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U. S. COMMISSION ON CIVIL RIGHTS

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MEETING  
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Friday, May 9, 1997

The Commission met in Room 540, YWCA  
Building, 624 9th Street, N. W., Washington, D. C.  
20425, at 9:30 a.m., MARY FRANCES BERRY, Chairperson,  
presiding.

PRESENT:

MARY FRANCES BERRY, CHAIRPERSON  
CRUZ REYNOSO, VICE CHAIRPERSON  
CARL A. ANDERSON, COMMISSIONER  
ROBERT P. GEORGE, COMMISSIONER  
CONSTANCE HORNER, COMMISSIONER  
YVONNE Y. LEE, COMMISSIONER  
RUSSELL G. REDENBAUGH, COMMISSIONER

EDWARD HAILES, JR., DEPUTY STAFF DIRECTOR

STAFF PRESENT:

MARLISSA BRIGGETT  
BARBARA BROOKS  
SICILIA CHINN  
KI-TAEK CHUN  
JAMES S. CUNNINGHAM  
PAMELA A. DUNSTON  
BETTY EDMISTON  
GEORGE M. HARBISON  
MYRNA HERNANDEZ  
CAROL-LEE HURLEY  
FREDERICK ISLER

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## STAFF PRESENT: (Continued)

JACQUELINE L. JOHNSON  
WILLIAM LEE  
REGINALD MARTIN  
STEPHANIE Y. MOORE, GENERAL COUNSEL AND  
PARLIAMENTARIAN  
VERONIQUE PLUVIOSE-FENTON  
CHARLES RIVERA  
MARCIA TYLER  
CATHERINE WALLACE  
ANTHONY K. WELLS, SR.  
AUDREY WRIGHT  
NADJA ZALOKAR

## COMMISSIONER ASSISTANTS PRESENT:

JOSEPH BROADUS  
ADERSON FRANCOIS  
CHARLOTTE PONTICELLI  
WILLIAM LEE SAUNDERS, JR.  
KRISHNA TOOLSIE  
CYNTHIA VALENZUELA

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9:30 a.m.

CHAIRPERSON BERRY: The meeting will come to order.

Could I have a motion to approve the agenda?

COMMISSIONER HORNER: So moved.

VICE CHAIRPERSON REYNOSO: Seconded.

CHAIRPERSON BERRY: Any changes or modifications?

(No response.)

Does anyone have any desire to have -- well, I'll wait until we get to announcements.

So we will -- any suggestions for change?

(No response.)

No.

It's been moved and seconded that we approve the agenda, as is.

Are we ready for the question?

All in favor, indicate by saying aye.

(Chorus of ayes.)

Opposed?

(No response.)

Okay.

Approval of the minutes of April 4th, 1997.

May I have a motion?

1 COMMISSIONER HORNER: So moved.

2 COMMISSIONER LEE: Seconded.

3 CHAIRPERSON BERRY: Discussion?

4 (No response.)

5 All in favor, indicate by saying aye.

6 (Chorus of ayes.)

7 Next item is announcements. Several  
8 announcements.

9 Commissioner Higginbotham has been ill for  
10 quite some time now and has had three open heart  
11 surgery operations. He is now in rehabilitation, a  
12 rehabilitation facility.

13 I spoke to him yesterday. He is still too  
14 weak to participate in a Commission meeting and I am  
15 hopeful -- he and I are both hopeful that by next month  
16 he will be able to join us again. But he has been  
17 absent because of his illness and I know that we all  
18 wish him well. And I conveyed that to him.

19 The second announcement I want to make is  
20 that we had a -- the GAO, which has been doing an  
21 audit, an administrative audit of the agency at the  
22 request of the subcommittee, came to meet with the  
23 staff -- and since we don't have a Staff Director, I  
24 sat in on the meeting just to see what they were saying  
25 -- to give what they call an exit interview, which is

1 to go over whatever findings they'd made and to see if  
2 the staff have anything else to say, and then to inform  
3 the staff that they plan to write the report. And the  
4 report will be coming to us soon.

5           The report will come and they will send  
6 copies to each Commissioner, so that we don't have any  
7 concerns about people not getting copies of the report.  
8 And they will ask for responses.

9           They sounded -- the audit findings, it seemed  
10 to me, seemed to be the kind of thing you would expect,  
11 which refer to Administrative Instructions that needed  
12 updating and certain other findings. I didn't hear  
13 anything that I think the Commission will be unable to  
14 either fix or respond to.

15           But that will be coming along shortly to us.  
16 And when it comes, we will have the staff prepare a  
17 response and then we will discuss it, as we did with  
18 the other audit, and see where we come out on that.

19           The next -- and they said we would get it  
20 within the next few weeks. They weren't precise about  
21 when we would get it.

22           The other thing is that there was a fire here  
23 in the building on the eighth floor at the Metro  
24 Authority's offices on April 22nd, and I think it was  
25 on local television that there was a fire. And some

1 people were connecting it with the Oklahoma bombing or  
2 Waco or something, the anniversaries or something, in  
3 the media.

4           In any case, the fire was not on any of the  
5 floors where our staff are located, and it did  
6 apparently minimal damage and is under investigation by  
7 the D. C. Fire Department. The Commission staff has  
8 met with the building owners and GSA officials and  
9 there have been staff meetings. And people have been  
10 concerned about security in the building because  
11 whoever set it apparently came in and somehow got in,  
12 went up to the eighth floor and set off this -- some  
13 kind of a device of some sort.

14           And so the staff have been having discussions  
15 about whether there is a need for greater security  
16 measures. And the GSA and the -- since we're not the  
17 only occupants in the building -- and all the other  
18 people in the building have been meeting to talk about  
19 plans for greater security and the people at the guard  
20 desk have been ordered to step up their procedures.  
21 And there are matters under consideration, such as  
22 whether there should be -- everyone should wear an ID  
23 card around their neck, which at the old Commission,  
24 for years, people did. Right. In the other building,  
25 staff did have those cards. And in other agencies,

1 some agencies, they do -- whether that would do any  
2 good.

3           And the other is, because the building is so  
4 small and on the other side, some people say the guards  
5 already know who belongs here. It's just a question of  
6 whether they notice anybody when they come in. There  
7 are some concerns about whether everybody should sign  
8 in and out. That's under consideration. Whether there  
9 should be key cards for everyone who's in the building  
10 so that they can't go from floor to floor or go  
11 anywhere unless they put a card into the elevator.

12           All of those things are under consideration  
13 and they would have to be coordinated with the other  
14 occupants of the building. And I just let you know  
15 that there has been some concern about it and there are  
16 ongoing efforts to try to figure out what best to do.

17           Our situation, as a Commission, is  
18 complicated, more complicated than it would be if we  
19 were a government agency that did not permit people to  
20 come in, because we have a library which the public  
21 uses. And so all of that has to be taken into account.  
22 So, I'm simply alerting you that this happened;  
23 informing you; and telling you that there will be some  
24 suggestions forthcoming which may or may not affect  
25 what Commissioners have to do in their comings and



1 goings and so on, and we'll discuss it. Although, if  
2 anyone has any comments, I'm perfectly happy to hear  
3 them, or if you have any suggestions about what our  
4 staff might consider doing about the building, we'd  
5 appreciate those, too.

6           The other point I wanted to make is we did  
7 not have an appropriations hearing this year. You  
8 probably noticed that. And we have submitted  
9 materials, as we're supposed to, and the staff has been  
10 asked questions, as happens every year, by  
11 appropriations staff about different numbers and how  
12 you add this and what you do with that.

13           Hal Rogers, Congressman Rogers, who's the  
14 Chair of the Subcommittee, like every subcommittee  
15 chair, has a rather busy and tight schedule this time  
16 of year, but staff has indicated that if any  
17 Commissioners feel that they would like to talk to  
18 Chairman Rogers about the Commission's budget, they  
19 should feel free to do that. And that we can either  
20 schedule a meeting and do that en masse, or that  
21 individuals who feel that they could do it  
22 individually, that that would work, too.

23           My own view would be, having done this for  
24 years like some of you have done it for years, that if  
25 individual Commissioners would want to make a special

1 case in brief fashion for anything, that they ought to  
2 do that. Just a sort of formal sort of taking up Mr.  
3 Rogers time, I'm not sure it's going to do that much  
4 good. That's not how appropriations get done. Anybody  
5 who's been in Washington long enough knows that's not  
6 how it gets done.

7           So that if any of you feel -- my view would  
8 be unless you think otherwise, that -- and I encourage  
9 you to use whatever contacts you have and go directly  
10 to Rogers if you wish, to please encourage them to look  
11 favorably on our budget.

12           I would remind you that in order for us to  
13 maintain the staff that we have without adding anybody,  
14 and to maintain and pay our rent and account for  
15 inflation and so on, I will remind you from the numbers  
16 that the Commission should have at least about a half  
17 million dollar increase in our budget just to make up  
18 for those costs.

19           We're not talking about adding more staff or  
20 more positions or anything else. And so I would just  
21 remind you of that.

22           This is not unique to us. Every agency has  
23 inflation costs and rent and pay raises. Staff are --  
24 many of them are on career ladders where they're  
25 supposed to get promoted. They expect to. They also

1 expect to get raises. Things of that kind you should  
2 take into account.

3 Yes, Commissioner Redenbaugh?

4 COMMISSIONER REDENBAUGH: Would you just  
5 review with me our -- what the budget amount was for  
6 the last year and what the OMB submission was this  
7 year? Do you have that?

8 CHAIRPERSON BERRY: I think -- George, how  
9 much did we ask for this year?

10 MR. HARBISON: We asked for \$11 million.

11 CHAIRPERSON BERRY: And last year we had --  
12 our budget, current budget, is \$8.75 [million] or  
13 something?

14 MR. HARBISON: (Off mike.)

15 COMMISSIONER REDENBAUGH: So the \$500  
16 [thousand] would take us up to roughly \$9.2 [million]  
17 and change?

18 CHAIRPERSON BERRY: Right. And the exact  
19 number --

20 COMMISSIONER REDENBAUGH: Just to stay at the  
21 steady state?

22 CHAIRPERSON BERRY: Right. And the exact  
23 number on that, I think, George, is \$516,000. I said  
24 half a million, but I think it's \$516 [thousand].

25 COMMISSIONER REDENBAUGH: \$9.3 [million]

1 then?

2 CHAIRPERSON BERRY: Yes. We're talking \$9.3  
3 [million] to stay at current services, essentially.

4 So just keep that in mind in whatever  
5 discussions any of you would have. And I urge you to  
6 have them.

7 Yes, Commissioner Redenbaugh?

8 COMMISSIONER REDENBAUGH: No. Thank you.

9 CHAIRPERSON BERRY: Okay.

10 The other point I wanted to make is about two  
11 memos that Commissioner Redenbaugh sent to us and  
12 circulated. One was on GPRA and the other was on  
13 tracking.

14 The staff tells me that a tracking system to  
15 track projects in the way that Commissioner Redenbaugh  
16 described in his memo will be in place for the  
17 beginning of the next fiscal year, by that time. So  
18 that will be done.

19 Secondly, the GPRA we expect to review at the  
20 June meeting, the strategic plan, which is required by  
21 July something or other.

22 Keep in mind, though, that it's required  
23 because it goes with the budget submission, but we have  
24 to remember that while we try to keep within these time  
25 lines -- I don't know when we submitted our budget last

1 year. I think it was sometime in the Fall. But  
2 anyway, we will be reviewing the strategic plan that  
3 the staff is preparing in June.

4 After that, the GPRA requires a performance  
5 plan, it's called, which is based on the strategic  
6 plan. So, the staff will begin working immediately on  
7 the performance plan as soon as they are finished with  
8 the strategic plan. We will get the strategic plan.  
9 We will discuss it. We will decide what we want to  
10 decide about it. And that will give them guidance as  
11 they are working on the performance plan, although they  
12 will be collecting numbers and putting together  
13 summaries while they await our decision at the June  
14 meeting.

15 So, we are working on the GPRA. That is  
16 going forward. And then we will see what Commissioner  
17 response is at the June meeting in terms of how we're  
18 proceeding.

19 COMMISSIONER REDENBAUGH: Thank you.

20 CHAIRPERSON BERRY: I've forgotten what GPRA  
21 stands for, but whatever it is.

22 COMMISSIONER HORNER: Government Performance  
23 and Results Act.

24 COMMISSIONER REDENBAUGH: Results Act. Thank  
25 you.

1           According to the staff, the Commission's  
2 reauthorization hearing may be scheduled for July, so  
3 you should be thinking in terms of who would be  
4 available to go to a hearing. And maybe we'll get more  
5 details about when this should be. I would very much  
6 appreciate it if Commissioners were available, or as  
7 many of you who can, to go.

8           The other point I want to make here is that  
9 we are likely to have a stock of reports come to us  
10 from the staff. You should think about your schedules.  
11 Because over the next two or three months, we will have  
12 a number of reports from Fred's shop on the education  
13 stuff.

14           What we're trying to do is to finish all of  
15 these reports on time, if we can. And the staff is  
16 being urged to work very hard. We will be getting Los  
17 Angeles. We will be getting -- then, after that, we'll  
18 get New York by September.

19           So, between now and October, you can expect  
20 to have a number of reports that we will need to read,  
21 and we will have to get them, somehow, done. I mean,  
22 we'll have to go through out processes and do whatever  
23 needs to be done. But staff and special assistants  
24 should be thinking in terms of a very heavy -- I mean,  
25 Commissioners should -- a very heavy workload.

1           And I think we owe it to the staff, if they  
2 give us this material, to respond to it and to work  
3 hard on it in order to urge them to continue to work  
4 hard.

5           We're trying to clear the deck so that next  
6 year, fiscal year, when we start on schools and  
7 religion and the other projects -- and hopefully try to  
8 finish the African-American males -- we will have  
9 cleared out all of the stuff that we're supposed to be  
10 doing now and not perpetually have a backlog. So  
11 that's the whole idea.

12           Okay. The last announcement I would make is  
13 that the President has indicated that he has a nominee  
14 for the Staff Director of the Commission. I have been  
15 told that officially. I sent you some materials  
16 concerning this person and that person is the only  
17 candidate for the Staff Director of the Commission.  
18 Whatever rumors you've heard or whatever -- and rumors  
19 are rife in Washington as they are in other places --  
20 the President only has, to my knowledge, one nominee --  
21 that's what they told me and that I should tell you  
22 that -- for this position.

23           And what we need to do is to -- that's  
24 official. So what we need to do is -- I ask you to be  
25 in touch or she would be in touch with you to see if

1 you could meet with her, talk to her or do whatever  
2 you'd like, so that we would be prepared to vote.

3           What I would like to know from you is how  
4 soon you believe you might be in a position to do this.  
5 I also want to know from you whether you desire to have  
6 any discussion of this while we are here. And if you  
7 desire to have some, we'd have to have an Executive  
8 Session.

9           Commissioner Anderson?

10           COMMISSIONER ANDERSON: Well, I have a  
11 question, and that is, has the nomination been made?  
12 Is the nomination officially made or is it officially  
13 that the President has a nominee but has not nominated  
14 that person?

15           CHAIRPERSON BERRY: Well, it's the same  
16 process that we have had in the past. We've done this  
17 two or three times.

18           The President announces his intention to  
19 nominate whatever. Then the President has, as of  
20 yesterday -- last night I was told officially that the  
21 President has now nominated this person. We should  
22 consider the person nominated. Okay? And that I am  
23 asked to now poll you to see what your response is to  
24 the President's nomination.

25           COMMISSIONER ANDERSON: Okay.



1 CHAIRPERSON BERRY: That's the status.

2 COMMISSIONER GEORGE: But we are going to  
3 eventually get one of those letters that we usually  
4 get? The autograph?

5 CHAIRPERSON BERRY: Yes. Right. It's not  
6 from the President, though. You may remember -- you've  
7 probably forgotten. There's no reason for you to  
8 remember. It's from the Director of White House  
9 Personnel.

10 Is that right?

11 COMMISSIONER GEORGE: Haven't we occasionally  
12 gotten-- we've gotten letters in front of us with Bill  
13 Clinton --

14 COMMISSIONER HORNER: You know what you're  
15 thinking of?

16 COMMISSIONER GEORGE: What am I thinking of?

17 CHAIRPERSON BERRY: You people are so  
18 confused.

19 COMMISSIONER HORNER: You're thinking of the  
20 letter designating a replacement for someone who left,  
21 an acting nominee.

22 COMMISSIONER GEORGE: Right.

23 COMMISSIONER HORNER: But usually the process  
24 is that the White House Press Office puts out a press  
25 release --

1 CHAIRPERSON BERRY: Right.

2 COMMISSIONER HORNER: -- that says today the  
3 President nominated or today the President announced  
4 his intention to nominate.

5 COMMISSIONER REDENBAUGH: Right.

6 COMMISSIONER HORNER: Barring anything coming  
7 up during the background --

8 CHAIRPERSON BERRY: Right. Get him straight.

9 COMMISSIONER GEORGE: Are we allowed to say  
10 the name of the nominee?

11 CHAIRPERSON BERRY: No. You should do it in  
12 Executive Session.

13 COMMISSIONER GEORGE: Okay.

14 COMMISSIONER HORNER: After the intent to  
15 nominate is put out by the Press Office, then we could.  
16 And I think you've been told in advance of this  
17 official announcement.

18 CHAIRPERSON BERRY: Right.

19 COMMISSIONER HORNER: So, it's not really  
20 officially announced until that press release comes  
21 out, which presumably would be today.

22 COMMISSIONER GEORGE: Have any -- I've been  
23 trading phone calls with the nominee.

24 COMMISSIONER HORNER: I have --

25 COMMISSIONER GEORGE: Have other people had a

1 chance to interview with her yet?

2 COMMISSIONER HORNER: I have an appointment  
3 scheduled.

4 COMMISSIONER GEORGE: Him or her yet?

5 COMMISSIONER HORNER: I have an appointment  
6 for a meeting next week.

7 COMMISSIONER REDENBAUGH: And I have  
8 interviewed her.

9 COMMISSIONER GEORGE: She said in her letter  
10 that she would be willing to come to us.

11 CHAIRPERSON BERRY: So if you could somehow  
12 arrange to talk, do something. And I need to know how  
13 soon you think you'd be ready to vote on this.

14 COMMISSIONER GEORGE: When is our next  
15 meeting?

16 CHAIRPERSON BERRY: Next year?

17 (Laughter.)

18 I think there's some urgency about us getting  
19 a Staff Director, if you want my opinion.

20 COMMISSIONER GEORGE: Sure.

21 CHAIRPERSON BERRY: At least responding to  
22 the President's nomination, unless you see some reason  
23 not to.

24 COMMISSIONER GEORGE: Mary, when is the next  
25 meeting? Is it -- do we have a short-run or is it a

1 four-month?

2 CHAIRPERSON BERRY: June 13th.

3 COMMISSIONER GEORGE: So it's more than a  
4 month.

5 CHAIRPERSON BERRY: Is that a Friday? I'm  
6 not coming. Friday the 13th. I won't be here.

7 (Laughter.)

8 COMMISSIONER GEORGE: It's June 13th?

9 CHAIRPERSON BERRY: I would hope we would do  
10 this before the next meeting. Come on, folk.

11 COMMISSIONER GEORGE: Yes. But we can't have  
12 an Executive -- if we do need an Executive Session, we  
13 can't have an Executive unless we --.

14 CHAIRPERSON BERRY: You can have a phone  
15 call.

16 COMMISSIONER GEORGE: Can we have a phone  
17 Executive Session? Is that --

18 CHAIRPERSON BERRY: If you need one. If you  
19 feel the need.

20 Yes, Commissioner Anderson?

21 COMMISSIONER ANDERSON: Well, I would think,  
22 for my own part, the presumption would be we could vote  
23 on this before the next meeting, but it's possible we  
24 could not, based on interviews or whatever. So I don't  
25 know how to -- I would be reluctant to set a particular

1 date prior to the 13th for a vote, but I would assume  
2 that we probably could vote on it before the 13th.

3 CHAIRPERSON BERRY: I would like to have us  
4 polled and vote before then. We've done this on  
5 nominees before. It's not that we've never done this  
6 before.

7 Yes, Commissioner?

8 COMMISSIONER HORNER: Madam Chair, I agree  
9 with Carl. Depending on the conversations we have,  
10 depending on how much opportunity for references, how  
11 much time that requires, if any. It's hard to make a  
12 commitment.

13 CHAIRPERSON BERRY: Two weeks?

14 COMMISSIONER HORNER: It depends.

15 CHAIRPERSON BERRY: I find this very curious  
16 because on other nominees that we've had -- we've done  
17 this before. It's not like we haven't done this  
18 before. We have done this in at least about two weeks  
19 after the -- I mean, I don't think -- can't think of a  
20 time where it took us more than two weeks.

21 I tell you, by the way, I have another stack  
22 of letters of recommendation to give to you. I had  
23 some faxed to you, but there were too many. So I can  
24 either give them to you or -- I guess we'll have to  
25 copy them somehow and get them, as they come in. But

1 there are a whole stack of them.

2 COMMISSIONER HORNER: Madam Chair, it's as  
3 simply as if -- she suggests we talk to someone for  
4 whom she's worked. And we call that person and that  
5 person is away for four days and then gets back and has  
6 10 messages and we're the 10th. And it's just hard to  
7 make a commitment to a date, other things being equal.

8 I'm sure it won't vary too much from the  
9 past, but I don't see the necessity to establish a  
10 date. We can have informal consultations with you to  
11 let you know if things are going quickly or need more  
12 time.

13 Commissioner George?

14 COMMISSIONER GEORGE: Does it happen that the  
15 nominee is here today?

16 CHAIRPERSON BERRY: Here where?

17 COMMISSIONER GEORGE: Here at the Commission  
18 today?

19 CHAIRPERSON BERRY: No.

20 COMMISSIONER GEORGE: No.

21 COMMISSIONER HORNER: I'd also like to see  
22 the official announcement from the White House before  
23 making any commitment, because otherwise if that hasn't  
24 actually -- somehow, if there's a last minute glitch,  
25 our readiness to vote could translate into part of the

1 political decisionmaking.

2           COMMISSIONER GEORGE: Could we tentatively  
3 schedule a possible telephonic meeting but with the  
4 understanding that --

5           COMMISSIONER HORNER: I didn't bring my  
6 calendar.

7           COMMISSIONER LEE: And would that meeting be  
8 in Executive Session?

9           COMMISSIONER GEORGE: Well, only if we need  
10 it. I mean, we haven't interviewed -- at least a  
11 number of people haven't interviewed with the nominee  
12 yet. It might be that an Executive Session isn't  
13 needed. In that case, the telephone meeting just  
14 becomes a -- we'd just vote.

15           Otherwise, we'd have an Executive Session,  
16 which I think there would be no difficulty with, as far  
17 as the ethics rules are concerned since it is  
18 specifically about a personality.

19           VICE CHAIRPERSON REYNOSO: Madam Chair, I  
20 like the idea of maybe setting a tentative date when we  
21 will talk on the phone. And maybe the staff could be  
22 in touch with the Commissioners on when that date could  
23 be. And then at that time if we're ready to vote, we'd  
24 vote. If somebody wants to make a motion that we'd go  
25 into Executive Session during the telephone interview,

1 we can do that, too. So we'd leave our options open.

2 COMMISSIONER GEORGE: The vote itself is on  
3 the record; right?

4 VICE CHAIRPERSON REYNOSO: Yes.

5 COMMISSIONER GEORGE: That doesn't take  
6 place, obviously, in Executive Session. We'd just go  
7 onto the record and vote, if we'd like.

8 CHAIRPERSON BERRY: Well, where is Leon when  
9 I need him?

10 Thank you, Cruz.

11 I sense a desire to put this off and that  
12 people are, for reasons I don't understand, not willing  
13 to even commit to actually voting. So I don't know  
14 what -- I'm at a loss. I'm tempted to ask somebody to  
15 move that we go into Executive Session so we can  
16 discuss it more openly and find out what the heck is  
17 going on. But because this -- I had thought we were  
18 anxious to get a Staff Director and that we were  
19 anxious to -- I've been urging the White House to  
20 nominate somebody and been driving them crazy. And now  
21 we don't seem to be in any hurry. So, I don't --

22 Yes, Commissioner Horner?

23 COMMISSIONER HORNER: Madam Chair, I think we  
24 are in a hurry and I will -- I do make a commitment to  
25 vote. I just won't make a commitment to a time certain



1 because my experience is that things need to be done in  
2 order. And I want to see the nomination and then have  
3 an opportunity to assess the nomination and then come  
4 to a conclusion that the time has come to vote. It's  
5 just a matter of not wishing to be pressured or forced  
6 through the process.

7 I'm eager to vote -- very eager to vote and  
8 have someone available to us.

9 CHAIRPERSON BERRY: Could we then do what  
10 Commissioner George and the Vice Chair suggested, which  
11 is set a date for a meeting on the telephone so that  
12 this doesn't have to drag over until next month, or set  
13 a date -- or, in the alternative, set a tentative date  
14 -- no. Why don't we just do this. I'll check back  
15 with some of you by the end of next week to see if  
16 you've had a chance to talk to the candidate and to see  
17 what your reactions are and to see if you're then ready  
18 to schedule a date to vote or whether you still feel  
19 that you need more time.

20 Why don't I just do that?

21 Yes, Commissioner Redenbaugh?

22 COMMISSIONER REDENBAUGH: I think, at the  
23 risk of complicating things, with the schedules of the  
24 eight of us the way they are, it's going to be, I  
25 think, difficult for staff to find a time agreeable to

1 eight of us when we're not already in one place. I'm  
2 not sure I have a solution to this anticipated problem.

3 Do we need -- although I've had bad  
4 experience in the past with this, but do we -- if we're  
5 going to vote and not need an Executive Session, do we  
6 have to all convene a telephonic meeting in order to  
7 vote? So, it's a procedural question.

8 CHAIRPERSON BERRY: No. In fact, what I was  
9 going to suggest was that I set a date whereby -- and  
10 we've done this in the past, polling on nominees, where  
11 we would say by the close of business, hypothetically,  
12 on June 1st, you will indicate your vote either  
13 telephonically or by fax to the Staff Director's office  
14 and designate who up there would collect, and you could  
15 indicate your vote. And that's what's been done  
16 before. And the person up there collects the votes and  
17 then says how many there are. And that's how it's been  
18 done.

19 You don't have to have a meeting to vote.

20 COMMISSIONER REDENBAUGH: Okay. Good. No.  
21 Then if you're anticipating that process. But I just  
22 think it will be hard to get eight calendars to line up  
23 on short notice.

24 CHAIRPERSON BERRY: Yes, Commissioner Lee?

25 COMMISSIONER LEE: Madam Chair, what happens

1 if one or a minority of Commissioners want to have a  
2 meeting before the telephone vote? Would that be  
3 possible? Or do we need a majority vote to get a  
4 meeting?

5 CHAIRPERSON BERRY: I can schedule a meeting  
6 or you need a majority if I don't want to schedule a  
7 meeting, but you don't need a meeting to vote. If  
8 Commissioners thought we needed a meeting to vote,  
9 well, we could do that. I mean, to have a discussion.

10 But all I'm suggesting now is that I would  
11 try to get in touch with each of you, which is  
12 sometimes -- well, I'll see how hard that is -- at the  
13 end of next week or the beginning of the week after  
14 that to see if you have met the candidate, if that's  
15 what you want to do, interview the candidate somehow,  
16 if you have questions or you still are pursuing  
17 inquiries or if you're prepared at that point to vote.

18 If you say you are, then what I will do is  
19 send out something saying that by X date at close of  
20 business, please submit your vote to X in the Staff  
21 Director's office, either by phone or by fax. If you  
22 tell me you're not ready and you don't want to vote,  
23 then we'll just have to hold it over. It's just that  
24 simple. That's the only thing I can see to do.  
25 Because I hate to hold it over if we don't need to.

1 Why? And if we do need to, then we need to.

2 You're looking at your calendar?

3 COMMISSIONER GEORGE: That seems to me to  
4 make sense. You'll get in touch with us or someone  
5 from the Commission or someone will get in touch with  
6 us?

7 CHAIRPERSON BERRY: I will. I'll call you.

8 COMMISSIONER GEORGE: Sometime this coming  
9 week, before the end of the week?

10 CHAIRPERSON BERRY: I'll wait until the end  
11 of the week.

12 COMMISSIONER GEORGE: And give us a chance to  
13 hook up with her and talk with her or at least let you  
14 know when we're going to be getting together with her.

15 COMMISSIONER HORNER: Madam Chair, could we  
16 get a copy of the press release?

17 CHAIRPERSON BERRY: Yes. I will send you  
18 whatever is in writing, confirming this, at the  
19 beginning of the week. Today is Friday.

20 Commissioner Anderson?

21 COMMISSIONER ANDERSON: I know a little bit  
22 about the person who we believe is going to be  
23 nominated. From what I know, there's no reason why I'm  
24 not going to vote for her. It's impossible for me to  
25 meet with the candidate or really talk to her by phone

1 next week, so the earliest I'll be able to do it is the  
2 19th.

