I didn't, as I
22 walked out. And we can see that the state is
23 making some good efforts in that area, but
24 there's a lot of gaps. There's a lot of zeros
25 and -- and ones in those numbers. And so

1 there's -- there's a long way to go.

2 Minnesota has made some efforts with --
3 with respect to the wage gap in a -- in a
4 different way, which is to adopt the whole
5 concept of pay equity. And that's perhaps
6 something that could enhance affirmative action
7 efforts, but maybe that's down the line -- down
8 the line somewhere. Maybe that's leaping ahead
9 too far.

10 I haven't watched my time. I've probably
11 spoken two and a half minutes. So I'll -- I'll
12 conclude with the same thing I opened with --
13 with, which is that affirmative action has been
14 extremely critical for women. I think with
15 respect to getting women into the labor force --
16 that's not as big an issue as -- I think as the
17 issue of mentoring and reaching out and creating
18 opportunities. Often for women the -- the --
19 the difficulty has been moving up. A lot of
20 data that show that women started management --
21 can start with whole group of management
22 trainees. And everybody moves along this far.
23 And then men go this way and women go this way.
24 And mentoring and other kinds of assistance that
25 women can get while they are within that

1 situation also -- also create opportunities and
2 are a -- I think maybe a very critical adjunct
3 to the overall affirmative action efforts that
4 -- that are happening.

5 I'll stop there and let you go on and then
6 respond.

7 MR. WIENBLATT: Mr. Day, thank you
8 for coming.

9 MR. DAY: Hello. My name is -- my
10 Indian name is Spirit -- Spirit Walking Around.
11 My clan is the Martin clan, which is a
12 furbearer. I'm from the Leach Lake
13 Reservation. My English name is Joe Day. And
14 I'm the Executive Director for the Indian
15 Affairs Council.

16 Before we get to the -- before I get to
17 the point of affirmative action and where it's
18 at and where it's been, I think we have to
19 recognize the history of the American Indian in
20 this country. History started for us prior to
21 European contact. As some of my colleagues
22 before me in the previous panel said, that not
23 being included in the history books, whether
24 it's the history of Minnesota, the history of
25 this country, in outlining that history started

1 when Europeans got here, you know, has a
2 definite negative impact on who we are
3 psychologically, emotionally and in today's
4 society, where we are going as far as -- we're
5 going, we're tribal governments, and attempting
6 to meet the 21st century.

7 American Indians have been treated as we
8 are today since Europeans got here. But today
9 the discrimination practices are below the
10 surface. You take Minnesota and say Minnesota
11 nice, you know. They really market that phrase,
12 but I believe that phrase is a mask of our true
13 feelings. All you have to do is witness what
14 happened in the state of Minnesota the past six
15 months during the legislative session, attacks
16 on tribal governments and Indian people. And
17 last week in congress we're -- Archers Committee
18 attempted to tax Indians casinos alone, not
19 taxing the casinos in Las Vegas or Donald
20 Trump's casinos. But they are targeting
21 American Indians. To me that's racism, economic
22 racism. So before we get to affirmative action
23 and where we do matriculate through the K-12
24 systems, post secondary systems and getting into
25 the workplace, you know, we've got many

1 battles. And we've fought them since 1492.

2 Even the words of people of color -- who
3 is that designed by? My response is people of
4 no color came up with that -- that term to mask
5 their true feelings about who I am as an
6 Indian. Our council took the position we're not
7 people of color. We're American Indians. So
8 please refer to us as that. We passed
9 resolution in '78 outlining that we prefer to be
10 American Indians, not Native Americans. Anyone
11 who is born in America is a Native American.

12 So it's those subtle battles that we have
13 to confront and overcome before we even enter
14 the workplace. It starts in kindergarten and it
15 doesn't end throughout our lives. I'm 52 years
16 old. I battle it on a daily basis. And
17 oftentimes you -- you get a job based on the
18 merits of your education, your -- your work
19 history. Then they say you got the job because
20 you're an Indian, you know. So those are the
21 things that I think we need to really address.

22 I think that history book part that the
23 Asian Pacific council talked about -- we need to
24 be included in the history of this country.
25 We're talking about the new immigrant. What

1 does this do to the dominant society, you know,
2 in 20 years. Asian Americans, African
3 Americans, Indians are going to be the majority,
4 women included, in the work force. The white
5 males are going to be the minority. Is that
6 frightening to them? Perhaps. I think they are
7 preparing for that.

8 But in today's workplace and the efforts
9 of the affirmative action laws, we're to provide
10 equal opportunity for jobs if we had the same
11 skills, the same expertise level when we're
12 applying for a job. And I think it's incumbent
13 upon a employer that you -- to hire American
14 Indians, African Americans, Asians, especially
15 if they are marketing products or services to
16 everyone in the country. You have to take a
17 look at the demographics of your community. And
18 hopefully your workplace would represent the
19 demographics, having the same percentage of
20 American Indians and so forth in your work
21 force, in particular if you're marketing to a
22 target area.

23 It's good to diversify, to have a diverse
24 work force to give back to the community. I
25 think we've lost community. And that's what

1 competition is all about, I believe. And that's
2 what European philosophy is all about, is
3 competition and neglecting community. Where
4 does competition get you. It may get you to
5 have the biggest bank account, but what are you
6 spiritually and morally. I think those are
7 important aspects that Indians hold really
8 dearly, the spiritual part and what's moral and
9 what's right for the community. So I think we
10 have to look at those and look at us and -- and
11 then look at some of the values that we -- that
12 we hold and -- and use those values. And
13 obviously we use some of the good things from
14 the other communities, embrace those, recognize
15 and respect other communities. And by doing so
16 develops a better society, a better world,
17 better workplace.

18 So affirmative action, in my 25 years of
19 work -- I did recognize that the ones that
20 benefited the most were -- were white females,
21 when I worked in California. We were the first
22 affirmative action officers. You know, that was
23 their entry into the business world, which is --
24 which is fine. I think we need to do that
25 because over half the populations are females,

1 so therefore half the work force should be
2 females. And those females should be making
3 comparable wages as the males, as we all should
4 in similar jobs. So I think that's what
5 affirmative action is attempting to do.

6 I think we need more enforcement, more
7 ways to evaluate how we're doing. Working in a
8 state system in -- in one department, in
9 particular, I see that there are a lot of
10 affirmative action initiatives, lot of proposals
11 being developed. But the next thing to do is
12 implement them, carry them out, ensure that the
13 work force really exemplifies the community that
14 you're serving, whether it's the state of
15 Minnesota, the counties, Honeywell, or whoever.
16 That we need to -- to take that commitment and
17 the leadership to make that happen. And
18 listening to Margot and the various successes in
19 the school systems with the disabilities -- it
20 really depends on the leadership and the
21 commitment of that leadership to ensure
22 success. You can have a leadership tell you
23 that we're going to do this for people with
24 disabilities or whatever, but if you don't carry
25 out that commitment, you're not going to be very

1 successful. So leadership and commitment is
2 very important. And that's all over the scale,
3 you know, in success rates throughout every
4 aspect of work. So we need to, I think, step up
5 our enforcement, take a look and evaluate it,
6 especially where federal agencies, state
7 agencies, local units of government are
8 involved, to see how well they are doing, see
9 what the commitments are.

10 So with that I'll go. Stop and entertain
11 questions.

12 MR. WIENBLATT: Thank you. Again,
13 we'll open it up to members of the Advisory
14 Committee.

15 MR. WILDERSON: Thank you.

16 Ms. Breen, my question is to you. Most --
17 in my opinion, most of the opposition to
18 affirmative action comes from white males.
19 Those of us in the community of color have some
20 assumptions about why that is the case. My
21 question to you is to ask: What is your opinion
22 or your assumption, as a white woman, why
23 there's such strong opposition to affirmative
24 action, given the fact that most of these white
25 men are married to a woman and many of them have

1 daughters? What's your opinion as to why they
2 oppose this so strongly?

3 MS. BREEN: That's an interesting
4 question. And I have the same opinion that you
5 do about the fact that that's where most of the
6 opposition comes from, although not all of it.
7 And I think -- well, I guess I'll have to say it
8 how I say it. I think it comes from a sense of
9 entitlement that I think those who have had the
10 opportunities feel they have been entitled to
11 them and so they should be -- continue to be
12 entitled to them. And any in-roads into those
13 entitlements are -- are a threat. And I think
14 -- I think we get that way when we have
15 opportunities. I mean, I think we are probably
16 all prone to have that feeling, that if we get
17 something, after we've had it for a while we're
18 entitled to it. And that if somebody else wants
19 it, it's a threat. But I certainly think -- I
20 mean, I think back a few years ago when the
21 St. Paul Firefighters were marching because
22 women -- they didn't want any women to come into
23 the -- into their department. And I -- I've
24 been gone on vacation. And I know that there's
25 -- there's more dissension there. And I

1 haven't paid attention to it because I'm not
2 referring to that, but I think -- I think we
3 hear a lot of these -- a lot of explanations,
4 but -- but I believe that there has been such a
5 pervasive monopoly on -- on the opportunities
6 for a long time, that those who are in them felt
7 that they belonged to them. And I think we need
8 to help them to understand that the more
9 opportunities there are for everyone, the better
10 it is.

11 Interestingly enough, what we call the
12 click comes very often when the daughter or the
13 sister or the wife or the mother has had an
14 experience where they were denied an
15 opportunity. And very often that -- that's when
16 the click comes and we begin to see some
17 change. But that's kind of a slow way to do it.

18 MR. WIENBLATT: I'm going to put
19 the same question to the two of you that I did
20 to the previous panel. And that is that the
21 president in his speech Saturday night
22 challenged those who would oppose affirmative
23 action to offer alternative -- alternatives.

24 Again, my question is not to someone who
25 opposes affirmative action, but someone who is

1 knowledgeable on the subject: Are there
2 reasonable alternatives and, if so, what might
3 they be?

4 MS. BREEN: Well, I'm only
5 prepared for the question because I heard you
6 ask the last panel. And I think of a couple
7 things. I mean, I -- I think -- I think
8 affirmative action has taken on the mantle of
9 having -- having lots of baggage connected with
10 it.

11 And I -- I -- I would not like to suggest
12 that we have to package the same thing in a
13 different way and call it something else and
14 then -- but in a way I am suggesting that, that
15 I think we have to look at what it is about that
16 term that engenders so much opposition, and then
17 talk about what we really want to accomplish.
18 Because when people think of affirmative action
19 they think of quotas or numbers or whatever
20 negative it is, hiring people who aren't
21 qualified because you have to fulfill certain
22 obligation. They think of a lot of things that
23 -- that are not -- do not describe what the
24 purpose of affirmative action is.

25 So I think we need to look at -- I don't

1 have a suggestion for -- for that completely,
2 but I do think it is a matter of making sure
3 that the message is about what we want to
4 accomplish. I don't think that gets rid of the
5 opposition. I think that the same fear that is
6 there continues.

7 And I think we need to look at some of the
8 other aspects of affirmative action. For
9 example, something I mentioned in my remarks,
10 that opportunities may be there to begin with,
11 but a lot of times the reason it has failed is
12 because they haven't gone any further, whether
13 we help people advance or help people with
14 training or -- or put money into programs that
15 do that, to make it successful. I mean, I think
16 simply having it isn't enough. There has to be
17 a commitment to making it succeed. So I think
18 -- I think that's the other part. We can -- we
19 can have the program out there and say it's
20 there and then not do anything to ensure that
21 affirmative action actually provides affirmative
22 opportunities and we haven't done anything. So
23 I -- I don't think we need an alternative, but I
24 do think we need to make sure that we're all
25 talking about the same thing and make sure that

1 it's clear so that we can get rid of some of the
2 -- some of the negative. Probably won't get
3 rid of it all ever.

4 MR. DAY: I think the affirmative
5 action initiative is -- or even the law --
6 you're looking at a symptom and not really
7 addressing the problem. I think the problems
8 come with the lack of inclusion through
9 education, through the way parents raise their
10 kids and saying we're different from those folks
11 and -- and they are not as good as we are. I
12 think it starts at an early age where
13 development -- development of a child and their
14 behavior is probably a place to start. And I
15 would allude back to what my colleague from the
16 Asian council said, that we got to be inclusive
17 in the history books. And the more we learn
18 about each other -- I think in the long run
19 would be more beneficial to getting rid of the
20 stereotypes about American Indians, Asians,
21 African Americans and develop a community as we
22 -- as we grow older and work together because
23 we have, as Indians, just as much to offer. And
24 we're just as smart as everyone else is. So
25 therefore if we're given ample opportunities to

1 share in the history of this country and be the
2 same as everyone else, I think when we get into
3 the work force a lot of that stuff will -- will
4 dissipate.

5 And what I really strongly recommend is
6 looking at those history books, the American
7 history, and all of the 50 states history books
8 and be inclusive. And by starting with the
9 children and how we teach them about treating
10 each other. There's only one race and it's the
11 human race. That's, I think, what we've got to
12 start with. That will -- will correct those
13 feelings when we enter the work force.

14 MR. WILDERSON: I have one. Those
15 who oppose affirmative action, in my opinion,
16 have sought to confuse the issue and its
17 intent. What is your opinion as what should be
18 the goal of affirmative action, to try to bring
19 some clarity from each of your point of view.
20 If you were saying if we're going to have
21 affirmative action, these are some of the goals
22 that you should seek to achieve, what would that
23 be?

24 MS. BREEN: Okay. Well, I think
25 the overall goal is -- is to -- is to create

1 equal opportunity. To me, I have always
2 considered affirmative action to be a method of
3 ensuring that opportunities are the -- are the
4 same or equal to everyone who -- who is out
5 there, that each person has the same opportunity
6 to achieve, to enter an educational program, to
7 be hired, to get a contract, what -- whatever it
8 is. That that's the overall goal. And I think
9 the current saying is the devil's in the
10 details. It's -- but to me that's -- that's the
11 goal, to ensure that there's a equal opportunity
12 for everyone. I guess I don't think there has
13 to be any more complicated statement than that.
14 It's pretty simple. And -- but the rest of it
15 is how it's accomplished. That's -- that is the
16 hard part.

17 MR. DAY: Yeah. I think the
18 opponents to affirmative action, especially the
19 ones that come from our communities, you know,
20 say that, you know, pull yourself up by your
21 bootstraps, you have the same opportunity as I
22 to succeed. Well, I don't really embrace that
23 because through my whole life I've never had
24 those same opportunities, you know. The one
25 party says we're all equal, you have the same

1 opportunity to get jobs. And yet we don't get
2 the jobs. And the other party says, oh, you
3 poor people. We're going to provide programs
4 for you so we'll keep you dependent on us, you
5 know. So I take a look at -- there are those
6 two different approaches -- and say they are
7 still not meeting my -- my personal needs as --
8 to have the same opportunities for jobs, to go
9 to school where I want to, those types of
10 things. I think those that oppose it are really
11 masking, you know, if you can do it -- if I can
12 do it, so can you. And they've probably had
13 something that we weren't allowed to have, you
14 know. Just because one person makes it doesn't
15 mean we all have those same opportunities.

16 I was looking at the debate between
17 Reverend Jackson and Connelly from California.
18 And I just had to shake my head and wonder why
19 that attitude is coming from that person who
20 opposes affirmative action.

21 MS. WIRTSCHAFTER: I have a
22 question for Ms. Breen. You mentioned, Aviva, a
23 report on affirmative action. Could you tell us
24 who prepared that report and would it be
25 available to this committee?

1 MS. BREEN: I think it was
2 prepared by the State Department of Employee
3 Relations. And it was the -- it's -- I'm really
4 sorry I didn't bring it. I just came back from
5 vacation today and I -- I'm glad I got here at
6 the right time. But I'm sure it is available to
7 you. And it -- it goes agency by agency and
8 includes all the numbers. There's not a lot of
9 narrative or lot of discussion, but basically
10 it's the reports on hires and promotions and --
11 in state agencies. And I'm sure it is
12 available. And, actually, when I go back to the
13 office I could even contact -- contact you today
14 and let you know. It would not be complicated
15 to get, I'm sure.

16 MR. WEINBLATT: If there are no
17 other questions, then we thank you very much for
18 your presentation.

19 I think that according to our agenda we
20 are scheduled for a short break and so we will
21 stand in recess until 11:15.

22 (Recess from 10:45 a.m. to 11:08 a.m.)

23 MR. WEINBLATT: All right. If we
24 could come to order, we'll continue with our
25 presenters this morning.

1 This -- on this next panel we are pleased
2 to have with us Stephen Cooper of the Cooper law
3 firm, attorney in Minneapolis and St. Paul, and
4 Peter Bell, from the Center for the American
5 Experiment.

6 Steve, would you like to go first.

7 MR. COOPER: Sure. And, as I
8 understand it, we should go for about four
9 minutes each and then argue the rest of the
10 time, so I'm happy to do that.

11 MR. WEINBLATT: Yes.

12 One other thing -- ground rule I would ask
13 -- that if you could have the microphone in
14 front of you.

15 MR. COOPER: Okay. Is that
16 better?

17 MR. WEINBLATT: Okay. Wonderful.
18 Thank you.

19 (Discussion off the record.)

20 MR. COOPER: Basically I think the
21 key thing, when we talk about affirmative
22 action, is almost all the debate that I see on
23 affirmative action is a debate over what the
24 reality is for people in America. And most of
25 that debate seems to be based on a false

1 reality. A lot of the anti-affirmative action
2 arguments, a lot of the arguments that are
3 saying that we've gone too far or things
4 shouldn't continue in this direction are based
5 on a lie. And that lie is that equality has
6 been achieved in America. Nowhere near equality
7 has been achieved. And sometimes we'll parade
8 out examples. And I was listening to a previous
9 commentator talk about that. We'll parade out a
10 example that in a particular individual's case
11 they managed to beat the odds and succeed,
12 therefore it's not a rigged game. And, of
13 course, that would be like saying when you go to
14 Las Vegas and gamble and you -- one person wins,
15 that means everybody's going to win. And that
16 -- that's ridiculous logic.

17 The reality is the opportunities for
18 people of color, the opportunities for females
19 and the opportunities for people with
20 disabilities from birth are dramatically
21 different than the opportunities for white
22 males. And every single piece of data you look
23 at proves that, shouts that, and cannot be
24 honestly argued with. Birth, life expectancy,
25 median income, accumulated wealth; anything you

1 want to look at. And I will challenge Peter or
2 anybody else to come up with a criteria that's
3 based on American reality today that
4 demonstrates that we've achieved equality. We
5 haven't.

6 So then we go to the second issue. Should
7 we do nothing about it or should we do something
8 about it. And I think then we have to look back
9 on what worked for us as a country 200 years ago
10 or so, 300 years ago, 400 years ago, whatever
11 you want to go back. The difference in the
12 United States as compared to the rest of the
13 world several hundred years ago, where we were
14 really the first society that took a chance on
15 inclusion. And we included a lot more people in
16 the opportunity to produce than any other
17 society had before us.

18 We were the first to include -- you know,
19 if you took the world before that -- you don't
20 have to go back too far -- that who you were
21 going to be was 100 percent determined by who
22 your father was and what your gender was. If
23 your father was a king and you were an idiot and
24 you were a dunce and you had absolutely no
25 talents whatsoever and you tended to be drunk

1 every minute of the day, you were going to be
2 king. And if you were a brilliant mathematician
3 who is an absolute genius and you happened to be
4 female and you happened to be born to a father
5 who was a cobbler, you were going to be a
6 cobbler's wife. And that's what you were going
7 to be.

8 And we were the first group to say, hey,
9 you know, we probably have a better society if
10 we don't do that. And, in fact, we did. But we
11 went from including 1 percent of the folks to
12 including about 30 percent of the folks. And
13 that move from 1 percent to 30 percent rendered
14 tremendous dividends. And we became one of the
15 most successful economies in the world, et cetera,
16 et cetera. But you see the challenge now is to
17 go from 30 percent to 100 percent. And we've
18 made big steps in that direction, but none of
19 them were recent, you know. Met -- letting
20 everybody vote -- how many decades ago was
21 that? I mean, it's embarrassing it was this
22 century, but how many decades ago was that?
23 What can we look to as achievement of recent
24 vintage? I can remember back in the '70s and
25 '60s the companies used to pride themselves by

1 doing more than the government required. So you
2 would have things like Control Data thinking
3 about where to place a plant where it would give
4 opportunities to a different group of people.
5 Now we have the opposite. We have most
6 companies thinking where can -- what's the least
7 we can do, you know, the four-fifths rule; we
8 have to be at 80 percent. All right. We'll be
9 at 80.00001. And 100 percent, you know, isn't
10 something to look at. I think we -- and I was
11 very pleased to see the President for the first
12 time in a decade has actually put on the front
13 agenda the issues of race in America. White
14 America to a large degree is no longer an
15 issue. It's sort of like somebody is raising an
16 issue that -- didn't that get taken care of back
17 there with one of those presidents names I can't
18 remember anymore. And so I think it's very
19 important for us to get on the front agenda.

20 I'll -- I'll just close with -- with one
21 other comment, but -- before Peter says his and
22 then get into whatever thoughts we have back and
23 forth.

24 There is no opportunity in the country,
25 and particularly in Minnesota, to wait on these

1 issues any longer. Things are getting worse
2 rapidly, not better. And everybody can look at
3 isolated little things where things are getting
4 better, but overall they are getting worse. And
5 I'm going to use a ridiculous overplay, an
6 example, but one of the -- one of the real
7 windows, I think, for America -- it's a crazy
8 one to have to use -- on race relations and
9 gender relations and other things was the O.J.
10 Simpson case. And I one of the things I really
11 found interesting about the O.J. Simpson case,
12 regardless of the guilt, innocence or anything
13 else, which is not what I'm getting at with you
14 -- but listening to people talk about it. And
15 when you heard women talk about it many of them
16 thought Marcia Clark was a brilliant attorney
17 and the plaintiff -- the defense attorneys were,
18 you know, cheating. Most guys thought F. Lee
19 Bailey was just wonderful. And here -- here is
20 your example of a real attorney.

21 When you got into the race issues, people
22 of color had a way different perspective, you
23 know. Whites basically felt by and large, well,
24 my God, the justice system doesn't work. People
25 of color often thought, hey, this is the first

1 time it did. So you had a real interesting
2 opportunity to see how little we talk about the
3 subject because the fact that that came as a
4 surprise to us -- the only reason we even got it
5 on the -- on the table was by complete
6 coincidence. It wandered in on an event that
7 had absolutely nothing to do with race relations
8 on its face, and yet it was an education for
9 us.

10 I think the -- sadly today when I was -- I
11 was running a little late coming back from court
12 and I was heading up to my office in order to
13 grab something before I came here. And the
14 elevator I was getting on -- the door was
15 closing. And I could see somebody coming to try
16 to get on it. And I didn't hold the door open
17 for them because I was in a hurry. I wanted to
18 get upstairs. And they could wait for the next
19 elevator. And that's a lot of what we are doing
20 in society today. You got that elevator there
21 and some of us are riding it. And we're not
22 willing to let that elevator door open so
23 everybody gets to go up. Hopefully what
24 affirmative action does -- says is let's get
25 people up.

1 The last point I'll make is affirmative
2 action -- the concept of affirmative action is
3 instead of going case by case, person by person,
4 which is the slowest, most tedious way to
5 achieve results, we're looking at groups, we're
6 looking at society. We're looking at big
7 pictures. That's the way to usually solve
8 problems. We are using the most conservative,
9 the slowest to succeed approaches in affirmative
10 action. In almost every other area where we use
11 affirmative action -- but it's not on race or
12 gender we just do use quotas. Think about how
13 we elect our senators and how we elect our --
14 our congress members. We use a flat out quota.
15 I don't care how brilliant you are and how
16 skilled you are. If you're not living in the
17 district, you're not eligible. And so we use
18 quotas in virtually everything else we do in
19 society to what? To assure equal distribution
20 of opportunity and equal distribution of power.
21 We don't want 98 of the 100 senators to be
22 residing in California for darned good reason.
23 The same thing should be true in these issues,
24 as well.

25 Thank you.

1 MR. WEINBLATT: Thank you. Peter.

2 MR. BELL: I will make my remarks
3 brief, as well. And I think about the times --
4 a limited time frame for remarks. And I'm
5 reminded of the guy who once said that if you
6 want to be seen, you should stand up, if you
7 want to be heard, you should speak up, but if
8 you want to be loved, you should shut up and sit
9 down. So with that in mind I'm going to keep my
10 remarks very brief.

11 I do want to challenge some of the things
12 that Stephen said. And hopefully we'll be able
13 to do that in dialogue.

14 One is that we don't talk about race in
15 this country or we don't talk enough about it,
16 and that President Clinton should be commended
17 for his action. In some respects I think we
18 talk about little else. I -- it would be
19 interesting to do a Lexis-Nexis survey of
20 newspapers articles or TV shows that have race
21 as a theme. And I would argue that at no time
22 in American history or few times in American
23 history have we talked about race so much.

24 Stephen started off under the premise that
25 affirmative action -- or opponents of

1 affirmative action would argue that
2 discrimination doesn't exist. I think -- I
3 don't know anyone who makes that contention --
4 or that opportunities are equal across the
5 board. I think people question, however, if
6 there should be government solutions to every
7 problems -- every problem.

8 Certainly discrimination exists. I think
9 racism exists. I might even argue it is getting
10 worse today. The question doesn't exist. The
11 question or issue is not does it exist. The
12 real question is what difference does it make.
13 For instance, some Asian groups make more than
14 whites. Japanese Americans do. Chinese
15 Americans do. Now, that to me, I think, forces
16 a very difficult question. Either they are not
17 subject to racism or something else other than
18 racism has an impact on -- on income in this
19 country. If you talk to many Asians groups
20 today they will say they -- they are subject to
21 various forms of discrimination. And yet it
22 doesn't have as clear an impact on income that
23 some might think.

24 Couple of additional points I would like
25 to make about affirmative action. It is really

1 based on, I think, one of four things. The --
2 the tragic historic realities of discrimination
3 is one. To provide wider opportunity and clear
4 compensation for his -- historically excluded
5 groups is a second. To provide fresh ideas for
6 business, nonprofits, governments and
7 foundations.

8 Though I think it is onerous to say that
9 race is ever a proxy for ideas. One of the most
10 disturbing statements to me that -- that Stephen
11 alluded to a minute ago is there's a black
12 position on anything or a Hispanic position on
13 anything when he was talking about
14 representation. I would challenge Stephen to
15 tell me what the black position is on any
16 issue. So when we talk about affirmative action
17 or diversity as a way for representation, I'm
18 reminded that not that long ago it was said that
19 all black people look alike. Now apparently we
20 all think alike because we apparently have the
21 ability to represent each other. I don't know a
22 black position or a Hispanic position or a
23 Native American position on any single issue. I
24 think to say race is a proxy for ideas is a
25 racist position.

1 And then the third -- and this is the
2 third or fourth rationale -- is to provide
3 representation and counsels of power for women
4 and men who are -- are under represented. This
5 idea has grown deep political and cultural and
6 legal roots that are just now being tested.
7 Last November 5 in California -- the California
8 civil rights initiative is the best example.
9 Many, however -- myself, included -- believe
10 that affirmative action has done more to
11 undermine the moral authority of the civil
12 rights movement in this country than any other
13 single activity. The push for affirmative
14 action tragically has forced many of the
15 communities of color to celebrate their failures
16 and overappreciate the impact of racism in a
17 demeaning manner to gain concessions from white
18 America.

19 A fundamental question that I would like
20 Steve to answer is that -- the proponents of
21 affirmative action, I think, do not address --
22 is can people of color ever be seen by ourselves
23 or others as equals as long as we are seen as
24 needing special treatment? Will we ever be seen
25 by our fellow citizens as equal? And this goes

1 to the heart of our humanity and our integrity
2 as a people. It is abhorrent to me that anyone
3 in this room would think that my son or daughter
4 cannot compete with Stephen's son or daughter or
5 that somehow they need special treatment.
6 That's an abhorrent concept to me. Or that
7 somehow I could not compete with Stephen on --
8 on -- in -- in any respect. That is an
9 abhorrent concept. And I think it demeans any
10 achievements that I may make in life or those of
11 my children.

