



**TRANSCRIPT
TELECONFERENCE MEETING
OF THE
ALABAMA, ARKANSAS, LOUISIANA &
MISSISSIPPI ADVISORY
COMMITTEES**

**TUESDAY, DECEMBER 3, 2003
9:00 a.m.**

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CONFERENCE #20104654
December 3, 2003

Sprint: ...so, at this point, I'll turn the conference over to you, Ms. Robinson, and thank you very much for using Sprint Conferencing Services.

Hardin: Thank you very much. Good morning.

Numerous: Good morning.

Hardin: This is Senator Alice Hardin, and I will be presiding this morning over the first portion of the meeting. The meeting of the Alabama, Arkansas, Louisiana, and Mississippi Advisory Committees to the U. S. Civil – U. S. Commission on Civil Rights shall come to order. My name is Senator Alice Hardin and the other person who will help moderate this session is Ann Shumaker. I am the Chairperson of the Mississippi Advisory Committee to the U. S. Commission on Civil Rights. I speak before you today on behalf of the Alabama, Arkansas, Louisiana and Mississippi Advisory Committees. With me today are other members of the Advisory Committees. Will each member please now introduce yourself to those who are in attendance. I guess I will start with myself and go in alphabetical order. My name is Alice Hardin and I am a member of the Mississippi State Senate.

Dukehart: My name is Dr. Barbara Dukehart and I'm on the Louisiana Advisory Committee.

Borg: My name is Lorna Borg and I am on the Louisiana Advisory Committee and I'm from New Iberia, Louisiana.

Powers: I'm Elizabeth Powers from Greenwood, Mississippi on the Mississippi Advisory Committee.

Foster: My name is Willie Foster. I'm on the Mississippi Advisory Committee from Hattiesburg, Mississippi.

Hardin: Thank you. Arkansas people?

Mitchell: My name is Katherine Mitchell and I'm on the Arkansas Advisory Committee.

Guerero: And I'm Andre Guerero on the Arkansas Advisory Committee.

Hardin: Thank you. Anybody else from Alabama?

Stokes: Yes. This is Martha Stokes. I'm on the Alabama Advisory Committee and I live in a small town in west Alabama named Carrollton.

Hardin: Okay, next?

Shumaker: This is Ann Shumaker. I'm on the Alabama Advisory Committee. I live the opposite side of the state from Martha. I'm in a small town called Centre, northeast of Gadsden, we're just right across the Georgia border.

Hardin: And you're also Chair of the Alabama Advisory Committee.

Shumaker: Yes, Ma'am.

Hardin: Okay. Very good. Also present with us are Farella Robinson...

Maharaj: Excuse me. Raphael Maharaj from the Gulf Coast of Mobile, Alabama, east of Mardi Gras.

Hardin: Thank you very much. Anybody else?

Madden: This is Roberta Madden. I'm Chair of the Louisiana Advisory Committee and I also work for the YWCA of Greater Baton Rouge.

Hardin: Anybody else?

Gradney: This is Clark Gradney. I'm on the Louisiana Advisory Committee and I'm in Baton Rouge.

Hardin: Anybody else? Okay, also present with us are Farella Robinson, Civil Rights Analyst of the Central Regional Office, and Ivy Davis, Chief of Regional Programs, Coordinator Unit, Washington, D.C. I and my colleagues from the four Advisory Committees serve without compensation as the eyes and ears for the Commission. The Committee is mandated by statute to report on civil rights developments in their respective states to the Commissioners, based in part on the work of our Committee and similar bodies in each of the 50 states and the District of Columbia will report to the Commissioners who report to the President and Congress on civil rights developments. We are here today for a briefing on several civil rights issues of interest to the committees such as predatory lending, racial profiling, the Patriot Act, immigrant issues in the south, voter rights, environmental justice, and the impact of the No Child Left Behind Act upon minority students and schools. We have specifically invited representatives of community groups and organizations who are knowledgeable about these issues. The information received will be used to assist the SACs in its planning activity. At the onset, I want to remind everyone present of the ground rules. Each day the meeting will convene at 9:00 a.m. until 11:30 a.m. However, if more time is needed, an additional hour has been schedule. The meeting will start with a roll call to include introduction of SAC members, staff, and presenters. Therefore, we are asking presenters to be available at least 15

minutes prior to their designated time to accept the Sprint operator calls. Also, you are welcomed to listen in on the full proceedings of the meeting by calling 1-800-377-4841, no. 20104654 on December 3rd and 1-800-377-4527, no. 20104671 on December 4th. Each presenter will have up to five minutes to summarize their major points and/or statement and 10 minutes for questions from SAC members of the staff. Open lines will be available to the media, public and interested organizations to listen in lecture mode. They will not be able to speak. The proceedings of this meeting are being taped. An opportunity for public and interested organizations to submit information in writing will be made available through January 5th, 2004. Information should be sent to U.S. Commission on Civil Rights, Central Regional Office, 400 State Avenue, Suite 908, Kansas City, KS 66101 or faxed to 913-551-1413. We urge all persons making presentations to be judicious in their statements. The Advisory Committee appreciates the willingness of all participants to share their views and experiences with the Committee. Do either Farella Robinson or Ivy Davis have any remarks they wish... If not, Farella or...

Robinson: No, not at this time.

Hardin: Okay. If not, then we'll begin with our first presenter. I need to tell you that our first presenter, who is Hastings Wyman, is not able to be with us because of a problem that came up that is beyond his control and so this morning we will have, reading his statement, Lorna Borg. Hastings Wyman is the Publisher Editor of

Southern Political Report in Washington, D.C. At this point I will turn it over to Lorna.

Borg: Thank you. This is the statement of Hastings Wyman and is entitled, "Civil Rights Issues in Today's South" and it begins:

While the theme of the Southern Civil Rights Listening Tour focuses on emerging issues, the nature of civil rights in the southern states necessarily involves the continuation of old issues. Allegations of segregated dormitory housing at the University of Louisiana at Monroe are being investigated by the Office of Civil Rights at the U.S. Department of Education. Racial balance in public schools is back in the news in Russellville, Arkansas and Lazoni, Mississippi. Some activists believe that the local catfish industry, where management is white and the workforce largely black is, in the words of a sociologist, "reminiscent of plantation slavery." And black farmers throughout the south are still protesting in Washington, D.C. against the Agricultural Department's handling of farm loan applications, despite a supposed settlement of a class action suit in 1999. Here again, the slavery comparison has been used with a department called "The Last Plantation" by its critics. There is a crucial difference in the way these issues are discussed in former times and today. Since the early 1990s, African Americans have become a potent political force in the south, especially in southern legislatures. Thus, when issues related to black people come up, there is an influential minority to advocate for the south's largest minority. Last year for example, black members

of the Alabama Legislature engaged in skillful wheeling and dealing with the white majority to achieve passage of legislation making it easier for convicted felons to regain the right to vote. Governor Bob Riley vetoed it, a decision which he probably regretted later when he needed black support for his tax plan. But it demonstrated the clout of Alabama's African American lawmakers. Similarly, in Georgia, black minorities in the State's House of Representatives were successful in defeating a proposal that would have allowed voters to choose a state flag that contained the Confederate Flag. While the black minority in southern state legislatures doesn't always get its way, it is making a significant difference in the way civil rights issues are debated and resolved. These historical issues and resonances are not, however, the only civil rights issues coming up in the south. Hispanics are now the largest ethnic minority in the United States and their increasing presence has created new issues. The recent arrest of Hispanic members of a cleaning crew at a Wal-Mart in Old Bridge, Arkansas and in 20 other states, led to a lawsuit brought on behalf of several illegal immigrants charging that the Arkansas-based retailer and the cleaning service violated their civil rights by requiring long working hours with no overtime pay. In the meantime, those arrested in the raids faced deportation. Other issues involving Hispanic residents – citizens and otherwise – includes some state English-only laws. Another set of civil rights issues involved the small, but increasingly well-organized minority of gay people. Localities throughout the south have seen laws passed to incorporate gays

into existing civil rights protections, though no state has passed such a law. Legislation to pass hate crimes laws that include gays are also a frequent topic. But the major gay-related issue of the next several years is likely to be same sex marriage. A recent opinion poll by the Pew Research Center found that southerners oppose same sex marriage by 67% to 23% -- a higher percentage against it than in any other region of the country. Nationwide, whites oppose gay marriage by 60% to 32%. African Americans by 60% to 28% and Hispanics by 51% to 36%. Given all these numbers, there is likely to be considerable support in the south for a constitutional amendment restricting marriage to heterosexual couples. These and other issues will continue to come up in the deep south and across the nation, both in the courts and in the political system. Because of the conservatism of the south's white majority on many such issues, and the active role played by the black minority, the debates will always be lively and the outcome uncertain. Thus concludes the statement of Hastings Wyman.

Hardin: Thank you very much. Farella, do I need to ask for questions regarding that statement or do we just move on?

Robinson: Uh, I would open it up to some discussion or questions by SAC members amongst themselves. Mr. Wyman indicated that, at some point in time, he would love to join the committee in a face-to-face meeting to discuss his statement, so I would open up this time for any discussion or comments by the SAC members.

Hardin: Okay, if you have a question or if you have discussion, now is the time to make it. I would remind you to please state your name so that we will know who is speaking.

Madden: Well I have one. I'm Roberta Madden from Baton Rouge, Louisiana. In one of the small towns in our state, a child was disciplined for telling his classmates that her mother was gay – I think it was a girl – she said her mother was gay. And she was made to write, "I will not use this bad word, gay" many times. The ACLU has jumped in, so I think it's going to be resolved fairly quickly.

Hardin: Mm hmm. Anyone else?