3 CHAIRPERSON BERRY: The 19th? Is that what  
4 you said?

5 COMMISSIONER ANDERSON: Yes. The week of the  
6 19th. So the 19th or 20th, something like that.

7 And I'm happy to schedule a vote very  
8 quickly, but I think what happens is that we -- by  
9 scheduling a vote on a certain date now, we  
10 disadvantage a particular Commissioner who may have a  
11 problem and may want a meeting to discuss it. Because  
12 then the Commissioner has to go around and try to  
13 either convince the Chair, which is not an impossible  
14 task usually, or a majority of Commissioners. But it  
15 does put a Commissioner, I think, with much less  
16 leverage than the Commissioner will have today.

17 So, I think we should go ahead. And if you  
18 want to schedule a vote, I'd be happy to schedule it on  
19 condition that if a Commissioner has a serious problem  
20 and wants a meeting that all it takes is one  
21 Commissioner to ask for a meeting and the  
22 Commissioner's request is granted.

23 CHAIRPERSON BERRY: Well, then we get back to  
24 Russell's point, which is -- and I guess, based on  
25 experience, Russell is right. Even if we in good faith

1 decide to set up a meeting, it will be very difficult,  
2 given everybody's schedule, to make sure we can find a  
3 time when everybody can meet. I mean, that's been past  
4 experience. People are just busy and people have their  
5 own schedules.

6           So, maybe -- how about if we try this, Carl,  
7 in the alternative. Just say that -- I'm trying yet  
8 another thing. That any Commissioner who feels voting  
9 on this nominee -- she isn't yet the nominee -- will  
10 take place no later than the Commission meeting on June  
11 13th -- that's when it is, June 13th -- which is our  
12 next meeting.

13           And any Commissioner who feels that they  
14 would like to vote before then, and so indicate, may  
15 send a fax or a phone message to the Staff Director's  
16 office saying I am hereby casting my vote in favor of  
17 this nominee. And anybody can do that all the way up  
18 to June 13th and at the June 13th meeting.

19           How's that? Is that okay?

20           And that way I don't have to call anybody.  
21 We don't have to set up a meeting. And if people want  
22 to vote, they can. And if somebody thinks they won't  
23 be at the June 13th meeting, they can vote before the  
24 June 13th meeting, which is a problem if someone can't  
25 be here and we do it at the meeting, because then they

1 wouldn't be here. Do you see what I mean?

2           So, if they feel comfortable, if any  
3 Commissioner feels comfortable voting before then, they  
4 can do it in writing or telephonically indicating.  
5 Otherwise, we'll take the vote at the June 13th meeting  
6 and count anybody who's voted ahead of that as a  
7 Commissioner as part of the group.

8           Is that all right? You got any problem with  
9 that, Carl?

10           That way you don't have to worry about when  
11 you see her or what happens or my trying to find people  
12 or do we have a meeting, or somebody who can't come on  
13 June 13th and thinks they won't be able to vote.

14           How's that?

15           COMMISSIONER ANDERSON: Well, I would say  
16 it's a very reasonable proposal. It does not solve the  
17 problem, though, of eight Commissioners who would want  
18 to have a meeting to discuss. Because by June 13th,  
19 five members may have voted and the issue is over. And  
20 then the Commissioner or two Commissioners that really  
21 do want to discuss it can't because the nomination is  
22 done. Confirmed.

23           CHAIRPERSON BERRY: Well, when would this  
24 meeting be that you're talking about? When would it  
25 take place?

1           COMMISSIONER ANDERSON: Well, it could take  
2 place on the 13th. I'm just saying that right now one  
3 or two Commissioners who may have a question about the  
4 nomination are in a position where they can insist on a  
5 meeting to discuss it, given the dynamics of what we do  
6 today. Any other procedure disadvantages a single  
7 Commissioner or two Commissioners or minority of  
8 Commissioners that may want to meet on the issue  
9 because all it takes is five to vote tomorrow and it's  
10 impossible to have a meeting to discuss it.

11           I don't intend to move for that at this  
12 point. I have no ulterior game plan here that's  
13 causing me to say this other than since we're talking  
14 about a Staff Director who hopefully we're going to  
15 have a long relationship with, every Commissioner ought  
16 to be, I think, as comfortable as possible with the  
17 nomination before it's confirmed.

18           CHAIRPERSON BERRY: Well, Carl, what would we  
19 do if someone wants to vote on the nomination and is  
20 prepared to do so, but then discovers they can't be  
21 here on June 13th?

22           COMMISSIONER HORNER: Telephone.

23           Madam Chair?

24           CHAIRPERSON BERRY: Yes.

25           COMMISSIONER HORNER: First of all, anyone



1 who wants to propose that we vote, simply makes a  
2 motion to that effect at the June 13th meeting. That's  
3 one solution. Knowing that that's a possible from here  
4 on, from any point after which the President has  
5 nominated this candidate officially, at any meeting  
6 anyone may propose that we vote, and the vote may  
7 occur.

8           It seems to me, as is always the case, any  
9 Commissioner who has sufficient interest in the outcome  
10 should be available to vote either by phone or in  
11 person. And if that is not the case, may request of  
12 the Commission a deferral of the vote until such time  
13 as everyone can get together.

14           I agree. This is a very large question.  
15 We've had a checkered history. Why don't we just do it  
16 right this time.

17           I fail to see the urgency of an additional  
18 several weeks if that should be the unhappy outcome of  
19 not boxing ourselves into a particular date. So why  
20 don't we just all go about our interviews, reach our  
21 conclusions, have our meeting on the 13th. If there's  
22 going to be a problem with anyone being able to vote at  
23 the 13th, why can't that Commissioner let you know  
24 about it, with no formal decision that we're going to  
25 vote at a particular time, but just leave it to anyone,

1 including the Chair, to propose that we vote.

2 I don't like polling. We've had a bad  
3 experience with it. It doesn't give us the face-to-  
4 face opportunity for a discussion. It doesn't allow us  
5 to just visit this whole question of what we expect  
6 from a Staff Director in a conversation among  
7 ourselves, and so on. It just seems to me simple and  
8 clean that at our next meeting, anyone who wishes to  
9 raise this proposal, do so, and we vote or not.

10 CHAIRPERSON BERRY: Well, if we don't act on  
11 it before the next meeting, then we would be expected  
12 to act on it at the next meeting. We can't just simply  
13 take a nomination and not just do anything.

14 COMMISSIONER HORNER: Well, that happens  
15 every day of the week, of course, in the Congress. And  
16 we can. But I see no reason why we should wish to  
17 delay this decision. It's just that I also see no  
18 reason why we should force it unduly at the expense of  
19 orderly decisionmaking.

20 CHAIRPERSON BERRY: Well, let me just put it  
21 bluntly. Is the Commission going to be -- expect  
22 Commissioners -- are you prepared to vote on this  
23 nomination, if not before the June 13th meeting, at the  
24 June 13th meeting?

25 COMMISSIONER HORNER: No.

1 COMMISSIONER GEORGE: Yes.

2 COMMISSIONER HORNER: Probably.

3 CHAIRPERSON BERRY: Because I don't want to  
4 have to report to them that the Commissioners don't  
5 even know if they'll vote on it then. They may never  
6 vote on it.

7 COMMISSIONER HORNER: If I were to -- we have  
8 only an informal resume. That's all we have. If I  
9 were to discover some difficulty, I would want time to  
10 pursue it before voting. I don't anticipate  
11 discovering difficulties, but my experience suggests  
12 that this doesn't -- it's not out of the ordinary.

13 CHAIRPERSON BERRY: Okay.

14 COMMISSIONER HORNER: We're protecting a  
15 prerogative. That's all.

16 CHAIRPERSON BERRY: I will put it on the  
17 agenda for the June 13th meeting.

18 Yes, Robbie? I mean, Commissioner George.

19 COMMISSIONER GEORGE: I'm intending to be  
20 here but I was struck that you're right that we want to  
21 make sure that every Commissioner has a right to vote.  
22 So if a Commissioner is ill or in transit and can't  
23 even be on the telephone, is there any reason why a  
24 Commissioner could not register a vote to be included  
25 at the meeting? Could a written vote be just faxed in?

1           COMMISSIONER HORNER: Not in advance of,  
2 except perhaps at the same time as. In other words, I  
3 think it's appropriate to answer that question at that  
4 time should that eventuality arise. It may arise. And  
5 we want to accommodate that eventuality. What I'm  
6 saying is if that were to be the case, if someone were  
7 to vote today, that person would not have the advantage  
8 of information provided by his or her fellow  
9 Commissioners two weeks from now.

10           COMMISSIONER GEORGE: But if the Chairman has  
11 a written document saying I vote in favor of --

12           COMMISSIONER HORNER: At the time of the  
13 meeting.

14           COMMISSIONER GEORGE: At the time of the  
15 meeting and it hasn't been revoked. Maybe they sent it  
16 today. Maybe they'd send it next week. As long as it  
17 hasn't been revoked, the Chairman counts that --

18           COMMISSIONER HORNER: Well, we've never done  
19 that.

20           COMMISSIONER GEORGE: I just think that we  
21 have to make sure that every Commissioner has an  
22 opportunity to vote. Judge Higginbotham isn't here  
23 today. He's not able to be on the telephone.

24           COMMISSIONER HORNER: I understand. But this  
25 is the problem I would raise to you. We've never done

1 it that way before. Usually, you need a quorum and you  
2 need a majority. And I don't know whether there are  
3 any special rules that pertain to this kind of vote,  
4 but you're establishing a precedent which would suggest  
5 that if another Commissioner can't be here at any time  
6 and an issue is coming up, that Commissioner may vote  
7 without benefit of discussion with the other  
8 Commissioners in the meeting. And I think it's an  
9 extremely bad precedent to set.

10 If we want to do that, it seems to me, at  
11 such time as the issue arises, and literally at such  
12 time we should address that question and address it in  
13 the context of an exception, not a precedent, and so  
14 on. We don't know that will be the case at this time.

15 COMMISSIONER GEORGE: But we don't have  
16 another meeting before then.

17 COMMISSIONER HORNER: No. We'd do it at the  
18 meeting. Preparations can be made for the execution of  
19 that decision, should we decide to allow -- for the  
20 first time in my knowledge in the history of the  
21 Commission, should we allow people who are not in  
22 attendance to vote.

23 CHAIRPERSON BERRY: The reason why the  
24 suggestion that I made earlier -- the suggestion I made  
25 earlier would take care of this problem, Robbie. That

1 if Commissioners wanted to vote up until the meeting,  
2 they could if they wished to vote with or without  
3 information or wished to vote with the information they  
4 have available. If they wished to file a written vote  
5 before that time, that would be in the nature of a poll  
6 and it wouldn't violate any of our rules and it  
7 wouldn't change any of our rules.

8           And if, since you've mentioned Judge  
9 Higginbotham, if he, for example, felt that he had  
10 sufficient information to vote but knew he was going to  
11 be too ill to participate or expected that, then he  
12 would be able to vote between now and then by fax. And  
13 it wouldn't change the rules if we were polling up  
14 until the end of that meeting. You wouldn't need to  
15 change the rules if that eventuality occurred.

16           But if you don't do that and you say you're  
17 going to do it at the meeting, the rules prohibit  
18 proxies. The rules would require Commissioners to  
19 waive the rule and to permit the person to vote. Which  
20 means that the person would be at the mercy of whether  
21 Commissioners agree that their vote could be counted.  
22 And they could not automatically assume that it would  
23 be.

24           COMMISSIONER GEORGE: Am I correct, Madam  
25 Chairman, that the confirmation of a Staff Director

1 requires five votes?

2 CHAIRPERSON BERRY: Yes.

3 COMMISSIONER GEORGE: So, in a certain way,  
4 the interests of a Commissioner who can't be available  
5 are protected. And, of course -- well, I don't quite  
6 know how --

7 CHAIRPERSON BERRY: That's a very sticky  
8 problem. Yes.

9 COMMISSIONER HORNER: Madam Chair, I want to  
10 be very clear. I want Judge Higginbotham to be able to  
11 vote. He is a member of this Commission. And I don't  
12 want anything to come in the way of that. I am deeply  
13 concerned about the precedent. And I wonder if there  
14 isn't some way we can avoid this. Because then we will  
15 begin -- we will establish a precedent in which we may  
16 poll on an educational report. We may poll on any  
17 number of things. And as you say, we can waive the  
18 rules.

19 And all I'm suggesting is that it's not  
20 impossible that should we decide to waive the rules on  
21 June 13th for this purpose, Judge Higginbotham would be  
22 able to vote by virtue of his preparation for that  
23 eventuality.

24 In other words, let's not decide now that  
25 we're going to do that, but let's be prepared to do

1 that on June 13th, such that he and you may communicate  
2 between now and then in writing or however, without a  
3 formal decision at this point to do it. I want him to  
4 be able to vote, but I don't concede in advance of  
5 necessity what might create a precedent that would be  
6 really undesirable.

7 CHAIRPERSON BERRY: Well, I'm hoping he'll be  
8 well enough to participate in the meeting by that time.

9 COMMISSIONER HORNER: I am, too.

10 COMMISSIONER GEORGE: Well, it could be any  
11 of us, of course.

12 CHAIRPERSON BERRY: Right. Any of us could  
13 get sick between now and then. God does not promise us  
14 anything.

15 Anyway, I think that then we've settled this.  
16 I'll put it on the agenda for the June meeting and I'll  
17 indicate -- and I'll send out to you the written  
18 nomination in the meanwhile. And I'll indicate that  
19 it's going to be on the agenda then.

20 Okay. Staff Director's Report, I think, is  
21 next.

22 Oh, sorry.

23 COMMISSIONER REDENBAUGH: I just have a small  
24 matter, if I may do that now?

25 CHAIRPERSON BERRY: Yes.



1           COMMISSIONER REDENBAUGH: In reviewing the  
2 transcript, either I misspoke or was misinterpreted in  
3 our last meeting, Mary. In an exchange of good natured  
4 banter between you and me, I spoke in a way that gave  
5 the impression that I thought our staff, the Commission  
6 staff, did not work hard. And that is not my  
7 impression. And I wanted to --

8           CHAIRPERSON BERRY: You said that? My  
9 goodness.

10           COMMISSIONER REDENBAUGH: Well, I don't think  
11 I said that, but the way the transcript is written, you  
12 could read that between the lines. And it's not my  
13 opinion. I just wanted to have this transcript show my  
14 more reflected judgment.

15           CHAIRPERSON BERRY: And I know you know they  
16 work hard.

17           COMMISSIONER REDENBAUGH: They do.

18           CHAIRPERSON BERRY: Yes.

19           Commissioner Horner?

20           COMMISSIONER HORNER: Madam Chair, I just  
21 want to say I thought the public service announcement  
22 by Phylicia Rashad and --

23           CHAIRPERSON BERRY: Eriq LaSalle.

24           COMMISSIONER HORNER: -- Eriq LaSalle was  
25 excellent. And I also would like to ask that we be

1 sent a copy or at least I be sent a copy of "Getting  
2 Uncle Sam to Enforce Your Civil Rights." I'd like to  
3 see it. Sounds like a significant document.

4 And also, I notice that the 1997 Spring issue  
5 of "Civil Rights Update" newsletter has been  
6 distributed to the mailing list. I don't think I've  
7 gotten it. The Staff Report says it's been distributed  
8 but I haven't gotten it. So maybe the Commissioners  
9 need to get a mailing of that.

10 CHAIRPERSON BERRY: Be added to the mailing  
11 list.

12 Okay, Charlie? "Uncle Sam" and "Update."  
13 All right.

14 Any other points?

15 Let's see. Commissioner Lee went to the  
16 Washington State Advisory Committee meeting. I  
17 received a letter from the Chair saying how much they  
18 appreciated the Commissioner showing up for the  
19 meeting. And I think Cindy Valenzuela went, too. But  
20 in the letter that I received from the SAC chair, the  
21 SAC chair raised some question about the  
22 disproportionality study or something -- a SAC report.

23 What is that about, Carol-Lee? Do we have it  
24 or where is it or what is it?

25 MS. HURLEY: It's continued for action at the

1 next meeting. It's a review of what the State of  
2 Washington is doing to deal with any issues of  
3 disproportionality based on race in juvenile justice.

4 CHAIRPERSON BERRY: So we have it for action  
5 at the next meeting?

6 MS. HURLEY: Yes.

7 CHAIRPERSON BERRY: Okay. Good. Because  
8 they were concerned about us acting on that, so that  
9 they could use it at some forum or activity that they  
10 had planned.

11 I want to encourage Commissioners to attend  
12 SAC meetings, to the extent that any of you can. We  
13 get a schedule of meetings and they always love it when  
14 somebody shows up, a Commissioner shows up. It creates  
15 great excitement and interest and they feel cared for,  
16 if you're interested in going. And there are enough of  
17 us, I think, that if we sort of divided it up from time  
18 to time, we could attend a SAC meeting and let them  
19 know ahead of time.

20 Also, if you are in the area where SAC chairs  
21 are located, they sometimes like to see you while  
22 you're there to talk about issues or concerns that  
23 their SAC might have. And if you could put that in  
24 your schedule if you happen to be in a particular area,  
25 that would be very helpful to us.

1 I know; Commissioner George, you stay in  
2 close touch with the New Jersey SAC, but that's not  
3 enough. When you travel around the country teaching  
4 your classes, you can talk to other SAC members, too.

5 (Laughter.)

6 Anybody have any other questions or comments  
7 about the Staff Report?

8 Yes, Commissioner Lee?

9 COMMISSIONER LEE: I have a couple of  
10 comments. Number one, on the PSA, I agree with  
11 Commissioner Horner. It was excellently done. What  
12 I'd like to ask the Office of Public Affairs is to have  
13 a list of your distribution list to make sure that  
14 there are certain new'groups. For instance, I met with  
15 a national Hmong group a couple of days ago, and they  
16 would be very interested in getting some information on  
17 getting copies, such as PSAs and getting the "Uncle  
18 Sam" booklet to their members. Because they are very  
19 new in this country and they're one of the many  
20 communities who really need to know their rights in the  
21 area of civil rights. So I'd like to see that list  
22 expanded.

23 Secondly, I'd like the staff to report  
24 whether they have been following the incident in New  
25 Jersey involving Asian-American and African-American

1 youth being allegedly harassed and beaten by an off-  
2 duty officer who was working at Denny's restaurant.  
3 I'd like a report if anyone is following up on that  
4 issue. If not, whether they will be.

5 CHAIRPERSON BERRY: When did that happen,  
6 Yvonne? Do you know?

7 COMMISSIONER LEE: Last month or within the  
8 last three weeks.

9 CHAIRPERSON BERRY: Do you know anything  
10 about it?

11 (Pause.)

12 You're sure it wasn't at Syracuse in New  
13 York?

14 COMMISSIONER LEE: I was told it was New  
15 Jersey.

16 CHAIRPERSON BERRY: I will be in Syracuse  
17 tomorrow for a commencement, so I will ask people about  
18 it there, if it is indeed Syracuse and not New Jersey.

19 COMMISSIONER HORNER: Syracuse would be  
20 horrified.

21 CHAIRPERSON BERRY: I will discuss it at  
22 their commencement.

23 No, I won't.

24 (Laughter.)

25 Any other comments or questions?

1 Yes, Commissioner George?

2 COMMISSIONER GEORGE: Madam Chairman, I just  
3 want to report on an issue that I've raised with the  
4 Commissioners before pertaining to restrictions placed  
5 on what military chaplains can preach about when it  
6 comes to issues that have political ramifications.  
7 That a federal court in Washington has invalidated  
8 certain Pentagon directives placing restrictions on  
9 military chaplains preaching -- on the content of  
10 military chaplains preaching, in the case of Ridgon v.  
11 Perry.

12 I'm assuming that that will be appealed, if  
13 it hasn't already been appealed by the military. But  
14 the first round on this has been won by chaplains and  
15 groups from a wide variety of denominations who had  
16 supported the chaplains, who were contesting the  
17 constitutionality of the Pentagon's directives putting  
18 limits on the content of speech in the context of  
19 preaching.

20 So that's just a report.

21 And the second thing is what is the procedure  
22 -- this is just a question -- the procedures for having  
23 some input into the content and language of the public  
24 service announcements? Would it be appropriate just to  
25 send a memo along to the Communications Office?

1           CHAIRPERSON BERRY: We already have -- I  
2 mean, remind me of how we're doing that. Because  
3 Commissioners have been able -- we review the message  
4 before they -- the proposed messages.

5           COMMISSIONER HORNER: Last time but not this.  
6 time, I think.

7           COMMISSIONER GEORGE: Yeah. I don't think we  
8 did this time. I think it's a good policy if we do  
9 review it.

10           Could we make that a matter of --

11           CHAIRPERSON BERRY: Maybe that slipped  
12 through the cracks, as they say.

13           So that let's make sure that the next time we  
14 do what we did the first time, which was, I remember we  
15 looked at all the messages. There were two or three or  
16 something.

17           COMMISSIONER GEORGE: Right.

18           CHAIRPERSON BERRY: And decided which ones we  
19 thought --

20           COMMISSIONER GEORGE: Is there any procedure  
21 that we have off-the-record input into -- rather than  
22 having a big discussion of it on the record?

23           CHAIRPERSON BERRY: You could ask for -- you  
24 could either meet with the folks who are doing it or  
25 you could ask the Staff Director, if we had one.

1 COMMISSIONER GEORGE: Right.

2 CHAIRPERSON BERRY: Or the Deputy Staff  
3 Director, I guess, to set up a little conference call  
4 between you and that person and the guy.

5 COMMISSIONER GEORGE: That would be fine.

6 CHAIRPERSON BERRY: And you could do that  
7 from Princeton.

8 COMMISSIONER GEORGE: Thank you.

9 CHAIRPERSON BERRY: Conference calls work  
10 wonderfully.

11 Okay. Any other -- did you want us to do  
12 something about Ridgon v. Perry, or you were just  
13 telling us about it?

14 COMMISSIONER GEORGE: No. That's simply  
15 reporting. I think it's now sub judice and the  
16 military will now appeal. I think it's an issue that  
17 is highly relevant to what we do here at the  
18 Commission, particularly on the subject of religious  
19 freedom and nondiscrimination. But I think for now  
20 we're just watching it.

21 CHAIRPERSON BERRY: Okay.

22 Yes, Commissioner Anderson?

23 COMMISSIONER ANDERSON: Thank you.

24 I want to not directly address the nominee  
25 for Staff Director issue but I do want to address for a



1 minute the Office of Staff Director.

2 I, for one, have had serious -- I don't think  
3 it's any secret -- had serious concerns about the  
4 operation of the Office of Staff Director under the  
5 previous occupant of that office. And while I see  
6 nothing in the background of the new candidate or the  
7 nominee for Staff Director, one of the things I will  
8 want to speak with the nominee about is the operation  
9 of the office and what steps will be taken in terms of  
10 moving forward rapidly to comply with the GAO report,  
11 which we hope to get in about a month, and the other  
12 report that we had from OPM.

13 I wonder whether there are not other members  
14 of the Commission and whether it would not serve the  
15 new Staff Director were we to have an Executive Session  
16 either before and/or after the nominee is confirmed to  
17 discuss various issues of that nature with the Staff  
18 Director and to get a better consensus.

19 Now, if I'm the only Commissioner that's had  
20 concerns about the way things have been operated here  
21 during the past year, then I'll be happy to do this  
22 privately with the nominee before and after  
23 confirmation.

24 If there are other Commissioners that are  
25 also concerned about some of the things that have

1 happened, then in my opinion it would be good to have  
2 an Executive Session to discuss these things. Or, we  
3 could have it on the record. But I think some of the  
4 aspects deal with personnel matters, personnel policy.  
5 And so it might be appropriate to have an Executive  
6 Session on that.

7           But I just think it would do a lot to clear  
8 the air and get a better sense of where Commissioners  
9 are coming from in terms of expectations for the  
10 operation of the Office of Staff Director during the  
11 next year or to and it would, I think, benefit the  
12 nominee.

13           CHAIRPERSON BERRY: I think we should have an  
14 Executive Session to discuss it. I think we should do  
15 it after we confirm the person, so that it's not like  
16 we're trying to do something to you before you -- but I  
17 think immediately after that we ought to have a  
18 discussion.

19           And the reason why we ought to have it is to  
20 clear the air, and also so that the person can hear  
21 altogether what different Commissioners have to say  
22 about their expectations. Because one of the tough  
23 jobs is going to be trying to balance everybody's  
24 expectations and be responsive to everybody.

25           And coming in, you might as well hear that

1 from everybody and hear us saying it to each other and  
2 to the Staff Director and figure out how to cut through  
3 that and to make everybody happy, if possible. Because  
4 I see this job -- there's been a lot of discussion  
5 about what this job of Staff Director is about.

6           Based on my own experience here, I think it  
7 requires somebody who is a good manager and somebody  
8 who is good with people and somebody who is sensitive  
9 to what it is to be staff to people who really make the  
10 policy and who you are supposed to be serving and  
11 implementing what they want to do and figuring out some  
12 way to help them reach consensus when you have a lot of  
13 different people with a lot of different views and to  
14 get the staff -- you know, keep morale up, get the work  
15 done, to get everything going.

16           I don't think it's a job that is a job where  
17 one just sort of schmoozes and doesn't do any work  
18 themselves or where management is not important. And I  
19 really think balancing all of us, our personalities,  
20 our interests, our concerns, our interest in how the  
21 place should run and what we should be able to do, is  
22 important.

23           So why don't we, unless somebody objects, say  
24 that we will have an Executive Session and discuss all  
25 this.

1 I only say Executive Session so that if  
2 someone is intemperate and says somebody's name or  
3 something, we don't have to say -- oh, well, let's go  
4 off the record. Okay.

5 Yes, Commissioner Anderson?

6 COMMISSIONER ANDERSON: Maybe the July  
7 meeting would be the best --

8 CHAIRPERSON BERRY: The time to do it.

9 COMMISSIONER ANDERSON: -- a good time to do  
10 it. And, I mean, just for people's planning, I would  
11 assume maybe an hour or two hours.

12 CHAIRPERSON BERRY: Okay.

13 COMMISSIONER ANDERSON: So people aren't just  
14 standing out in the hall for an hour. It would seem to  
15 me it would be kind of an extensive discussion.

16 CHAIRPERSON BERRY: And the staff would know  
17 they can go away and sit down somewhere and come back  
18 later.

19 Did you have your hand up, Commissioner  
20 Redenbaugh, or are you just sort of --

21 COMMISSIONER REDENBAUGH: No. I'm just  
22 agreeing. Amen-ing.

23 CHAIRPERSON BERRY: Okay. On the Staff  
24 Report, before I ask if there are other items for the  
25 future -- I have some, so let me see if anybody wants

1 to ask anything else about the Staff Report.

2 (No response.)

3 I wanted to raise two concerns. There's a  
4 great deal of discussion about an issue concerning the  
5 census. And it concerns a multi-racial category in the  
6 census. The Commission, to my recollection, has never  
7 taken a position on this issue. And it seems to be an  
8 issue in which there is growing interest, as opposed to  
9 less interest, just from what I read and hear.

10 And I was wondering, one, does anyone on the  
11 Commission believe that we ought to ask the staff to  
12 put something together and try to come up with a  
13 position or is this an issue we should best leave  
14 alone.

15 I only say this because I am concerned that  
16 there are a number of issues that are in public debate  
17 that seem to me to be about civil rights where the  
18 Commission does not weigh in. Now, we all have our  
19 personal views and we are at liberty, since we're not  
20 full-time government employees, to state them in forums  
21 or anyplace we care to.

22 But I wonder if this is a kind of issue where  
23 there is any possibility that we might get some kind of  
24 agreement or is this one where we would be so divided  
25 that it's not even -- it's one of those -- you know,

1 Robbie, like we shouldn't even discuss it. Like don't  
2 go there. Or is this one where there's some  
3 possibility that we might come up with something.

4           And if I could get -- how do I get somebody's  
5 -- you know, just sort of off the top of your head,  
6 whether there's any interest in the issue; whether you  
7 think it's important; whether you think we ought to say  
8 something about it or try to or struggle with it.

9           Robbie, is always willing.

10           Yes, Commissioner George?

11           COMMISSIONER GEORGE: What's the time frame?  
12 When will a decision on this be made?

13           CHAIRPERSON BERRY: I don't know. Maybe  
14 Commissioner Horner knows.

15           COMMISSIONER HORNER: OMB is going to  
16 promulgate the rule, I believe, in October officially.  
17 I'm not positive about that, but I think that's when  
18 it's coming out. But, obviously, the time to influence  
19 the rule is before it's promulgated for comment. So I  
20 would say OMB will probably be making final -- if they  
21 haven't already made final decisions, they'll be making  
22 them in the next few months.

23           So if we are going to do something, we should  
24 do it soon.

25           CHAIRPERSON BERRY: But there's a little

1 time?

2 COMMISSIONER HORNER: I think so. And the  
3 staff could check this. I saw a reference to the time  
4 frame in the paper recently.

5 CHAIRPERSON BERRY: Okay.

6 Vice Chair?

7 VICE CHAIRPERSON REYNOSO: Madam Chair, I  
8 seem to recall that we were asked specifically by a  
9 congressional committee to comment on this issue. And  
10 we did prepare some testimony, even though it was made  
11 clear to that committee that it's not official policy  
12 of this Commission. So we've already done some work in  
13 that area.