12 Affirmative action can also tragically
13 undermine initiative. If racism and oppression
14 are so powerful, many ask, why get an education,
15 why delay gratification, why work hard because
16 The Man won't let you get anyplace anyway. The
17 push for affirmative action sends the message
18 that people of color can progress primarily via
19 white concessions and good will.

20 I am outraged when people say, well,
21 Peter, you've probably benefitted from
22 affirmative action. And I may or may not have.
23 But when they say that, what they are doing, I
24 think -- that is a frontal assault to my parents
25 and my grandparents. Any success I have enjoyed

1 in life are due to Mr. and Mrs. Bell, not the --
2 the state legislature or the -- or the -- the
3 US Congress. Mr. and Mrs. Bell are significantly
4 more -- have had significantly more influence on
5 me as I will have on my children than anything
6 congress will ever be able to do. And it sends
7 the message that the only way the people of
8 color can be okay is for white people to
9 change. And I don't think -- I don't want to --
10 to rest this -- the advancement of communities
11 of color on white good will. I don't know if
12 white people are ever going to change. And to
13 say that I have to wait for white people to
14 change before I can be okay is a disempowering
15 statement.

16 The push for affirmative action sends the
17 message it is not what you know, but who you
18 know and the type of political and cultural
19 power that your group -- group can garner. This
20 creates much of the cynicism that exists, I
21 think, in communities of color today. I am
22 reminded of a Lily Tomlin line. No matter how
23 cynical I become, it's never enough to keep up.
24 And tragically I think affirmative action
25 heightens that. The push for affirmative action

1 tends to help those individuals in -- in
2 communities of color who need the help the
3 least. It is a classic form of bait and switch
4 that oftentimes those individuals who are quite
5 prepared or prepare themselves -- I think
6 affirmative action is used to enhance their
7 efforts. And they often -- we -- we push
8 forward the most tragic elements of communities
9 of color as a way to advantage other elements or
10 other individuals.

11 Our current political institutions, I
12 think, cannot determine -- and this is an
13 important reason in a -- an important point of
14 why, I think, we have so much political gridlock
15 in this country, is that our -- our -- our
16 current political institutions cannot determine
17 the merits of each group who claims victim the
18 status in America and wants to use affirmative
19 action as a way to address it. How do you
20 calibrate the various mistreatment of -- of --
21 of individuals and groups of color in this
22 country? And often they are pitted against one
23 another.

24 To calibrate their various mistreatment
25 and to determine what should be fair

1 compensation, I think, is beyond the scope of
2 our political institution. There is no
3 practical political process, I believe, for a --
4 a -- any affirmative action proposed by those
5 who support it, other than this. And that is
6 proportional representation in all fields. And
7 this is something that has never happened in the
8 history of the world. In other words, there has
9 not been proportional representation in any
10 field of -- of endeavor based on demographical
11 basis in the history of mankind. And I would
12 argue that proponents of affirmative action have
13 that as their end goal.

14 Let me end there and engage -- and answer
15 any questions or engage in appropriate dialogue.

16 MR. COOPER: I guess I -- oh, I'm
17 sorry.

18 MR. WEINBLATT: No. Go ahead.

19 MR. COOPER: Assuming that we
20 start with the response rather than question.
21 What would you want, the question or --

22 MR. WEINBLATT: Go ahead.

23 MR. COOPER: I -- I think a lot of
24 things Peter said are emotional bait and
25 switches. I mean, it's nice emotional pitches

1 that have absolutely nothing to do with
2 reality. But let's go through a couple of them.
3 And I sort of noticed he actually switches
4 themes in that prepared speech of his, where he
5 goes from one image and then he has a
6 contradiction, but nicely couched. Let's take a
7 look at a couple of them.

8 When we're talking here affirmative action
9 we're first and foremost not talking perfect
10 slotted representation in -- in congress or
11 places like that. We're talking first and
12 foremost equal access to what sustains the life
13 of families. We're talking the opportunity to
14 have a job. We're talking the opportunity to go
15 to school and get a decent education. We're
16 talking the opportunity to be given access to
17 those things that make life work for our
18 families. More importantly, you know, there's
19 this nice image, I did it all on my own. Peter,
20 you didn't. Nobody ever has. I didn't. Nobody
21 in this room did. Nobody ever will. We all
22 succeed or fail based upon the groups that we're
23 part of, the society we're part of, our families
24 and other kinds of things. And to pretend you
25 are where you are today solely and exclusively

1 because of your grandparents and your parents is
2 a fiction we'd like to believe because we like
3 that John Wayne image that we're all
4 independent. But the reality is in a complex
5 society we are where we are because of what that
6 society and ourselves in combination have been
7 able to create.

8 Talking about affirmative action is going
9 to hurt people's desire to go to school. They
10 weren't getting in. They weren't allowed in
11 with the exact same credentials. Not going to
12 let them get a job. They weren't allowed to
13 have them with the exact same credentials. What
14 institution is it that Peter is suggesting we
15 should trust? Don't trust the institution of
16 government. Trust who? Trust the very
17 institutions. There isn't an institution in
18 America, not one -- when he talks about that
19 there hasn't been equality in the history of
20 mankind -- you might want to say humankind, but
21 there hasn't been equality in the history of it,
22 so that means we're not supposed try. That
23 means we're supposed to say we're failures as a
24 race and therefore we should be happy with
25 inequity, which is a lot of the underlying

1 message here, particularly to those who
2 succeeded. Because one of the nicest things
3 that people who have succeeded can say to those
4 who aren't is life isn't fair. And if that's an
5 acceptable answer, then they are home free.

6 You know, the fact that I know that most
7 jobs -- think about it -- think of the
8 opportunities in your life that you've had. How
9 much of it came from networking? How much of it
10 came from the fact that you knew somebody who
11 knew somebody who gave you a break. And if your
12 network happens to give you access to people in
13 positions of power, you've got an edge whether
14 you want to admit it or not. And if somebody
15 else's network gives them access to a part-time
16 job at McDonald's as opposed to your access to
17 get that right recommendation letter to get into
18 the college you want and that right introduction
19 to get into that job interview you want, then
20 that's not a fair fight. And what we're talking
21 about here -- if we're going to glorify the
22 concept of letting everybody offer what they
23 have to offer, let's make it a fair fight.
24 Let's make sure it's a situation where it's a
25 fair fight.

1 Now let's talk about what affirmative
2 action is, what affirmative action isn't. And
3 one of the big things we hear about affirmative
4 action -- it sort of becomes this nebulous
5 concept that covers a wide range of things.
6 Affirmative action merely says, like any other
7 reasonable business practice, you keep track of
8 what you're doing. It's an accounting system.
9 If you run a store and you constantly are losing
10 money at one of them, i.e. you have a problem --
11 if you are a responsible business person you put
12 in place an accounting system to find out why.
13 We, as a society, know opportunities are not
14 evenly distributed. And all affirmative action
15 does is -- in its current incarceration -- in its
16 current conceptualization is it says let's
17 keep track of the why and then hold the person
18 who is doing the stealing of opportunity
19 accountable, just like we hold the clerk who is
20 stealing the money out of the cash register
21 accountable.

22 If you have a situation where somebody
23 never will hire a woman and regardless of the
24 fact that the data you look at shows the best
25 qualified candidate on 18 of the last 36 times

1 was a woman and 36 out of 36 times they hired a
2 man, or the 18 of the last 50 times was a person
3 of color and 50 out of the last 50 times they
4 hired a person not of color, then that is simple
5 logic. We use it in every other thing we do in
6 our life. And here's what becomes amazing with
7 the arguments you hear from the other side.

8 Peter's a good businessman. He's an
9 intelligent businessman. And he knows in his
10 practice and every other aspect of what he does,
11 he does this. As a banker you know for darn
12 sure he does this in everything else he does.
13 Why not then here?

14 One last point. Well, let me jump to a
15 couple other things. Then I'll stop.

16 The -- the thing that --

17 MR. BELL: Can I respond to some
18 of these?

19 MR. COOPER: Sure. I'll stop and
20 then you can.

21 MR. WEINBLATT: And then we'll
22 have some questions.

23 MR. COOPER: Okay.

24 MR. BELL: First I -- I want to
25 talk about bait and switch. We need to be very

1 clear about the difference between anti-
2 discrimination laws and affirmative action
3 laws. Actually, I support the original intent
4 of affirmative action, which is a broad outreach
5 program. I would argue you cannot have
6 affirmative action today without quotas. I
7 would ask Stephen if he thinks that the -- that
8 the -- the law school at the University of
9 California and the University of Texas was
10 affirmative action programs for quotas where you
11 had two separate lists and the -- the -- for
12 LSAT -- LSAT scores. And the lowest list or
13 lowest score for whites was higher than the
14 highest score for African Americans. Now, is
15 that an outreach? Now, this is -- this is all
16 under the group of affirmative -- affirmative
17 action. Is this an outreach program? Is this
18 providing just that -- that small finger on the
19 scale or was this racializing our society in
20 such a way as would have made South Africa blush
21 in some respects.

22 The other -- another question that I would
23 have about affirmative action is who should it
24 apply for or -- or who should it apply to.
25 We're going to have a very real question in the

1 -- the next census on multiracial children and
2 the like. Is Tiger Woods -- is he covered by
3 it? Is a person who is one-quarter black who is
4 a -- genetically white, but culturally Hispanic,
5 as many Cubans are -- should they be covered by
6 it? These are questions that when you codify
7 things in law -- and this is why I am not
8 against vigilant effort to address issues of dis
9 -- discrimination, but that these things cannot
10 neatly be codified in -- in -- in law. I would
11 not necessarily be opposed to upping the -- the
12 penalties for actual identified discrimination,
13 but I would be very opposed to the type of
14 situation we have in the University of
15 California and the University of Texas law
16 school. Let me stop there.

17 MR. WEINBLATT: If I -- if I may,
18 just to start some questions because I think the
19 two of you have played right into what is the
20 subject of our -- our forum.

21 If it is true that our goal is, as you
22 seem -- both seem to agree, equality of
23 opportunity, then in the -- the words of
24 President Clinton last Saturday night or
25 Congressman Watts a couple weeks earlier, what

1 alternatives would you propose to affirmative
2 action as we know it today?

3 MR. BELL: Choice in education. I
4 would even -- I -- I believe in the notion that
5 we should spare few expenses in creating
6 equality of opportunity, but we should not spend
7 a dime in ensuring equal results. I think there
8 -- if we were going to honor culture, if we are
9 going to honor family, we need to allow people
10 to make different decisions. Freedom is the
11 right to make both smart and dumb decisions, not
12 just smart decisions. And I do not accept that
13 proportional representation on demographical
14 basis in every field of endeavor will reflect
15 that we had equality of opportunity. I think
16 different ethnic groups are -- are and should
17 migrate to different industries and businesses.
18 I'm okay with that. And I think some of the --
19 the -- if the pay of some of those are
20 differential, that is something that I could
21 tolerate, as well, as long as people truly have
22 equal opportunity. I don't think everyone wants
23 to be a stone mason or a physician or a NBA
24 basketball player. And I think to look for
25 proportional representation in every field of

1 endeavor is nonsense. I do think education is
2 the route to opportunity in America. And that I
3 would be very open -- and I think more choice in
4 education is one of the ways that we need to --
5 to provide that.

6 MR. WILDERSON: You made mention
7 that education is -- would be your -- your road
8 to -- to providing equal opportunity.

9 MR. BELL: Right.

10 MR. WILDERSON: Some statistics
11 now are coming out that say since affirmative
12 action in some of the professional schools have
13 been discontinued, the number of people of color
14 who are entering those professional schools have
15 dropped considerably.

16 MR. BELL: Right.

17 MR. WILDERSON: What would you
18 suggest happened to change that?

19 MR. BELL: Let -- let me address
20 that because I think this is one of the areas
21 that is so disingenuous. Let me tell you one of
22 the big lies that I think is being said.

23 MR. WILDERSON: Oh, no, wait a
24 minute. That was the truth. That was true.

25 MR. BELL: Oh, what I just --

1 okay. Let me respond to it. Here is what I
2 think America is believing. That because some
3 elite universities are discontinuing affirmative
4 action, that the number of African Americans in
5 all post secondary education is dropping
6 significantly. Do you realize in 90 percent of
7 the institutions in this country of higher
8 education they accept everybody who applies? 90
9 percent of the institutions.

10 MR. WILDERSON: That's not true.

11 MR. BELL: Yes, it is. 90 percent
12 of the institutions of higher education in this
13 country accept everybody who applies. And it is
14 the elite institutions of this country that --

15 MR. COOPER: He's basing that
16 division on things like the haircutting schools
17 and the WIXY School of Broadcast Techniques.
18 That's not -- that's not four-year programs.

19 MR. BELL: It -- it -- it --

20 MR. WILDERSON: Let me go back.

21 MR. BELL: It's the elite
22 institutions in this country --

23 MR. WILDERSON: Let me go back.

24 I -- I -- I -- I -- I raised my question based
25 upon the fact that you used two schools as your

1 basis to say -- to focus. And so my question
2 comes back to the same thing, is that what the
3 -- the early statistics in a lot of
4 professional schools is showing that there has
5 been -- that there's a drop in the number of
6 people of color who are entering these schools.
7 And we can carry that on further, but what do
8 you think now, since your own premise has been
9 one of education is the role? And I'm saying
10 now educational doors are being closed. So what
11 -- how do we get on the road?

12 MR. BELL: Well, let me -- I'll
13 answer that question two ways. Let me tell you
14 one thing I wouldn't do and one thing I would --
15 I would do. I wouldn't have two lists. I
16 wouldn't have a black list over here and a white
17 list over here. And I wouldn't say the black
18 list you -- you can have lower test scores and
19 the white list over here, you have to have
20 higher test scores, which was going on in both
21 of those institutions. That is a fundamental
22 assault, I believe, to my -- I take -- to my
23 humanity and to my integrity in the most basic
24 fundamental ways. And I think the point I made
25 earlier -- we will not be seen as equal in the

1 eyes of our fellow citizens as long as that is
2 allowed to continue, no matter how Stephen wants
3 to dress that up. That is a fundamental -- a --
4 assault. I would not, however -- I am not a
5 colorblind absolutist. Now, having said this --
6 so I get into some nuance positions here.

7 Something I may entertain is this;
8 provisional admissions to those schools.
9 Remedial work is done until the person can meet
10 whatever the standard is determined to be. That
11 would be a middle ground that I would find
12 acceptable and would -- would -- would applaud
13 and something that I think is workable and
14 something that I think the public would accept.
15 The fundamental reality is that we in this
16 country have never had -- and one of the things
17 I do agree about Clinton's proposal, though
18 Clinton -- I think his panel on civil rights
19 doesn't reflect real diversity because the most
20 important diversity, in my mind, is
21 philosophical diversity. It is not racial
22 diversity. It is meaningless, in my mind, that
23 Stephen is white and I'm an African American.
24 What is much more important is that Stephen
25 represents a sort of point of view and I

1 represent another point of view. It is
2 philosophical diversity, what's needed.

3 And one of the concerns I have about
4 President Clinton's commission is I don't think
5 it will represent the broad spectrum of thought
6 on issues of affirmative action. We need to
7 have a rigorous debate in this country on
8 affirmative action, one of which I think we have
9 never had, but that would be my specific
10 solution; something that I could live with and
11 something I could not live with.

12 MR. COOPER: Let me just jump in
13 there for a minute because Peter has thrown a
14 lot of ideas out there.

15 First of all, his complaints sound like
16 you have a diagnosis that somebody has
17 pancreatic cancer and he wants to argue about
18 the type of Band-Aid that's being put on an
19 unrelated thing. When he's talking about the
20 law schools in California and in Texas --

21 MR. WILDERSON: You have to speak
22 into the mic.

23 MR. COOPER: Can you hear now?

24 (Discussion off the record.)

25 MR. COOPER: When -- when he was

1 talking about the California law school and
2 Texas law school, you know, he's completely
3 missing the point in what he's talking about.
4 Yeah, I might let you have these special little
5 programs. That's not going to cure the
6 problem. Let's look at what that tells us. It
7 tells us that the high school education people
8 are getting -- as he responds, we're not going
9 to Band-Aid that by a summer program.

10 The second thing it doesn't deal with is
11 what do these test scores mean? Hey, you ever
12 play Trivial Pursuit? You ever play Trivial
13 Pursuit and you're doing really well and you're
14 saying, hey, I'm glad this is the genius
15 edition, everybody now knows how bright I am,
16 come on over here, I just got the question of
17 who played the part of the uncle on Mr. Ed and
18 so I'm smart. And then you miss five or six.
19 And they ask you unfair questions, like what's
20 the capital of Minnesota. And you say Fridley.
21 You're oh, so close and no credit. And now
22 you're thinking, hey, this is a stupid test.

23 What does the law school admission test
24 test for? It tests for who was Mr. Ed, the
25 talking horse's, uncle. Because what it tests

1 -- predicts is one thing. It predicts only --
2 and this is what they say. And this is
3 supposedly the best test in the country. It
4 predicts first quarter grades. It doesn't
5 predict who will be a lawyer, doesn't predict
6 who will pass the bar, it doesn't predict who
7 will be a good lawyer. So what we have is we
8 have a group of people who write the tests and
9 are good at them.

10 Let's go back to Trivial Pursuits for a
11 minute. If I ask questions about name who is in
12 Count Basie's band, a certain group of people,
13 an age group in particular, are going to nail
14 that a lot quicker than a different age group of
15 people who might be asked to name ten rap
16 stars. And when you set those questions up
17 remember what you're going to get back. If you
18 write a test from a white culture point of view,
19 then people with the white culture point of view
20 are going to get better. Now, it would be
21 different and Peter's argument would have more
22 force if he could say, which he can't, these
23 tests tell us who will be a good lawyer.

24 Then let's get to the big issue here,
25 which he's completely forgetting. What -- does

1 it serve society for every lawyer to be white?
2 Is that serving society? Because lawyers and
3 doctors and other people coming out of these
4 professional schools are part, whether we like
5 it or not -- they are part of who is going to
6 make decisions about other people's lives. So
7 what we've got to do is attack all of those
8 things.

9 Here you go.

10 MR. BELL: Yeah. You know, it's
11 -- this -- this notion of representation, I
12 think, is interesting. While I am a strong
13 supporter of black chiefs of police -- and this
14 is the diversity argument. The argument
15 essentially says the crime will go down if we
16 have a black chief of police. Now, while I will
17 support black chiefs of police, I don't know any
18 example of that's the -- because they have
19 better community relations, they have got more
20 rapport with the community. The argument is if
21 we have black superintendent of schools, reading
22 scores will go up in those districts because
23 they could have more rapport and confidence in
24 community and like. If we have black teachers,
25 the test scores will go up. I would like to ask

1 Stephen to provide me any evidence at all where
2 that's true.

3 Something I'm very clear on is -- because
4 I do work in the financial industry -- this is a
5 tragic reality. One indicator of receptivity to
6 low income minority communities is what's called
7 the Community -- the CRA, the Community
8 Relations Act. Minority banks disproportionately
9 get poor ratings on this. Now, there might be a
10 whole host of reasons for this. There's a whole
11 -- there's a whole grading scheme that you
12 get. That's -- that's part of the honest
13 conversation that we need to have. That -- it
14 may seem counterintuitive, but it has not been
15 demonstrated to me at all that where black
16 superintendents preside over school districts
17 that reading scores have gone up. The black
18 chiefs of police -- chiefs have presided over
19 police departments that have better police
20 community relations. I know of no evidence --
21 and, Steve, I'd -- I'd be -- if that's the case.

22 MR. COOPER: You got it.

23 MR. WEINBLATT: Let's just --

24 MR. COOPER: Okay.

25 MR. WEINBLATT: You'll get a

1 chance to respond, but we do have a question
2 here.

3 MS. NELSON: Although I have to
4 admit this debate has been very exciting, I hope
5 there will be more of this.

6 The comments by both of you have generated
7 a million thoughts in my mind, but one I'd like
8 to share and then I'd like to follow up and a
9 couple questions. And that is: Peter, to a
10 certain extent I think there is some agreement
11 that the opposition to affirmative action,
12 particularly in higher education and some of the
13 recent case law developments, have led
14 institutions to rethink their processes for
15 admission. There are now at least 250
16 institutions that do not require SAT or ACT test
17 scores in order to be admitted. In addition to
18 that, Texas has implemented a system whereby
19 they will automatically admit students from the
20 top 10 percent of their class. And
21 unfortunately because they, as well as
22 Minnesota, still suffer from some segregation in
23 education, they will automatically admit a good
24 number of African American and Hispanic and
25 Latino students, assuming they don't go

1 elsewhere. But these are some of the -- the
2 things that people are now thinking about in
3 terms of alternatives. The results we have yet
4 to see, however. Some of us are watching
5 closely.

6 Now, one of the things that I thought I
7 heard you say, that I've heard a number of
8 people say, is the fact that while not a
9 replacement, what we should be focusing on is
10 prohibiting and preventing discrimination. And
11 since 1964 we've had this law in place to
12 accomplish just that. One of the things I'd
13 like to do is ask Stephen from -- particularly
14 from his experience in his field, what his sense
15 is of enforcement of discrimination laws in this
16 country. And then follow that by -- Peter, you
17 made some note of some -- some programs that you
18 would consider workable as alternatives to
19 affirmative action. And I'm wondering what you
20 would think about some alternatives that take
21 both race and class into account.

22 MR. COOPER: Okay. And going --
23 going to your first question, how does
24 enforcement of the civil rights laws of the
25 courts work. It reminds me of the highway

1 patrol enforcing the speed limit. And I saw an
2 article in the newspaper that said the highway
3 patrol always sets their enforcement rate at
4 what 80 percent of the people are complying
5 with. So if 80 percent of the people are going
6 75 miles an hour and the speed limit is 60 -- or
7 55 actually, they are not going to enforce it at
8 55 because in seven minutes they would all be --
9 you know, have their tickets for -- for the
10 month.

11 That's what it's like in -- in enforcing
12 civil rights opportunities in the courts. You
13 are finding about where the level of prejudice
14 and bias is and you're catching the people who
15 are above and beyond the normally accepted level
16 of discrimination, sexism, racism, et cetera.
17 You are not often fundamentally changing the
18 equation in society. You are just getting the
19 really bad ones. Now, is that important? Of
20 course it is. Just like the highway patrol, if
21 we didn't have them nailing people at 95, people
22 would be going 150. So, yes, that does have an
23 important impact, but it does not do what
24 comparable word or affirmative action or some of
25 these other plans are designed to do, which is

1 fundamentally change the opportunity for people
2 to participate.

3 One last point -- point on that, before I
4 give it to Peter. The -- the point that you
5 were saying at the beginning, I think, is a very
6 well taken one. One of the ways in which
7 affirmative action was infused and perhaps some
8 of these schools therefore will do things better
9 was it became a quick, simple fix with no
10 thought about what it cost in problems. In
11 other words, if we just do it numerically and
12 mathematically, we've solved the problem. And,
13 of course, Peter's point is well taken. You
14 have not. What you have to do is what you just
15 indicated some schools are starting to do. You
16 have to think about what created the problem,
17 why are we seeing this inequity and how can we
18 correct it.

19 I'll end it with one last point on that.
20 I remember at one time -- oh, I forget the name,
21 but there is -- there's an engineering school in
22 Chicago that started its own outreach program to
23 -- because it was sitting in Chicago noticing
24 it never graduated any black engineers. It was
25 thought, well, this is ridiculous. So it

1 started a program in high schools where they got
2 kids at about ninth grade, eighth grade and took
3 them through high school. And then at one point
4 in time they -- that school alone was
5 responsible for 45 percent of the engineers of
6 African American heritage in the country. So
7 one small solution like that that went beyond
8 hearing, oh, my goodness, we never get any
9 applicants could make a huge difference. And,
10 of course, I think that's what we've got to do.

11 MR. BELL: I think your question
12 had to do with race and class and would I be
13 comfortable with class. I think that's an
14 interesting question and one I would be a
15 cautious supporter of, though. I need to -- to
16 think through the unanticipated implications of
17 that. I think affirmative action, frankly, is
18 falling because of that. I think the country
19 finds it unacceptable that the son of a black
20 physician can get a leg up on the son or
21 daughter of a white coal miner's daughter. They
22 just simply don't buy Stephen's argument that
23 the history of racism and oppression is so
24 onerous. It's not that it doesn't exist. It's
25 the impact that it has, that that individual

1 should get a leg up.

2 I'll give you a third option I'd even be
3 more supportative [sic] of. And I think there
4 would be more public concensus -- is use
5 geographic regions as a proxy for disadvantage
6 because I think that truly is. I think if you
7 live in East St. Louis there is a broad
8 consensus that your schools are terrible, that
9 you are at a disadvantage. I think there would
10 be a broader consensus candidly based on
11 geographic region than there would even be on
12 class and certainly there is on race. I think
13 people no longer view race. If they view race
14 only as the crudest -- and I think to some
15 extent this is part and part -- only as the
16 crudest inexact proxy for disadvantage. The
17 reality is -- is there be too many individuals
18 of color -- not just African Americans, but
19 Hispanic, Asians, Native Americans and the like
20 that are successful to say it is a proxy for
21 disadvantaged. The public doesn't buy it no
22 matter how many people scream it from the
23 rooftops. Class is a crude example -- I think a
24 crude proxy for disadvantage, as well. Candidly
25 I think geographic region would be the most

1 exact. Now, that would be very, very hard to
2 implement and the like, but I think it is the
3 best proxy of all.

4 MR. COOPER: Can I just take a
5 quick shot at that?

6 I think geographic region would be the
7 most entertaining and the least effective. I
8 think -- watch how people move real quick.

9 MR. BELL: It would be good.

10 MR. COOPER: Yeah, it might be.

11 But I -- I -- I think the overall point
12 I'd like to stress here is there's lots of
13 things that disadvantage people in society, but
14 you don't mix them all up and it's sort of
15 confusing the issue. Race, whether you're a
16 physician's daughter, or whether you are a coal
17 miner's daughter is always going to be a factor
18 unfortunately in our society today. So when we
19 are looking at does race -- you know, you look
20 at very -- look at very highly qualified people
21 who are looking for the opportunity now to be
22 the president of a Fortune 500 company. That's
23 where race kicks some people. Some people race
24 kicks them on their ability to get a job at
25 Wal-Mart. Other people race kicks them in their

1 ability to become a president of a company.
2 Race doesn't suddenly disappear when economic
3 disadvantage disappears. Race doesn't suddenly
4 disappear when geographic location disappears.
5 But I -- you know, thinking about how we draw
6 congressional districts, I'd love to see those
7 see people sit down and draw these districts.

8 MS. NELSON: Yeah. And I just
9 wanted to respond to that, Stephen, that
10 probably sort of a summation of what you said --
11 there was a sociologist who once said to the
12 extent you take only race into account, you're
13 neglecting injustices of class, but to the
14 extent you take only issues of class into
15 account, you neglect the injustices of race.
16 And I think we have seen and heard over the
17 years from enough middle class to upper middle
18 class people of color of instances of
19 discrimination that they've experienced to
20 understand that it happens at all levels.

21 MS. CARTER: Mr. Bell, I'd like
22 for you to just comment a bit more on the
23 alternative -- your response to Alan's question
24 about an alternative for affirmative action
25 being a choice in education. My interpretation

1 of your short answer was that if there are
2 inconsistencies in the implementation of
3 education, one might have a choice to choose a
4 better school rather than having some consistent
5 measures ensuring quality education throughout
6 systems. Do -- do you know what I'm saying?

7 MR. BELL: I -- I do. And I'll
8 broaden that. When I said choice in education,
9 this is that the reality is that the public
10 school system is doing, from -- from many
11 people's vantage point, fairly well for middle
12 class folks of any race. That they are doing --
13 are at least adequate. But for low income
14 individuals, particularly low income individuals
15 of color, most people acknowledge it is
16 failing. And I have just simply argued that I
17 would be comfortable -- as a matter of fact,
18 this is one of the areas -- one of the few areas
19 I think Steven and I agree with at least in
20 terms of more resources going into -- to primary
21 and secondary education. And that while I would
22 support some perhaps upon admission to college,
23 I think Stephen was right when he said that
24 those would be woefully inadequate acts through
25 those other efforts.