Guerero: This is Andre in Little Rock. I got Hastings' statement, like the rest of us, and read it and in it he made reference to the quote "racial balance in public schools is back in the news in Russellville, Arkansas." And I phoned – or I e-mailed Farella and asked for the gentleman's telephone number because I wanted to pursue that. I had not heard about that being in Arkansas. And Mr. Wymans did call me back. I spoke with him last evening and, as Farella indicated, incidentally, he has jury duty both today and tomorrow and can't make it, but I asked him what his source of information was on that and what the details of the statement that racial balance is – in public schools is back in the news because Russellville in our part of the state is not an area that has much, if any, much of a racial mix in its general population. It's one of the – it's an area of the state that doesn't have many minorities. And there are some Hispanic families moving in and I didn't know if that's what he was talking about. He told me he had picked this information up off the internet and

didn't have much more to say other than that. This opened up the wider context – I'm just going to briefly mention and then stop – is that our state has recently – well last January, this past January, unsuccessfully defended itself against a lawsuit challenging the state's equity and adequacy in the funding of its public school system – it's one of the adequacy lawsuits that have gone, I think, through about 20 some odd states. The State Laws, Fed, and the Supreme Court ruled against the State. And in the various plans which will be considered at a specially called Legislative Session that's supposed to start this coming Monday, among the various plans are schemes for consolidation of schools, many of them rural schools. A small group of superintendents have raised a very significant issue, which is how racial balances may be thrown off and become more lopsided with such consolidation and several superintendents have called for that to be factored in before any specific plan, should it pass, calling for the consolidation of schools take place. In any event, I just thought I'd mention that. And I'm through.

Hardin: Very good. I'm very familiar with that. Alice Hardin. I spoke with Legislators from Arkansas at our Southern Legislative Conference and they were very much in a dilemma and I told them that they needed to pull up our MAEP – Mississippi Adequate Education Act – because we had gone – we did not have to go to court, we were proactive. We did ours before anyone or any group decided that it was not being handled appropriately. And so I think that what we have in place is a very good law that delineates how we will fund our public schools. We had to do away

with the old way that we were funding schools and we now have a system where the state allocates a certain amount of dollars per child and then there are certain add-ons that a school district can receive based on its population. There are certain dollars for at-risk students. You can get an additional 5% or – and I think that it is really working out very well. What happened to us is that the first five years of the plan, we allowed the school districts to take the monies that they would ordinarily have gotten and use it – pledge those dollars so that they could improve infrastructure at the schools, they could build new wings, they could put roofs – in other words, they could use it for construction or whatever the case may be in order to get the facilities up to par. And I suggested to them that they may look at something like that if the Court would allow it because theirs is really beyond a decision of what they believe is right or wrong of what they know is needed out there. The Courts, in the final analysis, are going to have to review, I'm sure, whatever decision the Legislature makes.

Borg: This is Lorna Borg from Louisiana and I would like to speak about one of the paragraphs in Mr. Wyman's statement. And it is the piece about the Wal-Mart and we know that Wal-Mart is very prominent and extremely large – the largest retailer in all of the states here that we are talking about this morning. And what concerns me is certainly what's in the news now about the alleged violation of civil rights by the Arkansas-based retailer with regard to Hispanics in their work. And I have long personally received, not as a member of the Commission, but in the work with

Southern Mutual Health Association here in Louisiana, many complaints from women who felt that promotions were denied them and that they were mostly males who were in the supervisory/managerial positions with the longer hours and that women historically, in their opinion, were kept from working "full time". They were kept just short enough hours so that the retailer does not have to pay them the kind of fringe benefits they would pay the male counterparts. I think that the Commission ought to be asking the large box retailers, such as Wal-Mart, for some sort of statistical analysis or presentation by the protected classes, which is people of color, women, and anyone else who might be in the protected classes, for their numbers on who are managers, who are full time, who is receiving fringe benefits and who isn't. This has an enormous impact on poor communities, on people of color and on women.

Hardin: Absolutely. Any other comments by any other SAC members or questions?

Guerero: I want to comment on Lorna's statement. This is Andre. I think she's absolutely right on. Living in Arkansas – and I noticed in our instructions Farella or Ivy or somebody said, be judicious in your statements – I don't know if that's a threat or just asking us to be polite and not use bad words.

Hardin: Don't use bad words. You can say what you want. Do not defame and degrade.

Guerero: All right. What I want to say is that, living in Arkansas, I have received in legion, anecdotal complaints, information and articles from various regional newspapers that dare print such things because Wal-Mart is extremely powerful in this state –

complaints about the hiring of illegal aliens, as Mr. Wyman stated, the underpayment of them, the outsourcing or subcontracting to avoid direct responsibility or perhaps liability for any abuses that may take place, ageism, sexism and its promotion, cutting down the hours so that benefits, especially health, as Lorna mentioned, were denied, just – it goes on and on and on. And a few people – also the – I don't know if the word "union busting" is too old-fashioned a word, but certainly efforts to keep unions out and intimidation of workers. And I do know that what few initiatives have been tried in the state – and this latest one is not in Arkansas – to challenge Wal-Mart's practices have been so totally and completely and utterly crushed by their legal department, which is extremely powerful, so you're up against the largest retailer in the world with incredible resources and I think it would take a group such as the National Civil Rights Commissions – what's left of its influence – to ask for an update or a report, these are the protected classes. And the way in which our southern region and other regions of the Advisory Committees could be of help is in providing data or reports of abuses to the National Office so that they can factor in those complaints to any inquiry to Wal-Mart itself.

Hardin: And the beauty of that – this is Alice Hardin – is that since Wal-Mart is in every state, particularly the southern states, we all have a stake in the outcome and what happens and how these workers are treated. So it's not just an Arkansas problem, it's all of our problem.

Robinson: This is Farella. I think that would be a wonderful project, if we suggested or recommended to the Commission to consider taking a look at that issue and in collaboration with SACs that agree to it, for them to collect information.

Mitchell: This is Katherine Mitchell in Little Rock and I think it is, too, however, I think that the obstacle is more so that in many of our states – I don't know about the others, but we do not have an official office or anywhere where the people can make the complaints. I mean we would have to devise some kind of strategy for having people to report those incidents to us because we don't have a "place" for them to go.

Hardin: But I think, though – this is Alice Hardin – I think, though, that that is something that the National Commission could do a lot better than us and let us assist them because we could move on with some other problems that we're having. I think that they ought to be the up-front people because, as somebody just said, these folks are nationwide. And so they ought to establish a place for people that they can call in – a 1-800 number or whatever the case might be – so that they can get information that's not tainted.

Borg: This is Lorna Borg from Louisiana. I agree that the National should take a lead. However, it might be very interesting, since they are situated in our region, for us to spur that on and to participate so that we might, in fact, have a local hearing where we receive testimony from whoever wishes to about this situation that we're talking about.

Powers: This is Elizabeth Powers. That's just another reason why each one of us needs to work extremely hard to get State Civil Rights Commissions or Human Rights Commissions established through out State Legislatures.

Guerero: Absolutely. It's the collection of data. This has come up again and again on racial profiling, on hate crimes, and there's been some ball tossed back to us in Arkansas with regards housing – there is now an office where you can issue complaints, but this centralized capacity to register civil rights concerns keeps coming back and back and back.

Powers: So that should be a priority for each of our states, to try to get Human Rights Commissions established.

Maharaj: This is Raphael Maharaj from Mobile, Alabama. At the last meeting of the International Conference of Human Rights, I submitted a resolution asking the Governors of Alabama, Mississippi and Arkansas to get commissions. We are the only three states within the 50 states that does not have one. The resolution has been passed and has been submitted to Governors of all three states.

Hardin: Well now that we've got a new Governor in Mississippi, we may be able to get it done.

Maharaj: Well, I'm hoping that he would. Also, I think that Governor Riley made an about-face and restored voting rights for convicted felons upon approval of the Parole and Pardon Board.

Robinson: This is Farella. Jerome Gray will be speaking to us regarding that issue today, later this morning.

Hardin: Okay. I think we need to move on to our next speaker.

Guerero: Let me just say one more thing – this is Andre – with regards to the last gentleman who spoke on the Human Rights Commission. It would be wonderful if you – and later on, I'll contact you – you could send me that resolution and any models for the establishment of it. We will be having – our Governor is term-limited. The Lieutenant Governor, Winthrop Rockefeller, Jr. has already announced he's interested – he's Republican, but as we move into the phase where we will have candidates, it would be interesting here to press them and their campaigns for where they would stand in establishing such a commission for our state and there may be a little window or opportunity here I'd like to make sure we don't let pass.

Maharaj: This is Raphael Maharaj again. I would love to send you that information.

Guerero: Great. Thank you.

Maharaj: You're welcomed.

Hardin: Okay, let's move on. Our next speaker – thank you for those [???]. Our next speaker is Steven Bradbury, Head Organizer, Acorn, New Orleans. Steven.

Sprint: Is Mr. Bradbury with us? Okay, he's scheduled to be called at 9:50. So it's 9:40, I will call the Sprint operator. Hold on.

Hardin: Okay.

Sprint: They're calling Steve Bradbury at this time.

Hardin: Okay. Anymore discussion on the Wyman report? We've got a few minutes, right Farella?

Robinson: Right. I thought it was a wonderful statement.

Sprint: Please excuse me – Steve Bradbury is now joining.

Hardin: Okay, very good.

Bradbury: Good morning.

Hardin: Good morning. Thank you very much. I hope you're ready for your segment. This is Senator Alice Hardin, the Chairperson of the SACs Committee in Mississippi. We now have with us Steven Bradbury, Head Organizer, Acorn, New Orleans. I'm turning it over to you, Steven.

Bradbury: Okay.

Hardin: You just have five minutes to make a presentation and then we will ask you questions and we will make comments.

Bradbury: All right. Well I'll try to make it short then, just briefly. My understanding is I'm supposed to go over No Child Left Behind and Predatory Lending, is that correct?