14 I think that you're right that it's an  
15 important issue. So I would hope that we would ask the  
16 staff to do something akin to a background report for  
17 us in terms of what the issues are, what the  
18 considerations are, what the implications are from the  
19 point of view of the various interest groups, and have  
20 us discuss it.

21 CHAIRPERSON BERRY: Okay.

22 Commission Lee?

23 COMMISSIONER LEE: In addition to the staff  
24 background report, I would suggest to have a briefing  
25 any time soon, maybe the June or July meeting. Because

1 I'm not ready to form any opinion until I've heard from  
2 interest groups.

3 CHAIRPERSON BERRY: Now, the next briefing, I  
4 think, is on the topic Commissioner Redenbaugh  
5 suggested. Am I right?

6 COMMISSIONER REDENBAUGH: That's my  
7 understanding.

8 COMMISSIONER HORNER: Is that June or July?

9 CHAIRPERSON BERRY: People are nodding their  
10 heads.

11 COMMISSIONER REDENBAUGH: That's June.

12 CHAIRPERSON BERRY: Yes. That's the next  
13 one.

14 COMMISSIONER REDENBAUGH: I think if we put  
15 this census thing off until July, we run the risk of  
16 being too late. I don't know. June's so fast, though,  
17 I don't know if we could do it.

18 CHAIRPERSON BERRY: Maybe we should try our  
19 hand at coming up with having the staff do a memo or  
20 something. And you're right. There's other testimony.  
21 To see where we'd come out on this. Not that we could  
22 decide anything based on it, but we could at least read  
23 it and see if we just automatically think that there's  
24 some right thing to do about this. I don't know what  
25 that is, but --



1           COMMISSIONER LEE: How old was the original  
2 submittal? How long ago was that done?

3           COMMISSIONER HORNER: The original what?

4           VICE CHAIRPERSON REYNOSO: Of the testimony?  
5 About two years ago is my recollection. I'm sure we  
6 can get a copy of that.

7           COMMISSIONER HORNER: This issue also arose  
8 during a briefing we had by someone from the Census  
9 Bureau, I remember.

10          CHAIRPERSON BERRY: Oh, yes.

11          COMMISSIONER HORNER: So we have some record  
12 there of the conversation.

13          CHAIRPERSON BERRY: Commissioner George?

14          COMMISSIONER GEORGE: Commissioner Lee has  
15 indicated that she doesn't know what her own position  
16 on this is. I certainly haven't studied the issue at  
17 all. But I'd like to know if other Commissioners have  
18 taken a public position on the issue. I'm not asking  
19 what the position is, but --

20          COMMISSIONER HORNER: Yes. I have.

21          COMMISSIONER GEORGE: Okay. So Connie has.  
22 Is there anybody else already on the record -- not on  
23 the record of the Commission meetings but has anybody  
24 taken a public position on this or are we all going in  
25 this together except for Connie?

1           CHAIRPERSON BERRY: Well, if we have taken  
2 public positions, the positions are already public so  
3 there's no reason why we shouldn't know if it's public;  
4 right? It's just a question -- I mean, if any of us  
5 have taken a public position, it's okay for us to say  
6 what the position was because it's public.

7           COMMISSIONER GEORGE: Oh, sure. Sure. No.  
8 That's not what I'm asking. What I'm really interested  
9 -- I'm just trying to indicate what my interest is. My  
10 interest is in knowing whether this is an issue on  
11 which some of us have already spoken out or not. And I  
12 don't care really at this stage what the position is.

13           CHAIRPERSON BERRY: Well, I do. Would you  
14 mind telling us so I could look it up, Commissioner  
15 Horner?

16           COMMISSIONER HORNER: I did an article in the  
17 Brookings Review about a year and a half, two years  
18 ago,. And a small section of that article dealt with  
19 what's called OMB Directive 15, which is the basis for  
20 the current racial categorizations used by the census  
21 and by all government agencies. And in my -- in my  
22 naive 1960s integrationist optimism, I came out for  
23 multi-racial, I think. I'm not sure I literally  
24 announced a position on it, but my comments would be  
25 construed as supportive of the notion as multi-racial

1 or no racial.

2           But I didn't assess the entire issue in  
3 itself rigorously at that time and I would be very  
4 interested in hearing what people have thought about it  
5 or do think about it in more depth.

6           I would also ask the staff to beat the bushes  
7 to find people who've written on the subject who don't  
8 automatically go for the status quo, though it may be  
9 hard to find written opinion on the other side.

10           CHAIRPERSON BERRY: Well, I have spoken  
11 publicly about this issue. Not in any depth. But I  
12 have taken a sort of ironic half-jocular approach to  
13 it. And what I do is point out that I'm already multi-  
14 racial and that most -- everybody in my family is. And  
15 that most African-Americans are. Because I tease and  
16 say that I'm Cabla Indian because, in fact, my great  
17 great grandfather on my father's side is white and the  
18 family from whom -- his decedents live on a drive in  
19 Nashville, Tennessee, where I come from, which is named  
20 for the family.

21           I always says that some day I'm going to go  
22 and ring the doorbell and say, "Guess who's coming to  
23 lunch?"

24           My mother only told me who they were about  
25 five years ago and identified where they lived and all

1 that.

2           And my great grandmother, who was black, was  
3 the one with whom he cohabitated.

4           And then on my father's side, one of my  
5 grandfathers is a Cherokee Indian. And then everybody  
6 else that I know has some African ancestor. So that  
7 makes me Cabla Indian. But most African-Americans are  
8 Cabla Indian. The only ones who aren't are those  
9 Africans who have recently come to this country, some  
10 who are from the West Indies where there was little  
11 race mixing in some areas.

12           And so whenever I check black or whatever it  
13 is in the census, I assume that means Cabla Indian.  
14 And most African-Americans have Indian ancestry, too.  
15 It's just part of the history of our country.

16           So I've always been curious, and I still am -  
17 - and maybe in the discussion I could figure it out --  
18 what we would mean by multi-racial. You know, like who  
19 would be supposed to check it? Would I be supposed to  
20 check it or would it just be people -- someone said to  
21 me if you have two parents of different races, like one  
22 is black and one is white. But that doesn't make any  
23 sense because your black parent is likely Cabla Indian.

24           So then you'd have to say, well, only if a  
25 certain percentage of the ancestry. Then you get into

1 the old one drop of Negro blood makes one Negro. And  
2 then what are you going to do? Sit around doing tests?

3 So when I speak about it, I'm asked about it  
4 and I answer, I answer in this vein. And so that  
5 doesn't mean I've done any research or any -- and I  
6 really am quite puzzled about what it would mean and  
7 what one would do. And it's an important issue.

8 I'm also sensitive, in talking to some people  
9 who want that category, who consider themselves multi-  
10 racial, that they are -- some of them just feel that  
11 they need to acknowledge their parents. You know, they  
12 have this psychological need to be seen not as one  
13 thing or the other because they feel that their  
14 ancestry and their parents aren't getting respect,  
15 psychologically.

16 I mean, I understand that and I'm very  
17 sensitive to that. I'm not sure it would -- I was  
18 interested in what you said, Commissioner Horner,  
19 because it always has seemed to me that if one were to  
20 believe that race should not be used for purposes of  
21 public policy in any sense, then one would probably be  
22 opposed to that, as well as being opposed to any kind  
23 of racial categories.

24 COMMISSIONER HORNER: Yes.

25 CHAIRPERSON BERRY: That that would be

1 logical.

2           COMMISSIONER HORNER: That is the point of  
3 view toward which my thinking tends. And one of the  
4 things which I want to hear -- I believe in an ideal  
5 world we would not be counting by race at all and that  
6 public policy ought to put it on track to the time when  
7 we won't be. And I also believe that intermarriage is  
8 escalating. I know that it is escalating. And when  
9 combined with immigration, is creating a situation in  
10 which we are going to be engaged in a lot of reductio  
11 ad absurdum as we try to count by race.

12           That being said, before making a definitive  
13 public statement, I would like to know what the near-  
14 term implications are for how we handle the current  
15 racial tensions that we have.

16           So I don't want to be ignorant in trying to  
17 apply a perspective that I think is morally well-  
18 founded. I think we should be trying from a moral  
19 point of view to get past race and to transcend history  
20 with present and future. But I want to know what that  
21 means for individuals before making a definitive  
22 conclusion about how to get there. So that's why I  
23 would like to hear about this.

24           CHAIRPERSON BERRY: Commissioner George?

25           COMMISSIONER GEORGE: While we're on the

1 subject, I recall sometime back Mr. Zog, the Arab-  
2 American group and an assistant, a woman who was here  
3 explaining in more detail their position, raised the  
4 question of whether there should be a category of  
5 Arabic or something like that. I don't remember  
6 precisely whether it was linguistic or had some other  
7 dimensions.

8           They were advocating the inclusion of such a  
9 category in the census.

10           Do you happen to know if that's a live  
11 political issue? That group felt that we should be  
12 weighing in in favor of their position, obviously, on  
13 that.

14           CHAIRPERSON BERRY: I remember that.

15           COMMISSIONER GEORGE: And I wonder if we  
16 should treat the issues more generally, or at least  
17 those that are alive. And perhaps we could find out  
18 whether that issue is a live one. And if so, what is  
19 to be said on that.

20           I think there's an interesting question  
21 because an Asian-Pacific Islander would cover Indian  
22 subcontinent, people whose ancestry goes to the Indian  
23 subcontinent but not to Afghanistan, Persian, Iraq and  
24 Syria, Turkey and so forth. But obviously, they're not  
25 of European background either.

1           CHAIRPERSON BERRY: So we'll ask the staff to  
2 find out what happened to this issue and then look at  
3 it and see.

4           COMMISSIONER GEORGE: And whether that's a  
5 live issue in connection with the census forthcoming.

6           CHAIRPERSON BERRY: Yes, Commissioner  
7 Redenbaugh?

8           COMMISSIONER REDENBAUGH: I can see why there  
9 are 6,000 languages in a world that probably has many  
10 races or some large number.

11           Is there any move also to move away from the  
12 geographic distinction, Asian, towards a more race  
13 based or is Asian satisfactory? Do you see what I'm  
14 saying?

15           COMMISSIONER LEE: But Asian is a race.

16           COMMISSIONER REDENBAUGH: Is it?

17           COMMISSIONER LEE: It is a race.

18           COMMISSIONER GEORGE: Well, nobody knows what  
19 a race is.

20           COMMISSIONER REDENBAUGH: See, I wasn't sure.

21           CHAIRPERSON BERRY: Oh, boy. Oh, boy.

22           COMMISSIONER REDENBAUGH: I wasn't sure if it  
23 was either.

24           CHAIRPERSON BERRY: Wait a minute. We've got  
25 three ideas on the table. We have four, actually.



1 Asian is a race.

2 COMMISSIONER REDENBAUGH: I thought it was  
3 both a geographic designation and a --

4 CHAIRPERSON BERRY: What is Japanese?

5 COMMISSIONER LEE: It's Asian race.

6 COMMISSIONER GEORGE: A nationality.

7 COMMISSIONER LEE: It's a nationality.

8 CHAIRPERSON BERRY: A nationality within the  
9 race. Okay. Chinese is a nationality within the Asian  
10 race. Okay. So we've got that idea on the table.

11 And what was the other item?

12 COMMISSIONER HORNER: Madam Chair, as the  
13 staff goes about looking into this, I would refer the  
14 staff to some work done by a West Coast anthropologist.  
15 And I cannot recall which of the major West Coast  
16 institutions. Stamford, I think. Some interesting  
17 work done off on the left of this question, if I could  
18 use that word in reference to the West Coast, which  
19 suggests that anthropologically speaking, there is no  
20 such thing as race. I'm not suggesting I believe that  
21 but I think it's something which has entered into the  
22 discussion in a very sophisticated and interesting way  
23 and we ought to be aware of it.

24 COMMISSIONER REDENBAUGH: His argument is  
25 that it's a very murky distinction.

1 CHAIRPERSON BERRY: Murky?

2 COMMISSIONER REDENBAUGH: Uh-huh.

3 CHAIRPERSON BERRY: And then race, of course,  
4 according to us deconstructionists, is socially  
5 constructed anyway, so it does not exist.

6 COMMISSIONER HORNER: And then the subset of  
7 that issue is, if it's socially constructed, do you  
8 fight like heck to maintain the construction or do you  
9 fight like heck to dissolve it.

10 COMMISSIONER REDENBAUGH: It depends on where  
11 there's no power.

12 CHAIRPERSON BERRY: What? Related to power?  
13 Is that what you said, Russell?

14 COMMISSIONER REDENBAUGH: That's what I said.

15 CHAIRPERSON BERRY: Now, you are a post-  
16 modernist because you have now gone to power from  
17 deconstruction.

18 COMMISSIONER HORNER: Oh, Russell, --

19 COMMISSIONER REDENBAUGH: You can do that if  
20 you want, but I had another issue.

21 COMMISSIONER REDENBAUGH: Given that there's  
22 no objective reality, Connie.

23 COMMISSIONER GEORGE: There's a Professor  
24 Apia at Harvard who's done work on most of these race  
25 things, problems of whether race is --

1 CHAIRPERSON BERRY: Apia. Yes.

2 COMMISSIONER GEORGE: As to whether it's  
3 constructed or whether there's racial essentialism.  
4 It's a huge debate.

5 CHAIRPERSON BERRY: And a professor at  
6 Princeton. Several, have raised this.

7 COMMISSIONER GEORGE: Who's that at  
8 Princeton?

9 CHAIRPERSON BERRY: Mr. Rampersad, who is in  
10 one of the departments, and Ms. Morrison, in her  
11 literary work, who happens to be on your faculty.

12 Are you familiar with these two faculty  
13 members?

14 COMMISSIONER GEORGE: Professor Rampersad, as  
15 a matter of fact, and I share a little league team.

16 CHAIRPERSON BERRY: Okay.

17 COMMISSIONER GEORGE: We have sons on the  
18 same little league team.

19 CHAIRPERSON BERRY: Put your mike on. Do you  
20 have on your mike? You're being bad.

21 I had one other issue that I wanted to raise  
22 to see if you had any interest in this.

23 Commissioner Redenbaugh had said once that we  
24 should find some way to get into the affirmative action  
25 discussion, if I'm not mischaracterizing your comment.

1                   COMMISSIONER REDENBAUGH: Yes. I did say  
2 that.

3                   CHAIRPERSON BERRY: If we could figure out  
4 some way to do it. And I have a feeling, based on what  
5 I know of us, that on many aspects of affirmative  
6 action we would disagree. Members of the Commission  
7 would find some disagreement. Some, we would agree.  
8 Others, we would disagree.

9                   But I also think on a particular issue that  
10 I'm about to raise, that we probably would have  
11 substantial agreement. That issue is the need to see  
12 to it that higher education opportunity is available  
13 for African-American and Hispanic students. And that  
14 all of us would, in the name of equal education  
15 opportunity -- because it's right, it's fair and  
16 because it's productive -- want to make sure that  
17 whatever happens, we would not be in the business as a  
18 country of making decisions that decreased higher  
19 education opportunity unnecessarily that was available.

20                   And that if you put the question that way and  
21 then tried to look to see what's going on, that we  
22 might be able to come together with some kind of  
23 recommendations that would be helpful to the country,  
24 just focusing on that aspect of it, education, higher  
25 education, and not all these other issues.

1           To be more specific about what I have I mind,  
2 as a result of the affirmative action debate and some  
3 of the changes that have been made in Texas, California  
4 and other places, there have been declines, I am told,  
5 in the numbers and percentages of African-American and  
6 Hispanic students that are attending four-year public -  
7 - or likely to attend in the Fall, in terms of  
8 admissions -- higher education institutions in those  
9 states. In some of the states where there really is  
10 not an affirmative action debate issue, such as  
11 Mississippi, where we just had a hearing, and some of  
12 the other Southern states where there are public black  
13 colleges and universities that are taxpayer supported,  
14 the numbers and percentages of African-American  
15 students in attendance is being affected negatively,  
16 I'm told, by the course that desegregation has taken.

17           That's what has happened, is that the states  
18 have imposed certain requirements on the black public  
19 institutions to force them to, quote, "desegregate,"  
20 which has reduced the number of black students who can  
21 go there. And that this is sort of like an unintended  
22 consequence. No one thought about what would happen.  
23 And so that therefore fewer students can attend those  
24 institutions. I'm talking about black students.

25           And in the case of Hispanic students, when

1 the numbers are reduced at public institutions, like in  
2 California, Texas, there are not as many -- there are  
3 no Hispanic public institutions that are taxpayer  
4 funded because we don't have the same history of  
5 segregation and taxpayers, separate colleges and  
6 universities, that would be places that they could go.  
7 And so that what we're likely to see is an overall  
8 decline in the numbers of Hispanic and African-American  
9 students going on to higher education.

10 I don't think that's anything that anybody  
11 wants to see and that whatever is going on, that that's  
12 not what anybody intends. And that some of the policy  
13 issues, as they deal with race and ethnicity and  
14 discrimination and remedies, have to be analyzed to see  
15 if there's some other way to do some of this stuff.

16 Now, I know from reading the paper there've  
17 been proposals in Texas for changing to a system where  
18 everybody who graduates from high school in the state,  
19 something like 10 percent of the top high school  
20 graduates, get to go to the University of Texas or  
21 something. And there are states where they used to do  
22 that. I don't know if there are still states. But it  
23 used to be policy in some states. If you graduated  
24 from college (sic) and you were in the top 10 percent,  
25 then you could go to the public university, whatever

1 that was. And this was something so that everybody in  
2 the state would be treated the same, their tax money  
3 paying for the school.

4 I'm told that in Texas if they did that, then  
5 large numbers of Hispanic students and African-American  
6 students would be able to get into the university  
7 because they come from schools where a large number of  
8 them are likely to be in the top 10 percent. I'm told  
9 that that wouldn't work in California for reasons of  
10 where the population is. That it may work in some  
11 places but not in others.

12 So, I am concerned about this. I don't think  
13 -- we went through a period about 15-20 years ago in  
14 which black enrollment in higher education went down  
15 and there were conferences all over this country. And  
16 I attended, I must think, about 100 in one year on  
17 black males, an endangered species in higher education.  
18 That was the name of each one of the conferences.  
19 Where people sat around and tried to figure out what to  
20 do and why it was happening and a lot of concern.

21 And we were able to figure out ways, in terms  
22 of policy, to get the numbers back up again.

23 And so I'm concerned that it not happen  
24 again. I don't think it's good for the country.

25 So I don't know if we could, without saying

1 we like affirmative action -- and I don't like it --  
2 sort of rephrase the question and say is there anything  
3 in these policies, whatever kind of policy is going on  
4 in the places where the desegregation policy has had  
5 this effect or places where the affirmative action  
6 policy has had this effect, is there anything that can  
7 be done or should be done so that the country doesn't  
8 have to face this and I wouldn't have to go to those  
9 100 meetings another year about how do we make up for  
10 the past.

11 So that's my concern.

12 Yes, Commissioner Redenbaugh?

13 COMMISSIONER REDENBAUGH: I endorse your  
14 concern and I think one of the ways that I'm going to  
15 propose that we move forward on that, if we're going to  
16 -- and I propose we do -- is rather than move to some  
17 study or a set of recommendations -- because I think on  
18 this issue, I myself, anyway, feel still that we're  
19 pretty postured in unsurprising ways. I think what  
20 would benefit me very much is some roundtable  
21 discussion with not more than four Commissioners, kind  
22 of an exchange of views and experiences on this topic,  
23 that could then form the foundation for how we might  
24 work more collegially in this area around the areas  
25 where we do have substantial agreement.



1           But I also think there's more than that. I  
2 mean, I think there are some areas where we have  
3 substantial agreement, but I think we could generate  
4 more of those if we had some sort of coffee house  
5 conversation. I think we might find ourselves changing  
6 some of our historical positions.

7           So, I would like to move forward with that as  
8 a first step in what I think you are talking about.

9           CHAIRPERSON BERRY: How many of us can talk  
10 at the same time somewhere together without sending out  
11 a notice?

12           COMMISSIONER REDENBAUGH: Four.

13           CHAIRPERSON BERRY: Only four?

14           COMMISSIONER REDENBAUGH: Only four. And I  
15 think operationally, above four is too many anyway.

16           CHAIRPERSON BERRY: Yes, Commissioner Lee?

17           COMMISSIONER LEE: Madam Chair, I think  
18 there's a misconception out there that Asian-Pacific  
19 American are overrepresented in the area of higher  
20 education. But in reality, once you desegregate the  
21 numbers, certain groups, particularly the Pacific  
22 Islanders, some Southeast Asian groups, have a far  
23 lower rate in higher education.

24           VICE CHAIRPERSON REYNOSO: Filipino-  
25 Americans.

1           COMMISSIONER LEE: And Filipino-Americans.  
2 They have a much lower rate in higher education than  
3 some Latino and African-American youths. So, whatever  
4 discussion we're going to have, I really hope that the  
5 Asian-Pacific Island youth will be included in the  
6 discussion.

7           CHAIRPERSON BERRY: Well, if they are, we  
8 would have to discuss those groups that have that  
9 particular problem, the one you've identified. Because  
10 what we should do, I think on all problems, if  
11 possible, is discuss the problems in the context of  
12 where the problem is and not -- I say that, despite the  
13 fact that in my years in Washington I have many times  
14 ended up having to support something that was very  
15 broad that was supposed to cover everybody in the  
16 world, when everybody who was sitting at the table knew  
17 that the problem was only one particular group of  
18 people. The only way you could get a solution is to  
19 include everybody.

20           So, -- and sometimes that works and sometimes  
21 it doesn't. And I've fought, kicking and screaming and  
22 sometimes I've just said -- you know. Hey. Forget it.  
23 Maybe that's the only way you can do policy. I don't  
24 know.

25           But I think you're right that if -- for

1 example, when I went out in California recently, down  
2 in that school district outside L.A. and listened to  
3 some parents, there were a lot of parents, there were a  
4 lot of Pacific Islanders who live in that particular  
5 school district -- I don't know why they happened to  
6 live in that particular school district that I was  
7 visiting -- who had some problems.

8           So, what I would do is, I would ask, then --  
9 maybe I'll take your suggestion. I guess I will,  
10 Russell -- and call and see if I can set up a dinner or  
11 -- I mean, I hate to take people's time with --

12           COMMISSIONER REDENBAUGH: But I think that's  
13 the only way to produce this is to take our time.

14           CHAIRPERSON, BERRY: So I will be calling you  
15 to see if you would be willing, three at a time.

16           COMMISSIONER REDENBAUGH: Count me in.

17           CHAIRPERSON BERRY: To have dinner. And we  
18 can sit around and talk about some of this stuff. Okay?  
19 All right. Because I think everybody is interested.  
20 It's not that no one is interested in discussing it.

21           Yes, Commissioner Horner?

22           COMMISSIONER HORNER: Madam Chair, I think  
23 that's a good idea. I would only suggest that we make  
24 it very clear, for the purposes of operating in the  
25 sunshine, that these are preliminaries to full

1 expression in public of any thoughts or goals or  
2 intentions we'd have for Commission work, just so it's  
3 clear to everybody we're not trying to operate out of  
4 the sunshine.

5 CHAIRPERSON BERRY: Okay.

6 Yes, Commissioner Anderson?

7 COMMISSIONER ANDERSON: And none of these  
8 meetings are directed toward policy or action of the  
9 Commission. I mean, they're a way of exchanging ideas  
10 in more an academic kind of sense. It's not policy  
11 oriented in any way, as far as I understand what we're  
12 discussing.

13 COMMISSIONER HORNER: Yes.

14 CHAIRPERSON BERRY: Okay. All right.

15 Does anyone have anything else? If not,  
16 we're going to take a little break and then do the  
17 briefing.

18 (No response.)

19 Nothing else? Let's take a break.

20 (Whereupon, a recess was taken.)

21 CHAIRPERSON BERRY: I want to adjourn the  
22 regular meeting and proceed to the briefing. And I  
23 want to welcome our guests.

24 I welcome the panelists to this briefing, and  
25 it's on the civil rights implications of issues related

1 to the Legal Services Corporation, which is a private  
2 corporation set up by Congress back in 1974, designed  
3 to channel federal support into programs giving legal  
4 assistance to the poor in non-criminal proceedings,  
5 non-criminal proceedings.

6           And so we are interested in how all of the  
7 issues surrounding the Legal Services Programs and what  
8 has happened to them, relate to civil rights concerns.  
9 In particular, the Vice Chair, who asked for this  
10 briefing, expressed a special interest in learning what  
11 effect the class action restrictions on the Legal  
12 Services Corporation might have on the representation  
13 of the poor in civil rights matters where they have  
14 concerns.

15           So, I want to thank each of the panelists who  
16 came today. Some came from California. But those who  
17 are local, too, thank you for coming. And we're eager  
18 to learn all we can about this important subject.

19           The first person that I'll call upon is  
20 Robert Evans, who is the Director of the Washington,  
21 D. C. office of the American Bar Association. He's the  
22 Associate Executive Director of Governmental Affairs  
23 and Public Services Group. He participated in the  
24 drafting of legislation that resulted in the creation  
25 of the Legal Services Corporation, so he should know

1 something about the legal services. And he's one of the  
2 leading experts on the history and need for legal  
3 services. And he currently chairs an ABA committee on  
4 the provision of legal services to all who need them.

5 Thank you very for coming, Mr. Evans. And  
6 could you make a brief opening statement?

7 MR. EVANS: Thank you very much, Madam  
8 Chairman, and members of the Commission. It's an honor  
9 to be here before you and I commend you for looking at  
10 this subject.

11 This has been consistently over the last  
12 many, many years, one of the highest priorities of the  
13 American Bar Association in terms of its legislative  
14 program and support. We believe deeply in the  
15 importance of this program to the rendering of justice  
16 in this country.

17 I was asked if I might, as the introduction  
18 indicated, provide a little bit of history, and I will  
19 do that very briefly. I expect that your questions  
20 will be the more useful part of this session for you,  
21 but I will try to sketch out a brief history.

22 Before doing that, I would make four basic  
23 points. First, lawyers, in our view -- access to  
24 lawyers is absolutely essential to the rendering of  
25 that most basic of civil rights, justice, to the

1 nation's poor people.

2           Second, despite concerted and intense efforts  
3 by the private bar, we have never been able to, I do  
4 not believe we ever will be able to, nor do I think we  
5 should be expected to carry the major portion of the  
6 burden of providing justice to the poor in this  
7 country.

8           Third, the key component of a delivery system  
9 to provide justice is, and remains, a staffed attorney  
10 office which is primarily funded under our system by  
11 the Legal Services Corporation.

12           And fourth, sadly the entire system remains  
13 on life support, these 28 years after the formation of  
14 the corporation.

15           With that said, let me trace briefly a  
16 history of this program for you.

17           The first Legal Aid Society on an organized  
18 basis that we are aware of, was started in New York  
19 City in 1876 and addressed primarily problems of  
20 German-American immigrants, perhaps reflective of the  
21 fact that these programs have typically looked out for  
22 groups in the population who were clearly  
23 underrepresented.

24           In 1920, the American Bar Association began  
25 its first formal involvement. Charles Evans Hughes,

1 later a Justice of the Supreme Court, became the first  
2 Chair of what is now our Committee on Legal Aid and  
3 Indigent Defendants. And he spoke at a symposium in  
4 1920 about the need for organized legal aid programs  
5 around the country to meet the legal needs of the poor.

6 And I would like to quote briefly from those  
7 remarks.

8 "Without opportunity on the part of the poor  
9 to secure expert legal aid, it is idle to talk of  
10 equality before the law. You may provide the machinery  
11 of courts but to have justice, according to law, save  
12 in a very limited class of cases where a Judge may act  
13 as advisor, you must have the aid of lawyers."

14 Hughes went on to comment specifically about  
15 the difficulties of having the private bar exclusively  
16 try to provide those services.

17 "The high minded practitioner moves in a  
18 world to which those most in need are utter strangers.  
19 The members of the bar who are most likely to recognize  
20 professional obligation to the poor are rarely so  
21 circumstanced that they can give aid without a waste of  
22 effort, which suitable organization would render  
23 unnecessary. And while their sporadic efforts would  
24 furnish relief here and there, as chance might offer, a  
25 multitude would continue to suffer without redress.



1           "Moreover, the wrongs of the poor fall into  
2 well defined classes and the attorneys for the legal  
3 aid societies acquire a wide knowledge and an  
4 efficiency in dealing with these cases which enable  
5 them to give a service at an office of the organization  
6 which could not be duplicated by the best law firms in  
7 this city."

8           So the association for decades worked hard to  
9 encourage the spread and strengthening of legal aid  
10 societies around the country. In 1922, we were able to  
11 identify 33 such legal aid societies and bureaus in the  
12 country. By 1965, that number had grown to 248 legal  
13 aid offices.

14           It had become apparent, however, that those  
15 legal aid societies were meeting only a very, very  
16 small fraction of the legal needs of the poor. And  
17 indeed, there were whole areas of the country where  
18 there were no legal aid programs at all, particularly  
19 in the South and the Western States.

20           Working with the Administration at that time  
21 and with many other folks, Sergeant Shriver in the OEO  
22 office, the ABA under the leadership of our then-  
23 President, Lewis F. Powell, Jr., unanimously passed a  
24 resolution in 1965 endorsing the concepts of  
25 establishing a federal program. And that program

1 indeed was established.