1 In addition to additional resources going
2 into education, I would be very comfortable or
3 -- and I'm a strong supporter of more choice in
4 education. I think that we have a centrally --
5 a monopoly in public education today. And I
6 think as all monopolies have generated
7 throughout history, they are tremendously
8 inefficient and self protective. And so I would
9 break up that cartel and break up that monopoly
10 with increased choice, but that's not a
11 panacea.

12 I think one of the things we have to do
13 particularly in communities of color is
14 restigmatize out of wedlock births. Bill
15 Bennett is right; ideas matter. Between 60 and
16 70 percent of all African Americans kids in this
17 country are born out of wedlock. No matter what
18 Steven is able to get congress to implement, no
19 matter what bureaucratic laws and regulations we
20 have, it will absolutely, I would argue, be
21 ineffective in the light of that reality. The
22 fact of the matter is -- is that kids need two
23 parents. And -- and particularly boys need
24 dad. Margaret Mead said the most important role
25 of the -- role of a parent particularly for a --

1 for a male is -- is to civilize all of our
2 children. And dads play an important role in
3 that. And we need to, I think, be vigilant in
4 sending the message that you should not have the
5 children out of wedlock or at least out of -- of
6 a committed relationship. Nothing that we
7 discuss here is going to a -- a -- address that
8 reality, and it will all pale in comparison.

9 MR. COOPER: Just briefly respond
10 to some of those thoughts. One of the things
11 that Peter has done again is point out there's
12 other problems. And there are other problems.
13 And other problems need other solutions. But
14 what I'm interested in -- the out of wedlock
15 children. Are you going to trust the
16 governmental institution on that one or is the
17 government still untrustworthy on that?

18 MR. BELL: I --

19 MR. COOPER: Okay. So what's the
20 institution that's going to step in or what's
21 the group that's going to step in? Okay.

22 Let me also hit on one other because a
23 long time back in his comments he challenged
24 me. He challenged me -- first, one of the
25 things Peter does is give me arguments I never

1 made and then knocks them down. And I'm sort of
2 sitting here -- I never said that. But then he
3 went on -- one of the things he had said was,
4 you know, police chiefs -- if you have a black
5 police chief it doesn't cut crime. I never said
6 that it did. I didn't hear anybody say that it
7 did.

8 But one of the things it does do -- and
9 this was a striking example I was very slow to
10 realize. When I first started practicing law I
11 was in a court system where all but one of the
12 judges were white males, all of the prosecutors
13 were white males, and all of the defense
14 attorneys were white males. And sometimes you
15 know how -- well, you know, whatever you do,
16 sometimes classrooms come in.

17 And classrooms would come in the back.
18 And the teacher -- and you have to stop because
19 the judges all love to play to classrooms. They
20 would be talking to little kids. And they
21 always said to the kids, what do you want to be
22 when you grow up. Well, you notice -- when I
23 first started practicing all of the boys -- the
24 white boys wanted to either be the judge or the
25 particularly smart ones the defense attorney.

1 And all of the girls -- they wanted to be the
2 court reporter. And the kids of color would not
3 make a pick. And you know how teachers get that
4 little tone of voice where they think they are
5 being thoughtful, but they're getting pissed
6 off. Make a pick, kid -- in that voice. They
7 get very -- and the kids wouldn't.

8 And then those classes still come in right
9 until today, but our bench has changed
10 dramatically and our -- the complexion of our
11 lawyers has changed com -- dramatically. Now
12 there's lots of women and there's lots of people
13 of color both on the bench and the courtroom.
14 And slowly I started to notice that the girls
15 now are saying they want to be the judge or, of
16 course, the very clever ones now the plaintiff's
17 attorney. And the -- the -- and there was no
18 difference between the kids of color and the
19 kids not of color. They all were making their
20 selections right away.

21 And what was the difference? It's what
22 they saw. One of the main ways humans learn
23 about opportunity is what they see. If you
24 never see a particular group in a position, you
25 don't have to be told that's not for them. And

1 just -- somebody mentioned Tiger Woods before.
2 And, you know, I just love to use sports
3 celebrities today. What did Tiger Woods do for
4 golf? I mean, all by himself, based on nothing
5 other than the fact if people could see, A;
6 somebody who was young who was the first person
7 who wasn't in their late 80s who won a
8 tournament, two; somebody who was of mixed
9 racial origin won a tournament. And what was
10 the impact of that? The crowds are huge. Not
11 folks who were going anyway now collecting
12 around this new person. But people never
13 thought of this as something they would
14 consider. Golf? Are you kidding? Tell you
15 what; that's all I'll say.

16 MR. BELL: One very quick point.
17 I did not say Stephen said that. I said the
18 arguments for diversity say that, that if we --
19 this is what I heard ten years ago: If we had
20 black chiefs of police, police community
21 relations would improve, if we had black mayors,
22 mayors -- relations with the citizenry would
23 improve, if we had black superintendents of
24 schools -- I did not attribute that to you. I
25 said those are the arguments. I didn't see

1 those as being the case.

2 You make my point about out of wedlock
3 birth. I would be much more supportive about
4 issues of affirmative action and the like if --
5 if proponents would say a very simple thing.
6 This is 5 percent of the solution. 95 percent
7 of the solution to issues of race and poverty
8 and justice in America go far beyond the courts,
9 go far beyond affirmative action, go far beyond
10 these issues. And this is on the far periphery
11 of resolving it. I often get the feeling that
12 -- that that percentage is inverted, that
13 people argue if we do these things we are just
14 one more great society program away. We are
15 full funding of Head Start away. We are more --
16 if we are more efficient and vigilant and in --
17 in terms of affirmative action and
18 nondiscrimination laws our problems will go
19 away. And I would argue just the opposite is
20 true. That the issues that we are dealing with
21 at the end of the day don't matter. The issues
22 of out of wedlock births, evaluating education,
23 some issues that I think we have fallen away
24 from -- those are the sort of things that will
25 make a difference in communities of color.

1 MR. WEINBLATT: Okay. Wonderful.
2 We do appreciate your presentation.

3 One final question that I might have for
4 -- for both of you is: Are we talking on the
5 same plane with one another; are we using the
6 same vocabulary when we talk about affirmative
7 action? Because as I hear the words that each
8 of you has said in your -- in your discussions
9 with each other primarily, is I hear all sorts
10 of negative connotations and baggage on that
11 phrase, affirmative action. And on the other
12 hand I hear it being not a panacea, but is
13 certainly a strong weapon and the arsenal to
14 provide equal opportunity.

15 Are you using the same words, same
16 concept, or is there -- as in many cases, is
17 there some language difficulty?

18 MR. COOPER: My impression is in
19 almost every discussion of affirmative action
20 there's a serious language difficulty. What I
21 think often happens when the term affirmative
22 action is used -- all kinds of things are
23 attributed to it that have nothing to do with
24 affirmative. They may have to do with the issue
25 generally, but they don't have to do with

1 affirmative action. Simply put, yes,
2 affirmative action, as Peter said, is only one
3 thing. Affirmative action alone, just like any
4 accounting system alone -- an accounting system
5 does not make a company profitable, but it does
6 let it know what it's doing and allow it to make
7 intelligent choices. All affirmative action
8 does is let us know where it is we're
9 discriminating, how it is we're discriminating
10 and what it is we can do about it.

11 And don't forget, Peter -- one part of
12 Peter's thing was, you know, you're always going
13 to have different percentage of people that want
14 to do different things.

15 Affirmative action corrects for that
16 because part of affirmative action says right in
17 it of the people who are interested and fully
18 qualified for the position. So if you have a
19 position that overwhelmingly has people
20 interested who are, say, males and females
21 aren't as interested, affirmative action doesn't
22 say you've made the wrong choice with your
23 life. Affirmative action is saying even though
24 80 percent of the applicants are male and 20
25 percent are females, you only hired 1 percent

1 female. So your problem is the difference
2 between 1 percent and 20 percent. So it doesn't
3 take options away from people. But I think a
4 lot of times we are talking about things.

5 MR. BELL: I would agree with
6 that, as well. I think there is a difference
7 between discrimination and affirmative action in
8 quotas, and often those things get used
9 interchangeably. As I mentioned, I am --
10 started off and remain a supporter of the
11 original intent of affirmative action. I think
12 affirmative action, though, if -- when it was --
13 as it was originally intended, which is simply
14 an outreach program -- I think when affirmative
15 action moves into quotas and minorities set
16 aside and race test scores, when it gets into
17 those areas I -- I become an opponent of it.

18 MR. WEINBLATT: Again, on behalf
19 the committee, thank you both very much for your
20 presentation.

21 (Discussion off the record.)

22 MR. WEINBLATT: My stage manager
23 is indicating that the appropriate time has come
24 to recess for lunch, and so we will stand in
25 recess until 1:45. Thank you very much. Look

1 forward to your attendance.

2 (Discussion off the record.)

3 MR. WEINBLATT: We are expecting
4 one additional member, so I'm going to talk a
5 little slowly. And if she arrives we'll wait
6 for her. If not, we'll get her presentation in
7 at the end of this panel.

8 Just to remind ourselves of the procedure
9 that we are using, each of our presenters is
10 being given three to five minutes to make an
11 initial presentation on the subject of -- of
12 affirmative action and their views on the
13 subject. And after the presentations by panel
14 members, those of us on the Advisory Committee
15 will have an opportunity to ask questions of the
16 panel members. And -- and they, if they choose,
17 can also comment on the observations and
18 presentation of the fellow panel members.

19 Again, to repeat, our record will remain
20 open until July 19 for the purpose of submission
21 of any additional written materials by persons
22 who were not able to be with us today.

23 As I mentioned to you, at the close of the
24 scheduled agenda there are now five people who
25 have requested permission to make a presentation.

1 And those have been granted. And they will make
2 their presentations in the order of their
3 requests, starting at 4:30. But let's proceed
4 now.

5 On our panel this afternoon we have with
6 us Father David McCauley, from the Minnesota
7 Catholic Conference, and Jay Tcath of -- from
8 the Jewish Community Relations Council of
9 Minnesota and Dakotas.

10 Father McCauley, maybe if you would be
11 willing to go first. I would say Jay is doing
12 -- just take the microphone in front of you.

13 We are being recorded, so we'll ask to
14 limit the defamatory comments. And if you'll
15 keep the microphone in front of you, Father
16 McCauley.

17 FATHER MCCAULEY: Thank you. I'm
18 glad to be here. In a nutshell, the Roman
19 Catholic bishops have strongly supported
20 affirmative action and they continue to do so.
21 And this is rooted in a number of documents.
22 I'd cite first the church on the -- or the
23 constitution on the church and the modern world
24 from the Second Vatican Council in 1965, which
25 addresses the notion that the basic equality of

1 all people must receive increasingly greater
2 recognition in every type of discrimination,
3 social or cultural, based on sex, race, color,
4 social condition, language or religion -- is to
5 be overcome and eradicated.

6 The second document brothers and sisters
7 to us from the National Conference of Catholic
8 Bishops in 1979 addressed primarily to the issue
9 of racism. Again comes out in favor of
10 affirmative action, commenting that it's
11 apparent in the sentiments that -- that too much
12 is being given, that the racial minorities to
13 redress the long-standing imbalances in minority
14 representation in government. And that that
15 statement again affirmed affirmative action for
16 minority people.

17 The document Economic Justice For All from
18 the National Conference of Catholic Bishops in
19 1986. In 1996 it was redone in a shorter
20 vision. And in 1997 was put down into a mere 11
21 sentences. And, again, this is certainly the
22 undergirding for their support of affirmative
23 action.

24 The economy exists for the person, not the
25 person for the economy. All economic life

1 should be shaped by moral principals, economic
2 choices. And institutions must be judged by how
3 they protect or undermine the life and dignity
4 of the human persons, support the family and
5 serve the common good. The -- the bishops
6 simply state that discrimination can never be
7 justified. There is a recognition that -- that
8 perhaps we have to relook at affirmative
9 action. They ask that the nation renew its
10 efforts to develop effective affirmation action
11 policies assisting those who have been excluded
12 by racial or sexual discrimination in the past,
13 especially if there be a removal of barriers to
14 full and equal employment.

15 The Department of Social Development and
16 World Peace of the United States Catholic
17 Conference in 1996 wrote in opposition to the
18 Equal Opportunity Act of 1995 casting -- or
19 suggesting that the bill casts affirmative
20 action as discriminatory itself. Again, in that
21 statement the bishops called for a renewed
22 debate over how to best overcome the lasting
23 consequences and current impact of racism and
24 unjust discrimination in all its forms. Asks us
25 what remedies are working well and what remedies

1 are not. And then calls on Pope John Paul II --

2 MR. MINARIK: Excuse me, Father,
3 we cannot hear back here, so if you could speak
4 closer to the mic.

5 (Discussion off the record.)

6 FATHER MCCAULEY: Then spoke to
7 Pope John Paul II's questions to Americans when
8 he visited here, how ought we live together as
9 isolated individuals competing for limited
10 opportunity divided into groups calling for
11 advantage. And suggested the moral task is to
12 search for the common good in a very divisive
13 debate to renew our nation by seeking
14 opportunities for Americans, acknowledging that
15 this requires judicious and appropriate
16 affirmative action to remedy discrimination and
17 offer opportunity for all.

18 We feel that affirmative action remains a
19 necessary tool for reaching equal opportunity.
20 To abandon it would be to retreat in our
21 struggle for justice.

22 Once again, in March of 1996 the United
23 States Catholic Conference stated it as -- as a
24 question: What kind of racially conscious
25 government actions, if any, are appropriate to

1 deal with racial discrimination and division
2 within society.

3 Over and above calling for affirmative
4 action in our society, the bishops have called
5 for it in the church.

6 And, in closing, I would like to allude
7 briefly to the Catechism of the Catholic Church,
8 published in 1994, which suggested that no
9 legislation by itself can do away with the
10 fears, prejudices, pride and selfishness which
11 obstruct the establishment of truly human
12 societies. No individual is equipped for all
13 eventualities in life. And the church calls us
14 to recognize the principle of human solidarity
15 with one another. Solidarity of the poor
16 between themselves, the poor and the rich,
17 workers among themselves, employees and
18 employers, nations and people. And in
19 suggesting such strong support for affirmative
20 action, I would not want to suggest that the
21 bishops necessarily see quotas as the way of
22 doing that, but that they would very much
23 support some -- some kind of affirmative action
24 that does assure all people an equal chance.

25 And I think I've gone a little over my

1 five minutes. I better be quiet.

2 MR. WEINBLATT: Thank you.

3 Jay?

4 MR. TCATH: Greetings, number of
5 friends and colleagues on the committee.

6 I should disclose off the bat the
7 relationship between myself and the Committee
8 Chair. And I'm -- I'm happy to do so because if
9 I say anything that's wrong or inappropriate you
10 can blame him more than I. He was on the search
11 committee that brought me to Minnesota. So any
12 complaints should be forwarded to the Chair
13 himself.

14 Unlike the Catholic church, there is no
15 single, firm Jewish position on affirmative
16 action. Indeed, one need only look at the most
17 recent Minnesota race for United States Senate
18 to see the differences that are represented
19 within our communities. In that case, as you
20 may well know, both candidates, citing their own
21 understanding of Jewish justice, had
22 diametrically opposed views on affirmative
23 action. For our part the Jewish Community
24 Relations Council is undergoing our own review
25 of affirmative action policy and expect a policy

1 to be formulated by the end of this summer.

2 Our tradition, however, is instructive in
3 some ways. The Bible's book of Leviticus tells
4 us, quote, favor no one, only judge on
5 righteousness. Yet the Talmud, a collection of
6 our tradition's teachings, states that rules of
7 evidence were altered for the wealthy to prompt
8 honest testimony from the poor who might
9 otherwise be intimidated from speaking the whole
10 truth, suggesting that certain societal
11 realities must be taken into account to be eq --
12 equitably balance the scales of justice.

13 Today American Jewish organizations on the
14 whole are more spur -- more supportive of
15 affirmative action than individual Jews, as
16 measured by public opinion surveys. And yet
17 both Jews and Jewish groups are more supportive
18 of affirmative action than nonJewish Americans.
19 But even that support from -- for affirmative
20 action is tempered, nuance, conditional and very
21 limited.

22 Our understanding of affirmative action
23 purposes based on our own experience with
24 bigotry is perhaps unique. For Jews quotas have
25 always been at colleges and corporations; the

1 ceiling above which we could not rise, not the
2 floor at which we could enter. Indeed, our
3 state's own University, University of Minnesota,
4 imposed quotas against Jews in certain graduate
5 schools throughout this century. What this
6 means therefore is that we tend to support goals
7 and time tables, special recruitment and
8 training programs, but not rigid number setting
9 that leads to what is known as reverse
10 discrimination. Many Jews see a logical non
11 sequitur in the argument that to become a
12 colorblind society we must mandate the enhanced
13 relevance of race. Nonetheless, Jewish groups
14 have supported race based preferences when and
15 only when a history of discrimination is well
16 documented at a particular institution, when the
17 preferential treatment will be for a defined
18 limited duration, when the institution,
19 regardless of its history, is not currently
20 integrated, and when past other affirmative
21 action efforts have been unsuccessful.

22 For American Jews, like many others,
23 affirmative action is rarely thought about on
24 its own merits, but rather as part and parcel of
25 many other concerns, including its ramifications

1 on intergroup relations.

2 I would be remiss if I didn't also
3 highlight some other Jewish perspectives.
4 America today is neither colorblind or a
5 provider of true equal opportunity. Indeed,
6 Americans violate and celebrate such equal
7 opportunity violations as nepotism, cronyism and
8 geographical diversity programs, programs that
9 were really established to limit the number of
10 New York Jews in a particular institution.

11 Social justice is worth economic costs.
12 America constantly judges and categorizes every
13 one of us on group characteristics from SAT
14 scores to veteran benefits. Such preferences
15 are not necessarily bad, only an approximation
16 we live with, but should recognize as such.

17 Unfortunately, affirmative action has
18 become a scapegoat for the economic and racial
19 anxieties felt by many. Of course, its real
20 impact, positive or negative, is relatively
21 small compared to its prominent niche in the
22 public psyche.

23 We need only to look at educational,
24 health, economic, and other societal indices to
25 realize just how far we still have to go to

1 attain a just society for all Americans. Much
2 is at stake.

3 I wish this committee success in its
4 important deliberations and wish to express my
5 and my community's gratitude for letting us add
6 our diverse views to this policy discussion.

7 MR. WEINBLATT: Thank you.

8 Members of the committee?

9 There -- there has been a suggestion made
10 then to us today that affirmative action either
11 generally or in specific types can be considered
12 an insult to the individual; that is, if I must
13 -- the argument has been made, if I receive
14 special benefits of any sort, my own
15 self-confidence, my own self-sense of value is
16 somehow attacked or diminished, that I can't
17 make it solely on my own merits.

18 Do either of your communities or
19 traditions speak to that issue?

20 FATHER MCCAULEY: I'm not aware of
21 any official statements speaking to that issue.
22 However, within the last several weeks I've
23 attended a -- a lecture myself in which that
24 notion was put forward, was put forward by a
25 black man who was very successful. And -- and

1 he suggested that there is a -- there can be a
2 certain insult in that. The direction that he
3 was moving somewhat parallels what I referred to
4 as the notion of human solidarity, I think. And
5 -- and he was expressing a -- a wish for a
6 rather ideal world. He said if we are a
7 pluralistic society we would want that pluralism
8 reflected in all aspects of our society. The
9 example I recall was from the law school in
10 Texas, where the incoming class has nobody other
11 than white persons, suggesting that this is a
12 real disservice to the -- to the -- the people
13 in that class and to the -- the people who will
14 be served by these attorneys. And -- and he was
15 seeking some kind of elasticity. He said, let's
16 say that -- that you have some test and 120 is
17 the cutoff point. And you get down on the -- on
18 the test and you realize there's something wrong
19 with this group of people. It does not
20 recognize the American public. So you go down
21 your list a little bit more. And -- and maybe
22 you find between 110 and 120 -- 20 people who
23 come from a whole variety of -- of different
24 social situations, different races. It's for
25 everybody's good that they come in. So I think

1 a more elastic approach. And that made sense to
2 me that, again, the notion of absolute quota,
3 being able to do everything by absolute law --
4 doesn't work that way. We're human beings.

5 MR. TCATH: We don't have a formal
6 position on that aspect of affirmative action
7 debate, but I -- I would caution that that not
8 be a consideration. I don't think public policy
9 makers should try and delve -- delve into the
10 psyche of individuals and say what's the likely
11 response going to be on their psychological
12 well-being. And certainly individuals have the
13 opportunity to probably withdraw themselves from
14 affirmative action type programs. So there is
15 that, in many cases, option out of it.

16 MR. WEINBLATT: Well done. Thank
17 you both. Appreciate you.

18 FATHER MCCAULEY: Thank you.

19 MR. WEINBLATT: Our next -- do we
20 have any of the members of our next panel?

21 MR. MINARIK: Let's recess for
22 about 15 minutes, Al, okay?

23 MR. WEINBLATT: Sure.

24 (Recess from 1:59 p.m. to 2:04 p.m.)

25 MR. WEINBLATT: Why don't we

1 continue on our agenda. We're going to make a
2 little bit of a schedule change. Wende Farrow
3 of the Employers Association is here with us
4 now. And with her permission I will call on
5 Ms. Farrow to make her presentation and tell us
6 a little bit about the Employers Association
7 just before you begin.

8 MS. FARROW: Thank you, Alan.

9 I represent the Employers Association,
10 which is officed here in Minneapolis and
11 St. Paul. We are a nonprofit member services
12 organization. And we're comprised of about
13 1,700 employer members. Our employers are
14 located mostly in Minnesota, but we find them
15 throughout the Midwest. Many also have offices
16 throughout the country.

17 Our mission for the past 60 years has been
18 to provide support and assistance to member
19 organizations on issues that impact the
20 employer/employee relations. Today we offer
21 technical resources to organizations in all
22 functional areas of human resource management,
23 which include affirmative action, fair
24 employment law, diversity, recruitment,
25 selection, compensation, benefits and collective

1 bargaining. I am the Director of the Human
2 Resource Services Division. And I manage the --
3 the group that does diversity employment law and
4 affirmative action work for employer members.

5 MR. WEINBLATT: Thank you.

6 Proceed.

7 MS. FARROW: I have a prepared
8 statement that I think I'm just going to read.
9 That way I'll manage my time constraints.

10 I know that this committee is discussing a
11 lot today, the issue of affirmative action. But
12 my presentation in front of you today is going
13 to be focused on employer, employment areas of
14 affirmative action. Specifically I'd like to
15 present a general picture of how most employers
16 that our organization works for and with have
17 viewed and approached specifically mandatory
18 affirmative action -- almost all mandatory
19 affirmative action retirements.

20 We have assisted employers which have
21 stemmed from the role as contractors or
22 subcontractors with federal, state or local
23 government agencies.

24 As some of you may or may not know, in
25 Minnesota we also have a number of firm --

1 mandatory affirmative action requirements for
2 contractors and subcontractors. Specifically,
3 we see them with the state of Minnesota, the
4 cities of Minneapolis and St. Paul, and Hennepin
5 County. What we have found with each of these
6 agencies, including the office of Federal
7 Contract Compliance Programs out of the
8 Department of Labor, is that they all have a
9 statute or an ordinance defining which
10 contractors and subcontractors have
11 requirements. And then they usually have
12 additional rules and regulations that specify
13 what an employer is to do related to affirmative
14 action. Usually the statutes and the ordinances
15 or the rules and regulations specify only basis
16 parameters, provide only general guidelines for
17 employers to follow in defining and fulfilling
18 their affirmative action requirements. Although
19 these documents provide some basic information,
20 they have often been the source of much
21 confusion and conflict between employers and
22 monitoring agencies. If employers were afforded
23 the latitude to interpret and apply these
24 requirements to the unique circumstances and
25 develop an individual approach to affirmative

1 action, then they would be of some benefit.
2 More -- more often than not today we have seen
3 that monitoring agencies and more notably
4 compliance personnel have viewed that it is the
5 prerogative to interpret them, namely the
6 regulations, and specify often in much detail
7 what affirmative action should constitute for
8 each employer.

9 They have often specified for employers
10 what their affirmative action plan must contain,
11 the nature and character of their statistical
12 analyses and what actions they must take. This
13 has resulted in employer affirmative action
14 efforts being analyzed to get the strict model
15 or standard of which each agency and compliance
16 officer expects. This has resulted in an
17 emphasis on such elements as the affirmative
18 action plan document, statistical calculations
19 and record keeping. This emphasis has clearly
20 had a negative impact on employer understanding
21 and ownership of affirmative action. Most
22 employers we work with believe they are not
23 afforded a lot of latitude in developing their
24 approach to affirmative action and their plan
25 and developing a plan that's consistent with

1 their culture, their environment and their
2 business strategies. The impression is that no
3 matter what effort an employer takes under the
4 mandatory requirements, compliance personnel
5 will insist that it be changed to meet their
6 expectations. And these expectations are often
7 different from each compliance officer to each
8 compliance officer.

9 Not only isn't too much emphasis placed on
10 mechanics of the affirmative action planning
11 progress, but the process as defined by most
12 monitoring agencies has become far too detailed
13 and confusing. It's also based on outdated
14 assumptions about organization structures and
15 how they are managed. Most employers have
16 trouble seeing the relationship of the planning
17 process and affirmative action. This process is
18 so detailed and technical that most employers
19 either give up on completing the plan or fail to
20 make their affirmative action commitments a part
21 of their normal way of doing business. This is
22 even more of an issue when employers have to
23 comply with varying requirements across many
24 levels of government. We see it's very common
25 for employers to end up with not one affirmative

1 action plan, but a plan for each level of
2 government they contract with. And the nuances
3 between the plans are so minimal that it makes
4 it really an administrative burden for the
5 employers.

6 The affirmative action planning, record
7 keeping and reporting requirements become very
8 onerous and burdensome for most organizations,
9 especially small employers. Most affirmative
10 action planning requirements on the federal
11 level are 50 employees or \$50,000 on a contract
12 or subcontract. In the state of Minnesota it
13 goes down to 20 employees. So for a very small
14 employer we're talking about a pretty large
15 process. They require a great deal of time and
16 attention on the part of the organization.

17 We find that employers focus too much on
18 completing the requirements just for the sake of
19 getting the plan document done, rather than
20 seeing and understanding the value of
21 affirmative action to the organization. Due to
22 productivity and cost constraints most employers
23 delegate these activities and ultimately the
24 decision making to the lowest level of personnel
25 possible. Clearly mandatory affirmative action

1 focuses too much time on the details, the
2 nuances and the mechanics of planning and record
3 keeping processes. And the fundamental
4 principals, philosophy and goals of affirmative
5 action are being lost for most employers. The
6 heavy emphasis -- emphasis today on the process
7 and the documents is having a derogatory impact
8 on the principals of affirmative action, as well
9 as employer commitment and agency flexibility.

10 It is always easy to criticize or find
11 deficiencies with historical practices. It's
12 also more difficult to recommend solutions for
13 the future. The last few weeks I've given a
14 great deal of thought to the issue. And I'd
15 like to offer the following comments and
16 suggestions.

17 First of all, as a employer in a support
18 organization to employers we support the concept
19 of affirmative action in employment. Namely,
20 trying to rectify historic discriminatory
21 practices in the workplace still makes sense
22 today to us and is important in the employment
23 setting. We continue to see actions by
24 employers, albeit not as blatant and as
25 conscious as in prior years, but they still

1 result in different and lesser treatment of
2 individuals in a number of protected group of
3 categories.

4 Second, I think it is difficult for the
5 agencies to try to develop a uniform standard
6 for how each employer should approach and deal
7 with affirmative action. Based on my education
8 and training on the concept, most affirmative
9 action regulations were designed for employer
10 interpretation and latitude to fit it toward
11 their organization, their culture and their
12 needs. The basic premise of the regulation is
13 just to provide guidance. And that still does
14 make sense. I feel it's critical that some
15 basic parameters be established for employers on
16 affirmative action. But employers need to be
17 given greater latitude to approach the issues
18 and to develop a plan and more importantly
19 commitments that can become a part of their
20 everyday way of doing business and will become
21 engrained in the operation. Obviously doing
22 this is easier said than -- easier said than
23 done.