Hardin: Correct, yes.

Bradbury: Okay. On the No Child Left Behind, I will just go over the bullets that I shared with Ms. Farella. Basically, we believe that no matter the makeup of the school in terms of the lower minority population, that the school should be able to provide a decent education, right? And that pretty much there's not enough funding going into NCLB for it to work, even if everything in it were as it was supposed to be.

That the testing provisions of NCLB, although we understand that testing is necessary, should not be the sole measure, you know, for deciding whether or not a student or even a school, you know, should be able to – whether a student should be able to move on to the next grade or whether a school should be able to continue to receive funding or have their funding decreased. Um, and that the provisions that require districts to make sure that the lowest income kids are not disproportionately taught by the least experienced and least qualified teachers, we do feel that that is a very important piece that our kids quite often have the teachers with the least number of Ph.D.'s and Master's Degree teachers as well as they end up being at the schools where the newest teachers or the teachers with the least amount of experience end up, although these are also the students who need the most experience and the most expertise. We do think it's good, the requirement that all parents and community groups should be able to know what the qualifications of the teachers and what type of services the schools are providing. That the supplemental that NCLB puts forth are not enough, that we need to concentrate more on improving the schools overall. We are opposed to the choice provisions that are allowed under No Child Left Behind because it doesn't help all the students in the schools that need to improve, right? The focus should be more on improving all the schools rather than pulling out – you know, cherry picking students and moving them around the system. We are opposed to the privatization of public education and that's in any and all forms. As regards the predatory lending, we

recognize that the primary lenders, all right? The banks still discriminate as regards to home loans that they give out to African Americans and Hispanics and that because of this, there has been a huge increase in the number of sub-prime lenders, right? And this is regardless of income so that even an African American family from an upper income bracket has less chance of getting a traditional loan from a bank than a moderate income white family. And as a result, you have steering going on as well as the active – where predatory lenders go out and seek families and then give out these high interest rate loans along with all the fees and things that are attached to them. And so as regards to predatory lending, there needs to be, on the one hand, we feel there needs to be legislation passed outlawing some of the practices as regards to fees that the companies are allowed to charge, that the steering needs to be stopped and that more pressure needs to be put on traditional lenders in order to assure that they make more loans to families who are able to handle them. Because what we found, quite frequently, is that people who qualify for loans are still being steered away from decent loans into these predatory type loans. And so I'll take questions from there.

Hardin: Okay, thank you very much for your statement. Do members of the Committee have comments or questions? Please state your name before you speak.

Dukehart: This is Barbara Dukehart from Natchitoches, Louisiana.

Bradbury: Okay, can you speak up? It's hard for me to hear you.

Hardin: Yeah, Barbara, you need to speak up or get closer to your phone.

Dukehart: Okay, can you hear me now?

Hardin: A little bit better.

Dukehart: Okay, this is Barbara Dukehart from Natchitoches, Louisiana and I have a question about the No Child Left Behind Act. Do you know of any state that is successfully meeting some of these problems – the non-sufficient funding, testing provisions, um any of those?

Bradbury: No, I don't know of any states. Primarily, the problem is that the Federal Government has not put out adequate funding for No Child Left Behind.

Dukehart: Right. The six to nine billion dollars that Rob Wheel suggested was deficit, but what I was checking was to see if you knew of any state that was maybe putting together some legislation to override this No Child Left Behind Act.

Bradbury: No, I don't.

Dukehart: Okay.

Hardin: Can I just say – this is Alice Hardin. In all my reading and everything, I think that NEA is going to propose something and I think that the AFP is going to propose something and you all need to correct me if I'm wrong. But I think there's a lot of contention among how it's being implemented. Now in my state of Mississippi, we are far along, but that's not having anything to do with No Child Left Behind. In 2001, we passed a new accountability measure, so we were going to do some things differently anyway. And it just so happened that the No Child Left Behind – we had put, I guess it was \$7/\$8 million into testing anyway because we were in the

process of redoing – going through the Mississippi curriculum tests, we had – we were making lots and lots of changes and so this came in the middle of that, and so what we have been able to do is to try to incorporate No Child – in other words, try to put the two together. And our State Superintendent has been – and we’ve got a new State Superintendent, and he has been very diligent in seeing to it that our own accountability scheme is being implemented in addition to what is being asked for by No Child Left Behind. The other thing I would ask you to do is – everybody on the SAC – is to go to your State Superintendent of Education or your State Board and find out how much money is coming into your state and find out what it is being used for. Until you know that, you don’t have an argument.

Bradbury: This is Steve Bradbury again. I would really like to caution people to be very aware of the use of the high-stakes testing as a single measure for moving students along. In Louisiana, the state has received high marks from the Federal Government for implementing high stakes testing, however, in our neighborhoods we’re finding that we have a higher rate of dropouts because students are not able to pass the tests in the fourth grade, in the eighth grade, and not even to speak of the senior high school. So just be aware that using the high stakes testing as a sole measure for advancement can create a lot of problems on the ground.

Mitchell: My name is Katherine Mitchell and I’m from Arkansas and I also serve on the Little Rock School Board. And to me, the No Child Left Behind Law is the pressure for vouchers. The emphasis on allowing parents to move their children

from one school to another if indeed a school that's on the improvement list, pretty soon we're gonna run out of public schools to transfer them to and, then they're gonna have vouchers to go to any private school that they want to. I think that it's a real attack on public school education. I would like to see them spend that money doing whatever improvements we need to do in the public school system because that's really the system that educates the children of our nation. And so I see it as that. I would hope that Congress would realize that many of the things that are in the law are just impossible and the testing is always the only measure you can use to determine progress. We have students that are making really good progress in their performance, it might not show up on a test as compared statewide or nationwide, but they're making progress.

Borg: Madame Chair?

Hardin: Yes.

Borg: This is Lorna Borg from Louisiana. While we all might have thoughts about the issues of choice and privatization and vouchers and high stakes testing, it seems to me that it's incumbent upon the Committee to receive very compelling testimony in linkage of those issues to how they impact disproportionately on the protected class in the Civil Rights act because that's what our mission is. And I think just implying it isn't sufficient. I think we need to have stronger compelling statements and evidence and facts to show that that is, in fact, the case.

Robinson: Lorna, this is Farella. I think the problem is that this No Child Left Behind was mandated in 2001 and there's simply not been enough time to make a determination of its impact. It's come to my attention that the Center on Education Policy has now commissioned case studies to measure, you know, local implementation of the mandate. So we really don't know the impact upon minority and urban school districts or protected classes that are predominately in the public schools at this time. But at the same time, we also know that their test scores, their performance, their academic performance have not been the best and we know that they lack many things in the public schools so the impacts of this program is definitely – we can assume – it's reasonable to assume that it's going to be adverse against those schools.

Borg: Well that's why – this is Lorna Borg again from Louisiana. That's why I'm confused by the number one of the opening statement that there are plenty of examples all over the country where schools with lots of low income minority students do very well and so that would lead you to believe that if they're not doing well somewhere else, there is a discriminatory action being taken against a certain protected class and that's what I was waiting to hear.

Davis: Excuse me, this is Ivy Davis, can you hear me? I just wanted to encourage you all to go to the Commission's website. They did a briefing on this topic back in the spring, I think, in North Carolina and they focused on the impact of No Child Left Behind on the public schools in North Carolina and South Carolina and we have an

Executive Summary on the Commission website, which is www.usccr.gov. So there is – you know, there is more than anecdotal evidence on the impact that this is having on school systems.

Hardin: And there are several other organizations who have also done research and studies and the Education Commission of the States is one.

Stokes: This is Martha Stokes. I would like to know what method, other than testing, that you would recommend.

Bradbury: Well teachers in various schools have used methods such as portfolios, writing – there are a number of different ways other than the standardized tests which can let you know how a student is performing, particularly since all students don't well on standardized tests. And one of the things that we've noted here in New Orleans is that because of all the emphasis on this particular test, an inordinate amount of time is spent teaching the test and not teaching the things that students need to know. Do you know what I mean? So we end up with a lot of trying to make sure that students get the information that may end up on the test rather than things that may actually help them to achieve in life.

Stokes: So what concrete measure would you do other than portfolio? And I don't understand...

Bradbury: A portfolio could include projects that were done by the student, writings that were done by the students, there are more ways of testing other than just the standardized test format, is what I'm saying. In order to find out, you know, how a student

achieves. I can understand, say, for mathematics that may probably be the best way but in terms of English comprehension and just comprehension even if it's for English, History, Social Studies, things like that, when you look at the sciences, there are projects that can be done that can illustrate whether or not a student understands the information being put forth. The standardized test is now always – should not be the only means, all right? It's not to say that it's not a means, it should not be the sole reason a student should move forward or be held back.

Powers: This is Elizabeth Powers. When you get into something like that, it's so subjective, that I'm not sure that that's going to be relevant throughout the country because of the subjectivity of that kind of assessment.

Bradbury: Mm hmm.

Guerero: This is Andre in Arkansas. Let me mention this to get to the question on what would you use if you don't use standardized tests for assessment. One little piece of that, a large piece actually for a specific population, for our limited English proficient students, we've had quite a to do nationally and also regionally with regards to the appropriateness of the assessments because they are criterion referenced, so you have a set of standards and you develop an assessment against those and that's the criterion you use – are they meeting standards? In our state they're called benchmarks and those benchmarks are established for core content areas, especially the two general areas of assessment, which is literacy and mathematics, although science and social studies are being added. The problem is

that when you have a criterion reference and it's an absolute standard, instead of measuring relative to where the student came in, how much progress they've made, the research for example on limited English proficient students, is that it takes from five to seven years – some would say nine years to develop academic proficiency, not social proficiency – talking in the halls, on the playground, or watching...