2           The program found itself mired in  
3 controversy, as I suppose the program remains even to  
4 this day. In 1969, for example, there was a proposal  
5 to permit each of the 50 state governors to veto any  
6 funding for legal services, federal money in their own  
7 state. Fortunately, that was rejected by Congress.

8           In the early '70s there was an effort to  
9 impound the congressionally authorized funding for this  
10 program, along with many other programs. Again, that  
11 effort was unsuccessful, but it prompted both public  
12 officials and those in the private sector to call for  
13 the restructuring of the federal program and for the  
14 establishment of what was hoped to be a politically  
15 independent corporation.

16           Frank Carlucci, Nixon's appointee as head of  
17 the Office of Economic Opportunity, testified before  
18 Congress. "It is also clear that the present structure  
19 of the legal services program can no longer provide the  
20 necessary independence and protection of the legal  
21 rights of the poor that is so important in our judicial  
22 system of governance."

23           And so in 1974, as one of his last acts in  
24 office, President Nixon did sign into law the act  
25 creating the -- 1974, creating the corporation. And it

1 came into existence in 1975.

2           The program had \$750 million in funding  
3 originally. That amount increased regularly until  
4 fiscal year 1981 when it reached a level of \$321  
5 million. That amount of money permitted the  
6 corporation for the first time to expand the geographic  
7 coverage of the program to all parts of the United  
8 States and to achieve very briefly a goal they had set  
9 of a minimum access level of two attorneys for every  
10 10,000 poor people.

11           I would note that in the population as a  
12 whole, you obviously have a much higher figure of  
13 practicing attorneys for every 10,000 people, something  
14 -- several multiples of that figure.

15           But the controversy surrounding the program  
16 resulted, in 1981, in a concerted effort to kill the  
17 program entirely. Compromises were made during the  
18 political process and the result was a 25 percent cut  
19 in the funding of the program, a cut from which it has  
20 never recovered.

21           There have been increases over the years.  
22 Some years, flat funding. Some years, increases. The  
23 program reached two years ago a funding level of \$400  
24 million. It was cut back in the last Congress to \$283  
25 million. And that is where it sits.

1           Adjusted simply for inflation, the \$321  
2 million from FY '81, you would need a figure of well  
3 over \$600 million in real dollars to provide the same  
4 level of service. Beyond that, the poverty population  
5 in this country has increased by one-third since 1980,  
6 adding an additional 10 million potential new clients  
7 for this program.

8           What has this meant in terms of the ability  
9 to deliver legal services? In FY '81, the program had  
10 1,406,000 local field offices. There were 6,559 full-  
11 time attorneys employed by the program and 2,901  
12 paralegals. The last figures available from the  
13 corporation indicate those numbers are now 1,064  
14 offices, 3,642 attorneys and 1,488 paralegals.

15           So the core staff program for the legal  
16 services movement in this country has been cut down to  
17 about half of what it was at its height.

18           There are, obviously, many other resources.  
19 There are roughly \$200 million in the most recent  
20 fiscal year of non-LSC funds available to the programs  
21 around the country. The biggest chunk of those are the  
22 IOLTA programs, which is a new source of funding which  
23 we can talk about, if you're interested, which came  
24 into play in the '80s. It is dependent upon interest  
25 rates and it's been declining in the last few years as

1 the interest rates have gone down. There are  
2 contributions by bar associations, by law firms, by  
3 foundations, by United Ways in many areas.

4 In total, they provide about \$200 million or  
5 roughly now about 40 percent of the total money  
6 available to legal services programs. The other 60  
7 percent coming from the federal government.

8 There have been a number of studies of  
9 whether the legal needs of the poor are being met. And  
10 in the best years, the studies have consistently shown  
11 that only about 20 percent of the legal needs of the  
12 poor were being met by these combined resources. That  
13 figure will obviously be lower with the recent cutback  
14 in funding.

15 As I say, the key component in legal services  
16 delivery system are the staff attorney offices,  
17 supplemented by the other sorts of resources that are  
18 available. We in the private bar simply would not be  
19 able to provide a level of pro bono services that are  
20 provided to clients, absent this core mechanism, which  
21 provides the intake, the referral of cases, the  
22 training of lawyers unfamiliar with particular areas of  
23 practice that are common for the poor.

24 There are about 150,000 lawyers nationally  
25 who are signed up on lists with local legal services

1 programs to do pro bono work. We're proud of that  
2 record. I think it is unmatched by any other  
3 professional business or anyone else in this country.  
4 Sure, it could be higher. We work hard to try to make  
5 it higher. But there is a limit to the capacity of the  
6 private bar to assist in these areas.

7           We, as I say, are strong endorsers of this  
8 program. I think its impact, obviously, on minorities  
9 in this country is enormous, because as you all too  
10 well know, the percentage of people who are in the  
11 poverty community in this country are heavily minority  
12 and so the cutbacks in this program directly impact all  
13 of those people.

14           I will leave it to others to talk about some  
15 of the restrictions that have been imposed in recent  
16 years which more directly affect perhaps the civil  
17 rights issues of concern to you.

18           Thank you.

19           CHAIRPERSON BERRY: Okay. Thank you very  
20 much.

21           Next we have Ms. Gail Laster, who is Director  
22 of Government Relations and Counsel for the Legal  
23 Services Corporation. Before that, she was counsel to  
24 the United States Senate Committee on the Judiciary and  
25 has been counsel to the Senate Labor and Human

1 Resources Committee.

2 Ms. Laster will focus her remarks on  
3 coordinating legal services activities in support of  
4 the federal appropriations and reauthorization  
5 processes.

6 Ms. Laster, welcome. Thank you very much.

7 MS. LASTER: Thank you. It's an honor to be  
8 here, as well.

9 And today, our Board of Directors is having  
10 its -- we have Board meetings every two months, I would  
11 say, and so our Chairman of the Board and our President  
12 of the Corporation are attending the Board meeting, as  
13 well as our Vice President, and so they sent me in  
14 their place.

15 I always have to say whenever I speak  
16 publicly that, indeed, I am quite mindful of the  
17 congressional restriction on lobbying in terms of Legal  
18 Services employees. I am allowed to lobby Congress on  
19 behalf of the corporation for our reauthorization and  
20 our appropriations process, and I'm certainly allowed  
21 to give to the public and anyone else information about  
22 the program, but we are not allowed to do any types of  
23 grassroots lobbying or call to arms with Legal Services  
24 funds or on Legal Services time. And so I always state  
25 that up front.

1 CHAIRPERSON BERRY: So you're not here to  
2 lobby us. You're just to inform us.

3 All right. Thank you.

4 MS. LASTER: In case there is a Congressional  
5 inquiry about this, I like to make that clear.

6 CHAIRPERSON BERRY: Make the record clear.

7 VICE CHAIRPERSON REYNOSO: We'd like to  
8 stipulate that this isn't lobbying; right?

9 MS. LASTER: And having said that, in terms  
10 of my written remarks, I have given to the Commission  
11 the remarks of our Chairman and Vice Chair at the  
12 Appropriations Subcommittee hearing. We have annual  
13 appropriations. Our Appropriations Subcommittee that  
14 has jurisdiction over Legal Services is the Commerce,  
15 Justice, State, Judiciary and Related Agency  
16 Subcommittee, both in the House of Representatives and  
17 the United States Senate.

18 The controlling committees that have  
19 jurisdiction over our reauthorization are different in  
20 the House and Senate from each other. In the House, it  
21 is the Judiciary Committee, chaired by Congressman  
22 Hyde, and it's the Subcommittee on Commercial Law,  
23 which is chaired by Congressman Gekas. And in the  
24 United States Senate, it is the Labor and Human  
25 Resources Committee, which is chaired by Jim Jeffers of



1 Vermont. There's no subcommittee that has jurisdiction  
2 over us. It's the full committee.

3 So that's where we are.

4 And then, just in terms of my remarks, I'd  
5 like to -- if you would excuse me, I'd like to talk  
6 about really what the program is all about. I hope I'm  
7 not repeating myself for those of you who know about  
8 it, but I found that having worked there for three  
9 years that I am still discovering the different things  
10 that our lawyers do with very little resources and with  
11 sometimes a lot of obstacles put in their way. But we  
12 do a lot and we don't necessarily have the opportunity  
13 to really explain to people all that we do.

14 And we certainly do find that in Congress,  
15 whether or not Congress people believe in federally  
16 funded legal services programs, they still do respect  
17 the work that our lawyers do for their individual  
18 clients and their constituents. And it's very  
19 necessary work.

20 So if you don't mind, I'd like to just talk  
21 about what the program does and our grantees do. Then  
22 I'd like to get into the restrictions, as well. And  
23 then finally, I would like to talk about -- there are  
24 two lawsuits that are challenging the restrictions, and  
25 just give you an update on those.

1           As you probably know, the Legal Services  
2 Corporation is a private not-for-profit corporation.  
3 And it's private because we were part of the  
4 government. But the Congress and the President felt  
5 that it was too political that way. So we have been  
6 taken out of the government scheme and are a private  
7 not-for-profit corporation organized in Washington,  
8 D.C.

9           We have a Board of Directors of 11. Five  
10 must be from one party; four must be from another  
11 party. And then we have two client representatives on  
12 the Board who are formerly from our client community.  
13 And the President appoints the Boards of Directors,  
14 members of the Board, and they are confirmed by the  
15 Senate. And then the Board of Directors appoints a  
16 President, a Vice President and so on.

17           And we are headquartered here in Washington,  
18 D. C. at 750 First Street, N.E., which is near Union  
19 Station.

20           And we are a grant-making organization,  
21 basically. We receive all of our funds from the  
22 federal government and then we, in turn, give out the  
23 funds to people who apply to us for these funds.

24           Back when the corporation was first created,  
25 we decided on service areas. They don't correspond

1 pretty much to congressional districts but we look at  
2 different states. Looked at the states and the whole  
3 map of the United States and figured out how we wanted  
4 to divide service areas for funding. And that is how  
5 we -- that is our basis for funding. People compete  
6 for funding for a basic service area.

7           We had to change those service areas  
8 dramatically when we had our funding cut dramatically.  
9 In fiscal year 1995, at a high, we were funded at \$415  
10 million. For fiscal year 1996, our funding was cut to  
11 \$278 million. So in order to deal with that large a  
12 cut in funding, we had to redraw our service areas.

13           In the past, we had done funding on --  
14 formula funding on different bases. But our fiscal  
15 year 1996 appropriations bill required us to have  
16 strictly per capita funding. We look at the poverty  
17 population from the 1990 census, and based on that, we  
18 fund the people who compete, you know, the grantees who  
19 compete for the funds to serve a particular area.

20           And if you note, I keep saying it's our  
21 appropriations language that requires this. And the  
22 reason why is because we have never been reauthorized.  
23 We were created in 1974 but we have never, for whatever  
24 reasons, been able to get a reauthorization bill  
25 through. And so our governing language is always

1 placed on our appropriations bills and they're called  
2 riders on the appropriations.

3           Senator Byrd often comments about how you  
4 shouldn't legislate on appropriations bills but that's  
5 the way we survive. So whenever I talk, I'm not  
6 talking about authorization. I'm talking about  
7 appropriations bills.

8           We currently fund about 280 local programs  
9 serving every county in the nation. And I think that's  
10 important in terms of if there was not a Legal Services  
11 Corporation. We do, despite our cut in funding, still  
12 try to have service -- still have service throughout  
13 the country. And there's no question that if there  
14 wasn't a federally funded program that in certain areas  
15 of the country, particularly rural areas and Southern  
16 areas, we might not have the same type of presence in  
17 terms of legal services.

18           And certainly you would find in your  
19 Northeast or here in Washington, D. C. that you would  
20 not have the coverage or some level of coverage. But  
21 we really do provide services throughout every county  
22 in the country.

23           In 1995 we resolved 1.17 cases benefitting  
24 some five million individuals, the majority of them  
25 children living in poverty. One out of every five

1 Americans is potentially eligible for legal services.

2 Now, the most common categories of cases  
3 handled by Legal Service grantees are family, housing,  
4 income maintenance, consumer and employment. Case  
5 types frequently encountered include evictions,  
6 foreclosures, divorces, child custody, support, spousal  
7 abuse, child abuse, neglect, wage claims, access to  
8 health care, and unemployment or disability claims.

9 And in terms of who our clients are, of  
10 course, our client is the poverty population but many  
11 of our clients are not unemployed. We represent the  
12 working poor. And just as an aside, sometimes we have  
13 a larger client base than we thought.

14 For example, in a disaster situation, which  
15 is something that I didn't know until I came to work  
16 for the corporation. Legal Services programs play a  
17 great role whenever there's a disaster. We work with  
18 FEMA and we work with the bar association and we work  
19 with a variety of volunteer lawyer organizations  
20 whenever there is a man-made or natural disaster to  
21 provide services to people who, all of a sudden, find  
22 themselves among the ranks of the poor.

23 One day they were middle class but the flood  
24 swept away all their belongings, their possessions, and  
25 so it's Legal Services attorneys and Legal Services

1 programs who help people -- number one, help FEMA get  
2 the brochures out about how to apply for state and  
3 federal aid.

4           It's Legal Services programs that train local  
5 bar lawyers and train volunteer lawyers to represent  
6 people in terms of getting their benefits and making  
7 claims. And it's Legal Services attorneys who have the  
8 experience with this and are able to actually provide  
9 some consumer services and help individuals who might  
10 be the targets of unscrupulous contractors who, you  
11 know, say, "Pay now and I'll fix your house," but come  
12 time to fix it, they're not there.

13           So, we have a lot to do with disaster relief,  
14 and indeed, when additional appropriations are made for  
15 disaster victims and relief, some of the money goes to  
16 Legal Services programs in order to provide that aid or  
17 relief.

18           So our clients are quite diffuse and  
19 sometimes they're middle class and sometimes they're  
20 poor.

21           In terms of the restrictions, again, the  
22 restrictions that have been placed on Legal Services  
23 programs were part of our appropriations legislation  
24 and these restrictions were part of the fiscal year  
25 1996 appropriations legislation.

1           And it was an ominous appropriations bill and  
2 I'm sure you all remember it. That was the year of the  
3 two government shutdowns and all kinds of go-arounds  
4 and Legal Services was right in the thick of it. And  
5 we came up with an appropriations bill that had many  
6 new restrictions on the types of activities that Legal  
7 Services programs or grantees could engage in.

8           The main one, however, I would say, is for  
9 the first time Congress said that the restrictions that  
10 they were placing on the use of federal funds also  
11 extended to the funds from any other source. And some  
12 of our programs are fortunate enough and work very hard  
13 at it -- I think you have representative from two  
14 programs who do it quite well here today. They work  
15 very hard at getting other sources of income. They get  
16 private donations. They get funding from IOLTA. They  
17 get funding from state and local governments. They  
18 have contracts. And they do quite well at trying to  
19 leverage Legal Services funds for more funds.

20           And so for the first time, Congress said that  
21 the restrictions that they have placed on federal funds  
22 also extends to the funds you get from private and  
23 other public sources.

24           The bill also was very different, in that for  
25 the first time it required competition for the awarding

1 of grants. In the past, there had been presumptive  
2 refunding, which was done, I think, in order to have  
3 continuum and the continuity of legal services. And  
4 indeed, cases unfortunately don't always go within  
5 calendar years or within fiscal years and judges don't  
6 always make their rulings with such regularity.

7           So indeed, we had presumptive refunding for  
8 our programs. But for the first time, that was not  
9 allowed and we had to have competition and we  
10 implemented that.

11           In terms of what the restrictions are -- and  
12 I'll just speak to you about those. Under the new  
13 rules, Legal Services attorneys can no longer  
14 participate in class actions of any type. They may not  
15 communicate with local, state or federal officials or  
16 regulators about proposed or current laws or  
17 regulations affecting their clients, except that they  
18 may use non-LSC funds to respond to written requests  
19 from officials.

20           They may not represent prisoners or certain  
21 categories of aliens. They may not collect attorneys  
22 fees to which they would otherwise be entitled by law.  
23 They may not challenge welfare reform measures as  
24 unconstitutional or otherwise illegal.

25           And with a few minor exceptions, these



1 restrictions now apply to funds from state and local  
2 governments and private sources, as well.

3           So indeed, because of these new restrictions  
4 on funding, a few programs with significant fundings  
5 from other sources decided not to apply for Legal  
6 Services funds. But most grantees, indeed, did  
7 reapply.

8           And that would segue me into the next item I  
9 wanted to talk to you and close about, which is that  
10 given this new congressional scheme, being that we're  
11 all lawyers here, there were two lawsuits that arose  
12 from it. And the first one was Legal Aid Society of  
13 Hawaii v. Legal Services Corporation. And that case  
14 was filed on January 9th, 1997 in the United States  
15 District Court in Hawaii and was brought by five Legal  
16 Services programs from Hawaii, California and Alaska,  
17 along with two private donors, individual staff  
18 attorneys and applying organizations to remove the  
19 restrictions on the representation of low income  
20 Americans with funds provided by non-LSC sources, such  
21 as states, municipal bodies, bar associations,  
22 charitable associations and private donors.

23           So basically, that was a lawsuit challenging  
24 the constitutionality of the federal government to,  
25 number one, impose these restrictions on non-LSC funds,

1 and LSC to carry them out. And in that case, the  
2 ruling was mixed. The judge said that indeed Congress  
3 had a right to impose restrictions on federal funds and  
4 non-federal funds. He also said Congress had a right  
5 to impose those specific restrictions.

6           However, then the judge looked at the cases  
7 of Reagan v. Taxation with Representation, Federal  
8 Communications v. League of Women's Voters. But the  
9 main one he relied on is Rust v. Sullivan. And in  
10 Rust, -- I don't know if you're familiar with that  
11 because it's about abortion, which is not about legal  
12 services.

13           But in the Rust case, if you remember, under  
14 the Bush Administration there was an Executive Order  
15 placed on employees of Title 10 clinics, planned parent  
16 clinics, or family planning clinics, I should say,  
17 family planning clinics. And Title 10 funds are used  
18 for family planning. And the Executive Order said that  
19 in the course of providing information about family  
20 planning, you cannot mention the word abortion and you  
21 cannot refer somebody for an abortion or talk about  
22 that as an option. And that was challenged in the  
23 courts.

24           And that was challenged on the federal level  
25 and it got up to the Supreme Court. And in that case,

1 the Supreme Court said, yes, indeed, this restriction  
2 on referral for abortion is proper. Congress can do  
3 this. The President can do this. This doesn't violate  
4 doctors' First Amendment rights. It doesn't violate  
5 their Hippocratic Oath. However, there must be an  
6 alternative outlet or sufficient outlet for somebody to  
7 receive information about abortion, that procedure, if  
8 they want to. And so there must be certain things in  
9 place to allow this alternative method.

10 And in our case, the judge in Hawaii said,  
11 although I have found that the restrictions -- that  
12 Congress can impose these restrictions, has the power  
13 to do it, the restrictions are constitutional, I do  
14 find that the restrictions have constitutional  
15 implications. And therefore, I will look to the Rust  
16 decision and see whether or not the Legal Services  
17 Corporation has provided sufficient alternative methods  
18 of expression. And he found that indeed Legal Services  
19 had not done that and that our regulations that  
20 pertained to alternative organizations or interrelated  
21 organizations were unconstitutional.

22 So, he said if you want -- he basically  
23 enjoined the corporation from enforcing certain  
24 restrictions that had constitutional implications. I  
25 know where you might be going. Class actions was not

1 one of them that he found in terms of having  
2 constitutional implications that required an  
3 alternative source of speech.

4           So, having done that, the corporation looked  
5 at its regulations and said, we understand where the  
6 judge is coming from. We defended this action. We  
7 wanted to have restrictions upheld. We were not in  
8 favor of them when they were first imposed but we have  
9 vigorously defended them and we have vigorously  
10 enforced them.

11           So when we got this opinion from the judge,  
12 we looked at the restrictions and his court decision  
13 and tried to figure out the best way to indeed preserve  
14 the restrictions that Congress intended because that is  
15 where the support in Congress is for. It is for this  
16 type of Legal Services Corporation.

17           So we amended our regulations to fit the  
18 model that -- I believe it's Justice Renquist -- said  
19 was appropriate in the Rust case in terms of providing  
20 an alternative method of expression. And based on  
21 that, the judge in Hawaii has now issued an order to  
22 show cause why the case is now not moot and why his  
23 restraining order -- well, actually, preliminary  
24 injunction -- should not be vacated. Because indeed he  
25 believes the corporation, on the face of it, may have

1 actually mooted out the case and may in fact be  
2 complying with the Constitution. That's one case.

3           And the second case that we're facing is  
4 called Valasquez v. Legal Services Corporation and  
5 Legal Services for New York City. And that's a class  
6 action lawsuit filed on January 14, 1997 in the United  
7 States District Court for the Eastern District of New  
8 York by a welfare recipient who was formerly  
9 represented by Legal Services of New York in a welfare  
10 reform case, which was probably a class action, as well  
11 as varied client groups whose members are eligible for  
12 LSC funded services.

13           And also plaintiff are four New York City  
14 council members, all of whom voted to appropriate  
15 public funds in support of Legal Services recipients.  
16 And that's who also challenges the constitutionality of  
17 the restrictions imposed by Congress on LSC recipients.  
18 And we are awaiting a decision on our motion for a  
19 preliminary injunction in that case.

20           But again, we are defending that case. We  
21 are asking the judge to uphold the restrictions and to  
22 not grant the motion for -- to deny the motion for a  
23 preliminary injunction.

24           And I would note the Department of Justice,  
25 in light of the change in our regulations, has come in

1 on the side of Legal Services, as well, and asked the  
2 judge to uphold the restrictions as constitutional.

3 So, I think that's what I wanted to say and I  
4 think I've covered the basics. I appreciate the  
5 opportunity to be here today.

6 CHAIRPERSON BERRY: Thank you very much.  
7 That's just the kind of information we needed.

8 Does any Commissioner have any questions for  
9 either Mr. Evans or Ms. Laster?

10 Vice Chair?

11 VICE CHAIRPERSON REYNOSO: Madam Chair, we'll  
12 hear, I take it, from some of the specific programs  
13 later in terms of how it's affected them?

14 CHAIRPERSON BERRY: Next panel. Yes.

15 VICE CHAIRPERSON REYNOSO: But I wonder from  
16 the point of view of the Legal Services Corporation or  
17 the ABA what you hear from the programs in terms of the  
18 impact that this is having on civil rights of the poor?

19 In times past, class actions have been a very  
20 important part of protecting civil rights of the  
21 clients in the various programs. The representation of  
22 non-citizens has been very important. There are a  
23 whole series of areas in which Legal Services have  
24 provided Herculean efforts in protecting civil rights  
25 and those seem to be quite restricted now.

1           And I just wonder -- at least in terms of the  
2 formal restrictions. And I just wonder what you've  
3 heard has been the practical effect in the regional  
4 offices.

5           CHAIRPERSON BERRY: Should we ask Mr. Evans  
6 and Ms. Laster that or just -- .

7           MS. LASTER: Go ahead. I'll do the second.

8           MR. EVANS: Let me just make a couple of  
9 general comments. One, on the issue of class actions,  
10 there seems to be among critics of class action suits  
11 an assumption that class action suits are suits  
12 designed to achieve particular objectives, usually a  
13 liberal agenda.

14           Class actions are basically a tool of the  
15 legal profession which are used by corporations and  
16 private individuals and all kinds of people. It's  
17 really a tool for judicial efficiency. That is, if you  
18 can combine cases which have many, many people who have  
19 incurred the same problem in the one action, then you  
20 do not need to have a series of the same action over  
21 and over and over again.

22           So, our association is supportive of class  
23 actions as a useful tool for lawyers in whatever kind  
24 of practice they are in over the years. Obviously, the  
25 impact of requiring that individual suits be brought

1 and that you not have available a class action tool is  
2 a very unfortunate develop, I think, in terms of the  
3 ability to get justice done for many, many people. And  
4 also, it has a most undesirable effect on the court  
5 system, because then you tie the courts up with lots of  
6 individual cases.

7           We are only at the front end, I think, of  
8 seeing how these restrictions play out and so I don't  
9 know whether there is much in the way of information.  
10 I've heard a lot of concern about it, but Gail would  
11 perhaps better know about it or other witnesses.

12           MS. LASTER: I would just repeat what I said  
13 initially. That indeed, because of these restrictions,  
14 we didn't have -- we had at least 10 programs not  
15 reapply. And one of the major ones was New York City  
16 Legal Aid.

17           And they said down -- it was a painful  
18 decision because it's a lot of money that they got from  
19 Legal Services Corporation. But the most -- you know,  
20 the initial result was to have programs simply say I  
21 cannot live with these restrictions. And we had those  
22 in about 10 cases.

23           VICE CHAIRPERSON REYNOSO: And why did they  
24 say they couldn't live with the restrictions? What was  
25 their rationale? What in terms of representing the



1 poor, particularly in terms of civil rights, did they  
2 feel they could not do that caused them to reject the  
3 federal funding?

4 MS. LASTER: Specifically, I think their  
5 concerns were about the class action lawsuits. That  
6 they wanted to be able to use that as a tool. It was  
7 also regarding the attorneys fees provision. That  
8 there were people who felt that indeed that was the  
9 normal course of business. That was a way to sanction  
10 inappropriate activity. It wasn't hitting the  
11 government twice in terms of paying. But they felt --  
12 and that was also a major source of being able to  
13 provide more legal services to poor people.

14 But I would say the main thing is that the  
15 funding was on non-LSC funds. I think we might not  
16 have had as many people decline to participate for our  
17 funds if you'd had the same restrictions, no class  
18 actions, no attorneys fees, but only on LSC funded  
19 activities..

20 And so we found that our programs that said -  
21 - our former programs that said we will not reapply,  
22 their main concern was that they couldn't -- that for  
23 the first time, they couldn't use their non-LSC funds  
24 to represent illegal aliens. Because indeed we have  
25 some programs who received state and local funds for

1 that and we have programs who receive private funds for  
2 that. We have programs who had contracts with states  
3 to represent prisoners. Again, not in criminal matters  
4 but in civil divorce cases, because the state felt that  
5 the Legal Services program was familiar with this and  
6 would be the best tool for that. And so you had a  
7 program like that saying, well, if I can't -- I've  
8 already got this contract that's ongoing and if I can't  
9 get out of the contract, then indeed I can't take your  
10 LSC funds.

11 But having said that, I would also say that  
12 Congress didn't necessarily say that we can't bring  
13 civil rights cases. And I'm not putting the idea in  
14 their minds. So, indeed, we can still bring those  
15 cases. Some of those cases, I will admit, are  
16 controversial. We have one ongoing. We had one  
17 program bring a case in Texas, a voting rights case,  
18 that has now been like the source of huge controversy.

19 So indeed, our programs can still bring the  
20 individual civil rights matter, but in terms of -- and  
21 we're grateful for that. And indeed, our programs are.  
22 And I think that the programs that have however  
23 accepted the funding, we don't hear necessarily  
24 complaints from them because they decided to go through  
25 this thing. But in terms, I would think, that indeed

1 the ones that have declined to accept the fundings are  
2 the ones that have the most concerns about the  
3 representation of the poor.

4 VICE CHAIRPERSON REYNOSO: I guess on a civil  
5 rights case, what you do is file 100 individual cases,  
6 then you file a motion to consolidate them or something  
7 of that sort? I'm not quite sure how they would handle  
8 it. But as indicated by Mr. Evans, the whole notion --  
9 much of the notion is one of judicial economy and that  
10 has been removed.

11 CHAIRPERSON BERRY: You shouldn't have  
12 mentioned that. Now there'll be a restriction on  
13 consolidation.

14 (Laughter.)  
15 Only kidding.

16 MR. EVANS: I was taking notes.

17 (Laughter.)

18 VICE CHAIRPERSON REYNOSO: I don't have  
19 anything further. Thank you.

20 CHAIRPERSON BERRY: Commissioner Horner?

21 COMMISSIONER HORNER: Yes.

22 Mr. Evans, you suggested that the loss of the  
23 ability to engage in class action suits was primarily a  
24 problem because of the loss of ability to operate  
25 efficiently. But I would really ask you if in fact

1 that might not be a bit disingenuous as an explanation  
2 for the primary change in what has happened with the  
3 loss of class action.

4           And the reason I ask that is that it's been  
5 my impression over the years, without being too close  
6 to this, that class action suits supported by the Legal  
7 Services Corporation have had as their goal the  
8 retention or expansion of entitlements, the retention  
9 or expansion of regulatory solutions or governmental  
10 solutions to social problems and the same for  
11 entitlements.

12           That is, expansion, in effect, of dependency  
13 as a solution to poverty. And that the emphasis has  
14 been very much on an ACLU type individual rights focus  
15 rather than a more communitarian rights of the  
16 community, rights of the housing project, rights of  
17 people to be at liberty to walk the streets at night  
18 without fear of crime and so on. And that there has  
19 been a mighty, mighty antipathy that has developed  
20 against all of those stances, executed through class  
21 action lawsuits. And that it has been the content of  
22 the class action suits as much as the form of the class  
23 action that has caused the political hostility to it.