24 A third suggestion is to build a better
25 partnership between agency personnel and

1 employers so that they have a common and better
2 understanding of each other's experiences and
3 needs. We need to see more business
4 professionals put into agency roles in terms of
5 monitoring and complying -- monitoring
6 employers' compliance so they can assist the
7 agencies in developing systems and procedures
8 that are consistent with how business is run,
9 especially the small employer, which is our
10 growing employer in this country. In addition,
11 employers need to have a better understanding
12 and working knowledge of affirmative action.

13 The process is so burdensome that most
14 employers don't even take the time to
15 understand, nor own the responsibilities. Too
16 many go through the exercise of developing a
17 plan and placing it on a shelf just in the event
18 to respond to a compliance issue. I would like
19 to see more required training for employers, at
20 least networking of participatory sessions where
21 agency personnel and employers can regularly be
22 required to get together to learn from each
23 other and to understand each other's side.

24 MR. WEINBLATT: Thank you very
25 much.

1 Members of the committee?

2 MS. LOPEZ: I do.

3 MR. WILDERSON: Ms. Farrow.

4 MS. FARROW: Yes.

5 MR. WILDERSON: Your -- your
6 remarks appear to me to summarize the -- the
7 concerns and expressions of agencies and
8 companies and things that you've worked with and
9 been involved with. And you pointed out in your
10 remarks how -- how difficult it has been, as
11 they report to you, to carry out the process,
12 the required paperwork and things of this nature
13 of affirmative action. I'm quite aware of the
14 fact that those are required. And what I'm
15 asking now -- it doesn't -- those requirements
16 does not preclude the companies and
17 organizations of doing things on their own. As
18 you engage yourself with those companies you've
19 been -- is there anything that any of them are
20 doing on their own to meet what they purport to
21 be allowable goal, of allowing a process for
22 equal employment opportunity for those that have
23 not been employed?

24 MS. FARROW: Yes and no. I guess
25 that's my best response at this point. We have

1 seen a number of voluntary effort from both
2 large and small employers in our member service
3 area. And we've seen very rigorous efforts to
4 the point of employers actually putting forth
5 formal strategies in documents related to their
6 efforts and how they approach them. To a large
7 extent their focus has been on how to improve
8 the representation of women and minorities in
9 their work force. And to a large extent that
10 focuses on employees or individuals that are
11 currently within the work force, not individuals
12 who have chosen to not participate or fall out
13 of the current labor force. So their efforts
14 are basically focused on currently working
15 employees, attempting to recruit them into their
16 organization, again to improve the
17 representation of women and minorities.

18 MS. LOPEZ: You have asked --
19 answered one of the questions that -- that I was
20 going to ask. But I said -- you said you had
21 about 1,700 members.

22 MS. FARROW: Yes.

23 MS. LOPEZ: And since this seems
24 to be a big issue and problem area with the
25 companies that you provide tactical assistance

1 to, are there any steps or policies or whatever
2 being looked at by the group to make this
3 reporting system that would result in more
4 equitable representation within the companies?
5 Is there anything being -- on the drawing
6 board?

7 MS. FARROW: You mean within our
8 organization?

9 MS. LOPEZ: Within your -- yeah.

10 MS. FARROW: We work very
11 aggressively with the agencies as much as
12 possible trying to improve communication between
13 employers and the monitoring agencies. As we
14 look at the -- for example, the federal
15 requirements, the regulations are more than 30
16 years old. And after 30 years of application we
17 find that the processes are fairly firm. So
18 other than through informal negotiations with
19 the local district director, for example, of
20 OFCCP or individual compliance officers, we have
21 a little latitude to influence or reduce the
22 burden of the process at this point.

23 MS. LOPEZ: Because that would
24 seem to be that -- if you could come -- I was
25 always -- felt that there was some latitude with

1 the kind of plan that the company drew up as far
2 as affirmative action. And I was always of the
3 opinion that there was latitude as long as the
4 compliance officer saw that there were some
5 results and with some measurable thing to look
6 at. I wasn't aware that -- that that problem
7 was that great.

8 MS. FARROW: Well, we're very
9 optimistic about the changes in -- in the
10 Minneapolis district office. Obviously
11 affirmative action and how it's monitored is --
12 is dependent on who the monitor is. And they -
13 what their perception is and their
14 interpretation.

15 We are becoming more and more optimistic
16 that employers can have some latitude. But
17 still if we take a look at the state of
18 Minnesota or the city of Minneapolis, it is not
19 uncommon for the agency to find a plan deficient
20 for simply failing to contain one word. So what
21 we get into is an expectation on the part of the
22 agencies and the personnel that the document,
23 the language, the format has to be in a
24 particular version or it will not be accepted.
25 I've seen many employers have local plans sent

1 back because one word was missing.

2 MR. WEINBLATT: I'd like to follow
3 up on the point that you're making now. In --
4 in his speech at the University of California,
5 San Diego on Saturday night the President called
6 on those who would oppose affirmative action to
7 come up with alternative ideas. You've started
8 down that path, I believe, in the remarks that
9 you made. To follow a little bit further down
10 that path, it's my understanding that the -- the
11 numbers game and the -- the process game that
12 you are describing have come about simply as an
13 attempt to measure compliance. And from what
14 I'm hearing from you, the measurement aspects
15 have overwhelmed, in your view, the substantive --

16 MS. FARROW: Yes.

17 MR. WEINBLATT: -- aspects of
18 affirmative action. And therefore not on behalf
19 the President, but on of behalf the committee I
20 would ask you: What alternative forms of
21 measurement of success or compliance or
22 noncompliance or failure would you suggest?

23 MS. FARROW: That's a very tough
24 question. And I think that's what I pondered a
25 lot for the last few weeks prior to sitting in

1 front of you. Employers, in terms of how they
2 run their businesses, are so very different,
3 just as individuals are. And along with that
4 goes different perspectives and different
5 approaches.

6 I think about compliance a bit in
7 conjunction with my own past. At one time I was
8 a school teacher. And although you don't always
9 consider this, when you're a school teacher and
10 you check people's work, you tend to not look
11 for what's right. You tend to look for what's
12 wrong. And I'm afraid that that happens a bit
13 when people evaluate affirmative action.

14 Part of my solutions or my suggestions are
15 that if we get employers ingrained in having --
16 and required to have discussions, dialogue about
17 how they are approaching it, about how they are
18 living the concept of affirmative action in the
19 work force, if we are forcing them to attend
20 training sessions, rather than running
21 documents, maybe we'll be more successful at
22 getting testimony to adopt the concept and see
23 the value of it in their day-to-day operations.
24 For most employers it's getting an extremely bad
25 image because all they see is the paperwork.

1 They see no value to it. They -- the whole
2 concept is being lost.

3 The few people that I work with closely
4 who we educate on the process and who look at
5 the results will all of a sudden see a light
6 bulb come on and say, oh, now I know -- I've
7 been doing this for the last six months and what
8 the numbers will show.

9 And what we find is -- and I have a staff
10 of four people who assist people in affirmative
11 action plans. And I was talking to one of my
12 staff members this week. And she said to me, it
13 gets very frustrating because I work very hard
14 for these people. I -- you know, I -- I care
15 about the values of it. But they don't care.
16 They don't own it, they don't adopt it. They
17 just do it because someone says they have to do
18 it. So if we can -- if we can get the concept
19 so people can talk about it more, maybe force an
20 education and communication, rather than plan
21 statistical analysis, maybe people will own it.
22 We -- our organization also does a lot of
23 harassment related training. And it -- we still
24 are amazed at the discriminatory impacts that we
25 see in the workplace today. So as far as a need

1 for affirmative action, we think there's a
2 fundamental importance. But that's not an easy
3 way to approach it.

4 MR. WEINBLATT: Thank you. Thank
5 you very much for your presentation.

6 MR. MINARIK: We'll have a 15-
7 minute recess.

8 (Recess from 2:27 p.m. 2:45 p.m.)

9 MR. WEINBLATT: Let me just
10 introduce the panelists to Reverend Peg
11 Chamberlin of the Minnesota Council of
12 Churches. Ms. Chamberlin, thank you.

13 REVEREND CHEMBERLIN: Committee
14 members, my apologies for being late on your
15 docket today, but I'm glad to have this
16 opportunity for discussion on affirmative
17 action.

18 I'm the Executive Director of the
19 Minnesota Council of Churches. Minnesota
20 Council of Churches is a preeminent movement in
21 Minnesota for Christian unity and community
22 reconciliation, has 19 member judicatories and
23 represents about 900,000 Christians in
24 Minnesota. Together we understand ourselves to
25 be primarily mainline Protestants. Would also

1 include a strain of evangelicals and a Baptist
2 tradition and Anglican tradition. We work for
3 the sense of Christian community to deepen the
4 quality of life in Minnesota.

5 Minnesota Council of Churches has a
6 long-standing position of support of human
7 rights. On May 9, 1991 the counsel approved the
8 following statement. We, the Minnesota Council
9 of Churches, reaffirm our historic opposition to
10 discrimination against anyone because of race,
11 color, religion, national origin, sexual
12 orientation, age or disability. Therefore we
13 urge member communions to join the Minnesota
14 Council of Churches in opposing rim --
15 discriminatory statements and actions and
16 affirming antidiscriminatory statements and
17 actions and in advocating in the public arena on
18 behalf of all victims of discrimination. The
19 traditions of the member denominations of the
20 council have also long supported
21 nondiscriminatory activity and, in fact,
22 affirmative action.

23 United Church of Christ in 1991 said: As
24 a denomination which is committed to affirmative
25 action and equality of opportunity for all

1 persons, it is imperative that the United Church
2 of Christ affirm its commitment and continue to
3 implement affirmative action policies,
4 procedures and programs in its life. Moreover,
5 it is imperative that we join with other faith
6 communities and civil rights organizations in
7 urging the President of the United States and
8 Congress to make and strengthen their commitment
9 to affirmative action.

10 The American Baptist Church in 1986:
11 Affirmative action is designed to bring about
12 justice and equal opportunity for people who
13 have long been excluded or underrepresented in
14 certain fields. It is designed to assist in
15 overcoming the affects of past discrimination
16 and to make equal opportunity a reality, rather
17 than a theoretical goal.

18 Episcopal Church in 1988: Resolved the
19 House of Bishops concurring that this
20 convocation reaffirm its commitment to a
21 vigorous affirmative action program and all
22 institutions and society as remedy to historical
23 racial and sexual injustices.

24 And United Methodist Church 1988: The
25 premise upon which affirmative action is built

1 is essentially moral and spiritual in nature.
2 Concern for the disadvantaged, the disinherited
3 and the oppressed is a major feature of both
4 what Christians call the Old Testament profits
5 and the message and ministry of Jesus.
6 According to biblical teaching what is required
7 is a redress of grievances and a sincere effort
8 to make amends.

9 In a document approved not only by the
10 Minnesota Council, but also by the two
11 organizations represented here earlier by Father
12 McCauley and Mr. Tcath, we said together
13 protestant, Catholic and Jewish, by virtue of
14 being created in the image of God -- all persons
15 have dignity. This means that human life has
16 unassailable value and each person has a right
17 to those things which make a descent life
18 possible. Civil authority exists to protect the
19 dignity of all persons and the claim of each of
20 us to basic human rights.

21 While these above statements represent
22 some of the best thinking of some of the best
23 leaders in our churches, one might also ask
24 whether these statements reflect the opinion of
25 those who are members of our denominations. And

1 the answer too often is no. In fact, many of
2 what we call the members in the pew either have
3 not reflected on the efficient -- on the finish
4 of affirmative action or would hold a negative
5 view. This seems to be true for the general
6 population. Perhaps one of the reasons is that
7 we have fought for affirmative action so often
8 in the judicial and executive branches and not
9 as often as the legislative branches that it has
10 perhaps inhibited our public discussion about
11 the reasons and the purposes behind affirmative
12 action.

13 We at the Minnesota Council of Churches
14 are working on a project entitled Renewing the
15 Public Church. One of the assumptions is that
16 renewal of the faith community and public life
17 will require a renewed ability for public
18 dialogue in a civil context. There needs to be
19 increased debate and discussion about
20 affirmative action. We believe that that case
21 needs to be made from the churches and with the
22 general public.

23 Folks don't seem to get it. They are --
24 they see affirmative action as lived out in
25 isolated incidences of personal comparison on

1 racial basis or personal basis or sexual basis
2 or sexual orientation basis or gender basis
3 ethnicity. People don't see the systemic
4 exclusion that was behind the assumptions that
5 put affirmative action into practice.

6 Minnesota Council of Churches has launched
7 the Minnesota Churches antiracism initiative.
8 We have had about 3,000 people who have been
9 part of this project over the last few years,
10 hundreds who have gone through intensive
11 antiracism training. And the important piece
12 about this particular training as opposed to
13 other things that we have done is that it brings
14 to the forefront to an experienced existential
15 understanding the systemic nature of racism.
16 Folks come away from -- from the training
17 understanding that racism is in the stream of
18 the culture, as are other discriminations in the
19 stream of the culture. And unless we're
20 intentionally swimming upstream we will be
21 caught in the racist nature of the culture that
22 we live in.

23 I'm thinking about Supreme Court Justice
24 Douglas who struggled with the affirmative
25 action questions before the Bacchi Regents of

1 University of California discussion. And
2 finally he said that the LSAT is racially
3 biased, and its bias justifies the reverse bias
4 by the law school in its affirmative action
5 process. That statement holds for me the
6 understanding of the systemic nature of
7 discrimination and racism in our culture and the
8 need then for affirmative action, a justified
9 bias against that stream in which we swim.

10 We would urge no backing off of
11 affirmative action, but increased discussion,
12 debate, public relations and education about the
13 basis for affirmative action. As long as the
14 general culture understands this as an
15 individual, isolated, one-on-one case and not as
16 a systemic condition which affirmative action
17 seeks to be a barrier to, we will continue to
18 have a -- the kind of lack of ownership, the
19 kind of lack of participation and a general
20 uncooperativeness about the affirmative action
21 that we just heard from our last speaker.

22 What's needed then is a widespread
23 analysis of the situation we're in, a public
24 education campaign, analysis of the basis out of
25 which affirmative action grows, analysis out of

1 the situation that affirmative action seeks to
2 be a barrier to.

3 Thank you.

4 MR. WEINBLATT: Thank you.

5 Mr. Louie?

6 MR. LOUIE: Try to pick up on what
7 you were talking about with regard to systemic
8 exclusion. How do you address this -- the
9 comment of a person who might say I don't
10 discriminate against anyone. Why should I have
11 to do, you know -- be responsible or be
12 penalized by affirmative action because of what
13 someone else did? Is that what you're referring
14 to and how do you address it?

15 REVEREND CHEMBERLIN: What we try
16 to do in our antiracism training is to help each
17 of us understand the way in which we are all
18 part of a -- part of the flow -- of the river
19 flow which discriminates on the basis of race,
20 gender and so forth. And as we all participate
21 in that, we do that unconsciously more often
22 than not. And it -- more often than not it's
23 our unconscious bias that propels those same
24 racist tendencies. In the training what we try
25 to do is to un -- to unpack our unconsciousness

1 about that, to un -- unpack the fact that we
2 live in that kind of a stream. It's -- this is
3 a very difficult concept for folks to get
4 because we tend to think in terms of personal,
5 isolated incident, rather than broad systems
6 analysis.

7 For me we -- we need clear, perhaps even
8 catchy anecdotes and descriptions of the
9 situation. Here's the best one I've heard
10 recently. As someone was describing to me a
11 mutual friend who is young, white and male, who
12 just landed a great job a law firm, they said,
13 you know, David thinks -- David was born on
14 third base and he thinks he just hit a home
15 run. We've lot -- lots of folks who weren't
16 born on third base, who were born on second
17 base, others who were born on first base and
18 some who aren't even in the ballpark yet.

19 But we need that kind of clear sense of
20 the analysis to say, you know, I have to admit
21 and understand, I was born maybe on not on
22 third, but on second. And -- and for us to be
23 able to identify our participation and our
24 privilege or lack thereof from that wide system
25 is important, I think.

1 MR. WEINBLATT: Anybody else?

2 MS. LOPEZ: In the training, the
3 participants of your training are members of the
4 group that you have -- what would you say is the
5 makeup of the participants? Is it community
6 persons, is it employers or -- would you kind of
7 give me -- give us a general break -- breakdown
8 of where the participants come from that take
9 the training.

10 REVEREND CHEMBERLIN: It is a
11 cross-section. I would say probably the thing
12 that we could say about all of them is there is
13 some self-identified interests in doing the
14 training. In some cases people of color who
15 want to encourage and support the rest of us in
16 this training. And some cases folks who know
17 there's a problem, but don't quite get what it
18 is. Or those of us who know what the problem
19 is, even have some analysis of the problem, but
20 want to have better handles on understanding how
21 it continues to live in our lives.

22 The Minnesota Churches antiracism
23 initiative is primarily targeted to put into the
24 intensive training workshops members of churches
25 and particularly church leaderships --

1 leadership. The result of that is not only this
2 -- what we hope is a conversion experience as
3 we would talk about in a Christian community, a
4 change, a turnabout that understands the system
5 and sees the picture, sees what's wrong with the
6 picture in a way that we didn't before. But the
7 next step of that is to engage in our own
8 understanding of how our systems perpetuate
9 racism. So the Minnesota Council of Churches,
10 Minneapolis Council of Churches, St. Paul
11 Council of Churches are all presently in our own
12 systems analysis about how the way -- how we
13 operate, how our personnel policies and our
14 staff hiring processes, how we allocate
15 resources, how all of those pieces contribute to
16 -- unintentionally, but nevertheless de facto
17 contribute to the establishment of racism,
18 sexism, so forth.

19 MS. LOPEZ: Thank you.

20 MR. WILDERSON: I'm not certain
21 that my question is directed to you or if it's
22 just something I'm rambling on as I'm trying to
23 understand such strong opposition to affirmative
24 action. And as we have sat here today and heard
25 others who have come before us, this panel, lot

1 of them spoken a lot -- a lot of companies and
2 institutions have a lot of aversion just to the
3 word affirmative action. And I'm struggling
4 with the fact because I've been in institutions
5 and I've known about companies and I've seen and
6 I've heard them talk on other subjects about we
7 have to have an affirmative plan, be it
8 recruiting students if they are all white
9 students or be it to get this -- what I'm still
10 trying to struggle with -- and you may have
11 touched on it some. But -- so is the opposition
12 more rooted in racism, in your opinion, than
13 some of these other things? Because these --
14 there's not a company out there that doesn't
15 have an affirmative action plan to go get a
16 contract, if it's to hide -- get students,
17 increase their student population from 1,900 to
18 2,100 -- they all have affirmative action
19 plans. And I'm still struggling with why is it,
20 when we talking about opportunities for people,
21 that there is such aversion to it. And this may
22 not be for you, but you -- you touched upon
23 something that led me to believe you may be able
24 to help me and -- and maybe the rest of us
25 understand this so as we move to -- to remedy

1 some of this stuff.

2 REVEREND CHEMBERLIN: Well, I hope
3 you're not asking me to defend that.

4 MR. WILDERSON: I'm not asking you
5 -- I'm not asking you to -- to -- to defend. I
6 am just wondering from your experience is it --
7 is it -- is it just probably -- the thing is, in
8 your opinion, do you think that it's more rooted
9 in racism, why that's -- this is such a aversion
10 or is there something else there?

11 REVEREND CHEMBERLIN: Well --

12 MR. WEINBLATT: Why does the
13 phrase have such a negative connotation.

14 MR. WILDERSON: All around us.

15 REVEREND CHEMBERLIN: I'm
16 convinced that it is only understood in a
17 individual to individual perspective. When we
18 hear language, rhetoric that says things like
19 affirmative action promotes blacks or promotes
20 gays or the gay agenda or promotes women, that
21 -- while those of us who are supportive of
22 affirmative action can say yes to that, how
23 that's heard on other side is without the
24 broader context which says this is a promotion
25 within a situation that's barriered. And I

1 think many of the -- those who would oppose
2 affirmative would say -- would not understand
3 the barrierness.

4 Now, there is a whole new voice that I
5 think perhaps does understand the barrierness,
6 but takes on a different tact about personal
7 responsibility and so forth. I think that's a
8 somewhat different discussion. But at the base,
9 personal responsibility without community
10 responsibility is a split that will eventually
11 undermine support from affirmative action. So
12 while we want to be supportive of personal
13 responsibility, to say that the community must
14 also be responsible -- and that means finding
15 ways and structures to at least open doors and
16 barriers. If we can learn to talk about
17 affirmative action as opening doors and barriers
18 rather than, quote, promoting as if it were a
19 level playing field to begin with, I think
20 that's the piece that I think seems to get
21 missed. Now, I'm not sure that if everybody
22 understood that we would have everybody agreeing
23 with affirmative action, but I think that the
24 middle population and certainly people of faith
25 in the -- particularly the communions that I

1 represent, I think would be more supportive
2 because the values of personal dignity and the
3 values of justice and the value and the concern
4 for the underdog has long been a part of what's
5 been -- what's been valued by my traditions.

6 MR. WEINBLATT: Reverend
7 Chamberlin, thank you for your presentation.

8 (Discussion off the record.)

9 MR. WEINBLATT: Our next presenter
10 is Bernie Brommer. Mr. Brommer appears not in a
11 -- personally, as well as on behalf of the
12 Minnesota AFL-CIO. Welcome.

13 MR. BROMMER: Thank you and good
14 afternoon to all of you. My name is Bernard
15 Brommer, and I'm the President of the Minnesota
16 AFL-CIO. The Minnesota AFL-CIO is a federation
17 of unions in the state of Minnesota, some 750
18 organizations. They are voluntarily affiliated
19 with the Minnesota AFL-CIO. Those unions in
20 turn represent approximately 400,000 working men
21 and women in the state of Minnesota.

22 I appreciate the opportunity to join you
23 this afternoon and to share several thoughts
24 regarding the labor movements position on the
25 issue of affirmative action.

1 In the past several years affirmative
2 action has come under attack, and the attacks
3 continue as we speak. But despite hostile court
4 rulings and political opportunism of some, the
5 work of affirmative action remains unfinished.

6 Our society puts a high value on equal
7 opportunity, yet the unemployment rate for
8 African Americans remains twice that for
9 whites. And for Hispanics the unemployment rate
10 is about one and a half times that of whites.
11 Also take into consideration that these official
12 unemployment figures do not count the many under
13 employment or the large number of discouraged
14 job seekers who have dropped out of the labor
15 force altogether.

16 While some progress has been made, women
17 still make less than men for comparable work
18 with equivalent qualifications and experience.
19 Complaints of employment discrimination based on
20 race, ethnicity, and gender continue to be filed
21 with equal employment opportunity offices across
22 the nation. The promise of equal opportunity
23 has been made. And the laws are on the books
24 but for many they are far from being a reality.
25 Just as the slaves in Texas never even knew they

1 were free until June 18th, long after the
2 emancipation proclamation has been issued, so
3 there are many African Americans and other
4 minorities and women today for whom equality of
5 opportunity remains only a dream.

6 No law, policy or program can make the
7 historical legacy of century -- centuries of
8 discrimination disappear overnight. But in the
9 few years that they have been in effect
10 affirmative action laws and policies have helped
11 and our nation is better off because of them.
12 Until we find a proven, more effective way of
13 ensuring that minorities and women have a fair
14 chance, our government should not be retrenching
15 from its critical role in enforcing affirmative
16 action laws. This is not a matter of idealism
17 or altruism, but of necessity and national self
18 interest. Minneapolis Urban League President
19 Gary Sudduth, speaking to delegates at the
20 Minnesota AFL-CIO convention last September
21 said, we cannot ignore the long-term trends that
22 are devastating many working families and their
23 communities, and particularly families in the
24 other America, the nonwhite America. We are all
25 in the same boat, Mr. Sudduth reminded us. Our

1 end may be sinking faster, he said, but if
2 something is not done, we all go down together.

3 In the final analysis Mr. Sudduth and many
4 others agree, it comes down to creating living
5 wage jobs and helping people, especially the
6 poor, get the education and training necessary
7 to qualify for and do those jobs. Affirmative
8 action is an important part of making sure that
9 happens. Certainly it is not the only
10 instrument at our government's disposal to
11 promote equal opportunity. Other strategies,
12 including more diligent enforcement of civil
13 rights and labor laws must be pursued. But for
14 the foreseeable future, affirmative action
15 remains a useful and necessary public policy in
16 our national pursuit of liberty and justice for
17 all.

18 Last year the AFL-CIO ran a full-page
19 advisement in the New York Times. It was signed
20 by AFL-CIO President John Sweeny. And I think
21 it sums up the American trade union movement's
22 view of the affirmative action. The ad read, in
23 part: Affirmative action has worked toward
24 eliminating centuries of racial and gender
25 discrimination in jobs and schooling. It has

1 promoted inclusion of all Americans on the basis
2 of genuine equality of opportunity. It is not a
3 quota system. It is not a numbers game.
4 Affirmative action has advanced fairness, not
5 favoritism. It has helped narrow the gap in
6 salaries, employment and education endured by
7 minorities and women. We need to reject
8 divisive attacks on affirmative action. We need
9 to work together for a better future for all
10 Americans.

11 Mr. Chairman and members of the Advisory
12 Committee, that completes my formal comments.
13 And again I thank you for the opportunity to be
14 here this afternoon.

15 MR. WEINBLATT: Thank you, sir.

16 Members of the committee?

17 MS. WIRTSCHAFTER: Mr. Brommer,
18 you have articulated the position of the
19 leadership of Minnesota AFL-CIO. Would you say
20 that rank and file members hold the same support
21 for affirmative action that you have
22 articulated?

23 MR. BROMMER: Mr. Chairman,
24 members of the Advisory Committee.

25 To the extent that the membership of the

1 labor movement in the United States, some 14
2 million men and women reflect the diversity and
3 the views of America at large, I would answer
4 your question as no.

5 MR. WEINBLATT: Mr. Brommer, as
6 the proud father of one of the most recent
7 members of a trade union, my daughter now for
8 one week having been an apprentice carpenter,
9 the thought struck me that she has the ability
10 to hold that position, that is, this opportunity
11 of employment, because in significant part of
12 the history of the last several decades of union
13 support for affirmative action. If that
14 American support for this concept were to
15 disappear, either be prohibited by law or not
16 supported by the populous and by government,
17 what do you believe might be the consequences
18 for equal employment opportunity?

19 MR. BROMMER: First of all,
20 Mr. Chairman, congratulations to your daughter.

21 With response with regard to your question
22 -- in response, I shudder to think what would
23 happen if the progress that we've made in terms
24 of promoting and advancing affirmative action,
25 equal opportunity -- if those laws were to be

1 struck down. If they were to disappear I think
2 that the impact on the employment of -- of
3 people, working Americans, would be
4 devastating.

5 MR. WEINBLATT: All right. Again,
6 thank you for your time.

7 MR. BROMMER: Thank you.

8 MR. MINARIK: Mr. Maitland and
9 Mr. Goldstein now, Mr. Chair.

10 (Discussion off the record.)

11 MR. WEINBLATT: All right. If you
12 would, please, I'll ask each of the
13 representatives, while you are making your
14 presentation, that -- if you would hold the
15 microphone that is without the stand. That's
16 the live one. The other one is just for show.
17 All right.

18 We have with us Professor Ian Maitland --
19 of the University of Minnesota and David
20 Goldstein, an attorney with the firm of Faegre
21 and Benson.

22 Mr. Goldstein, would you like to make your
23 presentation? We're asking for presentation of
24 three to five minutes from each of you. And
25 then we'll open up questions from the Advisory

1 Committee.

2 MR. GOLDSTEIN: Thank you,
3 Mr. Chairman.

4 Mr. Chairman, members of the committee, I
5 bring here perspective based on my experiences
6 as a lawyer working with clients in connection
7 with development and implementation of their
8 affirmative action programs and in connection
9 with agency audits of those programs.