(End of Side A)

Guerero: ...in the second language. The assessments do not allow for progress to be made that quickly. It says that after three years they're going to be assessed with the standard – in our state with the standard form of the assessment, which is a criterion referenced English-only timed assessment. So districts and students themselves and their families are – it is felt are at a disadvantage when you have that type and that lockstep an approach to assessment. And when you use these standardized tests, how else, as you implied, can you do that unless you have national norm or one of the other speakers just mentioned it. So this presents all kinds of dilemmas. You can use classroom assessments, you can see where they are when they started, we had an instance where several high school students in tenth grade came in, tested at the second grade level in mathematics, because of the lack of previous schooling in their home countries before they arrived in Arkansas, and we are required through No Child Left Behind to give them an assessment for end of course algebra this year and we're telling the districts that they cannot get out of that requirement

because of No Child Left Behind. So there are an accumulation of things that come up when you talk about assessment.

Dukehart: This is Barbara Dukehart. In addition, the research has demonstrated that formative assessment, which is regular assessments such as daily, weekly is much better than summative assessment which is, you know, tell me everything you know in one day and try to remember it. So the pretest/posttest is another good way to assess children to see if they've made progress from where they started to where the assessment begins and ends, so there are many other forms of alternative assessments. You could do an oral test, you could do demonstrations – there are many ways. I think Special Education has corner on that that regular education needs to take a look at.

Hardin: Okay. Any other comments or questions? Okay. Shall we move on?

Borg: Are we able to talk about predatory lending now?

Hardin: Yes you may.

Borg: I would like to ask Mr. Bradbury or Acorn to talk a little bit more, if he wouldn't mind, about the steering of borrowers who are most vulnerable by our banking institutions. If you would flush that out a little bit more for me, please.

Bradbury: Sure. And this is not always – in fact the steering probably takes place more often among moderate and upper income African Americans, all right? And what happens is someone comes in to a bank for a loan and they're told that they don't qualify for whatever reason but that we have a different loan product that you can

qualify for. And that other loan product has a higher interest rate. Or they may be told to go another arm – for instance, you have Wells Fargo which has, you know, traditional banking services and then Wells Fargo also has a sub-prime lending arm to it. And so what they'll do is they'll direct people to that arm that deals with the predatory lending.

Borg: May I ask you another question? This is Lorna Borg again. Is it your understanding or do you have any knowledge of, that those banks that steer them to the sub-prime or predatory market, in fact, get a fee for those referrals?

Bradbury: I don't know that the banking institutions themselves receive a referral, however, it has been our experience that the employees can, in fact, receive bonuses for the number of people they steer in to these bad loans.

Borg: The employees of the bank? Is that your statement?

Bradbury: The employees of the banking institutions, yes.

Borg: Get sort of a commission for those numbers that they send to the sub-prime or predatory market?

Bradbury: That's correct because those, in fact, bring in more money for the institution.

Borg: I don't understand. If they are sending them...

Hardin: They are still making money, right?

Borg: If they are sending them to another institution, how is it that the employees of the institution that steered them helps that institution at all?

Bradbury: Here, here. For instance, Wells Fargo – that’s why I used Wells Fargo as an example because that’s one that we happen to be working with at the moment. Wells Fargo can give out good loans and Wells Fargo can also give out the predatory loans, right?

Borg: So you’re saying they own both ends of this deal and they make more money by steering them into sub-prime and even if they’re good loans like upper income African Americans, by race, they are being set up in a sense so that more money can be extracted to them and that’s a protected class and of concern.

Bradbury: Correct.

Powell: This is Elizabeth Powell in Mississippi. I had been under the impression from some newspaper articles that many times this is the result of information given by realtors and that they are the ones also that are steering the people into these other directions.

Bradbury: All right, realtors, contractors have also been identified as people who work in tandem with these sub-prime lenders to originate loans. So it’s not just – you’re correct, it’s not just people who come into a bank looking for a loan, but a contractor driving down the street will see someone’s home who needs work and will offer to drive that person down and start working on the house while they’re still filling out their papers, right? There are predatory lenders who call people’s homes and say, we understand that you’re in danger of foreclosure, why don’t you let us refinance you? You know, they also send out checks in the mail and when

you sign your name on the check, you are also signing into a loan. If you're a homeowner, you've received these things in the mail.

Powell: I just wanted to be sure that we included these other sources other than just banking and financial institutions.

Bradbury: Right. They're the ones who are, you know, handling the financing of it, but in terms of bringing it in, yes there are realtors and contractors as well who direct people to these sub-prime lenders.

Borg: This is Lorna Borg. You've heard a lot of discussion about predatory lending. I have a two-part question. One, do you believe it should rise to the level of a civil rights issue in this nation and should be perhaps approached from a civil rights issue rather than simply a banking issue in our country? And (b) do you have any idea of the impact on poor and people of color communities in the New Orleans area or women, for that matter?

Bradbury: Okay. For the second question, I don't know that we've broken it down that much or done the research into how it impacts a community – if anyone has done that type of study in New Orleans or anywhere else. And as regards the first question, every year, we put out a home mortgage disclosure act which discusses lending rates in over a hundred metropolitan areas. And it clearly shows over and over again that it is a racial issue. So – and that's lending rates. And the thing about it is that it's the lending rates which open the door for the predatory lending to occur, all right? Where the primary banking institutions giving out loans, you know,

according to people's financial ability, then there would not be the waters for the predatory lenders – there wouldn't be as much activity because there just wouldn't be as many customers available.

Guerero: This is Andre Guerero. Have there been any civil rights offices of any of the Federal Agencies that have any, if they would exercise it, regulatory power that has taken a look from a protected class perspective, predatory lending?

Hardin: I believe that HUD has some jurisdiction over predatory lending and also has been involved in education and training on those issues. Am I correct on that, Ivy?

Davis: Uh, I don't know if my mike is on. Is that on?

Hardin: Yeah, it's on.

Davis: Yeah, but I – you might – the years that I was at HUD which was before coming to the Commission in July of 2001 there was a very active campaign between HUD and among the Federal regulatory agencies such as the Controller's Office. I would encourage you to pose that question to one of your presenters today. Greg Squires, who can give you an update on what is happening now. As you know, the sort of initiatives is what they're referred to from one administration may change, although that was a big initiative during the Cuomo administration, I don't know whether that's a big initiative under the Martinez administration, so you might want to pose that question to Greg Squires.

Guerero: I've got another question for Steven. And this may be an equal opportunity exploiter issue, but what comes to my mind – and plenty of white folks are involved

or seem to be victimized as well, but the increasing number of horror stories you read concerning these home equity loans where people get involved with them and then they lose their homes, they lose everything. Has there been any pattern or have you all specifically looked at that?

Bradbury: I'm not sure I understand what you're asking.

Guerero: Have the home equity loans that seem to be very popular gotten any of our protected classes disproportionately in trouble financially that you're aware of? That particular kind of loan?

Bradbury: Right. I don't know that, as a particular type of loan. But the thing is that what happens with the predatory lending is that it does – I mean it's set up to first eat up the equity in a home and then to eventually take over the property, right? And that the lending practices do point to significant racial disparity.

Borg: Mr. Bradbury, this is Lorna Borg to follow up on the gentleman's question. If in fact you could prove that their marketing as well as their...

Sprint: Please excuse me. Rob Weil is not joining.

Hardin: Thank you.

Sprint: You're welcome.

Borg: If you could in fact prove that their marketing as well as their lending has been targeted to the elderly and people of color and low income, be it of any color, would you not agree that that is perhaps needing to be looked at from the level of civil rights within our nation?

Bradbury: Certainly.

Hardin: Excuse me. Other questions or comments, we're gonna move right along. I understand our next presenter is already here. Let me thank you Steve Bradbury, wonderful presentation.

Bradbury: Thank you all very much.

Hardin: Thanks, Steve, for the presentation. Next is Rob Weil. Rob Weil is Deputy Director of Education Issues for the American Federation of Teachers from Washington, D.C. Rob, it's your turn.

Weil: Hello, good afternoon or good morning.

Numerous: Good Morning. Hello.

Weil: I'm here to talk about the impact of No Child Left Behind in a new federal legislation, the new reauthorization of the elementary and secondary act and basically the impact it will have – or it's having and will have in the future on minority students and specifically in the four states that were outlined. I sent a statement out there – basically my statement talks about the challenges and opportunities this law presents. There are great goals – the goals are laudable in this to really help all children reach high standards. And to make sure that they are being met, having some kind of assessment protocol in place. Having a qualified teacher and paraprofessionals in every professionals in every classroom. But with that comes the aspects of how do you do all that and the law has a huge accountability measure called AYP which stands for Adequate Yearly Progress.

And Adequate Yearly Progress is the measure against which all schools – is the measure which all schools have to meet each and every year. And that's the measure that within 12 years, all schools have to have students at 100% proficiency. And with all that, comes – with all this accountability, there was a guarantee of funding and a lot of that funding has, for a number of reasons, and you can – it depends on who you listen to, for a number of reasons it's either \$9 or \$6 billion short of what was really out there. And so with the high level of accountability, with the lack of follow through on the funding, there is a real concern that this law will have more of a negative impact than a positive impact and we're trying to figure out how to best to implement the law. So really, what I'd like to do is help answer any questions you have on the law or specifically to states or anything you might have.

Borg: This is Lorna Borg, if I might, Madame Chair. You mentioned that the funding hasn't been forthcoming. Since this is a civil rights discussion, my question to you would be, have you any evidence of discriminatory funding by protected class?

Weil: I do not have any evidence of that. The funding – looking at the appropriated funding levels in the bill vs. – there is no proof of that. I have no proof of that.

Hardin: Alice Hardin. Do you know how the money is divided up, how it is appropriated to the states and do you have some numbers that we could possibly look at regarding the amount of money that is going to the states?