24           And I wondered if you could tell me if you  
25 think that's not true. Could you give me communitarian

1 entitlement contracting, regulation contracting class  
2 action cases that the LSC has supported that would have  
3 had the effect of diagnosing a social problem as coming  
4 as a result of economic problems resulting from  
5 excessive regulation, for instance, or social problems  
6 from entitlement dependency?

7           MR. EVANS: First, I would not disagree with  
8 your comment that it is the content of those suits that  
9 has caused them to be controversial. My point was that  
10 the class action mechanism is a useful tool in  
11 achieving the result of dealing with a lot of similarly  
12 situated people. But I have no doubt that that's  
13 precisely why they've become so controversial and why  
14 people have blasted class actions as a mechanism and  
15 have wanted to get rid of them in the Legal Services  
16 context, which, as I say, I think is most unfortunate.

17           I will cite you case which I am aware of  
18 which I'm not sure meets your needs. There may be  
19 others who do this. But a number of the Board of the  
20 Legal Services Corporation, Nancy Rodgers, from Ohio,  
21 talks about her involvement with a case in Ohio, where  
22 there was a police department which refused to bring  
23 domestic violence complaints against husbands.

24           And only after they brought a class action  
25 suit on behalf of a number of women who were in that

1 situation was there a change in the policy.

2 Now, that does not get to getting against  
3 regulation, as you specifically have suggested. And I  
4 don't know whether Gail or some of the other witnesses  
5 can provide an example. But as I say, I think this is  
6 a tool that becomes appropriate to use where you have a  
7 common problem widely repeated --

8 MS. LASTER: I will just add, if I could.  
9 The other thing that comes to mind is there was  
10 recently a piece on NPR about Legal Services  
11 Corporation and I don't think Mr. Cole was in that one,  
12 but I think it was about the restrictions. The case  
13 that was cited, the way it started off -- I think David  
14 Norcross was the commentator. And the case cited there  
15 was a case where -- it was a landlord-tenant dispute.  
16 And there was an issue of lead in the paint and  
17 abatement of that. And there was a class action  
18 brought on behalf of the tenants similarly situated.

19 So that had nothing to do with social policy  
20 or those types of things. Well, it was a landlord-  
21 tenant dispute. It was not a welfare reform case.

22 And the only thing I would add is that  
23 indeed, your point is well taken. But indeed, Legal  
24 Services has been restricted on both. Arguably, what  
25 you're talking about is subject matter. We have been

1 both restricted on the subject matter and on the  
2 procedure. And I think there are people who would say,  
3 well, if you've restricted the subject matter, why do  
4 you necessarily have to restrict the procedure, as  
5 well, because indeed the procedure of class action  
6 doesn't necessarily only incorporate one type of  
7 subject matter.

8           We are restricted. We cannot do welfare  
9 reform cases. We cannot do the cases that -- the ones  
10 that send people through the roof, as a matter of  
11 subject matter. We cannot represent the type of client  
12 who is sympathetic or is whatever, as in the past.

13           So we have restricted the clients, type of  
14 person. We've restricted the subject matter. And I  
15 think some people had concerns about procedures, such  
16 as attorneys fees, such as class actions. Because  
17 those are procedural things. And if you've taken care  
18 of the subject matter and the client population, why  
19 also put this further restriction on lawyers.

20           COMMISSIONER HORNER: And I would like to ask  
21 you if the Board sets criteria for the grants which go  
22 beyond just how many poor people are there in a given  
23 geographic area.

24           In other words, does the Board decide each  
25 year, this year we're going to encourage grantmaking to

1 people who are interested in domestic violence or some  
2 particular issue?

3 In other words, does the Board select the  
4 issues of focus for the grantees or do the grantees  
5 simply take the money on the grounds that they're  
6 capable and willing to help the poor with legal  
7 problems and then the legal problems -- the case is  
8 taken or arise from the cases the poor bring?

9 MS. LASTER: Right. Right.

10 We are required in our fiscal year '96  
11 legislation to set priorities, national priorities.  
12 The corporation, that is. And the Board did set  
13 priorities. The priorities, however, are not  
14 mandatory. And the reason why they're not mandatory is  
15 because the structure of Legal Services programs are  
16 such that each entity that applies for a Legal Services  
17 grant is a separate entity with its own Board of  
18 Directors who set their priorities.

19 COMMISSIONER HORNER: But they tell you what  
20 the priorities are when they apply; right?

21 MS. LASTER: They have to tell you. And they  
22 have to abide by those. But we recognize, in terms of  
23 the system and the way it's set up with independence,  
24 we recognize that a program's priorities in Texas may  
25 not be the same priorities for a program in



1 Connecticut.

2           So, indeed, the Board does not mandate  
3 priorities but we may be looking at that. Because  
4 indeed there was one legislative proposal for our  
5 reauthorization that would have just listed the types  
6 of cases that Legal Services attorneys can bring. So  
7 that has been a suggestion that we go beyond just  
8 having a suggested list of priorities and that programs  
9 go beyond saying what their priorities are and actually  
10 having a list of types of cases you could bring.

11           COMMISSIONER HORNER: What are your  
12 priorities for the current grantmaking season?

13           MS. LASTER: The priorities are -- let's see.  
14 I have it right here.

15           (Pause.)

16           COMMISSIONER HORNER: If it's a problem  
17 finding it --

18           MS. LASTER: No. I think it's in the  
19 testimony.

20           Page 11 of the testimony submitted are  
21 suggested lists of requirements. Our Chairman's  
22 testimony indicated that as required by our fiscal year  
23 1996 appropriation, at our meeting of May 20th the  
24 corporation's Board of Directors adopted a suggested  
25 list of priorities to be considered by grantees in

1 setting their local priorities. This suggested list of  
2 priorities was published in the Federal Register on  
3 May 29th, 1996. The suggested priorities focus on  
4 protecting the integrity, safety and well-being of the  
5 family.

6 And it's published in the Federal Register.  
7 However, I could fax to you, if you'd like, a copy of  
8 it. I have it handy.

9 COMMISSIONER HORNER: I would like that.

10 MS. LASTER: Okay.

11 COMMISSIONER HORNER: Does protecting the  
12 integrity of the family mean supporting the efforts of  
13 parents whose children are being taken away from them  
14 to keep those children or who are under threat of that?  
15 Is that what that means?

16 MS. LASTER: Yes.

17 COMMISSIONER HORNER: So it's a family  
18 preservation goal?

19 MS. LASTER: Right.

20 COMMISSIONER HORNER: Rather than a child --  
21 I don't know what you call it. We don't have a  
22 conceptual word for child protection as independent  
23 from family protection.

24 MS. LASTER: Right. But it encompasses that.  
25 It also encompasses keeping the family together,

1 whether it be through housing, in the home. It also  
2 encompasses domestic abuse and violence. And as you  
3 well know, there are many components that go into  
4 preserving the family, but that's what the priorities  
5 emphasize.

6 COMMISSIONER HORNER: Thank you.

7 CHAIRPERSON BERRY: Commissioner Lee and then  
8 Commissioner Redenbaugh.

9 COMMISSIONER LEE: On those organizations who  
10 declined to apply for funding from you, were they  
11 receiving a majority of their funding -- I mean, were a  
12 majority of their funding coming from LSC?

13 MS. LASTER: Probably not. Probably not.

14 COMMISSIONER LEE: So, it was just a small  
15 portion?

16 MS. LASTER: Not small, but -- I've got to be  
17 clear. In declining, some reorganized. When we were  
18 looking at facing such a cut in our financing, in our  
19 funding, we went to each state and said, now what do  
20 you want to do. And indeed, we had chief justices from  
21 local state courts, from the state courts, members of  
22 the bar come together and think about -- since the  
23 structure was actually going to be changed, how best to  
24 provide services.

25 So you had some states say, well, this will

1 be the legal services entity in this state, but another  
2 entity, totally separate, not receiving LSC funds, will  
3 do other things and will probably do things that are  
4 restricted.

5           So, some programs -- I wouldn't say that all  
6 states had a large amount of non-LSC funding, although  
7 states declined LSC funding. But I would say that  
8 states that had other resources or had other programs  
9 available to do other things were the ones who  
10 declined.

11           COMMISSIONER LEE: And there were some who  
12 thought -- you suggested that you could rely on pro  
13 bono services to meet the -- to fill the gap? Is that  
14 a reality to rely on volunteer legal services to  
15 provide for the poor?

16           MS. LASTER: Well, by statute and by  
17 regulation our legal services programs and grantees  
18 must have private attorney involvement and so that's  
19 something that they do because it certainly increases  
20 their productivity. But in terms of filling the gap,  
21 no. I don't think anybody thought it could fill the  
22 gap.

23           And when you talk about filling the gap,  
24 there's something to keep in mind. Pro bono programs  
25 are only as good, frankly, in some ways as the person

1 who's directing it or giving guidance. And that's what  
2 Legal Services programs do very well. You don't  
3 particularly want to have, as our former President was  
4 found of saying. He's a distinguished trust and  
5 estates lawyer. He said, "You really don't want to  
6 have a trust and estates lawyer doing a landlord-tenant  
7 dispute for the first time without some type of help.  
8 I mean, some type of guidance."

9           So, indeed, if you talk about absolutely  
10 replacing what the Legal Services programs provided,  
11 that's both impractical on a quality of service level,  
12 as well as on a numbers level. But indeed, the private  
13 bar has tried to step up to the plate and our programs  
14 do encourage that. But I don't think it can suffice  
15 for what was there with the Legal Services attorneys.

16           MR. EVANS: I would agree with your comments  
17 100 percent and just add that when you get into these  
18 discussions about -- well, why don't we just keep  
19 trimming the federal funds and they will get picked up  
20 by the private sector, the assumption is that you are  
21 operating from a full tank of gas. That is, you're  
22 meeting all the legal needs of the poor, and as we do  
23 this, we could squeeze out a little more in these other  
24 areas to make up the difference.

25           Yes. There's a little bit more to be

1 squeezed out there someplace but we're operating in a  
2 situation where you're meeting 20 percent of the legal  
3 needs of the poor, at best. And so any kind of cut in  
4 any component of the system is quite devastating.

5 COMMISSIONER LEE: Just one more question.  
6 When you set your priorities, decide the program  
7 priorities, do you also look at underserved  
8 communities? That they would be on a higher priority  
9 level?

10 MS. LASTER: What do you mean by underserved  
11 community?

12 COMMISSIONER LEE: Maybe there's certain  
13 groups, newcomer groups, for instance, who have not  
14 been served by some of your partners. Do you set  
15 priorities besides just programs? Do you have  
16 priorities on groups that have been underserved by you,  
17 maybe linguistically disadvantaged groups or other  
18 geographical areas?

19 MS. LASTER: Well, before the '96  
20 legislation, Congress recognized that there were such  
21 underserved populations and they were a migrant  
22 population, not only because of the language issue  
23 normally, but also because of the work issue; and also  
24 Native Americans. And after the '96 legislation, the  
25 special set aside for serving minority migrant

1 populations was eliminated; however, the set aside for  
2 serving Native American populations was retained.  
3 So indeed, we do recognize that.

4 On a national level -- I found the list of  
5 priorities and I can give that to you.

6 COMMISSIONER HORNER: Oh, thank you.

7 MS. LASTER: On a national level, we do not  
8 necessarily prioritize a certain client population. We  
9 leave that for the independent programs to do that.  
10 However, we also recognize on the national level that  
11 there may be the need for migrant -- that migrant legal  
12 services, that migrant clients, potential clients, have  
13 special needs.

14 So in each state, indeed we do have Legal  
15 Services programs that are specifically designed to  
16 serve the need of a migrant population. So we  
17 recognize that.

18 CHAIRPERSON BERRY: Commissioner Redenbaugh?

19 COMMISSIONER REDENBAUGH: Yes.

20 Ms. Laster, do you have any types of cases --  
21 I don't know quite how to characterize them but I guess  
22 maybe citizens against government. And what I mean by  
23 that is in every municipality there are many  
24 regulations. Often, one of the effects of those is to  
25 prevent people from acts of enterprise.

1           Another category I'm thinking about is the  
2 federal restriction on not being allowed to save money  
3 if you're on welfare. And/or I know in some  
4 localities, state and federal OSHA regulations are not  
5 always enforced. Particularly, I was thinking in the  
6 case of the migrant workers where there's been a  
7 history of violations.

8           Do you ever represent your clients in suits  
9 of that nature against these different levels of  
10 government?

11           MS. LASTER: Yes.

12           COMMISSIONER REDENBAUGH: Can you tell me a  
13 little bit about that?

14           MS. LASTER: Well, specifically, it depends -  
15 - we categorize our cases under consumer, education,  
16 employment, family, juvenile, health, housing, income  
17 maintenance, individual rights, miscellaneous. And we  
18 don't necessarily keep track of every single type of  
19 case so that I can tell you that indeed -- recite to  
20 you the fact pattern of specific cases. But we do  
21 bring -- in a general sense, you're talking about suits  
22 against government, if I'm clear. And we certainly do  
23 bring those. And we do bring them on a variety of  
24 bases, whether or not it be a consumer, whether or not  
25 it be an OSHA case, whether or not it be a public



1 housing case, whether or not -- we've done that in a  
2 variety of subject matters.

3 CHAIRPERSON BERRY: He's suggesting you ought  
4 to do more of that.

5 No.

6 (Laughter.)

7 COMMISSIONER REDENBAUGH: Well, actually,  
8 that is my opinion. What a surprise.

9 (Laughter.)

10 But we, too, are not allowed to lobby.  
11 Lobbying is not happening.

12 Thank you.

13 CHAIRPERSON BERRY: Any other questions?  
14 Commissioner Anderson?

15 COMMISSIONER ANDERSON: Thank you.

16 During the last Congress, Representative  
17 Gekas introduced legislation which would, had it been  
18 enacted, set up an alternative way of providing legal  
19 services through a state, I guess, administered  
20 program.

21 Did the ABA have a position on that, Mr.  
22 Evans?

23 MR. EVANS: Yes. We proposed that proposal  
24 for a number of reasons. The Gekas proposal basically  
25 would have, in our view, set up an additional layer of

1   bureaucracy beyond what currently exists. That is, you  
2   have a federal Legal Services Program now which spends  
3   about 3 percent of the legal budget at the home office  
4   and the rest of it goes out to the local programs.

5           The Gekas proposal was to set up, in addition  
6   to a federal mechanism, which was going to change from  
7   the corporation, but not in a substantial financial  
8   way, then put in an office in each state that would  
9   administer funds. And they would be responsible for  
10  doling out the funds in the state.

11           His proposal, as originally drafted, said  
12  that up to 5 percent of the funds going to each state  
13  could be spent for that particular activity at the  
14  state level.

15           Further, his proposal did not require that  
16  any of the money that was available to a state be used.  
17  It was up to the state to decide to use it.

18           We felt that in terms of assuring that money  
19  would be available nationally, we thought it was a bad  
20  proposal. We felt, in terms of the structure, it was a  
21  bad proposal.

22           Our own view is that you basically have a  
23  revenue sharing local control program under the current  
24  mechanism. That is, the money goes out from the  
25  national office. It goes to a local non-profit

1 corporation. The statute requires that a majority of  
2 the members of the Board be appointed by the local bar  
3 association or the dominant bar association in the  
4 area.

5 It has typically in a community, as we will  
6 hear I'm sure from the other witnesses, representatives  
7 of a variety community organizations. And they set  
8 their own local priorities, as Gail indicated.

9 But we think the model that he was trying to  
10 get at is already out there and his proposal was going  
11 in a bad direction on the two particulars I mentioned.

12 COMMISSIONER ANDERSON: All right. Thank  
13 you.

14 Looking at the priorities established by the  
15 corporation, it seems to cover basically -- they're  
16 very broad categories. A limited number of categories  
17 but very broad. So really, you could look at that and  
18 say almost any legal problem that a poor person would  
19 have is covered within one of the categories. Then at  
20 the same time, we have these restrictions coming in in  
21 '96 and '95, earlier.

22 What would you think of the idea -- and at  
23 the same time, Congress is cutting the funding  
24 drastically. What would you think of the idea if the  
25 Congress said, look, we're going to take these limited

1 resources and we're going to address basically only one  
2 of those categories. And instead of doing a poor job  
3 in a broad level of services to a small part of the  
4 population in need, we're going to focus on one  
5 category of services and we're going to try to reach  
6 virtually everybody in need for that one service or for  
7 that one category; access to health care, maintenance,  
8 family protection.

9           What would you think about that?

10           MR. EVANS: We would not favor that. I  
11 think, again, the idea that the local programs ought to  
12 be setting the priorities and not Congress attempting  
13 to do that is a far preferable course.

14           I think it is a tempting subject to talk  
15 about because the program has been cut back and cut  
16 back and cut back that you get to a point where you  
17 could seriously talk about only having the poor  
18 represented in one specific areas. I think that would  
19 be a most unfortunate result. I think we ought to be  
20 headed back the other direction.

21           And I do not think that the level of service  
22 is poor. I think it is grossly underfunded. It is  
23 inadequate. But I think that by and large the services  
24 provided for the clients in the program on their  
25 particular matters are highly effective. And the won-

1 loss ratio and so forth, I you look at it in terms of  
2 what the programs have done in representation, I think,  
3 would bear that out.

4 COMMISSIONER ANDERSON: Okay.

5 MS. LASTER: If I just might add -- I'm  
6 sorry. I misspoke or I learned something. I'm looking  
7 over the priorities. And indeed, we do state in our  
8 priorities that programs should pay particular  
9 attention to other similarly vulnerable individuals  
10 within their service area. So, in addition to being  
11 marginal economic status or less capable of fending for  
12 themselves by reason of difference in language,  
13 cultural, educational backgrounds, disability or other  
14 special problems, access to legal assistance or special  
15 needs.

16 And if I just might add, I understand, but I  
17 wonder, and I think honestly, in terms of limiting the  
18 types of cases, perhaps, it would be there's the hope  
19 that the legal services program will be, quote,  
20 uncontroversial. And I must say I don't know of any --  
21 having done this for so long, even if you would limit  
22 it, you still would have controversy because by the  
23 very nature of the adversarial system.

24 It would be hard to define or get people to  
25 agree on what those limited areas are and what cases

1 you should take. I mean, you would think that, for  
2 example, family cases are something we could agree on.  
3 Well, arguably, people have said we shouldn't do  
4 divorce. But if the divorce involves abuse, physical  
5 abuse, is that okay?

6           Some people say, you know, all we did was  
7 landlord-tenant. Then you'd say people saying perhaps  
8 that Legal Services shouldn't be involved in that. If  
9 it was just income maintenance, I don't know if that  
10 would please people because there's two sides of it.

11           I think, indeed, you can -- and we do and we  
12 have some type of limit. We're not allowed to do all  
13 cases under the sun. But if you were to prioritize  
14 among them, you may not necessarily eliminate the  
15 controversy, is what I'm trying to say, or get people  
16 to agree that these are the only problems or that these  
17 are, quote, deserving or non-controversial cases.

18           You'd be surprised that even in those cases -  
19 - in custody matters. I mean, that's the most --  
20 sometimes the most acrimonious case you can have. So  
21 we've thought about it because our job is to try to  
22 figure out the best way to provide legal services for  
23 the poor, so we have to be open to all possibilities.  
24 And the corporation has done that, to it's credit. But  
25 we don't find that we can get people to agree about

1 what those cases would be that would be non-  
2 controversial.

3 COMMISSIONER ANDERSON: Okay. Well, I'm not  
4 sure what I was -- the intention behind my question had  
5 to do just with controversy. It had more to do with  
6 trying to do with maximize service in a particular  
7 category rather than to have a variety of many  
8 categories which were underserved or under provided  
9 for. Setting a priority of access to health care as a  
10 priority and trying to maximize the service to that.  
11 That was sort of what was behind my question.

12 MS. LASTER: Right. And I acknowledge that.  
13 I said that there are -- not you, but there are those  
14 who are also suggesting a limited number of cases who  
15 are seeking to eliminate controversy.

16 VICE CHAIRPERSON REYNOSO: Robbie?

17 COMMISSIONER GEORGE: Yes. Thank you, Mr.  
18 Vice Chairman.

19 I didn't quite follow the exchange between  
20 Ms. Laster and -- I'm sorry. He's not here. But just  
21 to make sure I get it, I interpreted Commissioner  
22 Redenbaugh as asking what LSC funded litigation had  
23 done in the way of attempting to remove regulatory  
24 obstacles to enterprise. Regulation that gets in the  
25 way of capitalist acts between consenting adults and

1 that sort of thing.

2 And I thought that your answer was, well, we  
3 sue government a lot.

4 MS. LASTER: No.

5 COMMISSIONER GEORGE: No? Okay.

6 MS. LASTER: My answer was that we're allowed  
7 to sue -- you're allowed to bring suits against  
8 government.

9 COMMISSIONER GEORGE: Okay. Then what's the  
10 answer to his question about trying to free poor people  
11 from the burden of regulation that makes it difficult  
12 for them to do business? I think that was the -- have  
13 I understood Commissioner Redenbaugh's question?

14 COMMISSIONER HORNER: You did. He obscured  
15 it by using conflicting examples. But I think that was  
16 his intent. And he wanted to know, for instance, in  
17 cases like in the District of Columbia, you cannot get  
18 a license to cut people's hair unless you've had 2,000  
19 hours of training, by regulation. And it's a method of  
20 constricting economic competition and reducing entry-  
21 level -- reducing entry into the field, into the job.

22 And the question is do you ever go to court  
23 to help somebody -- do your grantees ever go to court  
24 or does your group ever instruct your grantees to go to  
25 court to help somebody sue the government when the



1 government is getting in the way of their getting a  
2 cheap taxi license or hair-braiding license.

3 COMMISSIONER GEORGE: Street vendors and all  
4 these examples.

5 MS. LASTER: Yes. I would assume that we do.  
6 I can't cite for you a specific case at the moment, but  
7 we do do a lot of consumer cases and they'd fall under  
8 categories of bankruptcy, collection, contract, credit  
9 access, energy, loan, installment purposes, public  
10 utilities, unfair sale practices or other consumer  
11 finances. So that I would say that they would come  
12 under that.

13 We've been asked, for example, if we ever  
14 brought a case where we -- home schooling case on  
15 behalf of people who wanted to do home schooling. And  
16 I believe the answer was perhaps.

17 (Laughter.)

18 I'm not sure.

19 COMMISSIONER GEORGE: This actually  
20 interestingly goes to the question of controversy or  
21 more to the nature of the controversy. As I understand  
22 the dispute about LSC -- and I've not followed it  
23 terribly closely, conservatives are made at LSC.  
24 Liberals are defending it.

25 Are there cases in which you're getting flack

1 from the liberal side rather than from the conservative  
2 side because you're representing home schoolers or  
3 you're attacking regulation and so forth? That, I  
4 think, would be the question. The nature of the  
5 controversy. Or is the controversy always the same  
6 way? Conservatives get mad at you?

7 MS. LASTER: Well, I would beg to differ,  
8 first of all, because we do have strong conservative  
9 support. We wouldn't be here today if we didn't. We  
10 have -- one of our chief supporters is Senator  
11 Domenici. And in terms of -- in the Senate. And he  
12 has really been the person who has shepherded us  
13 through the Senate. And we are not necessarily only a  
14 liberal -- organization supported by liberals.

15 COMMISSIONER GEORGE: Is the Congress true,  
16 as well? Are there liberal critics of LSC?

17 MS. LASTER: Yes. I think we have one right  
18 here. Seriously.

19 COMMISSIONER GEORGE: I mean among Senators.

20 CHAIRPERSON BERRY: You will hear one in a  
21 minute.

22 MS. LASTER: Oh, yes. Certainly, we do. For  
23 example, I think Senator Wellstone was very concerned  
24 that the corporation -- along with Mr. Cole's argument,  
25 that he felt that the corporation should have fought

1 harder against the restrictions and that, indeed, he  
2 doesn't understand --

3           COMMISSIONER GEORGE: Well, no. I mean  
4 something different. Are they mad because of the kind  
5 of litigation that you're involved in, the way  
6 conservative critics are angry at litigation that they  
7 think has a political motive or political agenda that  
8 is left-leaning?

9           MS. LASTER: Well, one thing that comes to  
10 mind is that for a while we did fund a center called  
11 the Bop Center. The Bop Center -- that's it's slang.  
12 And that was a support center. And by law now, support  
13 centers are no longer funded.

14           But that was a support center that was the  
15 subject of a piece on, I believe 20/20 or Prime Time  
16 Live with Sam Donaldson, whoever. And that support  
17 center's main goal was to intervene in right to die  
18 cases or in -- I don't want to sound pro whatever, but  
19 I don't know what the neutral term is for right to die  
20 cases. And that center said that it would intervene in  
21 those cases on behalf of whomever interested party to  
22 not allow the person to die.

23           And I would say, given what I believe your  
24 parameters, you suggested conservative versus liberal,  
25 that might now have been a --



1 order in which we're going to take you is we're going  
2 to begin with Mr. Michael Horowitz, who is a senior  
3 fellow with the Hudson Institute and Director of the  
4 Institute's Project on Civil Justice Reform.

5 I'm familiar with him from the days when he  
6 was General Counsel at the Office of Management and  
7 Budget, and before that, knew about him at Ole Miss,  
8 law school and so on.

9 And Mr. Horowitz is the author of many  
10 articles on the subject of legal reform, the future of  
11 the American welfare system, federalism and the U.S.  
12 Congress. And he is going to provide some information  
13 to us on his perspective about how the Legal Services  
14 Corporation operates.

15 Thank you very much, Mr. Horowitz, for  
16 coming. And please proceed to give us some remarks.

17 MR. HOROWITZ: I hope to spend at least a  
18 part of my time not only speaking of the Legal Services  
19 Corporation but looking at what I think is a larger  
20 picture, contesting what I think is the implicit  
21 assumption of this hearing. Often the implicit  
22 assumption that the Legal Services Corporation and its  
23 fate is in some way central to how we care for the  
24 poor. And if one looks at the legal system and the  
25 poor, the conventional wisdom response is, well, let's

1 have a debate over the appropriations of the Legal  
2 Services Corporation.

3 I think those debates are fair, but as an  
4 attorney who deeply believes in the right of poor  
5 people to have access to the legal system, my own view  
6 is that that debate is arid, meaningless and that the  
7 Legal Services Corporation, its fate -- more money/less  
8 money -- is marginal to the fate of the poor.

9 And I want to see if we can't expand our  
10 perspectives. But I do want to talk some about the  
11 Legal Services Corporation because during my days as  
12 General Counsel of the Office of Management and Budget,  
13 I think I came about as close as one is capable of  
14 coming to being the Darth Vader to the Legal Services  
15 Corporation movement.

16 I took up the debate over the Legal Services  
17 Corporation, not because anyone asked me as a senior  
18 official at OMB, but because frankly I was tired and  
19 offended at people who called themselves conservatives  
20 defending the President's position on Legal Services  
21 Corporation, in what I regarded as obscene racist  
22 terms.

23 I remember one of the great critics of Legal  
24 Services Corporation defending the President's action  
25 on the ground that gays shouldn't have a right to

1 lawyer, only he didn't call them gays. And so I  
2 thought it was important for some of us to step into  
3 the breach, and I did. And I did because of my own  
4 sense of commitment to social justice.

5 I believed then, and I think that was the  
6 tenor of some of Commissioner Horner's questions -- and  
7 believe now that the Legal Services Corporation  
8 leadership -- left to its own devices, the Legal  
9 Services Corporation in its conduct, for the most part,  
10 has hurt the poor, damaged the poor in extraordinary  
11 sets of ways.

12 And so that was -- at least I thought it was  
13 important to raise the debate in those terms. I  
14 objected to the big case theory of the Legal Services  
15 Corporation where the sense was that -- I remember Dan  
16 Bradley, then the Chairman of the Legal Services  
17 Corporation, talking about -- if I only got more money,  
18 why, I'd put HHS out of business. I heard him give a  
19 speech. And the sense that there wouldn't be any  
20 barriers, even the modest barrier, that of HHS, to  
21 entitlement to cash on the part of people.

22 The whole notion of an income redistribution  
23 theory was at the heart of what they were doing and I  
24 thought those approaches could never succeed. And I  
25 was profoundly upset at their value-neutral, their

1 value-indifferent, their value-hostile character.

2 Commissioner Horner, again, raised some  
3 questions. The whole process, set of claims, of the  
4 Legal Services Corporation that made it difficult to  
5 impossible to evict obstreperous unlawful criminal  
6 tenants from public housing and to suspend obstreperous  
7 kids from public schools.

8 We middle class people got warm feelings in  
9 our bellies as we established rights for the poor and  
10 through the Legal Services Corporation, but we sent our  
11 kids to private school where the head of the school  
12 suspended the kid if the kid looked at her cross-eyed.  
13 It was double standard here that in my judgment hurt  
14 the poor. And I thought that was at the heart of what  
15 the Legal Services Corporation was about. And frankly,  
16 would be about but for the fact of a conservative  
17 Congress.

18 I objected. There was some mention of  
19 landlord-tenant cases. I remember dealing with the  
20 Pine Tree Legal Foundation in Maine where Legal  
21 Services lawyers would tell clients to exploit a one-  
22 month gap between nonpayment of rent and the right of  
23 eviction. People had stopped paying rent. It would  
24 hard to evict them. They couldn't even try for a  
25 month. Then Legal Services would come in, raise



1 issues. People who had stopped paying rent couldn't  
2 get evicted for three, four months. What a triumph  
3 they thought it was for the poor, except for this.