10 Part of my job as a lawyer is to help
11 clients comply with the law. And to this extent
12 the current debate about affirmative action and
13 the outcome of that debate is of real and
14 immediate importance.

15 However, another part of my job is to
16 offer counsel and advice. And what I tell
17 clients is this: The trend toward an
18 increasingly diverse work force is an essential
19 fact of economic life. Even if immigration into
20 this country were to suddenly stop, there would
21 still be states of the union in which people of
22 color will constitute a majority in the next
23 century. And the importance of women in the
24 work force is likewise only going to increase.
25 What this means is that it doesn't matter what

1 the law requires or merely permits or whether
2 the law even discourages affirmative action.
3 The fact is that businesses that fail to welcome
4 diversity and accommodate the differences among
5 their employees and their customers or clients
6 are going to have trouble surviving in an
7 increasingly diverse and increasingly
8 competitive marketplace, a marketplace where no
9 resource and particularly not the most valuable
10 of all resources, human talent and creativity,
11 can be wasted.

12 What then in a world in which it is in the
13 best business interests of employers to
14 encourage diversity and stamp out discrimination
15 should the government be doing? And to answer
16 that question, I think we need to take a hard
17 look at our society and at the past performance
18 of affirmative action programs. We don't have
19 time today to discuss all of the relevant
20 issues, but I have chosen four -- what I will
21 call facts of life, which I will touch upon
22 briefly. And I will also briefly address what
23 will -- unfortunately will have to be an overly
24 simplistic manner -- what I believe to be the
25 implications for reform that arise with regard

1 to each of those facts of life.

2 First, under existing law with very
3 limited exceptions affirmative action is not
4 supposed to result in preferences. Sex or race
5 should be used as a selection criteria, if ever,
6 only when selecting from among substantially
7 equally qualified candidates. Nevertheless, it
8 is a fact of life that many employers do make
9 selections on basis of race and that there are
10 situations when a female or minority candidate
11 is selected for a position in spite of the fact
12 that he or she was not as qualified as a white
13 male. Protestations of innocence to the
14 contrary. These practices are to some extent
15 the results of past pressure or current pressure
16 or at least perceived pressure from OFCCP and/or
17 state fair employment practices agencies. It is
18 such preferences, more than anything else, that
19 accounts for the current backlash against
20 affirmative action programs. And at the same
21 time such preferences undermine the credibility
22 of women and people of color who have succeeded
23 in their careers and who by an overwhelming
24 majority have succeeded on their own merits, not
25 because of affirmative action.

1 Part of the answer to this first fact of
2 life, assuming the constitutional restrictions
3 do not apply, would be to make references
4 explicitly available for the purpose of creating
5 opportunities for those members of our society
6 who have not, as a matter of fact, had equal
7 opportunity for physical, intellectual and
8 social development. Explicit preferences, not
9 the game that we currently play where
10 preferences are disguised, ought to be available
11 to offer education and training and entry level
12 opportunities into the workplace for people of
13 either sex or any race who are attempting to
14 overcome economic or other disadvantages.
15 Clearly, however, based upon current
16 demographics the primary recipients of such
17 preferences, however, ought to be people of
18 color and of more open standard as to who is
19 entitled to affirmative action should be not be
20 used as an excuse to limit those opportunities
21 that need to be made available to women and
22 people of color. After offering individuals a
23 leg up and a genuinely fair start, however,
24 there should be no place for extending
25 preferences and filling higher level positions

1 within organizations or awarding government
2 contracts.

3 Second is a fact of life that employers
4 that reach out to hire people from the most
5 disadvantaged groups in our society assume risks
6 that other employers do not face. Individuals
7 from such groups which are often meant from
8 communities of color will often lack critical
9 basic skills with regard to, for example,
10 reading, writing and arithmetic. They may lack
11 thinking skills such as the ability to think
12 creatively or make decisions or solve problems.
13 And they may exhibit deficiencies with regard to
14 certain personal qualities, such as displaying
15 responsibility, self-esteem, sociability, self-
16 management, integrity or even honesty.
17 Employees that hire individuals with such
18 deficiencies or histories of such deficiencies
19 are going to have higher turnover. That's a
20 fact of life. And it's also a fact of life that
21 employers are often afraid to demote or deny
22 promotions to or discharge an employee who is a
23 member of a -- of a protected class because
24 anytime a protected class employee is subjected
25 to an adverse action our laws and the legal

1 system create a significant risk that it will
2 lead to expensive and disruptive litigation. I
3 am personally aware of situations where minority
4 employees have been retained under circumstances
5 where a white male would have been discharged.
6 As part of the solution to this problem, the law
7 must recognize that employers who reach out to
8 individuals with limited work experience or who
9 are trying to overcome certain disadvantages are
10 going to have greater turnover in their work
11 force and that such employers need to be
12 protected from claims of desperate impact
13 discrimination. Moreover, there is a need to
14 generally reform our system for processing and
15 resolving discrimination claims and to limit
16 damages that can arise from such claims.

17 The third fact of life is that very
18 difficult issues arise as to the extent to which
19 minority businesses can and should be allowed to
20 preferentially hire and advance minority
21 employees or contract with other minority
22 businesses. The fact is that historically many
23 immigrant groups succeeded in this country by
24 living and working together, by giving
25 preferences to individuals from within their own

1 communities and thereby over the course of one
2 or more generations acquiring significant
3 economic and political power. Arguably real
4 assimilation of these immigrant groups into
5 American society began only after such economic
6 and political power had been acquired.
7 Unfortunately a variety of social and historical
8 factors made it very difficult if not impossible
9 for certain minority communities, particularly
10 the African American community, to acquire
11 significant economic and political power in this
12 manner and far more difficult for such
13 communities to assimilate into the larger
14 American society.

15 We now face very difficult questions
16 arising out of the tension between our professed
17 desire to become a colorblind society and, one,
18 the fact that people are often most motivated to
19 help and to help to advance people who come from
20 backgrounds similar to their own and, two, the
21 fact that such help between and among
22 individuals within a common community is often
23 the most effective way to improve that
24 community's political, economic and social
25 position in the greater society.

1 Now, I don't have a particular answer to
2 this third fact of life, but I do believe that
3 it can't be ignored. And I also believe that
4 this fact of life helps to illustrate a basic
5 fact. Programs of affirmative action employment
6 represent an opportunity at most to create only
7 incremental improvements in our society. The
8 real significance of affirmative action arises
9 only when it is part of a greater effort to deal
10 with a variety of elemental social problems.
11 Such problems include the absence of developed
12 economies within certain communities, the
13 absence of equal education opportunities and
14 many other factors which together work to
15 deprive many individuals within our society of
16 equal opportunity to grow economically, socially
17 and spiritually. Workplace affirmative action
18 programs are of little value in the absence of
19 effective programs to increase the availability
20 of qualified women and people of color in the
21 work force.

22 Finally, in the end the greatest possible
23 contribution that the government and agencies
24 such as OFCCP can make may be the provision of
25 both moral leadership and practical support to

1 businesses, education institutions and community
2 groups. Unfortunately the moral force which can
3 be brought to this mission is something that
4 governmental agencies, including OFCCP and many
5 state agencies squander on a daily basis. The
6 moral force of the executive order and the
7 ability of the federal government to provide
8 leadership in the area of affirmative action is
9 diminished every time a business is forced to
10 engage in unnecessary, expensive and time
11 consuming bureaucratic tasks. And many of the
12 technical requirements posed by the Department
13 of Labor's regulations implementing Executive
14 Order 11246 fall exactly into this category.
15 The moral force of executive order is further
16 diminished every time a compliance officer or
17 other help representative of OFCCP or a state
18 agency tells an employer that it has to do
19 something because it is technically required,
20 but that the required action is really of no
21 consequence. The moral force of OFCCP's mission
22 and other agencies missions are diminished over
23 and over again every day all over the country by
24 these and similar acts.

25 In addition, OFCCP's ability to provide

1 effective leadership and to find itself welcomed
2 by business is severely undermined by the fact
3 that businesses have no choice but to protect
4 themselves against the possibility of OFCCP
5 seeking to impose remedies or sanctions against
6 them. By putting so much emphasis upon finding
7 discrimination and obtaining remedies for
8 employees, instead of what should be its main
9 mission of promoting affirmative action, OFCCP
10 makes employers necessarily defensive.

11 In closing -- and I know that I'm -- I've
12 run a little long. It's my experience that
13 employers are constantly faced with difficult
14 decisions regarding employees in which all the
15 employer wants to do is what is right from a
16 business standpoint and from an ethical
17 standpoint. OFCCP or some other governmental
18 agency ought to be able to assist employers with
19 such decisions. And when that agency's advice
20 is followed -- ought to be able to provide
21 employers with a safe harbor immunizing them
22 from or at least limiting their liability under
23 state and federal antidiscrimination laws.

24 If OFCCP or some other agency would stop
25 seeking monetary damages with perhaps the

1 exception for truly egregious cases and instead
2 focus upon reviewing current practices and
3 offering assistance to avoid future problems,
4 such an agency might find itself becoming very
5 valuable to business and to society, indeed.

6 In conclusion, I think business employers
7 recognize the value of affirmative action, but
8 face very real difficulties in trying to
9 navigate the laws relating to affirmative action
10 and discrimination in this country as presently
11 constituted.

12 That ends my formal remarks. Thank you.

13 MR. WEINBLATT: Thank you.

14 Mr. Maitland?

15 MR. MAITLAND: Thank you very
16 much. My name is Ian Maitland. I'm a professor
17 of international business and business ethics at
18 the University of Minnesota. I'm very flattered
19 that the commission would be interested in my
20 views.

21 I claim no expertise in this area. And
22 I'm just a concerned citizen. I -- I do bring a
23 -- maybe an unusual perspective. As you can
24 tell from my accent, I was born not quite
25 overseas. I was born in Canada and raised in

1 Egypt, France, England and the United States. I
2 was raised in the United States, in part in New
3 Orleans, which is -- this was '58 through '62.
4 I paid visits to my father.

5 I -- I guess you could say I was born on
6 -- on third base. My father worked for the
7 British government as a diplomat and was counsel
8 general in New Orleans. And so at an early age
9 I had an opportunity to observe Jim Crow in
10 action. And it left a very lasting impression.

11 The -- I would like to say that in
12 addition to having lived abroad I'm married to a
13 Japanese and I'm the proud father of a
14 nine-year-old -- I suppose I have to call him my
15 racial kid, but I just think of him as -- as an
16 individual, my -- my son, Sandy, of whom I am
17 very proud.

18 I -- I -- I have been watching both from
19 over across the water and from the United States
20 with consternation, amazement, sometimes even
21 amusement America's attempt to grapple with the
22 issue of race. And like everyone my age, I --
23 my heart beat as one with the civil rights
24 movement. This was not just an American
25 movement. It was something that was being

1 followed by anyone who had a television set or
2 act -- or a newspaper around the world.

3 And I must say that when I finally
4 achieved my -- my -- my dream of coming to the
5 United States -- that was at the beginning of
6 1970s -- I was shocked to find that what I
7 thought had been the promise of civil rights act
8 -- and that was that we were going to try to
9 live in a colorblind society -- had been
10 replaced with a systematic program of emphasis
11 on our racial differences. Sometimes we called
12 them celebration of racial differences, but in
13 -- in any case, the -- the policies made race
14 and gender and national origin the basis for
15 differential treatment. No sooner had two
16 people stepped on campus -- in my case it was
17 Columbia University in New York -- but color
18 coded, we were pigeonholed, we were put in
19 certain boxes. And I suppose we were treated
20 differently accordingly.

21 I -- my concern is not so much with
22 affirmative action in what I thought was the
23 pristine sense of outreach. It is with policies
24 of racial and gender preference which I think
25 have greatly exacerbated racial and gender

1 tensions on campuses and further afield.

2 Let me -- let me say I -- I think that
3 race has become in any -- in many ways a -- more
4 salient than it used to be. Certainly the
5 debate has become more embittered, more shrill.
6 I look back on the '60s and '70s as a period
7 when there still seemed to be some optimism left
8 and still a feeling of -- of possibility of --
9 of interracial solidarity that I just don't
10 sense any longer. I think we've turned our back
11 on the colorblind idea that I thought was at the
12 heart of the civil rights movement.

13 Wanted to quote very quickly from Thurgood
14 Marshall's arguments before the supreme court in
15 Brown versus Board of Education. Thurgood
16 Marshall contended before the supreme court that
17 there was, in fact, no such thing as race.
18 There was -- and therefore there was no rational
19 basis for distinguishing between individuals
20 based on race. I've been challenged by some of
21 my friends on this issue, but that -- that
22 colorblind ideal is the one that I thought gave
23 this enormous moral authority, the moral high
24 ground to the civil rights movement.
25 Increasingly I see the civil rights movement as

1 yet another special interest in Washington, in
2 St. Paul with its -- with its tin cup out.

3 I'm -- I'm not only bothered by the
4 substance of the policy, but I'm bothered about
5 the way in which our policies of preference were
6 implemented. I -- I think these policies have
7 been of Vietnam War, of racial policy in the
8 United States. I think the war was undeclared.
9 I think the civil rights act clearly barred the
10 use of race and sex and perversely became the
11 basis for actions by courts, by bureaucrats in
12 implementing very far reaching policies of
13 treatment according to people's race. President
14 Clinton's call for a conversation about race I
15 -- I think we need a time out. Too often we've
16 had a long running conversation that has been
17 shrill, strident, finger pointing, more of a
18 shouting match.

19 One of our local columnists, Cybil Jones,
20 seems to think that the discussion about race is
21 a matter of sit down and listen. That is not a
22 discussion, it's not conversation. And the same
23 Cybil Jones referred to an earlier panelist here
24 today, Peter Bell, who supported Clarence
25 Thomas' nomination to the supreme court as -- I

1 think one of these is right -- a house nigger or
2 a good nigger. These are not the -- we cannot
3 conduct a reasonable conversation in a climate
4 that is that inflamed.

5 I think that our obsession with race has
6 prevented us coming to grips with very real
7 problems faced not just by black Americans, but
8 all Americans particularly faced with family
9 breakdown, kind -- crime and education.

10 Let me, in closing, say that
11 Ms. Chamberlin's testimony I had the opportunity
12 to hear referred to systemic exclusion. I find
13 it very difficult to grapple with this idea that
14 there's some invisible or systemic exclusion.
15 You can't identify specific cases, but we all
16 know it's there. It's like a sort of radon gas;
17 it's invisible, it's colorless, odorless and yet
18 it's poisonous. And it permeates everything we
19 do. I think if there's racism then we should be
20 able to identify it. It should be -- it should
21 be manifesting itself in specific practices or
22 actions or beliefs. And I -- I don't believe
23 the evidence is there that -- indeed, I think
24 it's at that -- very sorry stereotyping of the
25 great majority of Americans that we would jump

1 to this conclusion, that somehow all our -- that
2 all or most Americans' views are unconsciously
3 conditioned by racism.

4 If I may, Mr. Wilderson -- I don't know,
5 sir, if you are a colleague of -- of Mr. Frank
6 Wilderson at the University Minnesota, my
7 colleague there.

8 MR. WILDERSON: We're brothers.

9 MR. MAITLAND: You're brothers. I
10 see. Well, I'm very pleased to testify before
11 you.

12 You asked a question of Ms. Chamber --
13 Chamberlin, is opposition to affirmative action
14 the result of racism. I -- I devoutly believe
15 it isn't. I'm told that if I were to
16 investigate the deepest recesses of my psyche I
17 would find some racism lurking there, but I
18 haven't seen it, I haven't sensed it, I don't
19 know it, I don't believe it. It would take some
20 CAT scan, I suppose, maybe to convince me that
21 in spite of everything that I -- I think I
22 believe, that I'm really, really racist to my
23 views.

24 I believe the opposition to affirmative
25 action has fairly straightforward explanation.

1 And I'd like to refer you, this commission, if I
2 may, to a book. You may be familiar with Paul
3 Schneiderman and Paul Fiatsa of Stanford
4 University, The Scarlet Race. If you don't have
5 it, I'd be very happy -- I think it is so
6 important -- to buy a copy for -- for each of
7 you. He says -- the Schneiderman Fiatsa asks
8 the question whether -- this is a test, whether
9 a person who has lost his or her job is entitled
10 to government assistance in finding another
11 job. A conservative is more likely than a
12 liberal to oppose efforts to increase government
13 spending to assist blacks. That is a fact.
14 Conservatives, let me repeat, are more likely to
15 oppose help to blacks. But does it follow that
16 that is the result of racism? Schneiderman and
17 Fiatsa point out that after all conservatives
18 are more likely to oppose government spending,
19 period. That's what conservatism is, in large
20 part. The appropriate question then is -- and a
21 quite different one -- is a conservative more
22 likely to oppose increased spending on blacks
23 than on whites? And they -- they found in a
24 very sophisticated survey that the race of
25 potential beneficiary makes no difference to

1 white liberals. Those white liberals are more
2 sympathetic to the claims of white men -- of
3 white women. Sorry about that. Less
4 sympathetic to the claims of white men compared
5 to identically situated white women. But in the
6 case of race conservatives are more likely to
7 favor government help for a black man than for a
8 white. This is just one finding. I don't
9 presume to imply that, for instance, it is
10 proof, but I think we need a much more fine
11 grained, sensitive way of measuring these things
12 instead of these reckless broad stroke
13 imputations of racism.

14 I'm sorry for having run on so long.

15 MR. WEINBLATT: Thank you.

16 Members of the committee?

17 If I may then, is it your view,
18 Mr. Maitland, that there is not currently
19 discrimination in employment based upon race?

20 MR. MAITLAND: No, it is not my
21 view. This is a very big country. It's a big
22 state. And I work in a big university. And
23 there is everything -- bad, good and indifferent
24 is there. But is racism the explanation for
25 major disparities in criminal sense --

1 sentencing, job, award of Ph.D.'s? I do not
2 believe so. It may be a small contributory
3 factor, but I just don't believe it's this
4 pervasive, all-purpose explanation of all of the
5 differences that we observe out there.

6 MR. WEINBLATT: Then to follow
7 through with -- with your answer for it in just
8 a moment, what alternatives would you suggest to
9 all -- to affirmative action as a means for
10 correcting that degree of racial discrimination
11 which you do believe exists?

12 MR. MAITLAND: I -- I am -- I am a
13 very strong believer in very strictly enforcing
14 antidiscrimination laws and punishing
15 established cases of discrimination. Do I
16 believe that's enough? Probably not. The law
17 is a very blunt instrument. I believe that I --
18 I do not accept the view that we can simply
19 shift to a policy of preference based on
20 socioeconomic status, but I think that -- that
21 may be part of a solution. I think that if
22 given my advantages in life, a -- a -- an
23 African American were to obtain -- were to
24 perform at the same level as me, and we were
25 both applying for a job, I would hire the

1 African American. And I think that would be
2 entirely acceptable. The reason for that is
3 that if someone has achieved the -- the same
4 results in those difficult adverse
5 circumstances, I think that is a very safe
6 predictor that that person can achieve
7 considerably more. So I think that our policies
8 can be much more sensitive. I -- what I do
9 think is that government cannot be the solution
10 because government can only establish, I think,
11 fairly broad-based policies that are -- that
12 cannot possibly be sensitive to these fine
13 distinctions.

14 And I said I rejected the view that --
15 that white Americans are steeped in racism. I
16 came to America from overseas. I'd like --
17 Professor Orlando Patterson of Columbia
18 University a while back said that he considered
19 the United States probably one of the least
20 racist societies in the world. I think I would
21 probably endorse that. I really believe that
22 there is a huge fund of good will among white
23 Americans. And that if government were to back
24 off, we would see a wide range of creative,
25 imaginative solutions by white Americans and by

1 black Americans to this problem. I don't
2 believe the present regime of litigation and
3 harassment by OFCCP and others is the way to go.

4 MR. WEINBLATT: Just to follow
5 through that one more -- in one more aspect. Do
6 you hold the same views with respect to the --
7 what might be argued to be a -- a special
8 treatment under the veteran's preference laws?

9 MR. MAITLAND: I believe -- I --
10 I, who am a three-time loser -- I ran for United
11 States Congress in St. Paul three times and I
12 lost three times. And my position is
13 consistent. I'm against preferences. There are
14 -- where people have served, put their lives on
15 the line for me, whereby not -- not as a result
16 of some ascribed status, but because of
17 something they have done that is exceptional or
18 extraordinary from which I benefit -- benefited,
19 I have no problem with some sort of preference
20 there, though I think it should be very
21 sensitively handled.

22 MR. WILDERSON: This is another
23 one of my grappling questions, but I'm going to
24 grapple with Mr. Goldstein on this one.

25 I -- I said earlier this morning to one of

1 the other panel members that I -- I felt that
2 with -- with white males it was a very strong
3 opposition to affirmative action. And part of
4 that is because a lot of white males owned the
5 business and head of institutions and things of
6 this nature. But as this conversation today has
7 unfolded, it also appeared to me that there
8 might be a -- a different view of the meaning of
9 affirmative action between Caucasians and
10 certainly maybe African Americans because from a
11 lot of what your comments seems to focus on,
12 that from your clients and the frustration that
13 they are seeing -- was that it's -- and the
14 group that you've described about the less
15 educated, those that didn't come to work and all
16 of what that meant for that. It appears to me
17 that -- that you were saying that affirmative
18 action is to give a break to less qualified
19 people. My sense is that from a lot of African
20 Americans, what they are saying is that those of
21 us who are qualified want the opportunity to
22 work. And I'm just wondering that -- at that --
23 it's -- I'm afraid that kind of unfolds in
24 different kinds of ways because I'm still
25 struggling with where is this dichotomy.

1 What is it between affirmative action and
2 -- and why is there such -- I don't know --
3 backlash or such opposition to this because as
4 -- as I said, in -- in my mind, I'm thinking
5 about Xavier University in New Orleans, who has
6 one of the best pharmacists programs in the
7 whole United States. And I see all these
8 pharmacists who don't have any African Americans
9 not going down there to get any. So I am just
10 wondering what to think. But it seems -- I'm
11 coming back to the point -- that it appears from
12 the clients that you're working with is that
13 their fear is that -- is that we are --
14 affirmative action is asking them to take less
15 qualified people. And I think for a lot of
16 African Americans -- is saying that there are a
17 lot of qualified people who can't get a job.

18 MR. GOLDSTEIN: I am lucky enough,
19 privileged enough to spend most of my practice
20 with clients that have genuine commitments to
21 equal employment opportunity and to voluntary
22 affirmative action programs beyond whatever it
23 is that's required under federal law. So I -- I
24 largely am dealing with clients that would like
25 to have a diverse workplace and look very

1 favorably upon applications from qualified
2 minorities. The fact of life, to again come
3 back to facts of life, is that it is often
4 difficult to find candidates for positions who
5 are minorities and who are qualified to the same
6 degree that you can find a -- a white male
7 candidate, particularly in my experience in the
8 Minneapolis/St. Paul area where demographics are
9 changing. But the change has been recent enough
10 that it -- it's still -- the available work
11 force is not always there.

12 And -- and I could talk from my personal
13 experience with regard to my own law firm's
14 affirmative action program where we recruit at
15 -- extensively at colleges on both coasts and
16 in the south and go to minority job fairs and
17 have difficulty attracting minority candidates
18 who are very well qualified to look seriously at
19 this community. We -- we've done fairly well.
20 I'm proud of my own firm's affirmative action
21 efforts. And our own firm views its affirmative
22 action efforts not as hiring people who are less
23 qualified, but views its efforts as reaching out
24 and trying to attract poor candidates who are
25 equally qualified.

1 And I think the lawyers who succeed in my
2 firm and at many other places who are people of
3 color or women do succeed because of their own
4 merits and because they are equally qualified,
5 not because they have been given a hand up.

6 MR. WEINBLATT: But they have been
7 given a hand up.

8 MR. GOLDSTEIN: They have not been
9 given a hand up.

10 MR. WEINBLATT: By -- by your
11 search for them.

12 MR. GOLDSTEIN: I -- I think given
13 how, you know, my -- in my line of business,
14 human capital is -- is your stock in trade. And
15 reaching out to find people who represent a good
16 investment in human capital is not reaching
17 out. That's being smart. So I -- I don't think
18 that's a fair assessment of the program. The
19 problem is I don't think that's enough. I -- I
20 think you have to live with the demographics
21 that you're given and then see what you can do
22 to do better. And for historical and other
23 reasons, I think it is clear that people of
24 color, more often than not, start with
25 disadvantages in our society. And the people

1 who start with those disadvantages need to be
2 given a fair shot. And I think our very social
3 fabric depends upon giving them that fair shot
4 because the -- the idea that we are all created
5 equal, which I take to mean we were all given
6 equal opportunities at birth, is clearly not a
7 -- a truth in our current society. And we
8 ignore that disparity at our peril.

9 MR. WEINBLATT: If I may,
10 Mr. Goldstein, just one other thing that sort of
11 intrigues me. You said that you were fortunate
12 enough to represent businesses and agencies that
13 have voluntary affirmative action programs. Can
14 you give us just some examples of those kind of
15 voluntary programs.

16 MS. LOPEZ: Actions.

17 MR. WEINBLATT: Or actions.

18 MR. GOLDSTEIN: I -- I -- I think
19 most of them -- and not many of these are
20 inconsistent necessarily with OFCCP required
21 programs, but mentoring programs, in-house
22 training opportunities, newsletters, employee
23 committees, training programs, opportunities to
24 get college training or do other things like
25 that are -- are the most typical types of

1 programs. Certainly -- and many of these are
2 the types of things that OFCCP would recommend
3 or -- or publicize, but many of these are also
4 implemented by companies that are not federal
5 contractors. I think this is less true now than
6 it was a decade ago. But when I first started
7 practicing in this area and was being mentored
8 by -- by someone who had been practicing since
9 the mid '60s and the origin of the executive
10 order, it used to be that many affirmative
11 action practitioners had the mindset that we
12 have one program where we do what is necessary
13 to satisfy the bureaucrats and we do the minimum
14 amount in that program. And then we have our
15 own programs where we try to actually accomplish
16 something. And we try not to make commitments
17 to the bureaucracy because if we don't make --
18 if we don't succeed, we don't want to be
19 criticized by them or sanctioned by them, but
20 that we do these additional things.

21 I'm very pleased to say that at least from
22 OFCCP I see a -- a great change in their focus
23 at least at the national level. I have seen it
24 here at the -- at the local level now, but it
25 still varies from compliance officer to

1 compliance officer. But I see less of that,
2 where people have their secret program to do
3 what they hope to do, and their public program
4 to make sure they don't lose government
5 contractual.

6 MR. WEINBLATT: Thank you both
7 very much for your presentation.

8 MR. MAITLAND: Thank you very
9 much.

10 MR. GOLDSTEIN: Thank you.

11 (Discussion off the record.)

12 MR. MINARIK: Mr. Young, Mr. Mgeni.
13 Thank you, gentlemen.

14 MR. WEINBLATT: Our two panel
15 members at this time are Yusef Mgeni, of the
16 Urban Coalition, and Steve Young, on behalf of
17 Personnel Decisions International.

18 Mr. Young, since you have served as a
19 member of the State Advisory Committee before, I
20 think we'll give Yusef a chance to go first.

21 MR. MGENI: I prefer to go last.

22 MR. WEINBLATT: Then have at it,
23 Steve.

24 MR. YOUNG: Well, thank you very
25 much, Mr. Chair and ladies and gentlemen and

1 members of the panel.

2 I'm really going to get into it with Yusef
3 since he gets to hear everything I have to say
4 before he shares his thoughts with you.

5 First, Mr. Chair, for the record I would
6 like to comment that I -- I now work for
7 Personnel Decisions International, but the
8 thoughts and remarks that -- that I want to give
9 and -- and the conversation and exchange with
10 the committee are entirely my own. Perhaps
11 there would be no one who won't even take
12 responsibility for what I think or what I have
13 to say.

14 For this committee I would like to venture
15 into some controversial waters, if I may. And I
16 would like to raise before this group what in my
17 mind had been growing in very profound concerns
18 about affirmative action and thoughts and a
19 belief that I would say affirmative action is
20 not good for our society, for any American.