Weil: Okay. I can answer both those questions. One, the money is allocated through the 2000 census, then the Federal government uses the poverty level numbers and then measures the number of students or number of children at the poverty level in each state.

Hardin: Do you have that amount of money, is what I want to know.

Weil: I don't have it in front of me, but I can...

Hardin: If you can get it to Farella, she can send it.

Weil: Oh absolutely. I absolutely have that amount for all states, absolutely. The requested amounts and the actual funded amounts.

Hardin: Mm hmm.

Weil: Or we can get that to you.

Hardin: Right.

Robinson: Rob, this is Farella. I will e-mail you on that.

Weil: Okay. I absolutely have all those numbers. I just don't have them in front of me right now.

Hardin: Let me ask this question. Is there discretion, once the money gets to the state, they can use it for whatever suits their needs best or how is the funding designated that goes to the state?

Weil: And the answer is yes and no. Some money is set aside for specific things in the law and other monies are flexible enough that states and local school districts can use them for things called allowable activities. Allowable activities are things such

as hiring more teacher to lower class size, hiring paraprofessionals, implementing curriculum and the professional development that goes along with that. The law also dictates that a school doesn't make AYP for two years must offer all children in that school public school choice and that the school district will use its Title I funds to pay for the transportation.

Hardin: Right. What about things like paying bonuses to attract teachers that are a shortage like math teachers and science teachers and those kinds of...

Weil: Absolutely. The law allows that. Those are allowable activities, not only in Title I, but also in Title II.

Hardin: All right. What about training and retraining for teachers, that is a part of – is that a part of, I mean the training and retraining – a state could take some of its dollars and use it to do retraining to meet the quality teacher standard?

Weil: Title II absolutely and Title I also.

Borg: Mr. Weil, this is Lorna Borg again. So is it your opinion that it's in that area of discretionary spending that if it were to be investigated from your experience on the ground, you might in fact find protected classes discriminated against?

Weil: I think the way – I would say the way the law is implemented and the way the law requires the formula, the way the formula penalizes schools that are more diverse, I believe you could look at it and find how it would have a negative impact on minorities.

Dukehart: Could you tell me if the American Federation of Teachers has a plan for the No Child Left Behind – some of the problems that you're seeing?

Weil: Absolutely we do. We are...

Dukehart: Okay, could you tell us what that is?

Weil: Well first of all, we are looking at – since we support accountability, we are looking at other measures besides just the AYP formula. We are looking at other ways schools could be identified. The biggest problem with the AYP is that it doesn't give schools any credit for progress – or enough credit for progress. You could have a low performing school that's making great strides to improve the performance of their students...

Hardin: But if you ain't 4A...

Weil: But if you didn't reach the bar, it doesn't matter. You're the same as the school that is making no progress. And we're looking to include some kind of value added or some kind of performance indicators within that and we're trying to develop that system right now and then, hopefully, when the time's appropriate, propose such things.

Dukehart: And are you working with any parent groups?

Weil: We are working with – we're trying to build a coalition around this – it's not just parent groups, but also with other educational groups because we believe, in order to make the change, we need to have a very broad and large coalition.

Borg: Mr. Weil, this is Lorna Borg again. Do you believe or do you know whether or not the American Federation of Teachers, the AFLCIO, would have the will and the human as well as financial capacity to look at those discriminatory areas of spending to see if they disproportionately affect protected classes?

Weil: We have a research department – I’m sure they would look into that. I mean I can’t speak directly to whether they’ve done it or are planning to do it, but I know they are clearly looking – in the past, they’ve looked at those kind of things.

Borg: As a Commissioner (this is Lorna Borg again), I would be very interested if, in fact, they had research that would point to the disproportionate use of discretionary funding within the school districts that impact protected classes badly.

Weil: Okay. I’m not sure of that exact research, but I can ask.

Borg: Thank you.

Weil: Mm hmm.

Hardin: My question would be have you all thought about asking for exemptions for certain schools and let me give you an example that I’m talking about. In Jackson, Mississippi, we have a school that we decided was important to us and it services those students that are at least three to four grade levels behind. And so what happened is that is one of the schools that did not meet AYP and so my thing is, is there – have you given any thought to maybe exemptions for those particular – ‘cause that’s a special school and what they do is take those students and either

prepare them for GED or try to get them – over a year or two, to try to get them back to where they can go back, if they want to, to the regular class.

Weil: And where the AFT's position is is, I think the word exemption might be a little strong. What we're looking for is other ways to show the impact those schools have.

Hardin: That's exactly what I'm talking about.

Weil: I mean we're not – we wouldn't want any school to be exempted from accountability, we would like all schools to be accountable to make sure they're helping kids learn and that's why we support like the desegregation of data, but we also believe that one size doesn't fit all or one formula doesn't fit all because there's many different ways school affect performance and we're trying to figure out a way that, when schools are making, they should be rewarded for that.

Hardin: Mm hmm. That was very devastating, too, that the school in Jackson, Marsden, because it's a special school to begin with, you've got some students that decided that they wanted to go and they sign contracts when they go, when they see in the paper that they are one of the schools that did not meet AYP, I think they were quite discouraged.

Weil: That is absolutely a very discouraging thing.

Guerero: This is Andre in Little Rock. With regards to AFT's position on rewarding schools that are making progress, how have you factored in keeping that initiative from just becoming basically a monetary or whatever bonus for schools that don't handle

large numbers of very academically needy students. I mean this smacks to me of that let's just keep giving bonuses to people at the top stuff, how does that account for that?

Weil: Well the AFT would be absolutely opposed to just giving bonuses to just giving bonuses to people at the top and that's why we look at the progress that is being made, no matter where they're at. You know, if you're starting at – a school district might be starting or a school might be starting with poor performance to begin with and if they're making significant strides or good strides toward bringing everybody to proficiency, however that's determined by the state, then that needs to be rewarded. It's not a matter of just a flat aggregate score of just where they end up at the end of the year.

Guerero: Well two things – one is – and I'm not defending this because I have tremendous reservations about No Child Left Behind – but one is the safe harbor stipulation about the 10% within no child left behind per populations. The second thing, of course, is that many of our districts, especially inner cities, work with children that have double and triple whammies with regards to accountability. Let me give you an example. You have a poor child, you have schools that may work with large numbers of poor children, some of those do not speak English. In addition to annual yearly progress, those children are also covered – or the districts and state is under something called Annual Measurable Achievement Objectives for Title III – that's another layer of accountability.

Weil: Correct.

Guerero: I'm the Title III Director for our State; I know a little bit about this stuff. The second – or third level there – and this was a very interesting article in, I think, day-before-yesterday's New York Times on the children that are assessed that are in Special Education and how those scores, then, are figured into the sub-population and the devastating effect that current accountability measures have for districts that are struggling to adequately serve and serve well, that population. So while AFT and others are saying, "Yes, yes, accountability, we're all in favor of it," because that certainly is the word of the moment, there are lots – the devil is in the details and districts that are struggling under-budgeted, under-funded with under-served children – traditionally under-served, we have to be very careful how we look at assessment.

Weil: Absolutely. There's a couple of things there – one about the safe harbor provision. The safe harbor provision is – probably the best way to say it, it's a very small harbor. We did the – I can name the one state we did with Pennsylvania and it's less than 1% of the schools are able to find any safe harbor. The ELL students and Title III requirements, like you mentioned, and also Special Ed students that are less than three standard deviations below the mean being tested at grade level, that's a tremendous drain on schools and, like in my statement, I put in there about the schools that, the more diverse a school is, this law is progressively punitive.

Guerero: Yeah, that's a very good point I thought you made in your statement, incidentally.

Weil: Yeah. The more diversity a school has, it's clear that they have much more chance to be put on these lists.

Hardin: Alice Hardin. Two things. One, I guess I'm concerned about the Pre-K provision in the law, if there is any and I'm very much concerned that it didn't directly address Pre-K. The second thing is, we talk about punitive measures for teachers who do not meet high quality, and they're not necessarily punitive, but they have to meet this quality teaching standard by a certain year. My question is, what do we do to retain these people once we get them?

Weil: There are three things in retention and you guys have hit on them. The first one is – that help retain the teachers is working conditions. Teachers have to feel that they have the buildings, the support to do a good job. The second one is making sure that they have adequate salaries to keep them, that they don't have a whole lot – many other options they can go to that are better – teachers shouldn't have to make decisions between supporting their family and teaching school. And then the third one would be – and somebody mentioned it about the prestige of the job. When schools are identified as failing or lists in paper, it hurts internally and I've seen a number of studies that talk about how that impacts teacher retention and how teachers just do not like to stay around schools where they read that they're a failure in the paper.

Hardin: My question is, what does No Child Left Behind – how do they assist states in doing that? How do they assist states in retaining teachers? How do they assist states in trying to attract?

Weil: Well the law allows – has allowable activities in Title II and you can move some of that money around a little bit, but to use your title dollars to – whatever it takes, whatever states come up with to attract and retain high-quality teachers. Now it doesn't outline exactly how to do that, it just says – it has a couple of things like reward bonuses or pay extra money for hard-to-staff schools, but it doesn't specifically say it. It's basically up to each state, each school district, to figure out how those monies are used.

Hardin: So states can do something or they can do nothing. Or they can take what the Legislatures are already doing, and say, this is what we've already done.

Weil: Well there are some – the law about supplanting and but basically that has happened in the past.

Hardin: Now let me go back to – because I'm very much concerned about teacher quality. Now, we have a severe teacher shortage here in Mississippi. What has happened to us, at the end of last year, people were told that when middle school teachers that were teaching their subject areas, who had gone back and gotten the add-on for 18 hours, they were told that they could no longer teach that subject area with the 18 hour add-on. Well when I came along years ago, that add on meant that I had a minor in that particular subject. So now what they're telling these people is, you're

either gonna have to go back to school and you're going I—I think it's maybe 24 hours or something like that that you have to have, so you've got to take some more hours in order to meet the quality teacher standard. I asked my State Department for information on how many of those teachers with 25-year people, 28-year people because those are the benchmarks of our retirement system. And it concerns me that this may, in fact, make our teacher shortage worse.