4           The working poor living in those  
5 neighborhoods had to pay higher rents and nobody built  
6 housing for the poor. That, I thought, was the  
7 mindset. And I thought it hurt the poor. Indeed,  
8 devastated them.

9           I objected and was tired at sweetheart  
10 lawsuits. I objected and was tired of suits against  
11 cities. I heard many mayors, particularly smaller and  
12 medium-sized cities make the point -- and they were  
13 right -- that for all of their whining about inadequate  
14 resources, particularly in the days of the backup  
15 centers, the Legal Services Corporation had far more  
16 money, far more resources to pursue cases.

17           And with the fee shifting provisions in the  
18 law, whatever the merits of the case, they could  
19 bludgeon small cities, small business into settling  
20 cases because they couldn't afford to risk to lawsuit  
21 those cases. I objected to that.

22           I objected to the dishonesty of the Legal  
23 Services Corporation proclaiming itself as the people  
24 who were just handling individual claims cases and  
25 divorce cases and health care cases by citing numbers

1 of cases, when if you did anything like a serious look  
2 at budgetary allocations, it was clear that high  
3 proportions, half of the money spent by the Legal  
4 Services Corporation was on the so-called big cases;  
5 class action and other similar cases.

6 I was tired of the American Bar Association  
7 responses to this matter. When -- and I mean nothing  
8 to the ABA representative here, but when \$300-\$400 an  
9 hour lawyers, like I used to be for one time in my  
10 life, anyway, would come up and talk about our  
11 responsibility. And it's an ethical obligation. We  
12 lawyers have for the privilege of being licensed to  
13 practice law to represent the poor.

14 We satisfied that by coming to Washington and  
15 hustling for appropriations paid by taxpayers who earn  
16 \$10,000 a year. All this nonsense about how the bar  
17 can't take care of the problem is nonsense.

18 I believe that lawyers should be required, as  
19 a subject of licensure, to handle those kinds of cases.

20 I objected, and now I hear this talk about  
21 how the bar is so deeply involved in pro bono cases, I  
22 heard from the representative of the ABA. What he  
23 didn't tell you was that the American Bar Association  
24 hustles to make sure that in the so-called pro bono  
25 cases, if you win the case, as you often can do because

1 the big firms have got far more resources than  
2 municipalities. You get fees, lodestar fees, \$300-\$400  
3 an hour paid to non-busy partners and associates  
4 learning how to practice law after thousands of hours  
5 are put up.

6 I don't call that pro bono practice. When I  
7 practiced law, I never spent a year where I didn't  
8 spend 20 percent of my time representing pro bono and  
9 poor and middle class clients, and I never asked for a  
10 dime for it. That was the spirit I'd like to see. And  
11 I object to the American Bar Association preening as if  
12 they care for the poor. It is a retrograde  
13 organization against the poor, a lobby for the worst  
14 smugness of the American Bar with no real interest in  
15 the poor. And I objected to that.

16 I remember one time there was a -- I was  
17 before a group of ABA panjandrums. And I object to the  
18 presumptuousness of the bar -- where I was grilled on  
19 my position on the Legal Services Corporation and the  
20 man, later President of the ABA, said to me, "Young  
21 man," which I then was, he said, "do you see anything  
22 in the Constitution about a right to eat?" "No, sir."

23 "Anything about a right to a home?" "No,  
24 sir." "Well," he said, "there is a right to due  
25 process of law, isn't there?" And I asked him whether

1 he thought the American poor needed a lawyer rather  
2 than three squares a day and a roof over their heads.

3           The bar association has been shameful in this  
4 regard. And the idea of having a heavily politicized  
5 Legal Services Corporation with all sort of skewed  
6 views as to how to help the poor didn't strike me as  
7 appropriate.

8           I must say, too, one of my regrets is that  
9 Caldwell Butler and I had worked out something that  
10 would have ended those abuses years ago. I was  
11 attacked by the right as much as by the left in those  
12 solutions, because many conservatives on the right love  
13 the Legal Services Corporation as a whipping boy with  
14 which they sent out and collected direct mail. And  
15 they wanted gridlock forever.

16           This was a case of ideologues on both sides  
17 who couldn't have cared a fig for the poor. They cared  
18 about abstractions. They cared about fundraising.  
19 They cared about big government. The poor were means  
20 to that end. And that's why I objected to it.

21           Now, I can continue that discussion and we  
22 can continue that debate, but the real point -- and the  
23 real reason I want to be here is because I plead with  
24 you to move beyond these arid irrelevant categories in  
25 terms of what it is that you as a Civil Rights

1 Commission and what it is we can do through the legal  
2 system to really help the poor.

3 I'd love to see some of the kind of cases  
4 that Commissioner George was talking about. I'd love  
5 to see liberal oxen gored in all of their cases as much  
6 as conservative oxen are gored. That's not the case  
7 and we all know that. And as Commissioner Horner said,  
8 that's part of the problem of the Legal Services  
9 Corporation.

10 But I remember a day when Commissioner Berry,  
11 I was a civil rights law professor at the University of  
12 Mississippi teaching the first integrated classes.  
13 I'll brag to this degree. Having Byron Delabeckwith  
14 campaign for Lieutenant Governor of the state saying  
15 the first thing he would do would be to fire me as a  
16 professor at the University of Mississippi Law School.

17 I also remember a Civil Rights Commission in  
18 those days with Father Hessberg and others who really  
19 gored the oxen of establishments and who were listened  
20 to and who made a difference. One of the reasons  
21 nobody cares what this Commission does - and I say it  
22 respectfully to the members -- is because everything  
23 you do is so predictable, so conventional. The world  
24 discounts anything you say.

25 And here again -- and that's why I wanted to

1 come, because I believe in the need for a vigorous  
2 Civil Rights Commission. But as long as you have  
3 another Civil Rights Commission on the Legal Services  
4 Corporation, ho hum. Your report will be -- your staff  
5 has probably drafted it about how terrible it is that  
6 it only had \$200 million and it should have \$700  
7 million.

8 I say to you that you won't make the \$700  
9 million for starters. But I'm here to say that there  
10 are far more important things for the poor in its nexus  
11 to the legal system that I commend to you to look at.  
12 Let me give you one example, and it's one that I'm  
13 quite familiar with.

14 On April 18th of this year, a bipartisan  
15 coalition of Senators introduced -- hold onto your hats  
16 -- the Auto Choice Reform Act of 1997. Now, what has  
17 that got to do with civil rights, you ask? This was a  
18 bipartisan coalition of Senators, Gordon and McConnell  
19 and Graham, but also Senators Moynihan and Lieberman.  
20 Strong endorsement by -- Governor Dukakis sent in for  
21 this reform legislation a strong editorial in the New  
22 York Times, pitched in terms of the interest of the  
23 poor.

24 Here's what the legal system really does to  
25 the poor, and it has nothing to do with any money for

1 the Legal Services Corporation, anything the Legal  
2 Services Corporation has ever done or hopes to do.

3 We now have millions of poor people in this  
4 country who have to drive as either illegal, uninsured  
5 motorists, outlaws, because the rate of automobile  
6 insurance has climbed so fast that most poor people --  
7 I would dare say more than 50 percent of the black  
8 community in this country has to pay an automobile  
9 insurance bill for each year that is substantially  
10 greater than the value of their car. And they're  
11 forced into illegality.

12 It also means that if you or I get hit in  
13 D.C., the chances are the person who hits us will have  
14 no insurance. But it's worse. There are some states  
15 in which people are forced to buy automobile insurance  
16 by pressure of organized lawyers, by pressure of  
17 everyone else.

18 And what I brought to the hearing was  
19 something -- a report that in my judgment means more  
20 than all the reports in the cases brought by the Legal  
21 Services Corporation in the last 10 years. It's  
22 entitled "The Impact of Mandatory Insurance Upon Low  
23 Income Residents in Maricopa County, Arizona."

24 They tested, they looked at those people --  
25 and Arizona is a state where you've got to buy auto

1 insurance. That's part of the legal system, driven by  
2 the organized bar. They looked at people, at 50  
3 percent of the poverty level, the true working poor in  
4 this country. Do you know what they spend to buy auto  
5 insurance? 31.6 percent of their disposable income.

6 Take every single income redistribution case  
7 of the Legal Services Corporation, no matter how wacky  
8 or hopeless the theory is, it wouldn't do half as much  
9 as saving poor people from having to pay a third of  
10 their income to buy auto insurance, people at twice the  
11 poverty level, 50 percent of them. Those people with  
12 \$27,000 a year had to defer major purchases of food,  
13 rent, health care needs and other important matters in  
14 order to buy auto insurance.

15 Now, there's also not a city in the Unites  
16 States -- talk about the declining economic viability  
17 of American cities. There's not a city in the United  
18 States where you can't put \$500 to \$1,000, sometimes  
19 more, in your pocket by moving to an adjacent suburb.  
20 The same auto insurance that in Central Los Angeles  
21 costs \$1200, in Simi Valley costs \$300. And the  
22 reasons we can get into.

23 But as Senator Leiberman, as Senator  
24 Moynihan, as the New York Times, as the Joint Economic  
25 Committee, as the Rand Corporation have pointed out,



1 it's because the lawyers require, when you buy auto  
2 insurance, that you not only insure yourself for lost  
3 wages and for your medical bills but you've got to buy  
4 what consumer groups have called a lottery ticket  
5 called pain and suffering damages. That's the cause of  
6 fraud.

7           It's the reason why auto insurance rates have  
8 moved up way faster than the cost of living. It's an  
9 incentive for people to go to doctors when they're not  
10 sick and it drives up the cost of the rates with this  
11 impact on cities and poor people. But the lawyers say  
12 you've got to buy it.

13           You can't choose whether or not you want to  
14 be insured for lost wages or for medical injuries of  
15 auto. You've got to insure yourself to be able to sue  
16 for pain and suffering.

17           Now, consumer representatives, some with the  
18 courage to break away from the establishment, as I hope  
19 this Commission will do as it gets off more predictable  
20 debates about the Legal Services Corporation, consumer  
21 groups have made the obvious point that a pain and  
22 suffering damage is, quote, "a lottery ticket which,  
23 when won, mostly goes to the lawyers." Pain and  
24 suffering damages -- I quote now from the leading legal  
25 ethics case book -- is an inflated element of damages

1 tolerated by the courts as a rough measure of the  
2 plaintiff's attorney's fee. Billions of dollars.

3 Now, the Joint Economic Committee Report  
4 points out that the savings from the Moynihan-Dukakis-  
5 New York Times-Wall Street Journal Report, it simply  
6 allows people not to buy pain and suffering insurance.  
7 That's essentially what it does -- would be 48 percent.  
8 It think that's a low ball estimate of the current  
9 insurance policies that low income drivers have to  
10 have.

11 Want to talk civil rights? Let's talk civil  
12 rights in a legal system here.

13 CHAIRPERSON BERRY: Okay.

14 MR. HOROWITZ: I will finish now and I will  
15 just say I ask you to take on powerful voices. The  
16 American Bar Association will oppose this reform  
17 because it's their pocketbooks at stake. Yet they  
18 posture themselves at hearings like this as friends of  
19 the poor. They're not. Not the American Bar  
20 Association in its organized sense. And there are lots  
21 of well-meaning people in them.

22 But those are the targets you ought to look  
23 at, not the conservatives who have rescued the Legal  
24 Services Corporation or the poor by ending the  
25 political agenda that animated the Legal Services

1 Corporation that I think in the main hurt the poor.

2 Thank you very much.

3 CHAIRPERSON BERRY: Thank you very much for  
4 your testimony. We'll have some questions in a minute.

5 Mr. Padilla, thank you very much for coming.

6 Mr. Jose Padilla is the Director of the California  
7 Rural Legal Assistance Agency, CRLA, for 12 years. And  
8 he's been a Legal Services attorney since 1978 and was  
9 Legal Advisor to the California Migrant Education  
10 Parent Advisory Council. And one of his awards for  
11 community service is called the Cruz Reynoso Community  
12 Service Award. Just thought I'd point that out.

13 Welcome, Mr. Padilla.

14 MR. PADILLA: Madam Chair and distinguished  
15 Commissioners. Gandhi used to say that when you have  
16 doubts about decisions that you have to make, the  
17 expediency is to remember the face of the poorest and  
18 the most helpless person you have ever seen, and ask  
19 yourself if the step you contemplate is going to be of  
20 any use to him. Then you will find your doubts melt  
21 away.

22 I know the face of rural California. I was  
23 born and raised in a rural small town designed with a  
24 railroad track as a social and economic demarcation. I  
25 was raised by citizen parents who came from immigrant

1 families and I was raised by a rural village, so to  
2 speak, surrounded by aliens who I referred to Aqualita  
3 Tio Tia, meaning grandmother, aunt and uncle.

4 My father was a farm worker until his mid 20s  
5 and a man who gained his citizenship fighting for his  
6 country in World War II. He still believes in  
7 democracy. In his early 70s, he still serves on a  
8 rural school board that I sued as a Legal Aid lawyer  
9 some years ago, just as he was joining it.

10 (Laughter.)

11 I have given 18 years of a legal career to  
12 Rural Legal Services because, first, I remember what it  
13 is to pick tomatoes in 100 degree weather. And second,  
14 because until I die, I will believe in certain things  
15 that brought me to Rural Legal Aid. Among them, that  
16 working hard in employment that provides minimal social  
17 dignity should entitle you to some basic labor, civil  
18 and human rights.

19 And by human rights, I do not mean some  
20 esoteric notion of international implications. But  
21 something very basic like human respect and respect for  
22 human life.

23 But before I give you the client reasons why  
24 we do civil rights work, I want to make three points.  
25 One. That traditional civil rights work is legal aid

1 work but that it has come at a price. Two. That such  
2 work is a very small, very small aspect of the overall  
3 use of our resources. And three, that the basic issue  
4 of legal aid access is itself a civil rights issue.

5 First, traditional civil rights work in Rural  
6 Legal Aid has been significant. But one price for the  
7 existence of legal aid has been and continues to be the  
8 curtailment of civil rights remedies.

9 The mistake of many who judge the purpose for  
10 providing free civil legal aid to the poor is that they  
11 judge such a system's value through a political prism  
12 that believes that access to the law must be a  
13 political, non-controversial, colorblind and unworthy  
14 of being free in legal scope. All criticisms because  
15 the funding source comes from governmental taxing  
16 power.

17 In truth, poverty is political. Through it's  
18 ability to create or undo policy, government can  
19 ameliorate or enhance the very nature of poverty as it  
20 beats on the lives of the poor. But for legal aid to  
21 exist, the political price has been for the civil  
22 rights remedies to be sacrificed.

23 And because most legal aid organizations have  
24 not aggressively used civil rights issues  
25 affirmatively, the minority who have, like Rural Legal

1 Aid, are vulnerable to the reforms. Because these  
2 reforms cut at the margins of our most effective  
3 service. And it's because at the margins is where the  
4 controversy lies.

5           The most recent example of such controversy -  
6 - and somebody mentioned it -- is Texas Rural Legal  
7 Aid. Recently, they brought a Latino voting rights  
8 case well within the regulations set by the Legal  
9 Services Corporation. Ironically, as legal as the case  
10 was, they abandoned it and a short time later, the  
11 plaintiffs were victorious.

12           That's about controversy and getting involved  
13 with Latino communities to seek to participate in local  
14 politics. But if I were to give you in one sentence my  
15 18 years of experience regarding legal aid and civil  
16 rights protections, it would be that for the ethnic  
17 poor, legal aid lawyering has suffered a continual  
18 erosion of its ability to address the issues at the  
19 hearts of civil rights work.

20           From the onset, with the Legal Services Act  
21 of 1974, school desegregation was excluded. Since  
22 then, electoral redistricting has fallen victim. And  
23 the most effective and symbolic procedural means for  
24 effectuating civil rights remedies, the class action,  
25 went that way last year.

1           There's a public misconception out there that  
2 legal aid is color blind. Most persons who think about  
3 the practice of civil rights law will not relate such a  
4 practice to the legal aid system of this country. The  
5 traditional civil rights issues people think should be  
6 left to the civil rights groups. Now, that may be easy  
7 for urban-based legal aid programs who find strong  
8 civil rights networks addressing urban civil rights  
9 problems, but that is not true for Rural Legal Aid.

10           In rural California there is no civil rights  
11 infrastructure that brings the resources of the urban  
12 groups to bear on the civil rights of the rural poor,  
13 nor of the rural ethnic community. Although such civil  
14 rights groups may be approached to represent the rural  
15 ethnic poor on an ad hoc basis, their institutional  
16 focus, for reasons of history or reasons of resource,  
17 is urban.

18           These groups not only do not have the  
19 resources to reach out to these rural communities, they  
20 do not have the local presence to maintain ongoing day-  
21 to-day relationships that allow them to stay in touch  
22 with the changing needs that come from the changing  
23 demographics and the changing economic conditions.

24           CRLA is the NAACP, the MALDF and the Lawyer's  
25 Committee in rural California. CRLA filled the void out

1 of necessity. Rural California poverty is now majority  
2 ethnic, so that if a legal aid provider is in tune with  
3 the daily and real injustices of the communities that  
4 they bear, you have to bring race based or gender based  
5 litigation.

6 Just to give you an idea of the demographics,  
7 CRLA represents 310,000 rural poor. In the last 10  
8 years, that was an increase of 50 percent at a time  
9 when we lost a third of our resource. And if our case  
10 service statistics reflect the distribution of ethnic  
11 groups within our service area, this is what you would  
12 find: 150,000 Latino poor; 120,000 white poor; 20,000-  
13 25,000 Asian-Pacific Islander poor; 15,000-20,000  
14 African-American poor.

15 And whereas the rural white poor need basic  
16 legal aid, ethnic rural poor need both civil rights  
17 protection, as well as representation in the  
18 traditional services that legal aids are known to  
19 provide.

20 In the 30 years of rich CRLA history, of  
21 which Justice Reynoso was a part, CRLA lawyers have  
22 brought every kind of civil rights case that could be  
23 found in a rural setting. The work addressed such  
24 things as English literacy in voting, voting rights for  
25 non-landowners, school district at-large electoral



1 challenges, police misconduct, prison conditions,  
2 employment discrimination on the basis of race, sex,  
3 national origin, sexual discrimination, sexual  
4 harassment in agriculture, environmental racism in  
5 Latino towns, affirmative action, and it goes.

6           This came about not because we wanted to be  
7 called civil rights lawyers but because in small towns  
8 and not so small towns of California, Mexican and black  
9 folk of the east side never got the same white break as  
10 white folk. Rural racism was never and is not color  
11 blind.

12           I grew up with and was raised by victims of  
13 racism. In the Imperial Valley where my uncle, Caesar  
14 Real worked for the United States Government  
15 experimental agricultural station in the '50s and the  
16 '60s, the Imperial Irrigation District, the county's  
17 largest employer and the system that fed water to the  
18 crops my uncle tended would not hire Mexican laborers  
19 like him. Yet as a young lawyer in rural California in  
20 1980, I oversaw a consent decree that had corrected the  
21 injustice.

22           Whereas once in an 800 employee workforce  
23 where less than 50 colored folk, black and brown, had  
24 served on the workforce, after the litigation, 400 plus  
25 Imperial Irrigation District minority workers were now

1 employed. Four hundred families out of poverty. Four  
2 hundred families no longer eligible for our services.

3           There was no MALDF, no NAACP lawyer to bring  
4 that case. CRLA was the NAACP lawyer. We represented  
5 the NAACP and we represented the Mexican-American  
6 Political Association.

7           But let me not mischaracterize our work. In  
8 the overall thrust, legal services is not about civil  
9 rights litigation. It's about remedying basic poverty  
10 conditions. Opponents to legal aid call our civil  
11 rights work social engineering, but in reality, even  
12 our work is an individual, family oriented service that  
13 goes to help maintain what you would consider basics of  
14 living. A roof over somebody's head, food on the  
15 table, brief service and advice.

16           Sixty percent of our case work, brief service  
17 counsel and advice. In the National Legal Service  
18 statistics, less than 10 percent of the cases result in  
19 litigation that ends in court decision. CRLA litigates  
20 to court decision closer to 5 percent of our casework.  
21 Last year, 33 percent of our cases, more than 6,000  
22 cases, were in housing. Eighteen percent, more than  
23 3,000 cases, in labor. Seven percent in civil rights.

24           You know what kind of civil rights work we  
25 were doing? Citizenship education. Why? Because of

1 the immigration fear out there. They're coming into our  
2 offices asking to know how they can become citizens.  
3 That's the civil rights work that we were doing last  
4 year.

5           And in the year, talking about class actions,  
6 perhaps most relevant to you, in the early part of last  
7 year during the process in which we were forced to  
8 abandon all of our class actions, out of some 5,000  
9 active cases we identified in that time period 40 class  
10 actions, one-half of one percent of our active  
11 caseload.

12           My third point is that I believe that minimum  
13 access to legal aid is a civil rights issue.  
14 Inaccessible legal assistance is when you begin  
15 rationing justice. In rural California, access to  
16 civil rights protections must itself be a civil rights  
17 issue. The poorest members of an ethnic community are  
18 the most vulnerable to civil rights violations for many  
19 reasons.

20           So therefore, to the extent that legal aid is  
21 unavailable for the rural ethnic community, both civil  
22 rights and basic legal rights go unprotected.

23           Let me give you an image of this about  
24 inaccessibility.

25           The Legal Services Corporation published a

1 report in 1993 that indicated this. The general public  
2 averages one attorney for 305 persons, 305. Poor  
3 people in 1993 had one attorney for 10,567 people. In  
4 dramatic contrast, last year in our service area,  
5 average, one attorney for 16,000. For farm workers,  
6 one attorney for 30,000. And last year we lost 15  
7 lawyers. Now we have eight one-lawyer offices in rural  
8 California.

9           These are their averages. Santa Rosa, one  
10 lawyer for 29,000 poor people. San Luis Obispo, one  
11 lawyer for 26,370 people. El Central, one lawyer for  
12 25,500 poor people. Marysville, one lawyer for 22,890  
13 people. Santa Maria, one lawyer for 20,790 people.

14           I can't speak to you here about the  
15 implications of civil rights on our poor people without  
16 thinking that civil rights is about people, people with  
17 helpless faces, like Gandhi talked about, with  
18 families, with children. People who carry with them  
19 esoteric beliefs such as hope and faith, not unlike any  
20 other American seeking to ensure and pursue democratic  
21 happiness.

22           But you ask if CRLA now has 15 fewer lawyers  
23 than it did one year ago, why do you need to do  
24 restricted work? If so much need is unmet, why do you  
25 do class actions? Why do you want to do welfare

1 reform? Why do you want to serve aliens?

2           Why do a class action if you can do 50  
3 evictions using the same time and resources? If people  
4 are not here legally, if they are so-called aliens, why  
5 represent them when there are so many legal people who  
6 need the service?

7           And I'm going to use the word aliens, as I  
8 end, because as much as I'm angered by the derisive way  
9 that people use that, it is a choice of words used by  
10 our detractors. And I use it to remind me of the  
11 underlying insensitivity reflected there, despite the  
12 simple fact that these are fellow human beings.

13           So you ask why? If Gandhi were here, he  
14 would ask you to remember any helpless faces that you  
15 have run across in your life, because that's what's  
16 going to remove your doubts.

17           Welfare reform. If we could, we would  
18 challenge welfare reform because there are people named  
19 Ignacio Munoz, a 75-year old worker in Stockton in the  
20 Central Valley of California who had labored for more  
21 than 40 years picking crops and doing other jobs,  
22 fearing deportation and loss of his \$400 SSI check, he  
23 took his fear to the illogical extreme and seven weeks  
24 ago, the way the newspaper reported it, he hobbled over  
25 to a nearby bridge, slipped into a dry canal bed and

1 shot the fear out of his head.

2           No legal aid litigation will bring back an  
3 aged spent and lifeless brother. And we know that  
4 politicians looking for confirmation of such suicides  
5 will not find any unless they be judged. But fear and  
6 panic and heart attack is not a humane way to treat the  
7 elderly and the infirm, whether they are here are  
8 refuge transplants or retired workers who walk on spent  
9 arthritic legs because the strength was left in the  
10 furrows of fruit fields.

11           Class actions. Why do I do class actions?  
12 Because there are people named Lilly Hernandez. Until  
13 recently, she had the life role of bottling the world  
14 supply of A-1 Steak Sauce and Grey Poupon Mustard. She  
15 had worked there in that company for 25 years. In  
16 1995, dozens of Latino workers on the line challenged  
17 the Nabisco management because they had unduly  
18 restricted the restroom privileges.

19           Latino working women may not have glamorous  
20 jobs but respect, as a family and cultural value,  
21 stands for something. Many of these women began to  
22 develop urinary tract and bladder infections. Many of  
23 the women began to wear diapers on the line, like  
24 children, so that their bathroom needs would not  
25 interfere with the employer work expectation. Many of

1 these women were in their 60s.

2           The settlement was confidential, but the  
3 Chicago law firm of Davis, Minor and Gallon, who served  
4 as lead counsel with us, made it very clear that but  
5 for the fact that we had a local neighborhood office  
6 there, such litigation could not have been maintained  
7 without the client support that our neighborhood office  
8 gave.

9           Aliens. Why do we represent aliens? We  
10 represent aliens because there are workers named Noel  
11 Juarez, a Choctec Indian from Sierra Anna Yorena  
12 Wohaka, who came from the highlands of Southern Mexico,  
13 one of Mexico's poorest states, where the Indian  
14 culture, just as here with ethnic groups, is the  
15 subject of derision.

16           But like many of them who come prepared to  
17 bear whatever personal sacrifice they have to bear to  
18 be able to send money back home, few of them expect  
19 that in our modern democracy basic human rights mean  
20 little. CRLA, four years ago, closed the class action  
21 litigation where Mr. Juarez and 377 workers had not  
22 been paid back wages, about \$1.25 million. They had  
23 been working six-day weeks, 16 hour days, below federal  
24 minimum wage at the time, \$3.35 an hour. The dramatic  
25 impact of that case was incarceration of the grower for

1 criminal violations; racketeering, conspiracy, labor  
2 and immigration violations. It amounted to three years  
3 in prison.

4           Those of you who know flowers, your baby's  
5 breath could have come from that farm. Ornamental  
6 flowers do not look quite as pretty when they're picked  
7 by workers who live in a 50 acre compounded surrounded  
8 by high barbed fences, live behind locked gates secured  
9 by attack dogs. Some workers told stories of having  
10 their heads shaved so that the humiliation would keep  
11 them from escaping into surrounding communities to ask  
12 for help.

13           There was no MALDF, because these folks were  
14 not Latino. They were Indian. There was no Amnesty  
15 International because this is the United States. There  
16 was only Rural Legal Aid.

17           And let me say something about communitarian  
18 cases.

19           CHAIRPERSON BERRY: And you need to sum up,  
20 Mr. Padilla.

21           MR. PADILLA: This is the way I sum up.  
22 Labor camp cases. I think labor camp living is as  
23 communitarian as you can come.

24           We have to do class actions because of the  
25 numerosity of the families that we represent. These



1. people live in camps they call homes with funny names;  
2 San Andreas, El Rio, El Pelud. But when the conditions  
3 come forth at trial, this is what you hear from the  
4 clients. And this is a client talking a year ago.

5 Antonio Rocha, talking about the living  
6 conditions that she and her fellow tenants face. She  
7 said, "When we were cooking, cockroaches would fall  
8 from above us and into the food and we couldn't eat it  
9 any more. We'd get nauseous and throw it out."

10 But this is what I choose to end with. It's  
11 a very short letter. Because, as you might expect, we  
12 also do class actions because of children, children  
13 with alien names like Ilda, children who sometimes take  
14 15 minutes from their busy lives and they write to  
15 their lawyers. And we always need to be reminded, as  
16 lawyers about the simple reasons why we do what we do.

17 And I would read it to you in Spanish, as she  
18 wrote it, but you wouldn't understand, maybe, except  
19 Justice Reynoso. And this is what Ilda wrote.

20 "I lived in El Pelud in the Ranch of Bennett  
21 Farms, and it was very bad because we couldn't study.  
22 My papa worked very hard on this ranch, many hours, and  
23 they were paid very low. I was not very happy. We  
24 slept in rooms of wood and I think it was very good  
25 that lawyers brought us out of this ranch. Now we live

1 a comfortable live in another place and I am grateful  
2 to you for taking us out of there. I now sleep in my  
3 own room. Ilda Vargas. Seven.

4 Thank you very much for your time.

5 CHAIRPERSON BERRY: Thank you, Mr. Padilla.

6 Ms. Holmen, Phyllis Holmen is the Executive  
7 Director of the Georgia Legal Services Program and she  
8 has been at GLSP, Georgia Legal Services, since 1974.  
9 And she is going to discuss their work with low income  
10 Georgians throughout the state.

11 Thank you very much for coming, Ms. Holmen.

12 MS. HOLMEN: Thank you very much, Madam  
13 Chair, and let me start by apologizing for addressing  
14 my written remarks as Mr. Chairman. I, of all people,  
15 should have been more alert to that. I'm very sorry.