21 But in -- in trying to put some thoughts
22 before you and then explaining them and
23 defending them, let me begin by mentioning five
24 assumptions which I just want to make. And then
25 I want to go on and make some other points.

1 First of all, I assume a legal structure
2 against discrimination which is in place and
3 which is effective, which works for all -- a
4 legal structure. And I am contemplating, when I
5 talk about our national discussion, which our
6 president, of course, has now moved to the
7 forefront with his speech on Saturday about
8 affirmative action, as something which is
9 separate from and apart from the legal structure
10 of laws which protect all Americans against
11 discrimination based on religion, race, gender
12 and other matters.

13 Secondly, we are in this discussion about
14 32 years after this legal structure was put in
15 place to end segregation. And segregation was a
16 follow-on system to slavery. I fear that many
17 of us in 1997 are trapped in old thinking, both
18 whites and -- minorities from different
19 backgrounds. We are still prisoners of the
20 past. We are prisoners of an unhappy past which
21 goes back to slavery which includes segregation
22 and which includes, in my -- in my estimation,
23 an ineffective approach to the problems first
24 created by slavery through welfare and
25 affirmative action.

1 Fourth, we must as a society confront what
2 I -- what I would like to talk about and -- and
3 whether it's the most comfortable way to talk
4 about it I don't know. I believe we have to
5 talk about it in the open. We have to confront
6 as a society and resolve very quickly the
7 consequences of slavery for certain Americans.
8 It is a blot on the history. It is something we
9 must deal with. And we shouldn't deal with it
10 indirectly or by observations or ignorance, so
11 just deal with it.

12 Fifth, there's another example of how
13 different kinds of groups with -- with different
14 pasts can establish access to the heights of --
15 of power and money. And I would submit that
16 that's the Singapore example, which I would
17 consider a -- a -- a procedure to move by
18 meritocracy rather by -- than by affirmative
19 action. And -- and it is my assumption that
20 under the Singapore example there is no doubt
21 about the individuals who reached the top of
22 society from whatever background, whether it is
23 Malay or Indian or Chinese. There is no doubt
24 about their abilities to succeed at, you know,
25 the most important positions or the most highly

1 paid positions.

2 Now, some thoughts about affirmative
3 action. I'll just sort of go through a number
4 of thoughts in -- in highlight form.

5 First of all, it was my feeling then, it
6 is my feeling now that affirmative action was an
7 appropriate policy to adopt in 1965 to assist
8 African Americans disadvantaged by slavery and
9 segregation, to help them take robust advantage
10 of the civil rights and voting acts of 1964 and
11 1965. And I believe in retrospect that
12 affirmative action should have been phased out
13 as African Americans took advantage of new legal
14 rights and powers and consequent social and
15 economic opportunities.

16 Second: I do not believe there is a
17 compelling case that affirmative action is a
18 necessarily remedy for any new immigrant group
19 to America from Asia, Africa or Latin America.
20 The immigrant experience from the Irish to the
21 Jews to Indochinese refugees has been and is
22 very different from the nonimmigrant experience
23 which I say as an outsider was imposed on
24 African Americans. Nor is it to me intuitively
25 compelling to give white women advantages of

1 affirmative action after 1970 as American social
2 values and morals changed to accommodate and
3 value women frankly as economic workers linked
4 to society through the infamous cash nexus,
5 excoriated by Marx and Engels in addition to
6 ancient social roles for women of wives and
7 mothers.

8 Fourth: Affirmative action as a permanent
9 social cultural political norm and economic
10 policy contains a bias towards something that I
11 believe to be immoral. It creates and imposes
12 group identity as the relevant human
13 characteristic, not individual characteristics
14 and traits. And under most moral theories that
15 I'm familiar with, whether they are Christian or
16 Buddhist or Thomas Aquinas or Immanuel Kant, it
17 is the unique individual distinctions and
18 differences which provide ultimate value for
19 human beings; not our status as members of a
20 group, but who we are as individuals.

21 Affirmative action, therefore, conflicts
22 with the demands of individualism. Further,
23 moral theory makes individuals responsible for
24 their actions. Liability, in particular, is not
25 to be imposed on a person as a consequence of

1 his or her group membership. That is what was
2 wrong with racism and wrong with segregation and
3 wrong with Hitler's policy of genocide.

4 Five: Raising Young Americans according
5 to racial categories for affirmative action
6 purposes breeds, I believe, in the situation of
7 my own family, a psychology of victimization.
8 This hurts people because it undermines their
9 capacity for self-actualization.

10 Six: Raising Americans in racial
11 categories for affirmative action purposes has,
12 from time to time, pitted, I believe, African
13 Americans against Hispanics and Asians for
14 status as a preferred victim group and therefore
15 to benefit from particular programs and points
16 of view. I think this is and has been
17 divisive. I think it prevents us from coming
18 together in mutual respect to solve our most
19 significant problems.

20 Seven: The premise that I hear many
21 people use to support affirmative action in 1997
22 assumes that white Americans have a permanent
23 racist bend somehow in their genetic makeup.
24 But quite frankly, as I hope I am a reasonably
25 authentic white person, I find this to be both

1 fiction and a slander for many, many white
2 people. Never-ending white guilt is presupposed
3 in order to justify differential treatment for
4 nonwhites. Now, if we step back a second, no
5 lasting good ever comes from using guilt to
6 force conforming behavior on others. If, for
7 example, we want whites to behave in particular
8 ways, vis-a-vis nonwhites, what's the best way
9 to do it? Put them on a guilt trip or doing
10 something else? Guilt tripping our children to
11 secure their obedience is not recommended. In
12 our private lives we spend how much money each
13 year to overcome the effects of our own
14 parentally imposed guilts and neurosis and
15 things like that. Why therefore should we base
16 social policy and national well-being on similar
17 and equally suspect psychology when we could
18 have alternatives.

19 Eighth and finally: To ensure equality of
20 opportunity for all Americans and to increase
21 the odds that all Americans will experience
22 socioeconomic ease we should replace affirmative
23 action with, one, disciplined education for
24 excellence and, two, economic empowerment
25 through privatized Social Security accounts and

1 medical savings accounts.

2 Thank you, Mr. Chair.

3 MR. MGENI: May I have the mic,
4 please. Thank you.

5 Good afternoon. Steve and I were on
6 Minnesota Public Radio last week debating the
7 merits and substance of the President's year-
8 long dialogue of race relations. And I'm not
9 sure whether to feel like Morgan Freeman when he
10 appeared before the parole board for the final
11 time or Dan Ackroyd when he and Jane were doing
12 the news on Saturday Night live. So let me
13 begin by saying, Steve, you slut you.

14 MR. YOUNG: Oh, well.

15 MR. MGENI: You looked tired. I
16 thought I'd brighten your day.

17 As a reasonably authentic white person,
18 Steve, I'm sure you won't mind if I speak for
19 both of us. I do not understand --

20 MR. YOUNG: Now that depends,
21 Yusef, on what you're going to say and --

22 MR. MGENI: We began with equal
23 employment opportunities in the 1950s and 1960s
24 which essentially meant we're going to be fair,
25 we're going to put the little dye cast on our

1 letterhead and everyone will have the same
2 opportunity. And people sat around on their
3 thumbs, waiting for the character of the
4 workplace and the subcontracting and the like to
5 change. And very little happened.

6 We next graduated in the late '60s and
7 early 1970s to affirmative action, which meant
8 that we will perform outreach, we will publicize
9 our policies and we will ensure that the pool of
10 candidates who apply for positions for
11 management, for promotions, for real estate
12 openings, for other opportunities reflects our
13 constituency, reflects the population. And we
14 will affirmatively seek to ensure that we have a
15 good balance of applicants from a cross-section
16 of backgrounds who apply for these positions.
17 Then around the time of President Reagan's
18 tenure affirmative action became a dirty word
19 about the time that ketchup became vegetables.
20 We started hearing about reverse sexism and
21 reverse discrimination, which to me seemed like
22 the head of the Fortune 500 companies marching
23 down the middle of the street, beating
24 themselves with belt buckles. I've never seen
25 sexism or discrimination going anywhere but

1 forward and in high gear. And if one of you
2 esteemed panelist should happen to see it going
3 in reverse, please call me. I'd like to be
4 there for that historic occasion.

5 We are now in the midst of something that
6 is phasing out, called diversity. And Yusef's
7 grandma says anytime something means everything,
8 it don't mean nothing. There are no standards,
9 no laws, no benchmarks, no performance
10 measures. It's something we celebrate, it's
11 something we apologize for and I'm not sure what
12 it means. In fact, if you ask a half dozen
13 individuals, you're sure to come up with at
14 least 18 different definitions of the subject.

15 Let me back up for just a minute. My
16 understanding of history and of law suggests
17 that equal employment opportunity is the letter
18 of the law and that affirmative action is the
19 spirit of the law. The only time that goals,
20 quotas, time tables and other ills of so-called
21 affirmative action are present is as a remedy
22 for documented discrimination as imposed by a
23 court. Affirmative action does not mean goals,
24 quotas or time tables. Yet today on talk radio,
25 which, would you believe, shapes the forefront

1 of public opinion -- ought to be the hood
2 ornament for a garbage truck.

3 We're attacking affirmative action, the
4 spirit of the law, in a fairly disguised attempt
5 to eliminate the letter of the law. What we are
6 not looking at is the political reality of our
7 country, the social location of affirmative
8 action on the dawn of the 21st century.

9 When members of the majority culture are
10 asked what affirmative action is they say it's
11 an uneven playing field, they say that it
12 rewards incompetence, malcontents and provides
13 employment and other economic opportunities
14 primarily or exclusively on the basis of race,
15 gender, physical disability or other
16 characteristics of protected class group
17 members.

18 When that same question is asked of
19 representatives of protected class groups the
20 definition of affirmative action is one of
21 ensuring that there is an environment with zero
22 tolerance for discrimination. So on the one
23 hand it means nondiscrimination. On the other
24 hand, to many very well-intentioned Americans,
25 it means just the opposite, it means

1 discrimination. So we clearly have more than a
2 communications breach.

3 The subtext for this discussion on
4 affirmative action is tinged with the three
5 triplets; race, gender and class. And race was
6 clearly the engine that brought the civil rights
7 movement out of the dark ages of history. Along
8 with it the passenger cars of age, sex, gender
9 and other forms of discrimination. I'd like to
10 talk about these three; race, gender and class,
11 because I think the subtext is where we have
12 failed to connect the dots.

13 Let me just say a bit about the community
14 in which these hearings are located. I will
15 forgive the very tacky decor of the hotel
16 itself.

17 The Twin Cities is home to the highest
18 percentage of poor people of color below the
19 poverty line of the 25 largest urban
20 metropolitan areas in the United States, 43.7
21 percent. If you look beyond the Twin Cities, at
22 the metropolitan statistical area, each of the
23 contiguous counties with a population of 50,000
24 or more -- that's an 11-county area that extends
25 40 miles east into western Wisconsin, south to

1 Rochester, north to St. Cloud, almost to the
2 center of the state and west almost to
3 Hutchinson, Minnesota. We wind up with 33
4 percent of the inhabitants of communities of
5 color being below the poverty line, which is the
6 third poorest metropolitan region of the 25
7 largest regions in the United States.

8 Contrary to what Mr. Young says, if you
9 look at recent Southeast Asia immigrants, we
10 have the highest percentage below the poverty
11 line for any metropolitan region or urban
12 metropolitan area in the United States. In
13 reality, Lake Wobegon is getting a tan. It is
14 indeed a tail of two cities because if you're
15 poor, if you're a person of color, if you're a
16 female, 80 percent of the affordable housing is
17 located in the core of Minneapolis and St. Paul
18 and the first tier of suburbs. If you rely on
19 public transportation to get to a living wage
20 job you'll find that you can get a job here at
21 the Mall of America. There are some good jobs
22 there. I have a friend that has two of them
23 because that's what's required if you rely on
24 public transportation to provide for your
25 family.

1 We look at public education where we now
2 have a minority majority. They tell me it's the
3 new math. We're still minorities, but we happen
4 to be the majority of representatives in the
5 public school systems of Minneapolis and
6 St. Paul. We have dropout rates that exceed the
7 national average suspension, concentrated
8 poverty, persistent poverty where families
9 remain below the poverty level for at least
10 eight of the last ten years and exceed all of
11 the national negative characteristics.

12 So if we're talking about affirmative
13 action, first of all we have a responsibility to
14 talk about what it is. The spirit of the law.

15 We have an obligation to frame this
16 dialogue and this discussion in a mutually
17 beneficial context so that it is not perceived
18 as benefiting one group of protected class
19 members at the expense of the majority culture.

20 We have a responsibility to ensure that
21 affirmative action deals with systemic issues,
22 that it operates across generations and that the
23 public dialogue on it is honest and one in which
24 people are held accountable.

25 Do I need affirmative action? Sometimes

1 yes, sometimes no. I need to be ensured that I
2 will not face undo prosecution in the criminal
3 justice system or from law enforcement
4 authorities because of where I live or what type
5 of car I drive. I need to be ensured that if I
6 do decide to pursue an occupation or open
7 housing or other public accommodations, that I
8 have the same access to it that any other
9 individual has. Not a greater access or more
10 benefits at the expense of anyone else, just a
11 level playing field. Just the assurance that
12 nondiscrimination will be a requirement, that it
13 will be the order of the land and that there
14 will be consequences for those who step across
15 the boundary and do provide preferential
16 treatment, who do deny access to opportunities
17 and who do impose limitations on my or anyone
18 else's ability to achieve their maximum human
19 potential.

20 Now, I don't prefer to see that as rugged
21 individualism. I don't prefer to see that as
22 preferential treatment. I honestly do not
23 believe that we have reached a state of -- state
24 of total unconsciousness which would be required
25 in order for it, in 1997, to no longer be

1 necessary. But then if I sound pessimistic it's
2 because I'm an optimist with 48 years of
3 experience. And I believe that we still have a
4 tremendous amount of work to do. Rather than
5 bore you with additional statistics, I think it
6 was Des Wailey or Mark Twain who said there are
7 two different kinds of statistics. There's
8 lies, damn lies, and statistics.

9 I'd rather allow some opportunity for
10 dialogue at the risk of your going to sleep and
11 would be happy to respond to any questions that
12 you have to the remarks which I have shared with
13 you or any constructive criticisms or answers if
14 you feel you have them to some of the questions
15 that I've raised before you.

16 The organization that I represent is the
17 Urban Coalition. It is a public policy research
18 and advocacy organization that works with low
19 income communities and communities of color
20 throughout the state of Minnesota, but primarily
21 in the Twin Cities. We work in the areas of
22 health, which we define as the intersection
23 between access, quality and affordability, K-12
24 imposed secondary education, the elimination of
25 hunger and poverty, the evolution of welfare

1 reform, technical assistance, capacity building
2 and last, but not least, issues of race. And
3 there is, indeed, still a great deal of work to
4 be done to make a measurable improvement in the
5 quality of lives of all of the citizens in our
6 community. I trust that the result of your
7 deliberations will contribute to the body of
8 knowledge on that subject and that we will be
9 able to bless it by the use we put it to.

10 Thanks very much.

11 MR. WEINBLATT: Thank you both.

12 Members of the Advisory Committee? John?

13 MR. MORROW: Mr. Young, thank you,
14 first of all, for sharing your perspectives.

15 You made mention of the fact that -- of
16 the guilt factor being a -- impetus for the
17 creation of affirmative action. Would you say
18 now that maybe the growing opposition to
19 affirmative action is somehow a manifestation of
20 a growing comfort that America has now redeemed
21 itself?

22 MR. YOUNG: That strikes me as a
23 very important question. And I only have a few
24 sort of observations. One of the reasons I
25 wanted to raise this perspective of guilt or not

1 guilt on the part of whites is because -- just
2 to get it out in the open. Because I hear,
3 among a lot of whites who don't want to speak
4 about it publicly because someone will say,
5 well, you're racist or you're insensitive or
6 something like that, it -- it's -- it's sort of
7 an emotional part of where they live. They
8 don't feel guilty. They, themselves -- they
9 were born in 1952 or they were born in 1930 or
10 something. And they don't feel guilty. And
11 when they see what they interpret or what they
12 hear is public policies and the society and a
13 political process and cultural process and media
14 process which tends to root things on somehow --
15 you know, all you folks are guilty, therefore
16 we've got to do this. There's a -- there's a
17 resistance and alienation that's growing and a
18 rejection of that. What I think that's doing
19 politically is feeding the opposition to
20 affirmative action. And -- and in certain cases
21 I hear it's feeding more than that. It's -- you
22 hear this phrase. We heard it after the riots
23 in Los Angeles and quietly here and there and --
24 you know, 30 years and \$4 trillion pays down a
25 lot of guilt. Now, when a lot -- lot of white

1 people are starting to talk about that under
2 their breath among themselves. This is leading
3 to more divisions among us. It's not a healthy
4 situation at all.

5 Redemption. As an observer, I mean,
6 without, you know, talking to lots of people,
7 without -- without doing surveys, I -- I think
8 the -- this new community we've created since
9 the 1970s which is called white -- I mean,
10 another thing that I try to point out with my
11 kids and with others is that there never was a
12 category called white. This is a social
13 creation of the affirmative action program, the
14 categories. And when I was growing up as a kid
15 there was no category of white. I mean, there
16 were Irish and Germans and Italians and
17 Norwegians. And -- and they didn't like each
18 other. I mean, you know, I grew up out east
19 and, you know, the Italian Catholic mothers
20 would not send their kids to the Irish Catholic
21 church. A Catholic is a Catholic. They are all
22 Christians. No, no. That's Irish. I mean, you
23 know, we've come a long way. We've created this
24 category called white. And -- and my sense is
25 there are a lot of so-called whites who sort of

1 say something happened back then, particularly
2 with slavery and also, by the way, with Native
3 American peoples. But it was sort of -- back
4 then it was the 19th century and some white
5 people did some good things, a lot of white
6 people did some bad things, but, hey, I wasn't
7 alive, I wasn't around. In fact, my ancestors
8 came in 1902, so I have -- I got no connection
9 with that. So I'm just not going to kind of get
10 emotionally involved in whether America needs to
11 be redeemed or is redeemed or how it gets
12 redeemed or something like that. Then I put on
13 my own hat. I say I am whoever I am and, you
14 know, frankly I think I'm a good person, you
15 know. And I try to be a good, moral American in
16 today and after the civil rights movement and
17 raise my kids to respect everybody. And there
18 are people from many different backgrounds who
19 go to my kid's school and maybe live in my
20 neighborhood. I pay my taxes. I may grumble,
21 but I think basically I'm a good person caring
22 my weight. And I would like to see sort of
23 everybody, you know -- the phrase is everybody
24 get in the boat rowing rather than, you know,
25 somebody outside.

1 So I think it's a complicated situation.
2 But my suggestion to the committee is that we
3 need to surface a conversation on this because
4 there's a lot of feelings and anger all over the
5 place which are not being surfaced. And my
6 feeling is -- and in an open democratic
7 political system when you bury and repress
8 strong feelings, you're going to get
9 dysfunctional results somewhere down the road.

10 MR. MORROW: Thank you.

11 MR. MGENI: Would you like me to
12 respond to a reasonably authentic white people?
13 I thought you'd never ask.

14 Up until 10 years ago the US Department of
15 Labor listed 447 occupational categories. And
16 80 percent of the females in the work force were
17 restricted to just 10 of those 447 occupations
18 at about the time Mr. Young was entering and
19 graduating from law school. Today Mr. Young
20 lives in a reasonably affluent, fairly white
21 suburb of the Twin Cities. Now, I'm not
22 suggesting that Mr. Young take off his belt and
23 beat himself with the buckle before this panel,
24 but it would be naive not to acknowledge that
25 because of male privilege, because of denied

1 access that women had to law schools at that
2 point in time, that my counterpart on this panel
3 does not enjoy some social status, some
4 benefits, some privilege as a consequence.
5 Likewise, from the restrictive covenants, from
6 the selective screening and from the limited
7 access to home mortgages in the community in
8 which he lives.

9 Rather than guilt, I think what's required
10 is acknowledgment and accountability. Yes, I
11 have benefited because I'm a male. Even an
12 African American male can acknowledge that.
13 Yes, we have done a lousy job. And unless
14 you're a test tube baby, you have some
15 relationship to the challenge of the oppression
16 and discrimination of women in our society.

17 Now, having acknowledged that I have been
18 a part of problem, how do we then become a part
19 of the solution? And I think that it is through
20 that acknowledgment that we move forward, rather
21 than through the denial, through the camouflage
22 of privilege and prior benefit, much of which
23 traveled across generations. To begin to look
24 at how do we then move together into the 21st
25 century. And I think people would be far more

1 willing to move forward with those who
2 acknowledge their privilege and their benefit
3 together than to further polarize different
4 parts of our community by denying any
5 responsibility for collective benefit.

6 MR. WEINBLATT: Steve, you
7 mentioned in your comments that you thought that
8 the concept of affirmative action was okay in
9 1965, but should have been phased out sometime
10 thereafter. Two questions flow in my mind from
11 that. How do you know when, and with what would
12 you replace affirmative action?

13 MR. YOUNG: It may -- it may be,
14 Mr. Chair, that we, as -- as humans, can never
15 answer the question of when with any precision.
16 And I think one of the things that we have
17 learned since the creation of the welfare state,
18 from the '30s to the '60s, that government and
19 regulation and collective decision making is a
20 blunt instrument and what we come up with is
21 approximations. So first of all I think we need
22 to say whatever we're going to do through --
23 through laws and regulations and public measures
24 and mechanisms is going to approximate.

25 You know, my sense is thinking about the

1 alternative or one alternative, to have focused
2 much more on the content of education, from
3 elementary school right on through from the mid
4 '60s on. So that there was much greater focus
5 on maybe technical skills, job skills, things
6 like that. We also simultaneously went into a
7 period starting in the -- of great cultural
8 change in the late '60s and '70s where we got
9 away from a lot more disciplined focus on
10 standards and achievements. I mean, I have been
11 speaking out recently. Said that the -- the
12 statistics which you said was very correctly
13 mentioned here in the -- in the Twin Cities, but
14 not only the -- the dropout rate, but the lack
15 of achievement in the public system is
16 criminal. I mean, it's criminal that we've had
17 30 years of people and, I dare say, being very
18 partisan for a second, mostly democrats creating
19 a system which is sending out into life who
20 cannot read and cannot do math. Now how they
21 going to get any kind of a job? That -- at
22 least we ought to deal with that. If we deal
23 with that and we have a legal structure in
24 place, my sense is that the workings of society,
25 if you will, the -- the achievement drive by

1 individuals and the willingness of other people
2 to -- to deal with them as has evolved in the
3 last 20 years, would have gotten us to the
4 situation where we would have to begin to speak,
5 in Yusef's terms, improve the quality of lives
6 of all our citizens without these negative
7 consequences that -- that I'm sensitive to.

8 My sense is you have to have some sort of
9 a phase-out program. And if he -- hindsight is
10 easier to see these things. My impression is
11 that nobody was proposing in '65, when we
12 started this, that this was going to be a
13 permanent part of American politics and
14 culture. It was -- it was discussed and adopted
15 particularly with reference to the African
16 Americans and the context of the civil rights
17 movement and new legislation.

18 I thought -- those of us who were there at
19 the time in the civil rights movement and around
20 that, it's kind of tough. I mean, you say the
21 law says as of June 1, 1966, you know, you could
22 be a subcontractor, you have all these legal
23 rights. Well, if you don't have capital, you
24 don't have any training, if you don't have
25 management, you don't have all this kind of

1 stuff, how are you going to fairly compete? I
2 mean, there is no level playing field. You've
3 got to sort of get up to speed. How long is
4 that transition period to get up to speed,
5 question mark.

6 My sense of a phase-out period is, say,
7 over a decade? I mean, human life, human
8 society, if you take a decade, if you take ten
9 years, you set some goals out there, you say by
10 the end of ten years we sort of want to achieve,
11 these will be the values and principals that
12 we're moving toward -- that that's not unfair.

13 MR. WEINBLATT: And you would
14 still have that view today, that there ought to
15 be that phase-out of what is now and as of 1997
16 our concepts of affirmative action that it now
17 ought to be phased out.

18 MR. YOUNG: I would say we need to
19 move beyond affirmative action to something
20 much, much, much less divisive and much better.
21 And it's -- then maybe we have to look at it in
22 different areas of law. I mean, Yusef is -- you
23 know, what do we do with the educational
24 system. That's probably different from what we
25 do with employment rules and regulations, which

1 may be different from what we do -- a whole
2 series of issues around, say, access to housing
3 and credit -- which, by the way, my impression
4 is, Yusef, in this community is reasonably open
5 to most people if -- if you've -- if you sort of
6 hit certain benchmarks.

7 Now, reasonably open if you hit certain
8 benchmarks. Then what you focus on is the
9 benchmarks. What kind of benchmarks do people
10 need to go into any old bank around here and get
11 a loan. I mean, those are the things I think we
12 should focus on.

13 My preference is to focus much more on
14 structural incentives which encourage people and
15 drive people in their decision making for a
16 good, practical, selfish reasons. So they make
17 loans or they rent houses or do whatever it is
18 in order for their own selfish reasons and they
19 don't care about the ethnic or religious
20 background of the person they are dealing with.
21 Quite frankly, they just want to get the deal
22 done. Seems to me that is more the notion of
23 individually driven colorblind society that --
24 that we, all Americans, are committed to.

25 MS. ORWOLL: Question: I'd like

1 to ask Yusef about the groups that you deal
2 with. You say that most of them, I believe, see
3 affirmative action as a nondiscrimination
4 opportunity.

5 MR. MGENI: Correct.

6 MS. ORWOLL: But I'm wondering if
7 you see any difference between recent immigrants
8 and the traditional Americans who have been the
9 minorities for a long, long time. Is there a
10 difference of feeling, is there a competition,
11 is there, you know, just --

12 MR. MGENI: Mr. Chairman,
13 Ms. Orwoll, yes, there is. The federal
14 government is -- in its infinite wisdom has
15 reduced refugee assistance from 36 months to 18
16 months to six months, now down to three months.
17 And they are about to turn the clock -- clock
18 backwards under so-called welfare reform, which
19 is actually welfare change to a negative
20 five-year balance. You will not be eligible for
21 any type of assistance for five years after the
22 date on which you arrive in this country.

23 We see students who speak English as a
24 second language who are enrolled in five ESL
25 classes per day during the regular school day.

1 And then they have one study hall. And then
2 they learn how to make ashtrays and shoe shine
3 kits. So I think the message is we want you to
4 shine shoes, smoke and die.

5 Further, 85 percent of the family public
6 housing in the Twin Cities is occupied by
7 Southeast Asian refugees. We should be having
8 ESL classes before and after school and in the
9 summer months so that recent immigrants can
10 apply those ESL skills in regular classes, in
11 math, spelling, job seeking, computers, English
12 composition, rather than taking them away from
13 life-building capacity skills and drowning them
14 in ESL classes, so that when they graduate they
15 are able to read, write and spell their name,
16 but not to hold a living wage job.

17 I think furthermore that the xenophobia in
18 our country has really risen. I was listening
19 to a talk show host on the West Coast who
20 entertained a caller that said perhaps we should
21 meet at the airport or at the border and shoot
22 these people as soon as they come into the
23 country. The host then responded perhaps we
24 should go across the border, shoot them before
25 they come, so we don't have to pay the burial

1 expenses. That, I think, is reflective of the
2 mood toward immigrants in our country. Doesn't
3 matter whether they are Russian, Jews, whether
4 they are from Somalia, Ethiopia, Cambodia, Laos
5 or Vietnam.

6 The situation is further exacerbated by
7 the fact that -- and in response to what
8 Mr. Young said, the Federal Reserve Bank has
9 identified this market as the one with the
10 highest likelihood of discrimination and
11 mortgage lending in the United States,
12 Minneapolis/St. Paul. And if Stephen and I were
13 to apply for a loan for a house at the same
14 income, same education, same years of
15 employment, same pension plan, right down the
16 line, I would only be given 65 cents on the
17 dollar for what Mr. Young would be given in that
18 same reality.