Weil: There are actually four classes of teachers that are of concern. You hit on the middle school teachers; there's also the Special Education teachers, the bilingual teachers, and then also teachers of vocational education that counts for CORE. All four of those subgroups of teachers have a distinct disadvantage in this law the way it's written around the teacher quality sections. Now each state gets to set their own teacher quality things and if you've paid attention, for example, Wisconsin says that they have 99% of their teachers are highly qualified right now whereas Alaska has 16. Much like the AYT that's all over the place, the teacher quality numbers are all over the place – somewhere between 16% of the teachers being qualified to virtually all of the teachers being qualified.

Hardin: And let me just stop you right there. The problem I have with that is that they said that the No Child Left Behind would not let them grandfather people in who have been successful in teaching those courses for "x" number of years.

Weil: Well the law has a provision in it – something called the High Objective Uniform Standard Evaluation – a state can put together an evaluation called the – everybody

uses the "HOUSE" and that evaluation, where these experienced teachers that might not have a major in their...

Sprint: Please excuse me. Jerome Gray is now joining.

Hardin: Okay.

Weil: And those teachers can use that provision to prove they're highly qualified. But as of today, less than 15 states have that provision up and running.

Hardin: Would you all consider looking at that highly qualified? Because I think that's gonna pose a problem for a lot of states.

Weil: We clearly are looking at the highly qualified provisions and we closely monitor what states do around their definitions of highly-qualified teachers.

Borg: Excuse me. Are you saying – this is Lorna Borg from Louisiana – that the highly-qualified provisions are used to discriminate against protected classes?

Weil: I do not have any proof of that.

Borg: Thank you.

Guerero: One of the things I'd be curious to get the AFT's take on it is that what I've observed here is that higher ed moves in very quickly on issues of highly qualified and all of a sudden, as was mentioned earlier, experienced teachers, some of whom have wonderful records and we want to keep – in fact there's even an effort here to bring teachers that were excellent that have retired back into the classroom because it was a resource we can't afford to have go to waste. But the higher ed institutions come in very quickly and all of a sudden, you have these 18-hour or whatever it is

with regards to one of the groups of teachers you mentioned – teachers teaching students who are not proficient in English – I’ve gone back and looked at the Departments of Education, public and private in our state, and the number of faculty that are actually trained at those institutions to offer these courses, the frequency and regularity with which they’re offered and the quality themselves, using teacher feedback and performance feedback, it appalling. So, you know, I don’t know who has the franchise on marketing on whatever it is you have to purchase or acquire for a highly qualified, but the minute IHEs get involved, you’ve got another problem on your hands.

Weil: Uh, the overall pre-service teacher education in the country needs to be reviewed.

Guerero: Absolutely, yeah.

Robinson: This is Farella. Rob, I have one question I’m not clear on. Under the NCLB, what happens to the schools that do not meet the AYP within 12 years.

Guerero: A bunch of stuff.

Weil: Well there are – it doesn’t take 12 years – after two years, then there’s escalating consequences starting at the second year of not making AYP. They start at two years, three years, four years, five years and there’s escalating consequences to where at, basically, by seven years of not making AYP, a school has to be restructured and they have a list of five options of restructuring. So there are increasing consequences of what people call sanctions against schools that fail to make AYP and they are, you know, each year there’s more of them.

Robinson: Okay, very good, very good.

Hardin: Are we near the end of time, ya'll?

Robinson: Yes.

Hardin: Okay, yes, we are. I want to ask one more question and then I'm gonna move on. What happens, Rob, if it's a rural school and there are not other schools within the county or in that particular area? Is this not just a way to give vouchers – someone said that earlier today – to those parents or students or whatever the case might be?

Weil: Okay, there are two – that's a very common question. What happens if there's only one school in the district and there's no choice or if every school in the district failed to make AYP and there's no choice because all schools. The Department of Ed allows for supplemental services to be offered in that first year of school improvement. That's after-school tutoring that, you know, the school district pays for after-school tutoring. That's how they deal with that right now. As for any other things, there is no provision in this law about schools or kids being able to transfer between school districts.

Hardin: So who's going to do the after-school tutoring?

Weil: Well each state provides a list – providers apply to the state and the state approves the providers and those lists are provided to the parents and the parents make the selection.

Guerero: One more question before you go, Rob, this is Andre in Little Rock. What advice or what would you mention to our group to pass on to the office in Washington or

just handle at our own state level for the U.S. Commission. What are the issues you see that you think we should be on top of from your perspective? What would you challenge us with?

Weil: I would challenge to look at the AYP formula and how it's progressively punitive against more diverse schools. I think that's a huge issue. Schools that take on the toughest tasks of dealing with diversity and dealing with English language learners and special needs students, shouldn't be held to a higher standard, if you will. It should be – they all should have the same standard. And the way the AYP formula is created, it's flawed because of the progressive nature of it – the progressive punitive nature of it.

Borg: This is Lorna. So are you saying that, in the No Child Left Behind Act, the AYP formula may, in fact, if looked at carefully, violate the Civil Rights Act because it discriminates against certain protected classes?

Weil: I couldn't tell you. I just know it's progressively – when you have more subgroups, it makes it more difficult and then those schools face sanctions.

Stokes: But now I did understand you to say that there's no provision for transferring from school to school or for applying for the voucher program?

Weil: No, there's no provision to provide transfer between school districts.

Stokes: Districts, okay.

Weil: Between schools, public school choice comes after two years of not making AYP.

Stokes: Okay two years. Okay, that's what I want, uh huh, okay.

Weil: But between school districts, there is no provision in the law.

Hardin: Okay. Thank you very much.

Weil: Thank you.

Hardin: We really appreciate it.

Stokes: Thank you, Rob. We really appreciate your information.

Weil: Thank you.

Dukehart: Very helpful, thank you.

Hardin: Our next presenter, Jerome Gray, is he here?

Gray: Yes, I am.

Hardin: Okay, very good. Jerome Gray is the State Field Director of the Alabama Democratic Conference from Montgomery, Alabama. Jerome, it's all yours.

Gray: Thank you. Good morning, everybody.

Numerous: Good morning.

Gray: Yes, as a fellow member of the Alabama Advisory Committee to the U.S. Commission on Civil Rights for nearly two decades, I'm happy to have this opportunity to share with State Advisory Committee members in Alabama, Arkansas, Louisiana, and Mississippi some data and observations I have regarding the issue of voting rights and election reform. And since I've been told to limit my remarks, points to not more than 5 minutes, I plan to speak to the issue of felony disenfranchisement. This issue, like AIDS and HIV, felony disenfranchisement has been on the increase in America at an alarming rate over the past 20 years. In a

recent publication by a group out of New York called Demos, it's an advocacy network for ideas and action, they cite the following dire data on the number of people who have been disenfranchised in the United States in the year 2000. In 2000, there were 444,405 felons on parole. Another 1,222,378 felons in prison. Another 1,320,684 felons on probation. And 1,609,710 ex-felons in year 2000. So when we add those numbers, one quickly sees that in year 2000, there were more than 4 million in our nation who had lost their right to vote due to felony convictions. Back in the four states on this conference call today, here's what Demos found. In year 2000, Alabama had disenfranchised 225,095 of its citizens due to felony convictions. Arkansas had disenfranchised 50,416. Louisiana had disenfranchised 37,684 and Mississippi had disenfranchised 119,943. However, since I'm from Alabama, I can talk about my state real bad, like the jazz singer, Nina Simone did in the '60s. I get very upset when I see that Alabama is one of only six states in the nation which has more than 200,000 who can't vote due to felony convictions. And get this – one out of three, approximately 105,000 black men in Alabama can't vote due to felony convictions. On Demos' report card, they did a report card state by state – they found that Louisiana earned the best grade among the four states on this conference call. Louisiana received a grade of "B" because it is one of sixteen states and the District of Columbia that allows citizens to vote once they are out of prison on probation or on parole. Unfortunately, Alabama, Arkansas and Mississippi received a grade of D- because our states were

among 16 states that disenfranchised ex-felons who are still on probation or on parole. Although, Mississippi, with 897 black elected officials, Alabama with 731 black elected officials, and Louisiana with 701 black elected officials, were ranked the top three states in the nation with the largest number of black elected officials in 2000, based on a statistical summary compiled by the Joint Center for Political and Economic Studies. We all need to take heed of the shrinking electorate that is plaguing our states as a result of felony convictions. Unlike the 1965 Voting Rights Act or a new Help America Vote Act of 2002, or HAVA, there is no Federal law today governing the voting rights of people that have been convicted of felonies. For whatever reasons, access to information on restoring voting rights of ex-felons is often very limited in most states. In general, state corrections officials or offices of elections spend very little time or resources when it comes to advising ex-felons of their voting rights. Without question, felony disenfranchisement is a new form of voter discrimination. Indeed in my opinion, it is more onerous and discriminatory than the literacy tests and poll taxes that existed in some states prior to the passage of a 1965 Voting Rights Act. Consider this, over 13% of black men today are denied the right to vote nationwide due to felony convictions. And black men make up 36% of the total disenfranchised population in the country. Therefore, I raise this question. Are we really that bad? Or to state the disparity in another way. The average disenfranchisement rate for blacks is nearly 5 times higher than for non-blacks. Finally, as difficult as this issue is with respect to

changing public policy, we did make some headway in Alabama this year. In June, approximately 20 organizations came together and formed a new organization called the Alabama Restore the Vote Coalition. We now have a full-time paid State Coordinator. One of our short-term goals was to lobby the Legislature in an effort to get a house bill passed that sought to restore voting rights to ex-felons. The bill passed in June, but the Governor vetoed it after the session ended. In September, the same Governor who vetoed the bill in June did a surprising flip flop by putting the Felony Restoration Bill in the call during a special session. And the amended new bill passed and was signed into law. The DNA requirement which was required of all...