16 Madam Chair and Commissioners, thank you very  
17 much for the opportunity and the honor to come here  
18 today and talk to you about legal services.

19 As was stated, I've spent my entire legal  
20 career working for the local legal services people,  
21 most of that time in Georgia. I want to talk to you  
22 about how the funding cuts and the restrictions have  
23 affected what we do, and my belief that it is indeed a  
24 civil rights issue because of who the poor are. And in  
25 particular, in Georgia.

1 I want to talk to you a little bit about who  
2 the poor are, what we do for them, and what has  
3 happened with what we can do for our clients over the  
4 last couple of years, in particular.

5 I believe that the cuts and the restrictions  
6 have caused a serious denial of access to the justice  
7 system which makes poor people unable to enforce their  
8 rights and gain the protection of the laws to which  
9 they're entitled. It has also led to greater  
10 frustration on the part of the courts, other litigants  
11 and other lawyers, who are finding more and more pro se  
12 litigants in their courtrooms and dramatically  
13 impacting the administration of justice. So I believe  
14 it's well within the statutory charge of the  
15 Commission.

16 Georgia's Legal Services Program serves 154  
17 counties in Georgia, all of the counties in Georgia  
18 outside the five metropolitan counties of Atlanta.  
19 There are approximately one million potentially  
20 eligible individuals in those counties. We have 77  
21 lawyers and 30 paralegals who work in 13 offices to  
22 serve those individuals.

23 As Ms. Laster stated earlier, we serve each  
24 of those counties. We see clients in welfare offices,  
25 church basements, social service agencies, and

1 sometimes in our cars, if necessary.

2 We receive 68 percent of our funding from the  
3 Legal Services Corporation and about another 10 percent  
4 through other federal sources, such as the Older  
5 Americans Act, the Violence Against Women's Act, the  
6 Ryan White Act to serve persons with AIDS, the McKinney  
7 Act to serve persons who are homeless.

8 We receive less than 20 percent of our  
9 funding from private contributions, the IOLTA program  
10 in Georgia and United Way. So the bottom line is  
11 without that source of stable and substantial federal  
12 funding, we would not exist throughout the state of  
13 Georgia.

14 In our state, 71 percent of the population is  
15 white and about 28 or 29 percent are people of color,  
16 but poverty disproportionately affects Georgians of  
17 color. Fifty-five percent of people below the poverty  
18 line are African-American and 30 percent of African-  
19 Americans in Georgia are poor in contrast with eight  
20 percent of white Georgians.

21 Poverty also disproportionately affects  
22 women. One-third of the female head of households in  
23 Georgia are poor. Poverty disproportionately affects  
24 the elderly. Ten percent of our population are senior  
25 citizens, but 20 percent of them are poor. Perhaps

1 worse of all, one in four of our children under 6 are  
2 being raised in poor families.

3           The American Bar Association Legal Needs  
4 Study in 1994 found that in Georgia, as many as 39  
5 percent of poor families -- of low income families have  
6 a new legal need each year. We struggle mightily to  
7 meet those needs but the cuts in funding, in  
8 particular, have dramatically impacted our ability to  
9 do that.

10           We're spending more and more time on the  
11 telephone with people, screening them for financial  
12 eligibility, screening them for the severity of their  
13 legal problem, trying to give them a little bit of  
14 information over the telephone to help them solve their  
15 problem, but more and more often telling them, no, we  
16 don't have the resources to help their case.

17           We're offering more and more community  
18 education talks to groups of senior citizens, groups of  
19 people in homeless shelters, groups of people in public  
20 housing projects, in an effort to help them help  
21 themselves, in an effort to help them avoid their legal  
22 problems. Because I firmly believe most people would  
23 rather never see a lawyer than have to see a lawyer.  
24 So we try to help them do that.

25           Last year we started a landlord-tenant

1 hotline that is answering calls from 400 to 700 people  
2 a month, but simply giving them a little bit of  
3 information over the telephone for them to go and  
4 handle their own cases. It's an important service but  
5 it doesn't give them a lawyer to help them handle their  
6 case.

7           Each of our offices, as was stated earlier,  
8 as required of all Legal Services Programs, works  
9 closely with a panel of lawyers to which we refer cases  
10 on a free or reduced fee basis. But in rural Georgia,  
11 some counties have no lawyers at all. And in counties  
12 where there are even a few lawyers, many of those are  
13 conflicted out from representing our clients, for one  
14 reason or another.

15           And in addition, in rural Georgia there are -  
16 - in most counties in Georgia, there are no paid public  
17 defender programs. So those same lawyers who are being  
18 asked to deliver civil legal services to the poor  
19 without cost or fee are also being asked to bear the  
20 Constitutional burden of indigent criminal defense.  
21 And many lawyers have said to us, as generous as they  
22 want to be, it's simply more than they can afford to  
23 do.

24           In 1996, we closed just under 18,000 cases  
25 for clients. About 900 of those cases were handled by

1 private lawyers. But those volunteers rely heavily on  
2 our staff to screen the clients for financial  
3 eligibility, to screen the clients for meritorious  
4 case, and in many cases, for assistance with the  
5 substantive legal problem in the case. Those private  
6 lawyers are critical and we couldn't do without them,  
7 but they couldn't do without us either.

8           The matters we handle for our clients are the  
9 problems of everyday life, as Jose said to you.  
10 Perhaps writ larger because our clients have few, if  
11 any, discretionary resources to solve their problems.  
12 Over a third of our cases are family related matters  
13 and most of those involve family violence.

14           The next most common type of case involve  
15 housing problems, and most of those involve threatened  
16 loss of housing, eviction, foreclosure, so forth, and  
17 homeless.

18           The next most common problem involves various  
19 benefit programs; unemployment, food stamps, disability  
20 and the like.

21           Slightly over 60 percent of our cases, as  
22 Jose's are resolved with counsel and advice, brief  
23 service or some other less than formal adversarial  
24 proceeding. I think while that's a useful service,  
25 it's not getting real legal representation to clients

1 and we're seeing more and more pressure to devote more  
2 and more time to advice and counsel. And it frustrates  
3 our lawyers, frankly, because they can't do more for  
4 their clients.

5 I've included graphics for you in my paper  
6 which depicts all these statistics so you're not  
7 overwhelmed.

8 I think what I've described so far -- I hope  
9 what I've described so far shows to you that any impact  
10 that affects any service for the poor  
11 disproportionately affects people of color, women,  
12 people with disabilities and the elderly. The  
13 legislative actions affecting the appropriations for  
14 the Legal Services Corporation and the restrictions on  
15 our activity, therefore, is clearly a civil rights  
16 issue because of who the poor are.

17 As was stated earlier, in 1996 Congress cut  
18 the appropriation for LSC by 30 percent and that cut  
19 was passed right along to us. That was on top of a 5  
20 percent rollback in 1995 which was also passed right  
21 along to us. We lost 25 percent of our staff in 1996.  
22 We closed one office and resisted mightily closing two  
23 others which exist, but in very, very tiny forms. One  
24 of them is simply a part-time secretary who tries to  
25 make referrals to private attorneys.



1           In addition, I want to talk to you a little  
2 bit about the restrictions and the three that I feel  
3 impact what we can do for clients most.

4           The first is the restriction on legislative  
5 and administrative advocacy which we can undertake for  
6 our clients, except under very limited circumstances,  
7 with non-LSC funding. The second is the prohibition on  
8 filing or participating in class action lawsuits. And  
9 the third is the prohibition on litigation or  
10 legislative or administrative advocacy related to  
11 welfare reform.

12           Let me tell you of some specific examples of  
13 cases that we once did that we can no longer do.

14           In 1994, tropical storm Alberto rose up from  
15 the Gulf of Mexico and camped out over the state of  
16 Georgia for several days. As Ms. Laster stated  
17 earlier, Legal Services lawyers get involved in  
18 disaster relief. This took us completely by surprise.  
19 We had never done disaster legal assistance before and  
20 had to spend the time to educate ourselves on all kinds  
21 of FEMA regulations. The Small Business Administration  
22 has disaster regulations. There are special state  
23 programs related to disaster assistance. We spent  
24 great amounts of time learning all that stuff so that  
25 we could help our clients.

1           The storm dumped enormous quantities of rain  
2 on Georgia, particularly Central and South Georgia.  
3 The south flowing Flint River, which flows from around  
4 Atlanta south to the Gulf of Mexico overflowed its  
5 banks dramatically. Not as bad as the Mississippi the  
6 year before, but dramatically.

7           In particular, in Albany, Georgia, in  
8 southwest Georgia, the river completely destroyed  
9 several African-American neighborhoods in low-lying  
10 areas. In the ensuing 2-1/2 years, including to this  
11 day, Georgia Legal Services lawyers have been the  
12 principal advocates for the low income now former  
13 residents of those areas, dealing with issues related  
14 to FEMA, emergency housing, redevelopment of public  
15 housing projects, consumer fraud by repair contractors,  
16 as was mentioned earlier, eligibility for repair money  
17 from FEMA and even relocation of neighborhood schools.

18           The restrictions that we now have in 1997  
19 would have dramatically impaired our ability to help  
20 those individuals in 1996. And let me give you one  
21 example.

22           The City of Albany established a program with  
23 -- I believe it was HUD funds -- to help people repair  
24 their homes. One of the eligibility requirements for  
25 those funds was that you had title to your home. In

1 south Georgia, in rural Georgia and other parts of the  
2 rural South, heir property is a particularly common  
3 situation where estates are not probated when family  
4 members by, and no formal title documents are prepared.

5           We went to the City of Albany and said to  
6 them, "This is a problem for many of the residents of  
7 this area, our clients, and can we work with you to  
8 develop some other ways these people might be able to  
9 establish title to their homes." They worked with us  
10 and dozens and dozens of families were able to get  
11 repair assistance because of that one small change in  
12 that policy.

13           I don't think we would be permitted today to  
14 initiate those discussions, even on behalf of clients  
15 who it would benefit.

16           Another example. Five years ago -- and this  
17 is a welfare reform example and it's controversial, but  
18 I think the facts, in my mind, are not controversial.

19           Five years go, Georgia enacted a family cap  
20 provision on recipients of AFDC. These are not  
21 uncommon any more. This denies additional benefits to  
22 a family which has additional children after a period  
23 of time of receiving benefits. In our case, it was  
24 after you got benefits for two years.

25           On behalf of a number of potentially affected

1 clients, we submitted comments to the U.S. Department  
2 of Health and Human Resources (sic) based on facts that  
3 in many parts of rural Georgia the county public health  
4 clinics could not provide timely family planning  
5 assistance to these families and they were headed for a  
6 trap.

7           HHS imposed a condition on Georgia's program  
8 that they in fact allocate more resources for family  
9 planning services so that families could get these.  
10 And in fact, more services were established. Just this  
11 year, more money was allocated to family planning  
12 services, although we didn't do that legislative  
13 advocacy.

14           Now we cannot have that kind of input into  
15 welfare reform. The people who are most affected by  
16 these programs have no voice in that process. What all  
17 good lawyers readily do for their clients when programs  
18 are changing we can no longer do for ours.

19           Georgia Legal Services has built a reputation  
20 over the 25 years of its existence as engaging in high  
21 quality representation for people with disabilities,  
22 all types of disabilities. We have brought a number of  
23 lawsuits, many of them class actions. We have done a  
24 good bit of legislative and administrative advocacy.  
25 This has been an area that's been near and dear to my

1 heart, personally.

2           For 20 years, we represented a class of  
3 children who had been institutionalized in state mental  
4 hospitals, either abandoned by their parents, and in  
5 some cases abandoned by their state caretakers. It was  
6 not uncommon for children to spend years in state  
7 mental hospitals with no one advocating for their  
8 release.

9           As a result of a lawsuit we brought, which  
10 went to the United States Supreme Court, that situation  
11 has completely changed. Children are now admitted for  
12 acute care but rarely spend more than 30 to 40 days.  
13 And in fact, in the last couple of years, the state has  
14 dramatically changed its approach to treatment of these  
15 children and has essentially closed all the child and  
16 adolescent acute care beds in Georgia, focusing instead  
17 on putting these children in more normal community  
18 based settings so that they can learn how to live in  
19 society instead of learning how to live in an  
20 institution.

21           Just three years ago, we filed a class action  
22 on behalf of people with tuberculosis who were subject  
23 in Georgia to involuntary commitment based on a process  
24 where you did not have the right to cross-examine the  
25 witnesses against you, where you did not have the right

1 to have a lawyer appointed for you if you couldn't  
2 afford one. And if you were committed, you were  
3 committed for as much as six months at a time before  
4 you could challenge that commitment.

5 We brought a lawsuit challenging that status  
6 on behalf of an individual in a class. The individual  
7 was a man who had a family and had a job and was picked  
8 up and hospitalized based on that statute.

9 The State Attorney General readily agreed  
10 that the statute was unconstitutional and in fact  
11 settled the case by going to the legislature and  
12 getting a new law passed which now has procedural  
13 protections that everyone agrees are adequate. We  
14 couldn't do that case today.

15 I believe that individual representation of  
16 persons with disabilities will never accomplish the  
17 kinds of changes that we have been able to accomplish  
18 in this area over the years in securing more dignity,  
19 fair treatment and improved conditions for these  
20 people. In rural Georgia, just as in rural California,  
21 there are precious few alternative advocacy groups that  
22 have the resources or the expertise to take on class  
23 actions, legislative advocacy for the groups of clients  
24 who we are no longer committed to represent.

25 To the argument that the private bar can take

1 care of the legal needs of these clients, I would say  
2 that the private bar tries. We work closely with the  
3 state bar of Georgia and local bar associations across  
4 the state. As I said, all of our offices have  
5 volunteer panels.

6 We received last year \$228,000 in direct  
7 contributions from private lawyers. And while that's  
8 an important statement by those contributors about  
9 their commitment to equal access to justice, it's a  
10 drop in the bucket to what the need is.

11 Despite all the limitations and despite our  
12 extremely thinly stretched resources, we're still  
13 trying to do positive things for our clients to help  
14 them positively impact their lives. And I want to tell  
15 you about a couple of those things.

16 We are working with community groups across  
17 the state which are interested in a variety of self-  
18 help kinds of activities, including working to improve  
19 their children's schools, trying to start businesses  
20 cleaning apartments in public housing projects, and  
21 helping each other collect child support.

22 Those groups need lawyer counsellors to help  
23 them with things. Not just the organizational kinds of  
24 things, incorporation and so forth, but also looking at  
25 the law surrounding the issues that they're interested

1 in, helping them pursue grant opportunities, helping  
2 them deal with contract issues, even employment issues.

3 Most of those groups have little in the way  
4 of a budget to hire a private lawyer to do those  
5 things.

6 We're also working to help private lawyers  
7 learn the intricacies of things like special education  
8 law, disability law, landlord-tenant law, so they can  
9 take on more of the cases in those very specialized  
10 areas when our resources stretch too thin.

11 Last year, welfare reform changes put in  
12 motion a process whereby children who became eligible  
13 for supplemental security income benefits since 1986  
14 are going to have their eligibility for those benefits  
15 reexamined. In Georgia, it's estimated that there are  
16 5,000 to 8,000 children who are going to be affected by  
17 that process.

18 We were very concerned that these children  
19 would not have lawyers to challenge adverse decisions  
20 and we are now working with a private law firm which  
21 has offices in South Carolina and Georgia. They're  
22 also doing this program in South Carolina. And are  
23 working to recruit volunteers throughout those states  
24 and help train them so that they can represent those  
25 children. But they are very glad for the training that



1 we've offered on the complexities of this new law, as  
2 well as special childhood disability issues which are  
3 unique and very important.

4 We're also working with judicial councils in  
5 the state bar and local bars across the state to try to  
6 deal with this issue I mentioned earlier of increased  
7 pro se litigants. Judges are frustrated. Lawyers are  
8 frustrated. And the litigants themselves are  
9 frustrated.

10 I'm on a committee which is trying to look at  
11 this and try to come up with some ways to help the  
12 courts deal with those issues better.

13 CHAIRPERSON BERRY: Would you sum up, please,  
14 Ms. Holmen.

15 MS. HOLMEN: All of those things could not be  
16 done, however, were there no federal funding for  
17 Georgia Legal Services.

18 I want to end with a little personal note. A  
19 week ago I was up here for another purpose and I had  
20 the opportunity to walk over to the Supreme Court  
21 building, which I'd never had the chance to do before.  
22 It was late in the day and I didn't have time to go in  
23 the building but I stood out in front and saw those  
24 words, "Equal Justice Under Law." We've all seen that  
25 picture a million times, but it isn't the same when

1 you're standing in front of it.

2           The words themselves, of course, mean a lot.  
3 But I was just swept away by the size and the scale and  
4 the beauty of that building. And I thought about how  
5 much that meant about how important this concept is in  
6 our country.

7           But then I started thinking about the calls  
8 that I get every day from people whose cases we can't  
9 take: The grandmother who fears she's not going to see  
10 her grandchildren if her son-in-law wins a custody  
11 case. The newly divorced 55-year old woman who's going  
12 to lose her house and her medical insurance if her ex-  
13 husband can't be found and made to comply with the  
14 divorce decree. A woman and her disabled child who's  
15 going to be evicted from housing but she doesn't live  
16 in subsidized housing so we can't take her case.

17           No private lawyer will take these cases. So  
18 to me, all I could think about was that despite that  
19 promise etched up there on that building, for those  
20 people there's no equal justice under law.

21           Thank you very much.

22           CHAIRPERSON BERRY: Thank you, Ms. Holmen,  
23 for being with us.

24           And our last presenter is David Cole who  
25 we've heard about before. Your arrival has been

1 predicted and praised, I guess, or hailed. All hail,  
2 Professor Cole, from Georgetown University Law Center,  
3 Constitutional Law, Criminal Procedure, Federal Courts.  
4 And he's also a columnist for Legal Times.

5 Please proceed.

6 MR. COLE: Thank you. And thank you for  
7 inviting me to testify.

8 I'm not sure what I can add after these very  
9 specific, I think, and eloquent statements about the  
10 effects of the restrictions on legal services. And so  
11 I want to be -- and I understand the lateness of the  
12 hour, and I want to be brief.

13 CHAIRPERSON BERRY: And we will have  
14 questions afterwards.

15 MR. COLE: So I may be brief. And I just  
16 want to really make two points.

17 One is, like Mr. Horowitz, to put this in a  
18 broader context. But I think the broader context is  
19 not about automobile insurance but rather about access  
20 to courts. I think legal services is the principal way  
21 that poor people in our country gain access to courts.  
22 Our judicial system is legitimate only to the extent  
23 that poor, as well as the rich, have access to courts.  
24 And the real question is whether and how much we're  
25 going to pay for poor people to have that access

1 because it's obviously not free.

2           These restrictions are part of a very  
3 disturbing trend that we've seen in the last couple of  
4 years. And that is that Congress is now cutting off  
5 access to courts to the least powerful members of our  
6 community. These restrictions obviously affect the  
7 poor.

8           Other examples are the Prison Litigation  
9 Reform Act, which cuts off ability of prisoners to  
10 challenge conditions of their confinement,  
11 unconstitutional conditions of their confinement.

12           Another example is the habeas corpus  
13 restrictions in the Effective Death Penalty Act and  
14 Anti-Terrorism Act of 1996 which cuts off the ability  
15 of people convicted of crime to challenge  
16 constitutional errors in their proceedings.

17           A further example is last year's immigration  
18 bill which cuts off access to courts for many, many  
19 immigrants, raising many legal challenges to the way  
20 that INS deals with them.

21           One of the court's central purposes in our  
22 society is precisely to represent those who can't get  
23 their claims heard in the political process, who don't  
24 have the money to give to make sure that their claims  
25 are heard. And yet they're the ones, the ones who need

1 judicial access the most, who Congress has been  
2 targeting. Not surprisingly, because they can't --  
3 many of them can't vote. Virtually all of them can't  
4 give any money. Their interests are not represented in  
5 the Congress. And now, Congress is ensuring that their  
6 interests won't be represented in the courts either.  
7 And I think that's a very disturbing trend.

8           Now, the second point I want to make is  
9 simply that these restrictions are clearly undoubtedly  
10 unconstitutional under current Supreme Court law.

11           I won't go into the restrictions because Ms.  
12 Laster and Ms. Holmen have already talked about them,  
13 but what makes them unconstitutional is that they  
14 clearly restrict what recipients of federal funds can  
15 do on their own time with their own resources. That  
16 is, with non-federal funds.

17           The restricted activity, essentially lobbying  
18 and litigating, is all protected by the First  
19 Amendment. There's no dispute about that.

20           It is clear, for example, that if Congress  
21 said lawyers could not bring class actions on behalf of  
22 poor people period, it would be unconstitutional.  
23 Well, Congress hasn't said that. It has said that if a  
24 lawyer or legal agency receives LSC funds, it may not  
25 represent poor people using class actions. They have

1 conditioned receipt of the federal funds on the  
2 recipient giving up their right to do this work with  
3 non-federal resources.

4 That, according to the Supreme Court, is the  
5 very definition of an unconstitutional on funding. The  
6 unconstitutional conditions doctrine essentially says  
7 that the government cannot condition access to a  
8 government benefit on the surrender of a constitutional  
9 right. The government may define, within limits, how  
10 its own money is to be spent, but it can't use the fact  
11 that it is spending money to then try to expand its  
12 restrictions beyond the government's own money to non-  
13 government funds.

14 So the key issue in asking whether a  
15 condition on funding is an unconstitutional condition  
16 is to ask whether the restrictions extend beyond the  
17 government's money or whether they simply direct how  
18 the government's money ought to be spent. And Rust v.  
19 Sullivan which Ms. Laster described is the principal  
20 case on this, although there is a whole jurisprudence  
21 of unconstitutional conditions.

22 And in that case the court drew a very clear  
23 line. It said it was okay for the Executive to limit  
24 what Title 10 family planning projects could tell women  
25 who used those projects for family planning. But the

1 court said it would not be okay if the Executive had  
2 said that a Title 10 recipient is barred, for example,  
3 from talking about abortion or advocating abortion or  
4 advocating abortion rights with their own money on  
5 their own time. That would be an unconstitutional  
6 condition.

7           This is the language directly applicable to  
8 the restrictions at issue here. The unconstitutional  
9 conditions doctrine applies where the government has  
10 placed a condition on the recipient of the subsidy  
11 rather than on a particular program, thus effectively  
12 prohibiting the recipient from engaging in the  
13 protected conduct outside the scope of the federally  
14 funded program.

15           So, what Rust v. Sullivan teaches is that  
16 government can limit the use of its own funds but it  
17 may not use that as a way of restricting a recipient's  
18 activities with non-federal funds. These restrictions  
19 plainly fall on the unconstitutional side of the line  
20 drawn in Rust v. Sullivan. They don't restrict merely  
21 what LSC groups can do with federal funds. They  
22 restrict what LSC recipients can do even with non-  
23 federal funds.

24           And there is not a case in the Supreme  
25 Court's unconstitutional conditions jurisprudence that

1 would uphold these restrictions. And so I think it's  
2 unfortunate that the Legal Services Corporation has  
3 defended them in the courts, but I think it's more  
4 unfortunate that Congress has imposed them in the first  
5 place.

6 Thank you.

7 CHAIRPERSON BERRY: Thank you very much.

8 We're going to have some questions, but I  
9 just wanted to say that Mr. Horowitz has given me great  
10 comfort. The next time, we will tell Secretary  
11 Glickman, who is greatly concerned about our  
12 recommendations concerning civil rights enforcement in  
13 his Department, and even has a taskforce which used all  
14 of our recommendations on Title 6 as a basis of their  
15 report, and all of the black farmers who are using that  
16 material in their campaign against the Department that  
17 no one cares what we think. That will give him  
18 comfort.

19 I will also tell the 200-something people,  
20 almost 300, who send complaints to us every month and  
21 the 700 and something that we process every month that  
22 no one cares what we think.

23 And I will also tell people who criticize me  
24 constantly for statements that I've made about X, Y, Z  
25 or recommendations that the Commission has made or



1 recommendations they hope we will make that we do not  
2 make, that they should remember that no one care what  
3 we think.

4           And I'm only saying that because I realize  
5 that you were making an argument in friendly debate,  
6 but I just wanted to point that out. So I'm very  
7 comforted by that.

8           COMMISSIONER GEORGE: But I think in  
9 fairness, though, we should report to them that we've  
10 heard Mr. Horowitz. We're changing our ways and people  
11 will care what we think.

12           MR. HOROWITZ: And may I comfort you, Madam  
13 Chair. Truth is often a comparative relative  
14 phenomenon. I remember days when the Civil Right  
15 Commission spoke the larger political community really  
16 did listen, as we don't --

17           You know that and I know that, Madam Chair.  
18 That this Commission, in terms of its impact on the  
19 public policy process is a pale shadow of what it was  
20 years ago.

21           CHAIRPERSON BERRY: Oh, I would agree with  
22 that.

23           MR. HOROWITZ: And all I was trying to  
24 suggest is that by getting out of the old conventional  
25 boxes, the predictable responses from the Civil Rights

1 Commission, people will listen perhaps to this  
2 Commission something like the way it used to year ago.  
3 And isolated instances aside, I repeat, as an observer,  
4 it doesn't listen to this Commission today.

5           So I'd reiterate that comment and I feel sad  
6 about it because I think there is a role for serious  
7 advocates of civil rights for the poor by whatever  
8 agenda. My problem is that this Commission, by its  
9 choice of agenda, isn't such an advocate and isn't  
10 viewed as such an advocate too often.

11           And for all of the individual accomplishments  
12 you can tote up on an anecdotal basis, the reality is  
13 people don't care what this Commission does in general,  
14 and surely in contrast to the way they used to care  
15 about what this Commission said. That seems to me  
16 clearly a truth. It's inescapable.

17           CHAIRPERSON BERRY: Well, I don't want to get  
18 into a debate with you, but I think Father Ted Hessberg  
19 would be the first to tell you and members of that  
20 Commission that there was something called a Civil  
21 Rights Movements, which you are very aware of, and a  
22 national movement, Southern based reaction, which is  
23 the context in which the kinds of remarks and so on  
24 that you're talking about took place.

25           But I don't want to argue with you. I'll

1 just say that I'll just remember that next time  
2 something happens.

3 I will let my colleagues see if anyone has  
4 any questions for any member of the panel. I had a  
5 couple, but does anybody have any?

6 Yes, Commissioner Horner?

7 COMMISSIONER HORNER: I have a question for  
8 Mr. Cole.

9 The federal government over the last decades  
10 has been handling off more and more of its activity to  
11 third parties, state governments, local governments,  
12 non-profit organizations and for-profit organizations,  
13 and this phenomenon bids fair to pick up speed. It's  
14 going to increase, not diminish. And therefore, the  
15 problem that you discuss of what is going to be the  
16 basis of the relationship between legislated  
17 appropriations and the decisionmaking of governments,  
18 outcomes of non-federal organizations, is going to be a  
19 bid issue and it's one that I think is far from sorted  
20 out.

21 Without getting into all the judicial  
22 decisionmaking that has occurred or is in process,  
23 which I can't entirely follow just orally like this,  
24 I'd like to ask you how you would feel about another  
25 case and whether there's an easy and obvious way to

1 make distinctions, such that you can continue to defend  
2 the position you've stated, and even extend it.

3 Catholic Charities in San Francisco last year  
4 came under a great deal of pressure from the city  
5 government on the subject of whether it would conform  
6 to the city government's requirement for organizations  
7 which receive city funds to provide health insurance  
8 for domestic partners. And the church, not supporting  
9 the lifestyle of domestic partners morally, objected.  
10 Didn't want to.

11 Now, Catholic Charities nationally gets 66  
12 percent of its funding from governmental sources, so  
13 this is the leading edge of a problem for a private  
14 organization with a point of view.

15 Do you think that a private organization with  
16 a point of view like Catholic Charities is restricting  
17 its recipients -- restricting the liberties of a  
18 recipient, such as a domestic partner who is not in the  
19 employ of Catholic Charities but who would use a  
20 federally funded hospital? Would you, under the  
21 description you gave of your case, would you say that  
22 that person has or does not have a case that he is a  
23 recipient who is being denied his civil rights because  
24 he's being denied his liberty of access to a federally  
25 funded -- or his right to access to a federally funded

1 health care provider?

2 MR. COLE: I'm not sure I follow the fact  
3 pattern. The recipient of funding is Catholic  
4 Charities, I understand.

5 COMMISSIONER HORNER: Well, you made a  
6 distinction between the right of the government to  
7 restrict or condition funding to an organization, its  
8 own grantee. But you also said that the ultimate  
9 recipient of the service cannot have his constitutional  
10 right to access something conditioned.

11 MR. COLE: Let me clarify then. When I'm  
12 talking about recipient, I mean the institution that is  
13 receiving the grant. So in this instance, if Catholic  
14 Charities is receiving a grant, it is the recipient.

15 COMMISSIONER HORNER: Okay.

16 MR. COLE: What the law says is that the  
17 government wants to be able to condition its funds in  
18 the sense of saying spend this amount of money on this  
19 project. You know, if we want to have AIDS funding, we  
20 can say this has to be directed towards AIDS research  
21 and not towards automobile insurance research, for  
22 example. And that's perfectly legitimate.