19 Many immigrants are using supplemental
20 security income as a revenue source to make home
21 payments. And part of welfare change that we
22 need to understand is that, number one, of the
23 56 billion in cuts, 28 billion is in the food
24 stamp program. So children will now be
25 allocated an average of 65 cents per meal, which

1 just starts a series of additional dominoes
2 falling. 40 percent of the cuts fully affect
3 legal noncitizens, legal immigrants, even though
4 they make up only 5 percent of the participants
5 in the program. So that the consequences, the
6 impact and the affect of welfare change on that
7 population is going to be nothing short of
8 devastating. Those are the differences that we
9 see when we look at that population.

10 And we were the founders of an
11 organization in the Twin Cities called the
12 Immigration Task Force. That is comprised of
13 more than 43 organizations that provide services
14 and do research to assist and build capacity of
15 those respective communities.

16 MR. YOUNG: Mr. Chair, if I may
17 respond to one point. It's just that I take
18 issue with Yusef on the -- on the mortgage
19 amount.

20 And my presumption is, Yusef, if you have
21 two forms and the financial data is exactly the
22 same -- I mean, if that's the hypothetical. And
23 we put, you know, two false names on those two
24 forms and they go in and the computer chooses
25 through and does the assessments, it's going to

1 come out basically the same because in the way
2 the -- the mortgage lending goes now, so much is
3 driven by economic numbers, if you can get the
4 right economic numbers.

5 MR. MGENI: Take it up with the
6 Federal Reserve Bank.

7 MR. YOUNG: Well -- but I -- I
8 think you may be mixing apples and oranges. If
9 you want to talk about gross statistics in this
10 ethnic category versus that ethnic category with
11 ranges of economic realities on both sides,
12 you'll get a discrepancy. But if you take two
13 individuals who have exactly the same, you know,
14 age, income, assets, all this kind of stuff,
15 you're going to get the same results from the
16 computer.

17 MR. MGENI: The Federal Reserve
18 Bank did not.

19 MR. WEINBLATT: Appears to be two
20 additional factors that, having said one, is
21 unfortunately they did find strong evidence of a
22 red line in our communities. So geography of --

23 MR. YOUNG: That's a different
24 factor. That's geography if -- if I am buying
25 the house in Highland and Yusef is buying the

1 house in Frogtown. But clear -- clearly, I
2 mean, on behalf of the banking industry on this
3 -- I mean, if there is a general context of
4 riskiness in Frogtown is racism, quote, end
5 quote, which -- which raises question marks
6 about making a loan in that part of the
7 community because there are some statistics that
8 are going to be in -- in Region X as opposed to
9 Region Y about property, crimes, police, this,
10 this and this.

11 I mean, another feeling I have, and --
12 based exactly on what Yusef is saying, is we
13 have some severe problems in the inner city of
14 -- of whatever you want to call it, bad
15 conditions, that they are driving a lot of
16 things. And I think that's what we need to look
17 on, those objective conditions, rather than some
18 sort of spirit in the sky of who is guilty or
19 who has got this feeling or this animosity or
20 not.

21 MR. WEINBLATT: No questions? If
22 not, thank you both very, very much for your
23 presentations.

24 MR. MGENI: Thank you.

25 MR. WEINBLATT: As I had mentioned

1 to the representatives of SAC right after lunch,
2 we have five persons signed up to make
3 additional presentations. Our scheduled first
4 one is at 4:30, but I'm going to make inquiry
5 now, with your permission, as to who is here and
6 maybe let's just proceed with who is here,
7 rather than taking a break. Unless --

8 (Recess from 4:11 p.m to 4:24 p.m.)

9 MR. WEINBLATT: All right. We
10 will be back in session; the community forum of
11 the Minnesota Advisory Committee to the US Civil
12 Rights Commission.

13 We have had a request from several persons
14 to make a presentation to the Advisory
15 Committee. And we are very appreciative of the
16 time and appearance of all those persons.

17 There are only three things that I would
18 ask each of you to keep in mind as -- as we
19 begin our presentation. I'm going to ask that
20 you limit your opening remarks to three minutes
21 so that the members of the task force will have
22 an opportunity to ask you questions.

23 Secondly, as we -- one item, I would ask
24 that you both give and spell your name for the
25 benefit of our court -- the reporter. And at

1 the same time give your mailing address so that
2 we have that on our official record.

3 If any persons have any exhibits that they
4 want to bring to the attention of the Advisory
5 Committee, please give them to our staff person,
6 Peter Minarik, and he will make sure they're
7 duplicated and distributed to members of the
8 committee. All right.

9 With that opening, the first person who
10 has requested to appear before us is Barbara
11 Forsland, the Minnesota Chapter of Human Rights
12 Workers.

13 Ms. Forsland? And we'd ask you to please
14 use the microphone to speak into so that we all
15 can hear it. Thank you.

16 MS. FORSLAND: Thank you very
17 much. Good afternoon to you all. We appreciate
18 the opportunity to appear before you on this
19 long day.

20 My name is Barbara Forsland, spelled
21 F-o-r-s-l-a-n-d. And my mailing address is the
22 Minnesota Department of Transportation, 395 John
23 Ireland Boulevard, MS 170, St. Paul, Minnesota
24 55155. And I'll leave my business card here for
25 you.

1 I am appearing today not in my capacity in
2 my work as an attorney and contract compliance
3 officer with the Minnesota Department of
4 Transportation. I am here in my capacity as
5 Chairperson of the Minnesota Chapter of the
6 National Association of Human Rights Workers.
7 We are a fairly significant organization because
8 we've been around since 1947 and our work
9 involves membership for any person who works in
10 human or civil rights. We have a long-term
11 history in civil and human rights issues. We
12 are the only national volunteer organization
13 that publishes a professional journal in
14 intergroup relations and is as -- speaking for
15 our organization about intergroup relations that
16 I appear before you today.

17 Our membership is the membership that is
18 on the line in implementing and enforcing
19 affirmative action. Our members work for cities
20 and counties, for private businesses, for
21 community based organizations. And some of our
22 members are simply members of our communities.
23 Our membership enforces affirmative action and
24 equal employment rules. It enforces affirmative
25 action, it measures it, it monitors it and

1 writes about it in a professional journal. We
2 do not espouse any single program or single
3 method to achieve equality. We look at the
4 circumstances of life and make analysis about
5 that and move forward, trying to reach our
6 goals.

7 I'm giving you this background simply
8 because I want you to understand that because we
9 don't espouse any theory, I would like to have
10 you give some weight to our opinions about
11 affirmative action. We have these observations
12 to offer to you from our professional
13 membership.

14 We observe that the overall employment of
15 women and minorities has increased as a result
16 of affirmative action and that has provided a
17 stabilizing influence for individuals, families
18 and communities. However, we believe that
19 continued affirmative action efforts are
20 required to assure that gains of employment
21 continue and are not offset by reductions in
22 force, layoffs and other market forces.

23 We observe that access to education for
24 women and minorities has improved with
25 affirmative action. And that has provided

1 increased preparation for full participation in
2 the American economy and increased opportunities
3 for personal and professional growth. However,
4 we believe that continued affirmative action is
5 necessary to assure that access to education is
6 maintained over time. Employment of women and
7 minorities in supervisory and administrative
8 positions and education has increased under
9 voluntary affirmative action plans which are in
10 place in our larger Minnesota school districts.
11 However, we believe that mandatory affirmative
12 action plans would likely extend this type of
13 change to our medium and smaller sized school
14 districts in Minnesota. Employment of women in
15 the areas of math and science in education has
16 increased with voluntary affirmative action
17 plans. Again, we believe mandatory affirmative
18 action plans would extend this type of change to
19 our medium and small school districts.

20 Access to contracting opportunities for
21 companies owned by women and minorities has
22 improved under affirmative action creating
23 economic incentive for entrepreneurial efforts
24 and providing increased stability within our
25 communities. However, we believe that continued

1 affirmative action in contracting is necessary
2 to provide a business environment based on equal
3 access to economic opportunity. Continued
4 affirmative action for the foreseeable future is
5 necessary in Minnesota until a critical mass of
6 support for equality is achieved and the changes
7 wrought through affirmative action become self-
8 sustaining.

9 In order to assist you in your research
10 into this matter we took it upon ourselves to
11 prepare some documentation. I'll run through
12 that briefly.

13 One of the things that affirmative action
14 has made possible is some very creative problem
15 solving by our government agencies. Affirmative
16 action overcomes institutional inertia. That's
17 what I've seen in my work with the Minnesota
18 Department of Transportation. I offer for your
19 consideration this -- called a Fact Report,
20 which represents the Minnesota Department of
21 Transportation's analysis of failure to achieve
22 affirmative action goals in the employment of
23 women and minorities in highway construction and
24 the intent to solve that problem and put
25 significant financial backing behind the

1 solution of that problem. This is a very
2 creative program that's designed to solve a very
3 practical problem in a business perspective.
4 Our contractor told us they couldn't find women
5 and minorities who wanted the jobs. We looked
6 at the situations, we weighed their opinions, we
7 examined the market force and we said we can do
8 something about this. Affirmative action made
9 possible overcoming the institutional inertia of
10 a very large organization that builds great
11 roads, brings them in on time and at budget, but
12 now has also a policy of social justice. This
13 is a radical change in institutional behavior
14 made possible by affirmative action.

15 We'd add a couple more thoughts for your
16 consideration based on remarks that we've heard
17 here today. There is some discussion that
18 removal of affirmative action might move us to a
19 meritocracy, that everyone will achieve a level
20 that they can get to by their own merits. And I
21 would propose to you that that is not true, that
22 we do not have a meritocracy in America, and we
23 probably never will. We have a situation where
24 those who are charming maybe do better than
25 those who are grumpy, where those who are tall

1 do better than those who are short, where those
2 who are thin do better than those who are not
3 thin. We have the situation where if your last
4 name is Kennedy and you're related to a family
5 you could probably get into Harvard a lot easier
6 than I could. And those are the kinds of things
7 that are just involved with human nature. And
8 affirmative action is not particularly designed
9 to change that. But when those choices are
10 based on impermissible motives, affirmative
11 action would swing into place and allow us to
12 let people move forward based on their own
13 efforts.

14 Secondly, I would like to suggest that you
15 consider the concept of critical mass. That's a
16 term that's used in social philosophy in fields
17 I am not an expert, but where I have done some
18 studying through our professional journal. When
19 you have enough people who understand
20 affirmative action and -- and have a clearly
21 defined definition of affirmative action, that
22 may be the time to phase out affirmative
23 action. Critical mass percentage is generally
24 considered in business applications to be 75
25 percent. For instance, Minnesota -- the

1 Minnesota Department of Transportation has a
2 quality program. When 75 percent of the people
3 in the Minnesota Department of Transportation
4 fully understand and apply the quality program,
5 that program has been successful. Those are
6 things that you could measure. Affirmative
7 action gives you the measurement tools you need
8 to see if you're making a difference.

9 We've talked on about what would replace
10 affirmative action. And that leads me to remind
11 you that affirmative action has not very -- been
12 very well defined, professionally speaking,
13 within the country as a whole. There are at
14 least five models of affirmative action going
15 from a straight quota system to a self-defined
16 affirmative action within a company. And
17 understanding those different types of
18 affirmative action might allow us to give
19 different labels to programs that would not
20 raise the hackles of people who might feel they
21 have been taken advantage of.

22 In conclusion, the Minnesota Department --
23 Minnesota Chapter of the National Association of
24 Human Rights Workers is very pleased to have had
25 the chance to speak with you today. And on

1 behalf of our membership we would give our best
2 advice and counsel to you that affirmative
3 action needs to be continued in Minnesota for
4 the betterment of our Minnesota citizens. We
5 have some measurable gains due to affirmative
6 action which we don't want to lose. And if
7 we're careful about how we apply the program, it
8 should serve us well into the future.

9 Open for questions.

10 Thank you.

11 MR. WEINBLATT: Thank you. What
12 are the five models?

13 MS. FORSLAND: I'd be happy to run
14 through those with you. This is our
15 professional journal. It's called the Journal
16 of Intergroup Relations. A discussion of the
17 five models appears in the fall 1996 addition.

18 First model is the standard quota model.
19 Very clean and very effective. I've had
20 contractors say just go back to it. It's an
21 easy rule. We meet or don't meet it. We all
22 know what's going on.

23 Second model is the preference plan.
24 That's similar to the plan in the Bacchi case in
25 California, where plans are race or gender

1 conscious, but they are flexible. You could
2 consider whether an applicant had to overcome
3 more serious barriers¹ to get where they are
4 currently when you're considering whether to
5 admit a student under this plan.

6 The third model is called the self-
7 examination model. And that's prevalent in
8 government and large industries. It uses goals
9 and a timetable developed internally to measure
10 affirmative action and see whether you're making
11 progress or not. In fact, I -- I'd suggest that
12 that's one of the most positive things
13 affirmative action programs do, is help
14 companies or agencies develop goals and time
15 tables.

16 The fourth model is the outreach model
17 which some have called the pristine version of
18 affirmative action here today before you. That
19 involves seeking out and recruiting those whom
20 you want to include in your applicant pool. And
21 this assumes that the employers have been
22 involved over time in practices which were
23 exclusionary, whether intentional or not.

24 The fifth model is called the
25 nondiscrimination model. And it has two facets;

1 one is active and one is passive. This is the
2 model I'd suggest that we have at the Minnesota
3 Department of Transportation simply because it
4 depends on leadership, which we've discussed
5 today as being crucial. The active
6 nondiscrimination portion of the program is a
7 firm statement by your leadership that there is
8 zero tolerance for discrimination in any form,
9 and that followup is consistent, quick and
10 thorough. The pass apart is that when
11 complaints are received about discrimination
12 which takes place, they are also dealt with
13 quickly and thoroughly. That's the most highest
14 -- the highest developed level of affirmative
15 action. And as you can see, it doesn't rely on
16 agencies or governments or rules or laws, but on
17 the strength of leadership and moral
18 correctness.

19 There's a full discussion in the article.
20 And I'd be happy to submit that, also, with my
21 materials.

22 MR. WEINBLATT: If you would,
23 please.

24 MS. FORSLAND: Sure. Couple of
25 other materials that I've submitted. Justice by

1 the Numbers, which is a full discussion of using
2 contracting as a measure of public policy,
3 discussing both pros and cons, very evenly
4 balanced presentation which I'd recommend to
5 you.

6 And an article called the Impact of
7 Affirmative Action on Women, which makes very
8 clear that the gains that women have experienced
9 in employment can be tied to some aspects of
10 affirmative action.

11 I've also included the training materials
12 that another attorney and I developed as
13 training for our contract compliance programs in
14 the city of St. Paul and Minnesota Department of
15 Transportation, so that should someone on the
16 committee be interested, you can see the type of
17 training we require of our contractors and we
18 require of our compliance staff. It's a very
19 sophisticated level and sophisticated
20 interpretation and application of the laws. So
21 I -- I guess I don't feel that it's that
22 heavy-handed version.

23 We also maintain advice and counsel for
24 our contractors at -- at MNDOT so that when they
25 do have a question, they can call us and we will

1 help them resolve their problems before we have
2 to get to the enforcement level, in contrast to
3 what some other people have implied, that
4 contractors don't have that service available.
5 That service is truly available at least
6 regarding highway construction in Minnesota.

7 In conclusion, we would strongly support
8 the continuation of affirmative action in
9 Minnesota.

10 MR. WEINBLATT: Thank you.

11 MS. WIRTSCHAFTER: I have a
12 question.

13 Ms. Forsland, several people today
14 mentioned a -- compliance officers as -- as
15 being part of the problem. Would you respond to
16 that since you have experience in that field.

17 MS. FORSLAND: I can understand
18 where their complaints are based because we are
19 involved in the friction between companies that
20 are trying to make a profit and public policy,
21 which is trying to enforce social justice. And
22 I think there is some tension in those
23 positions. However, I have worked at -- through
24 this organization have worked with compliance
25 officers in the major cities and counties in the

1 major metropolitan areas area and also with
2 out-state compliance officers. The level of
3 training available for them is very high. And
4 generally I find that the policies in place are
5 not intrusive. What seems to happen is that
6 companies don't bother to read or learn the
7 policies and programs that are in place, or
8 there's a turnover in company staff and people
9 are always on the low end of the learning
10 curve. And therefore companies make mistakes
11 and errors or they do not implement programs.
12 They do not reach out. They do not recruit in a
13 wide enough area. And then they can find that
14 their numbers of employees are falling well
15 beneath the standards.

16 Most of the compliance agencies in the
17 major metropolitan area do offer training to
18 contractors and will be full of assistance in
19 finding minority applicants. Good example of
20 this is the Minnesota Department of
21 Transportation, about as conservative an
22 organization as you can find given their tasks
23 of buildings roads, such a major expense, has
24 decided that it is well worth a major investment
25 of funding to assist contractors in their

1 recruitments efforts. Now, this would not be
2 possible if affirmative action were extinguished
3 because this is going to be a program of
4 identifying, training and placing women and
5 minorities in the construction trades. Your
6 daughter may well be working on a MNDOT
7 construction project at some time under one of
8 these programs.

9 So I can understand the concern because
10 the heavy hand of compliance can take away
11 funding and shut down projects and hold a
12 specific company in noncompliance and thus take
13 away all contracting opportunities with
14 government agency. However, the training and
15 the recruitment and the skills that we offer
16 contractors to train with are certainly there
17 for the contractors to enjoy. I think we just
18 have a different point of view from a profit
19 making company wishing to cut expenses the best
20 way they can to a social policy of justice.

21 MS. WIRTSCHAFTER: Thank you.

22 MS. LOPEZ: Would you say that one
23 of the problems of -- would you say that some of
24 the problems of some of the companies as far as
25 complying with the law may be due to the fact

1 that people that are in charge of monitoring and
2 putting the plan together may not have adequate
3 training and thus -- I've heard that sometimes.
4 Or else they get disenchanted with the position
5 and leave. But I guess I'd like your thoughts
6 on that and how -- and, if so, how could that be
7 -- how could the companies be helped. I
8 understand your -- your organization does that,
9 but with internally.

10 MS. FORSLAND: I do think there is
11 a problem that you've identified, and that is
12 that it's difficult to maintain trained staff in
13 the areas of equal employment. It is a high
14 burnout field if even within companies, and
15 there is turnover within companies. At this
16 point the best we have to offer is -- is
17 numerous training opportunities for their staff
18 to learn or for us to go out. All of the
19 agencies of which I am familiar will send people
20 out to company offices to review the policies
21 and to help train their staffs in appropriate
22 methods of achieving equal employment. Short of
23 that, when you -- when you hold it out and you
24 offer it to companies, the issue is how do you
25 get them to come to the trough to drink, you

1 know. And that may be the problem there.

2 MS. LOPEZ: So, in other words,
3 you know, it's -- it's not so much as that they
4 don't understand the law, but it's really paying
5 attention, being committed to it.

6 MS. FORSLAND: I think it's the
7 paying attention. We do have many companies
8 that are committed, but carrying it out in the
9 details is a difficult task particularly in the
10 out-state areas. On the other hand, in every
11 county in Minnesota where -- where our major
12 companies are doing business or where MNDOT is
13 doing business, there are companies that are
14 doing just fine.

15 MS. LOPEZ: Thank you.

16 MR. WEINBLATT: Thank you very
17 much.

18 Our next presenter is Marvin Taylor of the
19 Inter -- Intergovernmental Compliance Institute.

20 MR. TAYLOR: Good afternoon,
21 Mr. Chairman and committee members. My name is
22 Marvin Taylor. I am the President of the
23 Intergovernmental Compliance Institute. The
24 organization was --

25 MR. WEINBLATT: Mr. Taylor, could

1 you do two things.

2 MR. TAYLOR: Sure.

3 MR. WEINBLATT: Speak into the
4 microphone. You're --

5 MR. TAYLOR: I will.

6 MR. WEINBLATT: Sure. Could you
7 give us your address for the record.

8 MR. TAYLOR: Okay. Our address is
9 Post Office Box 65233, St. Paul, Minnesota
10 55165.

11 MR. WEINBLATT: Thank you.

12 MR. TAYLOR: As I was saying, the
13 organization was incorporated in 1979. And it's
14 comprised of the professional practitioners in
15 the areas of affirmative action and contract
16 compliance.

17 I'm here today at the behest of the
18 organization to address the issues before you
19 today. I sincerely support and commend this
20 forum to focus on affirmative action. It is our
21 belief that an objective review of the facts and
22 philosophies on the matter is a very important
23 and worthwhile endeavor. I want to acknowledge
24 the long day that the committee has had and will
25 consider this in the length of my presentation.

1 And I will also reserve time at the end of my
2 address for questions.

3 Issues relative to race have unfortunately
4 been ingrained in the history of America. We
5 understand that as a matter of economics persons
6 were enslaved and stripped of their civil and
7 human rights. It is important to note that any
8 honest biologist or genetic scientist will tell
9 you that the concepts of race as we know them
10 and use them is a farce. It has, however, as
11 indicated by our discussions today, remained a
12 significant topic for well over 200 years.

13 I would like to briefly touch upon the
14 history and effects of racism and discrimination
15 prior to addressing the concepts and realities
16 of affirmative action. With the indulgence of
17 the committee, a few periodic quotes can bring
18 history into focus.

19 The late Frederick Douglass stated: It
20 seems to me that it is the relation subsisting
21 between white and colored people of this country
22 which is, of all other questions, the great
23 paramount imperative and all commanding question
24 for this age and nation to solve. These
25 comments were made in 1863 and are unfortunately

1 just as valid today.

2 With respect to the time, I would like to
3 move a hundred years from 1863. But before we
4 start we must understand and admit that
5 government has consistently acted to bolster the
6 economic well-being and quality of life of its
7 citizens. This can come in the form of land
8 grants that were given to people to -- in the --
9 in the state of Minnesota or other states or
10 land grant institutions such as the University
11 of Minnesota to teach them how to farm and get
12 economic benefit from the land. Crops
13 subsidies, oil credits, business and education
14 tax credits or the annual expenditures of the
15 Department of Transportation is -- they are all
16 ways that government leads to the economic
17 well-being of certain citizens. Unfortunately,
18 because of the color of some citizens' skin they
19 are not privy to these privileges and benefits
20 of government spending.

21 The education and employment opportunities
22 and all of the benefits of being American
23 citizens is important to the well-being and the
24 quality of life of us all. It's important that
25 all of us be able to participate in the growth

1 and the benefits of America. Twenty-two years
2 ago the late President Lyndon Johnson of Texas
3 said you do not take a person who has for years
4 been hobbled by the chains of discrimination,
5 liberate him, bring him up to the starting line
6 of a race and say you are free to compete with
7 all the others.

8 During the '60s programs called
9 affirmative action were either created or
10 adjusted to address this injustice.

11 Affirmative action is simply a plan to
12 develop reasonable representation from all
13 sectors of society. It may be estimated, for
14 example, that African Americans make up 12
15 percent of the total population. It would
16 therefore be reasonable to believe that absent
17 past and present discrimination, one in ten
18 employees would be of African American descent.
19 The public works act of 1977, as an example, was
20 set up to bolster the economy by setting aside
21 \$4 billion of state and local -- for state and
22 local public works projects. The recipients of
23 these economic benefits agreed to share 10
24 percent of what they received with minority
25 companies. In this fashion government is

1 economically helping all Americans by requesting
2 that disenfranchised Americans also have an
3 opportunity to share a reasonable piece of the
4 pie. Unfortunately, self-centered critics of
5 affirmative action have sought to dismantle the
6 effectiveness of overcoming the past
7 discrimination by the use of shallow excuses and
8 complaints.

9 I stand before you as American as anyone.
10 I am -- I have ancestors of Scottish descent,
11 Native American, African descent and others not
12 of -- that I am not aware of. Does the tint of
13 my skin determine the level of education I will
14 be able to receive, the type of job I can hold
15 or the environment in which I raise my
16 children? For personal, economic or
17 psychological gain we ignore the strain that
18 racism and discrimination places on public funds
19 and the quality of life of us all. Will we make
20 excuses to turn our heads while deep down we
21 know that discrimination is alive and well? I,
22 for one, believe that America is too important.
23 I believe that human potential and human life is
24 more important than a few people hoarding all of
25 the benefits.

1 In closing, I want to leave one other
2 quote which is: The only thing needed for evil
3 to prosper is for good men and women to do
4 nothing.

5 And I will open it up to questions.

6 MR. WEINBLATT: Thank you.

7 MR. MORROW: Question.

8 MR. WEINBLATT: Yes.

9 MR. MORROW: Mr. Taylor, thank you
10 for your comments.

11 Throughout history we've observed that
12 when oppression is overcome, that often it is
13 replaced by another form of oppression. Would
14 you say that affirmative action may be a
15 regulatory -- continual regulatory means to keep
16 in force, to watch over that type of action?

17 MR. TAYLOR: Well, I think that
18 your -- your comments about oppression are --
19 are very interesting. And I could see certain
20 benefits in that. Personally I feel that
21 affirmative action is a means by which we can
22 incorporate the disenfranchised persons in
23 America who have been denied the opportunity to
24 contribute to America. I think economically --
25 economics is behind historically -- economics is

1 behind racism. Economics is behind
2 discrimination. And I think once we realize
3 that it is easier to provide opportunities for
4 persons with the same dollar that builds a
5 building or builds a road -- if we have that
6 same dollar circulating through each community
7 that we represent, then that same dollar does
8 not have to go to build jails.

9 And I think it's, again, a few people that
10 want to hoard the benefits and the control of
11 the economic well-being and the tax dollars that
12 continue to dismantle and make attacks on
13 affirmative action. I think also that there are
14 people who systematically attack the people that
15 work in affirmative action to the point that
16 they are no longer effective.

17 I hope I answered your question.

18 MR. WEINBLATT: Mr. Taylor, could
19 you tell us a little bit about your
20 organization.

21 MR. TAYLOR: Yes. As I said, our
22 organization was incorporated in 1979. We are
23 practitioners in the field. We are the
24 professionals in the field. We have done a
25 great deal of training. In fact, I was

1 certified as a contract compliance administrator
2 by the School of Social Work, Boston
3 University. We have a national organization
4 that we are affiliated with. And I think it's
5 very important that people in this field take
6 the job very seriously and that if we don't
7 train ourselves, no one will.

8 MR. WEINBLATT: Do you consider
9 yourself to have been a beneficiary of
10 affirmative action?

11 MR. TAYLOR: To the extent that my
12 current position resolves around affirmative
13 action, that is of economic benefit to me.

14 Personally I will tell you that I have
15 been very well educated. And the reason I was
16 very well educated was because I could provide
17 economic benefit to the University of
18 Minnesota. So in exchange they gave me
19 education, which I would probably say that my
20 father could not afford to give me.

21 MR. WEINBLATT: Is that -- is --
22 in that context as a beneficiary, do you in any
23 way feel that you are second-class or demeaned
24 by -- as a result of being the beneficiary of
25 that benefit?

1 MR. TAYLOR: No. Actually, I -- I
2 really feel that -- if I can please use an
3 analogy. If -- if we were talking about Michael
4 Jordan, for example -- if Michael Jordan was
5 born in the 1930s, he would not, because of
6 discrimination, be allowed to play in the NBA.
7 Because he is now, since those laws have
8 changed, allowed to play in the NBA I would not
9 venture to say that he feels that his ability
10 and his contributions are tainted because he is
11 now allowed to play in the NBA. It's that we
12 would not be able to enjoy his contribution to
13 the game had that form of racism still existed.

14 MR. LAWRENCE: Mr. Taylor, could
15 you give me your definition of what affirmative
16 action is? I've heard it all today. And I'd
17 like to hear it from you.

18 MR. TAYLOR: I -- I would say that
19 affirmative action is a simple plan, an
20 aggressive plan to ensure that all segments of
21 society are equally represented and -- and to
22 receive the benefits of the government.

23 MR. LAWRENCE: Let me take it to
24 another step. Is there a difference, as you --
25 as you a -- your interpretation of affirmative

1 action, is there a difference between the world
2 of academia, if you may, versus American
3 industry?

4 MR. TAYLOR: No, I don't think
5 so. I -- I think that the bottom line, in my
6 opinion, is being given the -- the opportunity.
7 And with that opportunity does not come
8 guaranties whether that be in a -- in a
9 educational institution or sitting in a -- in a
10 corporation. Everybody has responsibilities to
11 carry out.. However, some people have just been
12 denied the opportunity.