(End of Tape 1, Side B)

Gray: ...was eliminated in the new bill and a 45-day mandatory time line was added requiring the staff at the Board of Pardons and Paroles to complete that background review and recommendation as to whether an ex-felon should receive something called a Certificate of Eligibility to Register to Vote, based on objective criteria set forth in the law. I'll stop there and open it up for questions. Thank you.

Hardin: Okay, do you have questions – members of the Committee?

Foster: This is Willie Foster in Hattiesburg, Mississippi. My question in regards to reinstatement of the right to vote – what could we do in Mississippi to cut down the number of people that are disenfranchised after they have served their time and are no longer on parole?

Gray: One of the things that we are doing now and it's probably a problem nationwide, is that you would probably have to institute a massive public education campaign. Perhaps the U.S. Commission on Civil Rights through our Advisory Committees – that may be one place to start, but one of the things that we are doing through our State Coalition is to use our network to send out information kits to community leaders and organizations throughout the state letting them know what the process is now that we have the new law and basically the new law provides all ex-felons who are, as we would say, off papers, who have completed their sentences and paid all fines and restitutions, they are not eligible for this Certificate of Eligibility to Register to Vote. But they must initiate the process by filling out a very simple application that goes to the Alabama Board of Pardons and Paroles. But most ex-felons, I dare say, probably aren't even aware of the process and many community leaders aren't as well, so we're spending a lot of time on the front end attending all kinds of meetings – we just came back from the NAACP State Convention, a political convention that was held in October in Birmingham – any opportunity to get before community groups and organizations, ex-felons groups, we are doing that to get the word out and to give them the information kits with the intake form which is a very simple form that doesn't ask for a lot of information, basically the name and address of ex-felons, whether the conviction was Federal or State, a Social Security number, an AIS number if the felon did any lockup time. That's basically all that's required. They don't even ask for a signature of the ex-felon.

But what we're gonna do since we've gotten some resources in Alabama for our campaign, we are going to launch a massive media campaign starting in February probably for about 3 months using television – a lot of cable television, radio, some video tapes getting testimonies of ex-felons, their family members or employers who are saying good things about ex-felons and why they should have their right to vote. But it's really incumbent upon community organizations and leaders and ex-felons and their family members and friends to inform ex-felons that just because they have lost the right to vote at one time does not mean that they are prohibited or banned from ever voting again, but it's just a process that they need to be educated on regarding how to begin that.

Borg: This is Lorna Borg from Louisiana again. I would like to ask you, Mr. Gray, if you have a model felony restoration bill that you could attach to your statement so that commissioners might have an opportunity to read such a model bill.

Gray: Sure. Thank you.

Borg: And secondly, do you believe that if the Regional Commission or any State Commission or the National Commission of Civil Rights decided to hold a hearing, whether it be by teleconference or in person testimony, that there would be serious attention given to this issue and would benefit this issue from a civil rights perspective?

Gray: Absolutely. Absolutely. Presently – I mentioned this special project that our coalition is a part of. There are not eight national civil rights organizations that

have targeted five states to do special work for a three-year period. And, of course, Alabama is one of those states. In our region, we have Alabama, Florida, New York State, Maryland and Texas are the five states that have been targeted for this three-year project. However, we are hoping that the National Campaign will grow because the problem is nationwide. You know, we're talking about over 4 million people who have lost their right to vote, over 1.4 million of them, you know, are blacks who have lost their right to vote. And as I said, it's really a problem that to me is worse than what we had to deal with prior to the 1965 Voting Rights Act because it's something that is sneaked upon is and it's more lethal because the process of restoration or restoring the vote is much more difficult and also the public attitudes that, particularly many of the policymakers have, that once a person is a felon, they think of them as almost trash or dirt or non-citizens, you know, they aren't fit to have the right to vote, so we've got to do a lot of winning over of people, particularly policymakers who have these attitudes that ex-felons don't count and shouldn't have the right to vote.

Guerero: Jerome, this is Andre in Little Rock. Some of that stems from who considers them trash, and usually it's from folks who don't want them registered, in my opinion, because they're afraid they're gonna vote for the wrong party or the wrong way. I suspect you saw the cover lead article, I think, two issues back in *The Nation* specifically on this. It was entitled "America's Last Disenfranchised Class." I want to ask you two things. One, are – and you may just put this in something that you

send to Farella that she can share with us, but I'm wondering if you would have the names of specific groups or coalitions within each of our states that we might individually be able to contact, so for example for us here in Arkansas we'd know exactly who the point people were in this initiative number one, and then the second thing is, the high – if this is correct data, the high rate of correlation between literacy or illiteracy itself and incarceration – folks that are incarcerated and you mentioned, you know, we don't have poll tax or the literacy test, voting is a defacto literacy test, especially on referenda or initiative where you don't just have names, although that does, for candidates, which of course also requires some reading, but I'm wondering how you all would address that need, at least in new methods or techniques for casting votes or how you're addressing that issue.

Gray: Well, in terms of the voting piece, I think HAVA is going to help us out quite a bit once that gets further down the track because one of the things that the Help America Vote Act authorized was funding for voting equipment that would be more user-friendly, even though there would still be people who would need assistance in voting, but I think that's one of the things. And also more training for poll officials and more community outreach and HAVA even has a piece in it where it encourages election officials to reach out to the felon community and do more to access them and get them involved in the voting process.

Borg: This is Lorna. You mentioned earlier a 4 million person figure and that of that figure, 1.4 million were black males, I believe, or African Americans.

Gray: That's correct.

Borg: Do you – I'd like the clarification on – is the 4 million within those states or nationwide? And whatever the ratio is, whatever the number refers to, what is the ratio of people of color to the 4 million – like Hispanics, Blacks, any – all people of color to that number?

Gray: 1.4 million are Blacks out of that 4+ million. And what I did, too, from – the Citizens Project did a study in 1998 called Losing the Vote, it was the first national study of its kind, where they basically did an analysis, state by state, and broke it out by percentages. And I've done that. For example, in the four states on this call today, interestingly enough, Alabama has the highest rate of disenfranchised out of the total population nationwide – 7.5%. And Mississippi ranks second in the nation in terms of total population disenfranchised due to felony convictions – 7.4%. Now that includes, you know, Blacks, Whites, Latinos, men and women. And if you break it out racially – oh let me give you Louisiana – Louisiana was 0.9% and Arkansas was 1.5%. Now in terms of the racial percentages in terms of rates, Alabama is highest in the nation – 31.5% of Black men have been disenfranchised – they broke it out by, you know, gender. And Mississippi ranked third in the nation – it was 28.6% of all Black men have been disenfranchised and of course Arkansas was at 9.2% in terms of Black men disenfranchised and Louisiana was at 4.8%. In terms of raw numbers, Alabama had 105,000 Black men who had been disenfranchised, ranked fourth in the nation, just in terms of raw numbers. And

Mississippi was fifth in the nation, 81,700. And of course, Louisiana and Arkansas – they were sort of on the low end of the totem pole – Louisiana was 19,600 Black men disenfranchised and Arkansas at 10,700. And what really grabs me is, if you take a state like Alabama with just a little over 4 million people based on the last census, and here we have 105,000 Black men who are not eligible to vote due to felony convictions and you look to the most popular state, California, and they only have – California only has 69,500 Black men who are disenfranchised due to felony convictions.

Guerero: Jerome, the thing of it is, and maybe Lorna was getting there with expanding that, casting a little bit wider net to expand it to include people of color period. You have California, New York, Florida and Texas with very large numbers of Hispanics that are incarcerated. That makes very significant influence with regards to electoral college votes. So I think maybe that's kind of where I'd be especially interested in expanding that as much as possible, as I know you are to all folks disenfranchised because of incarceration.

Gray: You hit on something – in fact, we just came back from a conference about a week or so ago in Washington, DC where all five states in this national coalition that have been targeted met and Muldaf (sp?) had a representative there and one of the things that they are looking at is trying to come up with the numbers regarding Hispanics and Latinos because it's something that most states have not been doing in terms of keeping the data in terms of Hispanics and Latinos as they have been doing with

Black/Whites. So Muldaf is making an effort to do that and they said it's going to probably – it's been difficult, they said, but it's going to probably be another year or so before they will have the data to include in the next study that will be done.

Borg: Jerome, this is Lorna. What concerns me, I would also add Asian Americans to the California – or to your total. And I'm really interested in the people of color ratio to the 4 million because 1.4 million out of 4 million, someone could argue that it's not a disproportionate impact by population. And so I think it is, if you add people of color – if you add the Hispanics, the Asians, and all the people of color, you will find that there's a disproportionate impact on the voting rights of ex-felons by protected civil rights classes, which is what we could address.

Gray: Yes.

Hardin: Okay. I want us to thank Jerome for bringing us that valuable information.

Mitchell: I would like to ask one question – this is Katherine Mitchell from Little Rock, Arkansas.

Hardin: Yes, you may.

Mitchell: Is there a national organization that's spearheading this effort?

Gray: The closest thing to it – I guess two groups – the Citizens Project is based in Washington, DC. They, I guess, were the first group to do a national study, state by state, on this issue. And now there is a new group out of Washington, DC/New York pretty much. This National Restore the Vote Coalition that has targeted these five states I mentioned earlier. So between the Citizens Project sort of on the

research side and the National Restore the Vote Coalition that's been doing more work in terms of putting resources into...

(Disconnected Line)

Hardin: I think we were cut off.

Guerero: Jerome is cut off, I think.