23 What the court has said the government cannot  
24 do is use the fact that it is giving a grant to  
25 restrict not only what is done with that federal money

1 but to restrict what the recipient, whether it's an  
2 individual, an institution or whatnot, what the  
3 recipient does with non-government money.

4           And I think it's out of the very concern that  
5 you're expressing. That because there is so much  
6 contracting out, so much public work done with  
7 government dollars, that there's a concern that the  
8 government can sort of do indirectly what it is  
9 forbidden from doing directly. And the doctrine is  
10 designed to do that; to ensure that the government  
11 cannot essentially undermine people's constitutional  
12 rights by sort of forcing them to surrender their  
13 rights in order to get access to a benefit.

14           Now, it may well be that Catholic -- I don't  
15 know the facts of the case enough, but it may well be  
16 that if Catholic Charities has a constitutional right  
17 not to provide that type of benefit that that would be  
18 an unconstitutional condition. The question would be  
19 whether they have a constitutional right not to provide  
20 that benefit. But it's an open question.

21           COMMISSIONER HORNER: Can the government  
22 decide that it doesn't want to give money to  
23 organizations which, through their activities, support  
24 policies that are contrary to policy?

25           For instance, if the federal government were

1 to decide that it's a good thing to fund health care  
2 for domestic partners and some organization simply  
3 chooses as a matter of policy not to do that, there's a  
4 policy conflict between the federal policy and the  
5 recipient organization's policy. May the government  
6 write a law that says we will give to organizations  
7 only if they conform to our generic federal policy on  
8 this subject?

9 MR. COLE: A law that broad I don't think  
10 would be permissible. There generally has to be some  
11 kind of a nexus between the condition and the program  
12 being funded and the restriction has to be limited to  
13 the program being funded.

14 So, the whole problem is when the handing out  
15 of a government benefit is used to try to essentially  
16 coerce people or institutions into doing something  
17 which it is their constitutional right not to do. Or,  
18 in this instance, to coerce institutions into not doing  
19 something that it is their constitutional right to do.

20 COMMISSIONER HORNER: This is very troubling  
21 to me because I heard Ms. Laster talk about a high  
22 priority of the Legal Services Corporation being family  
23 preservation and I think that family preservation, as a  
24 concept, has been carried out in such an extreme  
25 fashion that it is literally ending up killing kids.

1 And I think it's bad policy now the way it's been  
2 implemented and the policy needs correction.

3 And so I'm very concerned at federal funding  
4 being channeled to organizations that create such a bad  
5 outcome. So I think it's going to be very hard for the  
6 political sphere and the legal sphere to adjudicate  
7 these things. And that brings me to a question to --  
8 not so much a question to Ms. Holmen as an observation,  
9 and then I'll just be quiet.

10 My observation is that many of the things  
11 that you described your organization as doing seem on  
12 the face of it helpful, or at least benign, and  
13 probably helpful to people in individual cases of  
14 suffering. But my question is why must such assistance  
15 be so fully legalized. For instance, why are your  
16 energies as an individual human being being put into  
17 creating an environment in which mothers may demand  
18 that fathers assist children rather than courts assist  
19 children or public institutions assist children.

20 It seems to me that wherever we see a  
21 deficiency in our social arrangements, instead of  
22 having the courage to confront the wrongdoers directly  
23 we try to create a regulation or a funding or an  
24 entitlement or something that will paper over the  
25 problem or, to put a better light on it, ameliorate it.



1 And it allows us to go on avoiding laying blame where  
2 blame is harshly due.

3 And I'm concerned that the federal government  
4 is funding the -- what's the word? -- the facilitation  
5 of the abdication of responsibility by individuals.

6 MS. HOLMEN: I guess I want to stay two  
7 things. First of all, I'm not certain that I said  
8 that. And if I implied that, I didn't mean that.

9 COMMISSIONER HORNER: You didn't say that.  
10 I'm extrapolating. In other words, part of what you  
11 did could be done by a strong editorial in a newspaper  
12 calling attention to a problem, by a voluntary  
13 association that says we're all going to kick in 1,000  
14 bucks --

15 MS. HOLMEN: Possibly.

16 COMMISSIONER HORNER: -- or 10,000 bucks as  
17 an organization and hire a lawyer. Why must it be  
18 federally funded with this huge legal apparatus?

19 MS. HOLMEN: I think one comment that I  
20 wanted to make earlier when we were talking about this  
21 issue is that we are lawyers. That's why we legalize  
22 things. That's how we are trained to approach  
23 problems.

24 And with respect to things like child  
25 support, the way to enforce a child support obligation

1 in our country has become a legal way. You go to  
2 court; you get a contempt order; you put the --

3 COMMISSIONER HORNER: But isn't that because  
4 of your activities that it's become a legal --

5 MS. HOLMEN: I don't think it's because of  
6 our activities. That's the way the legislature has set  
7 it up and that's what courts are for.

8 And with respect to the family preservation  
9 versus child protection issue and the other values  
10 kinds of issues, I mean, again we see ourselves as  
11 lawyers and it is my own personal belief that the  
12 system works if both parties to a dispute have  
13 representation because we've set up courts and that's  
14 how we resolve conflicts. It's actually a very  
15 conservative approach to handling conflicts within our  
16 society and that if both sides have lawyers, a better  
17 outcome results.

18 And when you're talking about child  
19 protection, state officials make mistakes. State  
20 officials don't do what they're required to do by law  
21 to assist families. There's a variety of reasons why  
22 children should be taken from their families or  
23 shouldn't be taken from their families.

24 We don't take a case just because it's a  
25 custody case or a termination of parental rights. We

1 take a case if there is merit to it. We think there is  
2 a legal basis for the parent's position if the  
3 assistance that's required to be given her by federal  
4 law has not been given.

5 I see the vast majority of what we do as law  
6 enforcement in a very conservative way, and protection  
7 of rights that are guaranteed to people by statute, by  
8 regulation or by the constitution.

9 CHAIRPERSON BERRY: If I may try to ask a  
10 question -- I didn't ask one of the other panel -- to  
11 sort of broaden the discussion a little bit and get you  
12 to -- the people in the middle here to address  
13 something Mr. Horowitz said and vice versa, which would  
14 interest me greatly. Unfortunately, I've not paid a lot  
15 of attention specifically to the Corporation recently.

16 But in teaching the history of American law,  
17 which is one of the things I teach, I'm of course very  
18 familiar with the historical roots of the idea that you  
19 ought to have paid legal services for poor people as a  
20 conservative remedy to keep poor people from marching  
21 in the streets and overthrowing the government and  
22 doing all kinds of things, just as the legal defense  
23 funds and the Justice Department and Civil Rights Acts  
24 were designed to get people off the streets and into  
25 the suites, as we say in the civil rights movement --

1 or used to say.

2           And that these were all seen -- and this  
3 Commission, in fact, was set up not as a liberal  
4 cutting edge radical institution. Let's be clear about  
5 the history. This Commission was set up as a safety  
6 valve by President Eisenhower to diffuse people  
7 fighting in the streets and to get us to put facts on  
8 top of the table and discuss civil rights issues in a  
9 polite forum.

10           I mean, that's what many Commissions are for,  
11 but that was what it is for.

12           Now, that being the case, the understanding  
13 then was the federal government ought to support legal  
14 services because, one, 'there's not enough out there in  
15 the states and not enough that private people are doing  
16 and we want the poor to feel that they're represented  
17 and that will be a good thing. And if they complain,  
18 we can say, "You have a lawyer. Go to court," or "Let  
19 your lawyer mediate" or whatever. And that's why it  
20 happened.

21           And then lots and lots of lawyers, like you  
22 and other people who we taught in law schools and some  
23 whom we went to the law schools with got involved in  
24 this because they believed in that theory. That they

1 were being good lawyers, being conservative, helping  
2 the poor and doing good by doing well. I mean, that's  
3 basically is where it came from.

4           Now we have, of course, a tax on that. In  
5 terms of what I understand, one argument is that the  
6 federal government doesn't need to pay for it because  
7 it could be done by lots of other folks. The history  
8 of it is that it wasn't done by a lot of other folks  
9 which is why the federal government is doing it. It's  
10 like people who say you could repeal the civil rights  
11 laws because the states would do it or Joe Blow would  
12 do it. One of the reasons why we have civil rights  
13 laws is because Joe Blow didn't do it or he did  
14 something the opposite.

15           So the question is, one, do we still as a  
16 society believe that legal representation for the poor,  
17 and ensuring that it be provided, is something that we  
18 ought to do for the general health of the society and  
19 to reduce social conflict, which is what we used to  
20 think. And the second part of it is, is it that it  
21 somehow just got out of line and is there some way to  
22 push it back into that framework.

23           And then specifically, after that, how would  
24 you address questions -- not just you personally, but  
25 any of you -- like the one Mr. Horowitz posed? I mean,

1 we heard some very appealing stories about poor people  
2 and things that are happening to them, but wouldn't it  
3 be better to instead of keeping poor people from being  
4 evicted on a case-by-case basis, which would then lead  
5 to people not building houses for poor people or homes  
6 for poor people. That you have to think of the social  
7 policy and the overall effect when you litigate, even  
8 though you're lawyers.

9           And maybe legal services -- with it, the poor  
10 -- we wouldn't have conflict, which is what we used to  
11 think. Maybe what we would have is people being more  
12 innovative. And now, after all this experience, local  
13 people and volunteer groups and the like helping to  
14 mediate all these concerns and doing more for the poor.

15           And then finally, why don't the poor do more  
16 for themselves. I'm just being -- I'm a lawyer, too,  
17 so I'm just being an advocate.

18           Like the folks you talked about, Mr. Padilla,  
19 with the cockroaches falling into their food. Why  
20 didn't they just like, you know, get rid of the  
21 cockroaches or hire an exterminator or go get some  
22 vinegar or something and put on the cockroaches or  
23 something, as opposed to complaining about the  
24 cockroaches being in their food.

25           VICE CHAIRPERSON REYNOSO: Use covers over

1 the stove.

2 CHAIRPERSON BERRY: Right. Over the pots.

3 So maybe legal services has been a crutch  
4 creating some kind of dependency for the poor and that  
5 all of our assumptions were wrong.

6 So, I throw these out because I think these  
7 are the fundamental questions about all this stuff. So  
8 what indeed do you have to say about all this, either  
9 of you? And then we'll let Mr. Horowitz rebut, because  
10 we know what his position is.

11 (Laughter.)

12 MR. HOROWITZ: No, you don't.

13 CHAIRPERSON BERRY: Mr. Padilla -- well, we  
14 think we do. Maybe we'll find out we don't.

15 Either of you? Any of you?

16 MS. HOLMEN: If I can remember all the  
17 questions --

18 CHAIRPERSON BERRY: I said too much. I'm  
19 sorry.

20 COMMISSIONER GEORGE: You do two and Mr.  
21 Padilla can do two.

22 MS. HOLMEN: I think certainly we still do  
23 believe that having access to the system of justice,  
24 whether that means going to court or having someone  
25 explain your rights and your responsibilities to you is

1 better than not. I think we still do believe in that.

2 My mother drilled into my head that fairness  
3 was as principal value and I still believe in that.

4 I think if there is a problem with dependence  
5 in large concept form on the part of people who are  
6 poor, it's not because of the Legal Services Program.  
7 It is because of much larger social issues.

8 As Jose said, poverty is, at bottom, a  
9 political issue. And --

10 CHAIRPERSON BERRY: What does that mean? I  
11 heard that, but what does that mean?

12 Maybe everybody else knows. If everybody  
13 else knows, then I won't ask.

14 COMMISSIONER HORNER: No, I don't know.

15 CHAIRPERSON BERRY: What does it mean to say  
16 poverty is a political issue? Just what do those words  
17 mean?

18 MR. PADILLA: I can give you my point of  
19 view.

20 If government can pass a minimum wage law to  
21 go from \$5.00 to \$10.00 an hour, maybe you wouldn't  
22 need us. Now, I know in California, every time we  
23 tried to lift the minimum wage, everybody comes out  
24 from small business to large business to growers. They  
25 don't want to see that.



1           So I think -- and that's set up by a  
2 governmental regulatory group of people. So that, to  
3 me, in a very simple way, maybe I would agree that if  
4 the money could be put elsewhere, like to raise the  
5 minimum wage to \$10.00 an hour, then maybe people might  
6 be happier to do some of these jobs that they're doing  
7 right now at \$4.00 and \$2.00 an hour.

8           Because after all -- we were talking to a  
9 farm worker woman not too long ago at a get-together  
10 where a 70-year old woman, her son had just become a  
11 Superior Court Judge of this rural court. And she  
12 says, "Why do you fight growers?" A Latino woman. I  
13 said -- she said, "After all, agriculture in picking  
14 crops, is a dignified job because you work with your --  
15 your only problem is they don't pay us enough."

16           And to me, I mean, when I say it's political,  
17 it's because you can pass policy like that.

18           In agriculture, the other example, the  
19 growers will tell you not to pass increases in certain  
20 wages because you will pay, as the consumer. You're  
21 going to pay, so therefore, don't raise the wage of the  
22 pickers.

23           I was looking at a New York Times article two  
24 months ago about farm worker wages going down 20  
25 percent in the last 20 years. And the image there was

1 you pay \$1.00 for a head of lettuce. How much do you  
2 think goes to the farm worker? Eight cents. That's  
3 what the farm worker gets out of the \$1.00.

4           You raise farm worker's wage 20 percent, you  
5 give him two cents, to go from eight cents to 10 cents.  
6 What's it going to cost you to eat that lettuce?  
7 \$1.02. I mean, you could do that. You could raise that  
8 wage 25 percent and it would pull out many, many farm  
9 workers out of poverty.

10           So sometimes I think that government could do  
11 those kinds of things but government will never do  
12 those kinds of things. It hasn't done them. In  
13 California, all it would take is to raise the minimum  
14 wage.

15           So I think that -- but we're not into --  
16 that's when people then start criticizing. You're into  
17 the leftist wage distribution and of -- the government  
18 does that all the time. They raise minimum wage when  
19 people violate the immigrants. The immigrants, about  
20 people coming in and -- let the domestic folks come in  
21 and do the jobs. Don't bring those people from Mexico  
22 to do the job.

23           There are some politicians I wish they would  
24 have said we could raise the wage to \$8.00 and \$10.00  
25 an hour and maybe some of those legal Mexicans would do

1 it, legal African-Americans would do it. But nobody  
2 said that. Nobody ever said, when they were talking  
3 about domestic jobs, washing the dishes, cleaning the  
4 beds in the hotels, nobody ever said that in California  
5 in Prop 187. If you up the wage, that maybe the  
6 domestic workers could have a decent wage.

7           So to me, poverty is political because all of  
8 those decisions that affect the way people live on a  
9 day-to-day -- and that's just talking about the wage --  
10 can make poverty economically go away. It may not make  
11 poverty socially go away because there are also social  
12 conditions that result.

13           But anyway, that's why I said --

14           CHAIRPERSON BERRY: Well, what was the answer  
15 to my question? What was the answer to the question I  
16 asked about why wasn't Mr. Horowitz right that instead  
17 of trying to keep the family from being evicted, which  
18 was one example he gave, what you really should do is  
19 understand that if you -- or let the persons wait three  
20 months and not pay their rent or whatever -- that what  
21 you're going to do is, you are in fact disadvantaging  
22 other working poor people who have to pay higher rents  
23 because they people aren't paying. And two, no one is  
24 going to come in and build more low income housing.

25           So you'd be better off, instead of trying to

1 keep them from being evicted, to say, hey, you should  
2 evict people who don't pay their rent. And this will  
3 create a greater supply, if I understood correctly, of  
4 housing -- it might. And it also doesn't disadvantage  
5 other working poor people who therefore have to pay  
6 higher wage rates. And that that is a more global way  
7 of looking at the problem.

8 Yes?

9 MR. HOLMEN: Well, I can't defend what  
10 another legal services program did, but I bet there's  
11 more to that story.

12 We advise people who come in with housing  
13 problems of what their rights are, what their  
14 responsibilities are, what the law provides as far as  
15 how many days it will take before a court order is  
16 entered evicting them. And I think that's what any  
17 lawyer would do for that client.

18 If there's no defense to the eviction, we  
19 will not file papers in the court to defend an  
20 eviction. We would get sanctioned by the court if we  
21 did that.

22 So, I don't know what Pine Tree Legal  
23 Assistance is doing.

24 We are also working with groups that are  
25 trying to build affordable housing. We have frankly

1 worked with OSHA -- not OSHA -- the state, Georgia  
2 Department of Labor, on migrant housing conditions. We  
3 have talked with growers about migrant housing  
4 conditions. We are trying to do some more positive  
5 things.

6           Some of the private attorneys who've gotten  
7 involved with our work are transactions lawyers. We're  
8 frankly not schooled in that kind of work for clients.  
9 That's an expertise that we don't have that we're  
10 trying to get. You know, trading off expertise,  
11 poverty law, for business law.

12           But it's not easy for a low income group to  
13 develop a housing project.

14           CHAIRPERSON BERRY: Mr. Horowitz?

15           MR. HOROWITZ: I think a couple of the  
16 comments that Ms. Holmen and Mr. Padilla made here in  
17 terms of their kind of world view as to how to help the  
18 poor strikes me at being at the heart of the problem of  
19 the Legal Services Corporation and the reason why its  
20 appropriations will decline and the reason why, given  
21 that structure, I hope they decline in the interest of  
22 the poor.

23           Let me give some examples.

24           The litigation oriented notion of Ms. Holmen.  
25 If both sides have lawyers, we have a better outcome,

1 she said. I think it's arguable that if neither side  
2 has a lawyer, there is a better outcome in many, many  
3 settings. And I want to comment on that point in a  
4 very particular way as we get to the statistics of the  
5 ratios of lawyers for poor people as against lawyers  
6 for everybody else. These are very skewed numbers and  
7 very revealing when you get to the core of it.

8           Want to come to Mr. Padilla's point. His  
9 fantasy that if Congress waived a magic wand and raised  
10 the minimum wage to \$10.00, they wouldn't need him any  
11 more. Mr. Padilla is somebody whose moral passion I  
12 admire. I'd like to think from time to time I even  
13 share his commitment to the poor.

14           I say that kind of rank economic illiteracy  
15 about the way the world works in a world of limited  
16 resources is just so saddening to me to hear a powerful  
17 advocate think that the problems of agricultural  
18 workers in California will be solved if we increase the  
19 minimum wage.

20           I think, for example, just to take California  
21 Rural Legal Assistance, you have this notion of income  
22 redistribution by government fiat.

23           Then on the other side of the coin, perhaps  
24 the most famous case in California Rural Legal  
25 Assistance was the effort to try and get the university

1 to block any expenditure by the University of  
2 California-Davis to do agricultural research -- to  
3 mechanize agriculture to free people from the burden of  
4 crop picking. I think that would be a blessing.

5           And I think the minimum wages are obviously,  
6 it seems to me, particularly at preposterous levels,  
7 like \$10.00 an hour, are utterly certain to drive jobs  
8 and opportunities for poor people -- and that's  
9 particularly important, because poor people, the issue  
10 is not the, quote, dignity of the job often so much as  
11 learning the work ethic and learning the work habit.  
12 Because when you look at poverty in the United States,  
13 it's not a static snapshot. It's a very dynamic  
14 picture of people starting out at the poverty level,  
15 learning a work ethic, not having the trap of  
16 dependency and moving up the income cycle. That's what  
17 used to happen in this country and that's the critical  
18 problem of the underclass trapped in a world of AFDC's  
19 minimum wages, more lawyers --

20           CHAIRPERSON BERRY: Not any more. We  
21 reformed welfare. We just reformed welfare last year,  
22 didn't we? I know we did.

23           MR. HOROWITZ: Let me just say in that regard  
24 --

25           CHAIRPERSON BERRY: So you've got to get

1 another line in that part of the speech.

2 CHAIRPERSON BERRY: Madam Chairman, we can  
3 debate. I was perhaps as troubled by the welfare  
4 reform bill as you were.

5 CHAIRPERSON BERRY: You were?

6 MR. HOROWITZ: Yes. Because I didn't think  
7 it focused on the real target, which is the  
8 subsidization of illegitimacy. It had the sort of  
9 false mock notion of "make them work," which I don't  
10 share any more than you do, I think.

11 But the question you asked was --

12 CHAIRPERSON BERRY: I believe in "make them  
13 work," by the way, but go on.

14 MR. HOROWITZ: Well, not in terms of the  
15 kinds of programs that I see. But I really don't want  
16 to debate the welfare thing and I just have a few  
17 comments to make about these comments and the  
18 questions.

19 One, that notion that poverty is a political  
20 problem seems to me to suggest the notion that lawyers  
21 ought to have a bit of modesty. We can do a darn sight  
22 less than we think in ameliorating poverty. We can, in  
23 a fixed pie, try to redistribute the income. But what  
24 a sad zero sum process of helping the poor. It will  
25 never ever, ever work, the notion of income



1 redistribution rather than enhancing the dynamism of an  
2 economy so that the pie is bigger.

3           Lawyers are very good at slicing up the pie,  
4 the static pie, and very good as these comments have  
5 indicated at being economically illiterate in terms of  
6 the process by which the pie gets larger.

7           Now, you used the example of the Civil Rights  
8 Commission as the conservative force. I think it's an  
9 instructive example because the one thing about the  
10 Civil Rights Commission, which did a lot for civil  
11 rights and helped make the movement work in the days  
12 when it counted, was that you didn't have lawyers. You  
13 didn't have subpoena powers. You couldn't take people  
14 to court. You exercised the moral force which reshaped  
15 the country.

16           Let's take civil rights matters. Let's take  
17 them. It used to be that when an employer was alleged  
18 to be a discriminator on racial grounds, there was a  
19 sort of moral gravity to that. People didn't want to  
20 be thought of as bigots. Then the lawyers took over  
21 the civil rights business and it's a game of numbers.  
22 And you can accuse people of being discriminatory.  
23 Nobody think it has any moral meaning because it's a  
24 lawyer's game of income redistribution and not the  
25 moral business civil rights, in the days you and I knew

1 it, used to be.

2           And who suffers? The lawyers don't because  
3 there's a lot of income for lawyers in economic cases.  
4 It's the poor and the discriminated against who, in my  
5 judgment, suffer.

6           I want to come to the numbers thing because I  
7 think that's very important. The statistics constantly  
8 cited about one lawyer per 300 -- you know, for  
9 everybody and one for 10,000 for the poor, the  
10 numbers -- I mean, if that is the case, Washington,  
11 D. C. should be the most prosperous happy community in  
12 the whole world. I mean, we've got a lot of lawyers.

13           The reality is this. Lawyers mostly work on  
14 the commercial side involved in business transactions.  
15 If you took those per capita indices of lawyers per  
16 income cohort, guess who has the least access to  
17 lawyers? Not the poor, the middle class, the people  
18 who are above the cut for legal services eligibility.  
19 They're the people who almost never get lawyers.

20           And you know what? Their lives are better in  
21 the main for it. Which is not to say they don't  
22 occasionally need them. Which is not to say injustice  
23 isn't done. Of course, it's done. Injustice is with  
24 us. And the pursuit of utopian goals that lawyers  
25 think in our arrogance that we can solve often causes

1 more problems than good, and particularly for the poor,  
2 because we get paid and they're left holding the bag  
3 often for the kinds of things we do.

4           So, I would say stop giving us these doctored  
5 statistics. Let's look -- because I used to represent  
6 middle class people in my practice when I came from  
7 Mississippi. I saw there was some of that, and I  
8 didn't want to go to work on Wall Street, and I  
9 represented people above the cut for the Legal Services  
10 Corporation. And yes, I occasionally did some.

11           But you know why they were strong and good,  
12 the middle class? They didn't have the likes of me,  
13 except very, very infrequently. And I was proud of the  
14 work I did. But if you would multiply my numbers in  
15 the same proportion that the poor had them at the time,  
16 I think the middle class would have been hurt rather  
17 than helped.

18           We lawyers are part of the problem more often  
19 than the solution. And I want to just give a couple of  
20 examples.

21           Again, Ms. Holmen talked about AFDC  
22 expansion. I mean, the AFDC system is the system that  
23 has marginalized the black male, substituted the state  
24 for the male and has subsidized, in the way that  
25 Frances Perkins, the most liberal member of the

1 Roosevelt Administration understood. She didn't stop  
2 the historical accident of AFDC being made eligible for  
3 illegitimate women. It was an accident when it  
4 happened in the New Deal and Frances Perkins was  
5 appalled by it.

6 She saw that it would be a trap. That it  
7 would generate family breakdown, illegitimacy.

8 And here we have a bunch of lawyers who think  
9 that they're on God's side by wanting to expand AFDC  
10 entitlement.

11 Or, to take another example Ms. Holmen  
12 cited -- God help us, the deinstitutionalization. If  
13 there's one thing that the class action bar ought to  
14 hang its head in shame about it is the sweetheart  
15 lawsuits of 10-15 years ago when the Legal Services  
16 lawyers sued the states, saying your state mental  
17 hospitals are terrible. The states didn't want the  
18 burden, the cost burden. It used to be a high item in  
19 state budgets.

20 They said, gosh, you're right. And all of  
21 the schizophrenic people, who -- God, I had worked and  
22 I know something about those state mental hospitals.  
23 They were terrible. They were close to snakepits in  
24 some cases. Let me tell you, nothing like the snakepits  
25 of the city streets that the mentally ill are not

1 walking through that are at the core, often, of our  
2 homeless problem right now.

3           That's a lawyer made, quote, solution for the  
4 poor, and I don't think it helped the mentally ill.  
5 And you ought to talk to the parents of schizophrenic  
6 people whose sons and daughters got kicked out of the  
7 hospitals because of the intervention of Ms. Holmen and  
8 her colleagues who deinstitutionalized the place and  
9 got warm feelings in their bellies to boot.

10           That, it seems to me, is the problem. I'd  
11 like to see lawyers, to the extent they're-- as I say,  
12 I think lawyers can do much, but it's a lot less than  
13 we think. I'd like to see a lot more modesty on the  
14 part of lawyer, which is why I come back to my original  
15 point.

16           It's politics. It's not lawyers that creates  
17 the poverty. It's economic problems. We lawyers at  
18 the margins can help a little bit but far less than we  
19 think. We are more often part of the problem than the  
20 solution when we get involved in income redistribution.  
21 And we stand in the way of a more vibrant political  
22 process.

23           So that's the kind of debate I'd like and  
24 that's why I hope the Civil Rights Commission can get  
25 off the dime of thinking about law and the poor in

1 terms of the budget of the Legal Services Corporation.

2 CHAIRPERSON BERRY: Unless someone has a  
3 point of personal privilege -- go ahead, Mr. Padilla.

4 MR. PADILLA: Just one comment about taking  
5 lawyers out of the equation, a moral force. I guess I  
6 would agree if I sensed a moral force out there. You  
7 were talking about the intervention of lawyers and you  
8 don't need lawyers to come in.

9 I think if there was moral force in some  
10 growers to pay even the minimum wage, I think something  
11 might work. We had a case three years go, huge grower.  
12 Huge growers are not -- they're corporate. There's no  
13 moral force there in corporate agriculture.

14 But they owed our workers over a million  
15 dollars in back wages. And if that grower hadn't  
16 received a -- gotten a lawyer to bankrupt the  
17 corporation, maybe our clients could have gotten money.  
18 That grower was in business six months later with  
19 another shell. The workers knew it.

20 The bankruptcy court, it's run by lawyers.  
21 Our workers, over 800,000 of them, were making 10 cents  
22 to the dollar that was taken. They lost \$900,000.  
23 Somebody stole \$900,000.

24 Now, if there's no moral force when somebody  
25 does not pay \$900,000 of minimum wage, we saw it.

1 There is no moral force out there when it comes to  
2 that. Somebody's going to make a quick buck. And if  
3 lawyers hadn't intervened, maybe the moral force of his  
4 fellow growers would have allowed -- forced the man to  
5 pay \$900,000 to workers who no longer have \$900,000.

6 Maybe there is moral force somewhere out  
7 there. I don't see it.

8 CHAIRPERSON BERRY: I want to thank the  
9 lawyers for being with us and this was very  
10 illuminating and we learned a great deal.

11 Thank you very much for coming.

12 COMMISSIONER GEORGE: Can I enter just a  
13 final comment on that?

14 CHAIRPERSON BERRY: Oh, he's got a final  
15 comment. Okay.

16 COMMISSIONER GEORGE: I won't hold the panel  
17 up. I just wanted to express my regret that here we  
18 are with lawyers on trial and Russell Redenbaugh is not  
19 here to enjoy it.

20 CHAIRPERSON BERRY: That's right. He'd love  
21 it.

22 Thank you very much for coming.

23 Thank you, members of the Commission. That  
24 concludes our briefing.

25 (Whereupon, the proceedings were concluded.)

1  
2 REPORTER'S CERTIFICATE

3 This is to certify that the attached  
4 proceedings before:U.S. COMMISSION ON CIVIL RIGHTS  
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7 In the Matter of: MEETING  
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12 were held as herein appears and that this is the  
13 original transcript thereof for the file of the  
14 Department, Commission, Administrative Law Judge  
15 or the Agency.  
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18 DAVID McCOY  
19 Official Reporter.

20 Dated:MAY 9, 1997  
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