13 MR. WEINBLATT: Again, thank you
14 for your presentation.

15 MR. TAYLOR: Thank you.

16 Oh, can I say one thing, too? We would
17 like to offer some exhibits at a later date if
18 that's okay with the committee.

19 MR. WEINBLATT: Yes. Our record
20 will be open through July 19.

21 MR. TAYLOR: Okay. Thank you,
22 sir.

23 MR. WEINBLATT: And if you need
24 the address for submission, Mr. Minarik has a
25 card for you.

1 (Discussion off the record.)

2 MR. WEINBLATT: All right. Our
3 next presentation will be by Leon Rice.
4 Mr. Rice has been very patient.

5 MR. RICE: Thank you. Can you
6 hear me okay?

7 MR. WEINBLATT: Just fine.

8 MR. RICE: My name is Leon Rice.
9 I'm the Director of the Employment in Housing
10 Ombuds, O-m-b-u-d-s, Service, Suite 100, 1819
11 Nicollet Avenue South, Minneapolis, Minnesota
12 55403. Okay.

13 What I would like to do first is read five
14 lines from the Minneapolis city ordinance into
15 the record and then make some brief comments
16 about that, if I could.

17 This is from the Minneapolis City
18 Ordinance Statute 139.70, development of
19 affirmative action plans by the city
20 departments. All city of Minneapolis
21 departments, including the Minneapolis community
22 development agency --

23 MR. MINARIK: Excuse me, Mr. Rice.

24 MR. RICE: Yes.

25 MR. MINARIK: We cannot hear you.

1 Thank you, sir.

2 MR. RICE: This is from Minnesota
3 Statute 130.70, development of affirmative
4 action plans by city departments. All city of
5 Minneapolis departments, including the
6 Minneapolis community development agency and all
7 boards, commissions or agencies shall at least
8 annually develop and submit to the city council
9 -- excuse me -- a plan including goals and time
10 tables for the higher promotion and retention of
11 minorities, women and persons who are
12 handicapped and for the purchase of goods and
13 services from women and minorities. That is a
14 current city statute. There is an equivalent
15 statute at the state level for the state of
16 Minnesota.

17 And my comments about this for you are
18 that these statutes at the state and city level
19 are violated regularly and routinely with
20 impunity. The city of Minneapolis and
21 Minneapolis Department of Civil Rights, which is
22 the enforcement arm of city, and the Minnesota
23 Department of Human Rights, which is the
24 enforcement arm of the state, have not updated
25 their own plan since mid 1995. And that is true

1 for most other departments at the city level and
2 the state. I regard these comments as defaming
3 these departments based on the criteria you
4 talked about earlier. And I really support
5 equal opportunity. So I would encourage you to
6 invite the governor or representative or the
7 mayor of Minneapolis or representative to come
8 before you and explain why those affirmative
9 action statutes are being violated on a regular
10 and repeated basis.

11 And that's my comments. And I would field
12 any questions, if you have any. There's also
13 ample documentation to support this. That can
14 be supplied to you, if you want it.

15 MR. MINARIK: Do you want the
16 documentation?

17 MR. WEINBLATT: Sure, oh, yes.

18 MR. RICE: Okay. There's two
19 sources. One source for the documentation is
20 Judge Amyon Higginhoffen (ph.) with the US
21 Commission on Civil Rights. Or you can also
22 obtain it from Ms. Dorothy Low, the chief of
23 systemic investigations with the Federal EEOC.
24 If they can't deliver it to you, I will provide
25 you with it.

1 MR. WEINBLATT: Thank you. Any
2 questions from members of the commission?

3 MS. LOPEZ: Yes. What have --
4 what -- what -- I would say why was this brought
5 up not before the committee but has the
6 community been made aware of this or contractors
7 or --

8 MR. RICE: The members of city --
9 Minneapolis City Council have been made -- made
10 aware of this by a letter from me and my
11 organization. The agencies that I referred to
12 earlier have been made aware of it with
13 complaints that have been filed with them. It's
14 common knowledge within the city. There are
15 over 90 city agencies, for example, that are
16 supposed to turn in a plan annually. And it's
17 just not on anybody's radar or agenda. It's
18 common knowledge that it's not being done.

19 MS. LOPEZ: Because I know some of
20 the recommendations that have been made by
21 previous -- for people that have appeared before
22 the commission -- before the SAC has been lack
23 of enforcement of regulations. And that was
24 voiced more than once. So I'm -- that is --

25 MR. RICE: I'd like to comment. I

1 think that's absolutely true. The enforcement
2 arm of the Minneapolis Department of Civil
3 Rights is not a place where a person of color
4 can go and get a fair and objective
5 investigation because of political reasons and
6 other misconduct that prevents that from
7 occurring. That's also true of the Minnesota
8 Department of Human Rights, too. And they are
9 the enforcement arms who are going to comply.

10 MS. LOPEZ: Okay. Thank you so
11 much.

12 MR. WEINBLATT: Appreciate you --

13 MR. RICE: It's my pleasure.

14 MR. MINARIK: Thank you very much.

15 MR. WEINBLATT: Our next presenter
16 it Jerry Fahey, Fahey Consultants.

17 MR. MINARIK: Mr. Fahey.

18 MR. FAHEY: Thank you. I'm Jerry
19 Fahey. I presently work full-time for the state
20 of Minnesota, but I'm not here representing
21 them. My background --

22 MR. MINARIK: If you could spell
23 your name and address --

24 MR. FAHEY: F-a-h-e-y. 3842
25 Xerxes Avenue North, Minneapolis, 55412,

1 Minnesota.

2 I have worked six years with the depart --
3 Minnesota Department of Human Rights. And then
4 I transferred over to Department of Employee
5 Relations where I work in the affirmative act --
6 equal opportunity division. My main job there
7 was to put databases together to gather the
8 information to do all the goals -- availability
9 goals for all minorities and females and for all
10 the state agencies and -- and the department
11 groups. I think it was about seven or 800
12 altogether. I did them twice after we got the
13 final census results in. I'm here to speak
14 about the need to have affirmative action. The
15 state of Minnesota has a plan that does not meet
16 the requirements of what's allowed in
17 affirmative action. The Supreme Court has ruled
18 on at least two well-known cases about what is
19 required for an affirmative action plan to be
20 considered legal. One was Webber and one was
21 Santa Clara County.

22 In these cases affirmative action is --
23 has to consider the fact that we're dealing with
24 job groups such as professionals or nurses that
25 have been historically and significantly

1 discriminated against. That the program has to
2 be temporary in nature until the fix is in,
3 until you attain the proper percentages. And
4 also that you don't unnecessarily trample the
5 rights of the nondespaired persons in the
6 process of doing this.

7 The state of Minnesota has -- has a
8 problem in that they, first of all, apply the
9 program to all job groups, all agencies
10 regardless of what the situation is.

11 Secondly, they have a measurement problem
12 as to whether you're in or out of compliance and
13 that they require that 25 percent or less of
14 your hires not be nonprotected group members.
15 That -- and the problem there, of course, is
16 statistically 25 percent of the people on the
17 list are protected group members on the
18 average. And this is based on several years of
19 calculating materials. 80 percent would be
20 nonprotected group members, but when it comes to
21 hiring, you have to hire 75 percent of the --
22 your hires from the protected group member
23 status, which, of course, would become a
24 violation of the civil rights laws in order for
25 the state and in order for them to be in

1 compliance.

2 The other problem is it doesn't really --
3 that measure doesn't really address where the
4 real problems are. There are several agencies
5 and several job groups that, in spite of the
6 requirements of the state, are significantly
7 underutilized. As an example, IRRR -- I think
8 there's three R's -- B in Hibbing has about 150
9 employees. And the data that goes back to about
10 1985 or so on that particular agency shows that
11 they've never had a minority working for them
12 except for one quarter one year. I, in my doing
13 the availability, which considers the work force
14 in the area and which considers the skill levels
15 and all the other -- we consider five or six
16 different factors in determining availability.
17 They should have 3 to 4 percent, as an example.
18 Based on this program, because they never have
19 any minorities on the list, they can never be
20 found out of compliance because they never have
21 a missed opportunity because in order to have a
22 missed opportunity you've got to have a minority
23 -- or if it's a female or disabled. So the end
24 result there is that except for one year,
25 they've never been out of compliance because

1 they've never had any missed opportunities, and
2 yet they have no minorities employed there.
3 Even in the -- the summer job program that the
4 state's put on for disadvantaged people, and
5 it's based on income or lack of income, the --
6 ordinarily you would expect, based on some of
7 the statistics I have seen, that you'd probably
8 expect to see a percentage of minorities to be
9 increased by twice the normal percentage in the
10 whole state. As an example, you might expect to
11 see 20 percent minorities that would fit the low
12 income criteria. And in 1994 they had 79
13 employees hired for the summer job program and
14 none was. 1995 there was no minorities out of
15 the 75. And this is for needy people. And
16 maybe they have no needy minorities there, but I
17 think there's other problems. And then in 1996
18 they -- they did improve. They got one out of
19 70 some.

20 So the state's program doesn't address the
21 real problem areas. I have data here that shows
22 there are several job groups and agencies that
23 are significantly underutilized as far as what
24 we determine availability should be, such as
25 they are only at 50 percent of what they expect

1 to be for minorities. And in some of them
2 classifications are, you know -- and I've got
3 all this data here. If you want I can leave
4 this information. I'd be very glad to do so.

5 But what really kills this thing is the
6 fact -- so there's plenty of -- there's plenty
7 of evidence to show why you need affirmative
8 action. Plenty of evidence. However, the
9 average state employee, average white male
10 that's applied for the job at the state, whether
11 he be a state employee at the time or somebody
12 that's presently trying to seek a job from the
13 state, is going to have a extremely negative
14 attitude against affirmative action because it's
15 common for them to be told by managers who are
16 usually white, male managers, that I'm sorry,
17 boy, you're really pretty good, but I've got
18 disparity here. And I'm going to have to hire a
19 protected group member. I mean, they are doing
20 this all the time. I've gotten a lot of phone
21 calls. And so this is -- this is going on.

22 And the other thing is -- well, we've
23 decided to hire you. And this is part of their
24 plan, part of their program. We've decided to
25 hire you, but I can't hire you until I go to the

1 affirmative action officer, who might not --
2 might only be a clerk specialist or something,
3 you know, and get approval from her to hire you
4 because there's a protected group member on the
5 list that's also interested in the job. And --
6 and -- and these people are being told that. So
7 the attitude of the average white Minnesotan who
8 has tried to get a job with the state has -- has
9 to be very, very strongly against affirmative
10 action. And that's not really affirmative
11 action.

12 Stephen Cooper brought that point up
13 today. There's a lot of things that are called
14 affirmative action that aren't part of
15 affirmative action. And if -- if the state
16 stuck with what affirmative action really is, in
17 addition to these other things that I talked
18 about, those three items that the supreme court
19 ruled on -- an affirmative action program is
20 supposed to be a positive action program that
21 after you've searched around in your area and
22 found out you've got a problem certain places,
23 that you're supposed to have a positive action
24 program to remove the barriers that you have to
25 assume or should assume that are there. And

1 it's because of those barriers that the numbers
2 are so low.

3 So in affirmative action you determine
4 where these problem areas are. Then you
5 investigate to see why the percentage of
6 minority females and so forth are so low. And
7 then you put in these programs. And it's not
8 supposed to be a preferential treatment thing
9 where you say, geez, my number is too low, go
10 hire a minority, go hire a female. That's not
11 the way affirmative action is supposed to work.
12 That's not the way the law says it's supposed to
13 work. And the supreme court rulings have, you
14 know, shown this same sort of thing.

15 But the way it is right now, if I hadn't
16 had all this information myself, I'd be hating
17 affirmative action. I was told on a couple of
18 different jobs that I applied for that, sorry,
19 there's been a -- there's a disparity here. I
20 never got the job. I assumed initially that the
21 -- the despaired person got the job. Turned
22 out in both cases that another white male got
23 the job anyway. But this is going on and has
24 been going on. And I've -- I've put out a lot
25 of documentation and -- and a lot of information

1 on this. And I've given it to the proper
2 authorities. And it gets buried. And I would
3 like to unbury it a little bit by presenting it
4 to your committee.

5 MR. WEINBLATT: Thank you very
6 much for your presentation.

7 Are there any -- Peter.

8 MR. MINARIK: Is this for --

9 MR. WEINBLATT: Thank you very
10 much.

11 Are there any questions of Mr. Fahey?

12 Again, our appreciation.

13 MR. MINARIK: This is the state of
14 Minnesota, Mr. Fahey?

15 MR. FAHEY: Yes, it is.

16 MR. WEINBLATT: Yes. All right.

17 Our next presenter is L. Ron Edwards of
18 the St. Paul branch of the NAACP. Thank you,
19 Mr. Edwards.

20 MR. EDWARDS: Thank you,
21 Mr. Chairman. Good afternoon. I know it's been
22 a long and arduous day, so I will try to keep my
23 remarks as brief as possible.

24 By the way, the name is Ronald A. Edwards,
25 E-d-w-a-r-d-s. Address 1214 Penn Avenue North,

1 Minneapolis, Minnesota 55411.

2 Mr. Chairman, I am here today at the
3 request and I've been commissioned by a number
4 of specific organizations which I will
5 identify.

6 The purpose and the footnote of your --
7 purpose and intent is somewhat history
8 revisited, if you will. Specific organizations
9 are most interested in the future of affirmative
10 action because they are in the particular
11 discipline of providing public safety to the
12 citizens specifically of Minneapolis and
13 St. Paul.

14 Those organizations which have asked me to
15 appear here today to both make a request -- and
16 they will be within the next 30 days providing a
17 formal petition to the United States Civil
18 Rights Commission in Washington with a copy of
19 said petition to your regional office on Monroe
20 Street in Chicago.

21 Now, those organizations are the
22 following: The United Firefighters Association
23 of St. Paul, our president, the African American
24 Firefighters Association of Minneapolis; Alan
25 Johnson, president, the Neighborhood American

1 Firefighters Association of Minneapolis; Michael
2 Boleo, president, the African American or Black
3 Firefighters, Black Police Officers Association;
4 Lieutenant Don Bannam, and the St. Paul NAACP;
5 Nathaniel, Nate, Galief, president.

6 The organizations have asked me to come
7 here today as a part of the genesis of both the
8 request and hopefully the convening of a public
9 hearing operating under the authority vested in
10 you to take testimony, sworn in nature. Has
11 somewhat to do -- and it's interesting to look
12 across the table -- with a report first
13 commissioned by this commission, if you will, in
14 July of 1981, dealing with the practices of
15 police in the Twin Cities as a part obviously of
16 successful affirmative action, diversity,
17 integration, et cetera, particularly in the
18 public safety arena. And we refer to them as
19 the protective services. If we have a continued
20 breakdown in the implementation of affirmative
21 action and your police and fire, ultimately
22 you're talking in terms of significant decay
23 with respect to the rest of the population and
24 the general citizenry.

25 Also, the NAACP of St. Paul has

1 commissioned me to indicate today their extreme
2 concern with respect to the continued
3 deterioration of relationships in that community
4 between the law enforcement entities of the city
5 of St. Paul and the African American and other
6 communities. This is further advanced and
7 supported by the organizations that I have just
8 cited who are equally concerned about a
9 continued deterioration of similar relationships
10 and relationships which have -- which have
11 become extremely volatile and extremely deadly,
12 unfortunately.

13 Mr. Galief has asked me to leave with you
14 the following names, per se. The names are
15 Mr. Jones, John Jones, and Mr. Samuel Anderson;
16 two gentlemen who lost their lives under very
17 questionable circumstances, one as the direct
18 results of being in police custody, the other as
19 the outgrowth of a determination which indicated
20 justifiable homicide. It is a question then of
21 standards.

22 In Minneapolis we are talking about two
23 specific individuals who we will bring to your
24 attention, one a Mr. Stanley, deceased in
25 January of 1996, the other a Mr. Stewart Boggut,

1 a/k/a James Allen Edwards. No relation, by the
2 way. Mr. Anderson, Mr. Boggut and Mr. Stanley
3 all died while in police custody. There's not
4 been a lot of publication or discussion in this
5 city, but the pattern is rather peculiar. And
6 it seems to be a pattern that has taken place
7 far too frequently around the United States.
8 The three gentleman that I just named died while
9 in police custody after allegedly ingesting
10 cocaine. A very peculiar and interesting
11 pattern.

12 The organizations in which I have
13 indicated have commissioned us to come here are
14 concerned about the ability of the institutions
15 that they serve and the municipalities to
16 provide the kind of commitment that will allow
17 for the kind of diversity that we say we are all
18 committed to in this country. There is much
19 discussion. And I will begin to conclude and
20 entertain any questions that you may have.

21 There is much discussion particularly in
22 my city of Minneapolis over the last number of
23 months about fighting the war against crime.
24 And part of that has been to designate hot zones
25 and communities that seem to be at risk, such as

1 the Phillips neighborhood, the near north
2 neighborhood and likewise in the city of the
3 St. Paul the need to, quote, end quote, deal
4 with the gangsters and -- and all those kinds of
5 things. So it seems to me there is certain
6 imbalance that takes place in our society
7 because basically you only hear people talking
8 about gangs of color. We don't seem to talk in
9 terms of the gangs of militia, neo-Nazis and
10 motorcycle gangs. And a separate so -- a
11 certain tinge of racism unfortunately emerges,
12 which I -- I think hampers our clear vision to
13 deal with the real problem.

14 But the concern of these institutions that
15 I have just mentioned to you is that they are
16 engaged in a significant and almost titanic
17 battle to better integrate their respective
18 membership. I think it is scandalous, the
19 suppression, if you will, of the battle that is
20 being waged. And be advised that right now at
21 this particular hour that as we talk there are
22 at least five major cases of discrimination
23 pending in the federal court against the
24 jurisdictions of St. Paul and Minneapolis.

25 Already this year in the city of

1 Minneapolis the district state courts have
2 awarded almost \$1 million in damages to
3 Hispanics for the violation of their rights
4 under the guise of breached affirmative action
5 commitments.

6 We will, in the city of Minneapolis, as
7 taxpayers, pay out this year in excess of \$2
8 million, not including the \$840,000 awarded to
9 Captain Brian Cullen, the -- the Hispanic. But
10 over \$2 million in damages and et cetera. We
11 currently have, as an example, in the federal
12 court a contempt citation against the city of
13 Minneapolis who has been under court order for
14 27 years to integrate its fire department. I
15 think that that is absolutely absurd. I leave
16 that with you.

17 I leave with you, though, the appeal of
18 the associations that we have just named who are
19 asking for you to convene a public hearing
20 taking testimony under oath to take a look at a
21 very serious and dangerous pattern of abuse and
22 the aborting, if you will, of affirmative action
23 commitments within the two specific cities that
24 -- as they have, quote, end quote, responsibility
25 and stewardship. And that is the cities of

1 Minneapolis and St. Paul.

2 Any questions?

3 MR. WEINBLATT: Mine might sound
4 trivial, but I'll ask it. Why -- to what do you
5 attribute what sounds, to my ears anyways, as a
6 gigantic reluctance on the part of the police
7 and fire to -- to follow what appears to be the
8 law or court order or whatever? What is it
9 about that employment, that particular type of
10 protective service employment, if anything, that
11 -- that leads to that stonewalling?

12 MR. EDWARDS: Good question. The
13 fact of the matter is -- is that the problems is
14 not limited to the specific institutions that
15 have commissioned me to come here today and to
16 -- to make you familiar with that. In both
17 municipalities and through state government
18 you've heard some testimony here already just in
19 the short period of time that I've been here.
20 But to your specific question, sir, I think it
21 is a part of the belligerence that unfortunately
22 exist in our society. The continued resistance
23 to the application of law. The continued
24 resistance to the things that we say we hold
25 dear. And that is the full diversity, the full

1 integration of society.

2 Some people use maybe a little bit more
3 colorful language, but I'm referring to what is
4 known as the old good old boys club, good old
5 girls club. But in some cases, in many cases in
6 my long experience, including and well
7 remembering our testimony before this very
8 commission in 1981, it has to do with a outright
9 rejection of the importance of full integration
10 of society.

11 That's why this commission was created.
12 That's why these advisory panels were created
13 throughout the contiguous 50 states -- hopefully
14 to get a handle. I think that you -- I would
15 hope that you would do that.

16 I brought a copy -- this is my own
17 personal copy, though, but maybe Ms. Watson or
18 someone will be able to find this document
19 commissioned by your predecessors 16 years ago,
20 talking about the practices of police in the
21 Twin Cities. What has happened -- and of course
22 when this document was commissioned, the same
23 atmosphere and environment of belligerence
24 existed also in respect to fire departments of
25 both cities.

1 Most of the testimony, as
2 Ms. Lopez remembers, though, centered on police
3 practices because we were number one coming off
4 of serious periods of conflict. But there had
5 been a renewed concern with respect to the
6 relationship of communities of color and the law
7 enforcement institutions within the state of
8 Minnesota, particularly the Twin Cities.
9 Unfortunately 16 years later it really hasn't
10 changed.

11 Now what you do have is something that you
12 did not have in 1981. That is, there has been
13 some small measure of, quote, end quote,
14 integration. As those people of our community
15 have become a part of the institution, they have
16 began to see clearly and more distinctly how the
17 -- the barricades and the burdens that are
18 being placed upon them. So they have organized,
19 they have become their own associations. And
20 for that reason they make that appeal here
21 today.

22 I hope I have satisfied your inquiry with
23 respect to -- to why this level of decadence
24 continues in our society.

25 MR. WEINBLATT: Thank you.

1 MS. ORWOLL: Question.

2 Mr. Edwards, I'm not very familiar with
3 St. Paul, but you say the firefighters are --
4 there's a separate black firefighters
5 association.

6 MR. EDWARDS: Yes. Let me just be
7 more --

8 MS. ORWOLL: That -- I just want
9 to know, are you not part of -- is there not a
10 whole firefighters association in which everyone
11 is a part?

12 MR. EDWARDS: Well, let me explain
13 that to you, if you would allow me to,
14 Mr. Chairman, because obviously education is an
15 excellent criteria.

16 There -- in -- in all basic jurisdiction
17 across this country there is always a collective
18 bargaining unit. And that normally is -- is
19 identified as a federation. In the St. Paul
20 fire department, as an example, there has always
21 been since the beginning of the labor movement
22 and the issue of the certification of collective
23 bargaining -- there has been, quote, end quote,
24 a federation. Of course, based on the
25 composition of the body that it -- it grew out

1 of -- in this case the fire department -- it
2 began, quote, end quote, its birth, if you will
3 at a time when that fire department was devoid
4 of people with color. So when the union became
5 a collective bargaining entity it was all
6 white. During the intervening years there was a
7 struggle to, quote, end quote, integrate. And
8 that was a very arduous process in St. Paul and
9 Minneapolis and in both protective services. So
10 what happened in St. Paul was that after this
11 long, arduous process -- and by the way, the
12 total number of African Americans in the
13 St. Paul Fire Department is 24. And allegedly,
14 you know, there've been -- they have been at the
15 business of integration since like the 1950s.

16 But what happens is -- is that
17 unfortunately again in our -- in our country --
18 responding to the question of your chairperson
19 -- we are not all in locked step with respect
20 to what it is we desire. And so unfortunately
21 the people of color find that it is necessary to
22 create at least some political unit within the,
23 quote, end quote, broader spectrum to advance
24 their concerns.

25 Let me just give you a specific issue.

1 And I'm very glad that you raised the question.

2 We have a very serious meeting in
3 Minneapolis before the Civil Service on the 26th
4 of this month in which, interesting enough,
5 Black Police Officers Association and its,
6 quote, end quote, collective bargaining
7 representative, the Minneapolis Police
8 Federation, are in grave dispute because of the
9 Federation's objection to the implementation of
10 -- of the ruling list and expanded
11 certification. So what happens unfortunately in
12 our society -- contrary to what we may feel,
13 there comes a time when one must go outside, if
14 you will, of what one thinks to be the
15 protective institution and the protective
16 mechanism that one has. So unfortunately, yes,
17 the organizations I named, including the Native
18 American Association -- Indian Association have
19 found it necessary to create for the purposes of
20 their own personal and political survival a -- a
21 unit that will allow them to speak to their
22 issues when unfortunately the broader
23 institution which they pay dues to declines to
24 do that.

25 Does that answer your question?

1 MS. ORWOLL: I guess so.

2 MR. WEINBLATT: Okay. Thank you
3 very much, very much.

4 MR. EDWARDS: Oh, sir -- and let
5 me just say I am not a firefighter. I am just a
6 mere citizen. Thank you.

7 MR. WEINBLATT: All right. That,
8 members of the commission, constitutes the --
9 the persons who have indicated a desire to
10 address us. But before we adjourn I will
11 address those assembled and ask if there is --
12 if there are any other persons who wish to make
13 their known views -- their views known to the
14 Advisory Committee.

15 MR. TAYLOR: Mr. Chairman.

16 MR. WEINBLATT: Mr. Taylor.

17 MR. TAYLOR: Yes. Just for the
18 record, I'd like to restate our -- our mailing
19 address, which has changed since the -- the
20 address I gave you. And that address is 900
21 City Hall, 15 West Kellogg Boulevard, St. Paul,
22 Minnesota 55102.

23 MR. WEINBLATT: It will be so
24 amended.

25 MR. TAYLOR: Thank you.

1 MR. MINARIK: Thank you,
2 Mr. Taylor.

3 MR. WEINBLATT: All right. There
4 being appearing no other persons who want to
5 make a presentation to the Advisory Committee, I
6 am about to declare our meeting in recess. It
7 will not be adjourned because, as I indicated on
8 a couple of occasions, the -- our record will
9 remain open.

10 I want to thank the members of the task
11 force for appearing throughout the entire day,
12 to our staff of people, Constance Davis and
13 Peter Minarik, our great appreciation for the
14 work. You will not be held responsible for the
15 mechanical difficulties with the sound system,
16 nor the room next door. And to our court
17 reporter, your person, services -- we do
18 appreciate your work very much.

19 The record, as I mentioned, will be open
20 for the purposes of receiving written
21 materials. Each of the members of the Advisory
22 Committee will be provided with a draft report
23 which we will consider separately and then
24 together at our next meeting.

25 Tentatively by -- in my discussion with

1 you at lunchtime it appears that Thursday,
2 September 25 would be an appropriate date for
3 our completion of this session. And so subject
4 to whatever develops between now and then, just
5 tentatively pencil that in on your calendars.
6 And for most members of the public Ms. -- has
7 left, but that's a very, very important critical
8 role that the public plays in helping us get the
9 message to the US Civil Rights Commission on the
10 status of our -- of our civil rights in our
11 community.

12 As we hoped at the outset, it appears that
13 word of affirmative action has not been delayed
14 two years plus in getting to our communities.
15 We seem to have some significant differences as
16 to what it means currently and what affirmative
17 action should in the future mean. And that
18 would be part of the recommendation at least for
19 our sake that we make to the Civil Rights
20 Commission.

21 Again, thanks to you all. And we stand in
22 recess.

23 (Proceeding was recessed at 5:30 p.m.)

24
25

NOTARY-REPORTER'S CERTIFICATE

STATE OF MINNESOTA)

ss.

COUNTY OF WASHINGTON)

Be it known that I took the above proceeding on the 19th day of June, 1997, in Bloomington, Minnesota;

That I was then and there a Notary Public in and for the County of Washington, State of Minnesota, and that by virtue thereof I was duly authorized to administer an oath;

That the testimony of said witness was recorded in stenotype by myself and transcribed into typewriting under my direction; and that the foregoing transcript of said proceeding is a true record of the testimony given by the witness to the best of my ability;

That the cost of the original transcript has been charged to the party who noticed the proceeding, and that all parties who ordered copies have been charged at the same rate for such copies;

That I am not related to any of the parties hereto, nor an employee of any of them, nor interested in the outcome of the action;

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality.

WITNESS MY HAND AND SEAL THIS 17th day of July, 1997.



Nancy G. Gisch
Notary Public
Washington County, Minnesota