Hardin: Hold on.

Stokes: This is Martha Stokes. What's going on?

Hardin: We're waiting...

Gray: You all cut me off.

Hardin: Okay, all right, he's back on.

Gray: [??] have the right to speak.

Hardin: All right, you were addressing Katherine's question.

Gray: Yes I was just mentioning those two groups – they are probably the two primary groups in the nation today that are looking at this issue.

Foster: One other question. This is Willie Foster in Hattiesburg. Is it possible that you could send that information to Farella and she could get it – send it out to all the SAC members?

Gray: I'll be glad to.

Robinson: Okay, then, I'll contact you, Jerome.

Gray: All right.

Hardin: Thank you.

Numerous: Thank you, thank you very much, thank you for all your time, great presentation, thank you, Jerome.

Hardin: Okay, we've got one more person that's – let me call the operator to bring him on. Kane Downing. Hold on.

Downing: I'm here.

Hardin: Okay. The next presenter, then, is Kane Downing. He's the Coordinator, Campaign Against Racial Profiling for American Civil Liberties Union, ACLU, out of New York. It's yours, Kane.

Downing: Thank you very much, both to the U.S. Commission and to the State Advisory Committees of the Southern Region and also to the people of those four states for the opportunity to take part in these hearings. I had one procedural question I might have answered at the start of this. I had participated in other hearings of this type. This is the first time that we have used the miracle of technology in order to make this happen and that's a great thing because I've been listening all morning and the way that everyone's been able to participate. The one question I had, there was one of the strong aspects of the hearings that were held in the other regions and in particular, I'm thinking of the New York SAC was the fact that they were available to the public. And I know that there was an 800 number that was made available here. I had problems calling into it this morning and I just wanted to know to what extent the word got out to the public that they did have the possibility of at least listening in on these hearings?

Hardin: Uh, we sent out a press release to the major media outlets in the four states and also it was included on the Federal Register. We also encouraged our SAC members to take the press release and distribute it to the various groups and organizations that they believed would be interested in sitting in on the call. We do have some listeners on the call.

Downing: Well yes, and the number that I ended up being referred to was different from the one that was posted, so hopefully people...

Hardin: Oh really? Okay, I'm sorry. We'll follow up on that so that won't happen again.

Downing: Thank you very much. Very briefly now, I'm the National Coordinator for the National Campaign Against Racial Profiling of the ACLU and that's a non-partisan organization of over 300,000 members dedicated to preserving the principles set forth in the Bill of Rights and the campaign was started in 1999, and along with other civil rights and community groups, we were able to make the concept of Driving While Black a household word and I monitored the efforts of over 53 affiliates in identifying and ending racial profiling through litigation and public education and outreach and media awareness. And what I'd like to speak very briefly today about is the racial profiling issue and the effect of the Patriot Act on it and the points that I want to touch on will be just a definition of racial profiling, the fact that it's a nationwide problem proven by the data that it's ineffective and causes resentments, excessive force is a major component of it, that the history of race in this country and institutional racism are factors that have led us from the war

on drugs to the current situation that the Patriot Act and other post 09/11 problems are extensions of the problem, and an area where I have been particularly calling attention now is, given this history that we have, the reason why expectations that the post 09/11 laws and policies will eventually also be applied to people of color in “non terrorist” settings. I submitted a very long supporting document as part of my testimony. I have no intention of going all the way through it, but I just wanted to provide substantial background information so that people’s could be directed towards whatever parts of it they found to be most relevant or pertinent to their area. And if you do have them in front of you, also note that information of particular interest or pertaining to the southern region was placed in boxes and I hope that came through in the .PDF file that was sent.

Hardin: Yes, that was very helpful to us. We did manage to get it out to several of the SAC members – not all, but most of the SAC members that are on this call does have access to that document.

Downing: Okay. So then I’ll just run through some of the major points. Our definition of racial profiling is the use of race to any degree to support discretionary judgment by a police officer or anyone acting in a law enforcement capacity to stop, search, detain, frisk, arrest, or even use force against an individual except where there is a specific suspect whose race is part of the description and that description is timely, reliable, and locally relevant. And we use the example of anyone acting in a law enforcement capacity as well because we are also getting allegations, not only post

09/11, of airport screeners and others who, in effect, are acting in a law enforcement capacity, but also very recently shopping mall and store security guards and that's a big issue that we're starting to look into. Racial profiling occurs on streets, in airports, post 09/11 especially involving searches, removal from planes and a relatively new issue, no fly list. And the aforementioned stopping in shopping mall security guards is a nationwide problem, not only anecdotes but also national polls have indicated that not only people of color but also white people, also a majority of white people believe that it's a problem. I wanted to cite also, very quickly a poll that hasn't received very much attention that was issued by the Institute of Public Policy and Social Research and that's available at their website at www.ippsr.msu.edu. And it was a poll that was taken between November 14th and January 15th – November of 2001 and January of 2002 – which in effect, said that a majority of Americans, when asked whether they would prefer security or civil liberties, some very key issues post 09/11, yielded some answers that do not seem to reflect the common wisdom that's being shared now and the opposition that are being taken in the media. So for example, a majority were not willing to give up – slightly more than half were not willing to give up civil liberties for security. An amazing 90+ percent were not willing to – preferred civil liberties when it came to investigating non-violent protesters and that approximately 85% preferred civil liberties in the area of racial profiling. And this covered both pre and post 09/11 racial profiling – Arabs, Muslims and south Asians – that just under 80% preferred

civil liberties when it came to warrantless searches of suspected terrorists and that some 70% preferred civil liberties when it came to monitoring telephone and e-mails and just over half preferred civil liberties when it came to detaining suspects indefinitely. So it paints a picture immediately after the attacks of the preferences in the country for civil liberties over changes in security that we have seen since then. Fifteen states now are collecting racial profiling data and this data around the country is indicating clearly stop and search disparities of people of color and in the southern region make reference to the Alabama racial profiling study which was a study of citations that were issued under the primary seatbelt law – the ACLU takes a position against primary seatbelt laws because of their potential racial profiling abuse and prefer secondary seatbelt laws and I'm bringing this up now also because there is currently a major campaign by the Highway Traffic Safety and Local Police Departments to – under the name of "Click It and Ticket" which are beginning to issue a large number of tickets and we are monitoring that situation, especially in the primary seatbelt law states because we believe that the same disparities that we have seen in stop and search studies across the country are going to appear. And that there is no documented justification for the targeting for people of color. Because even though the data shows that there are differences in highway deaths as to race, the Transportation Safety Board was exposed as having attributed that to seatbelt use, even though their own studies indicated that there were no disparities in seatbelt wearing by race. As far as other data collection, Alabama does not have

a statewide law. Arkansas recently passed a law that bans racial profiling but does not require statewide data collection and we feel that's an important component. Louisiana passed a law requiring data collection but only if a department failed to implement policies, which is a fairly low standard, just once a ban is instituted and procedures are set up in order to train and inform departments about that, the data collection requirement falls short, so we don't consider that a data collection bill. And to, our knowledge, Mississippi hasn't taken any action on the issue. And as I said, we have studies from around the country that indicate that racial profiling is a problem. We trace it to the historical role of race in this country, not only for African Americans, but also Latinos, Indians and Asians and in post 09/11, Arabs, Muslims and South Asians and that those biases in the form of individual and institutionalized biases and racism led to police policies that targeted these very same populations, especially in the area of the war on drugs where, in spite of the fact that studies show that drug use pretty much matches population by race, we're getting indications that many of the drug projects targeted urban street retailers of color and as a result the prisons are filled, not only in states, but nationwide with people of color, primarily for drug crimes, also targeting urban crime as the majority or predominant crime. It has been our position that white collar crime, my job has been made a lot easier ever since Enron and World Com by being able to point out that corporate crime actually costs society far more than urban street crime and not to take away from the importance of that, but that priority has

ultimately had a higher cost to society. We found studies that indicate that violent crime is actually – these are studies of young males – that violent is actually spread equally between the two groups, and yet we see arrests and prosecutions primarily on people of color and I'm gonna kind of ease into the post 09/11 section of this now, just as a preliminary section. The federal agencies were – federal law enforcement agencies were not immune to these biases prior to 09/11 and that's important when we look at what the Patriot Act is going to empower these agencies to do. The GAO study of 52,000 customs body searches in 1998 found that women of color were nine times more likely to be searched than white women, but were half as likely to have drugs on them and this is something that has come up in state study after state study. We see these disparities in the targeting of people of color for stops and searches and yet when you look at the hit rates or the rates at which drugs and contraband are found on the individuals who are stopped, the people of color at worst have hit rates that are equal to whites and many times they are substantially lower, meaning that this targeting is being misdirected. So U.S. Customs has been found guilty of the same practice. And even though they went through substantial reform, the data after the reform showed that while the total number of searches went down, the racial disparities increased severely. And around the country the former INS has had suits filed around the country, notably in Arkansas, California, Louisiana, and Ohio that showed that they were targeting people of color, primarily Latinos for workplace raids even though in some cities

they were not the predominant immigrant workforce and also the fact that many of the criteria that the agents were using were constitutionally protected, for example if people were speaking Spanish or that they were wearing clothing that is native to Central America and for us, that's another form of racial profiling. Now turning to the 09/11 issues, when we look back at the history of the treatment of immigrant peoples of color, it's not surprising to see what we have seen since September 11th. The early treatment of Chinese immigrants following the end of the building of the railroads, the interment of Japanese Americans in World War II, the targeting of Latinos that I just mentioned has set the groundwork for what Professor Susan Hiprem (sp?) "racialization". And that is – excuse me just for a second – I'm going to clear my throat here. Under this concept of racialization, Arabs, Muslims and South Asians are treated as brown people and not as a separate ethnic or religious group and so their treatment falls into the historical pattern of other people of color here and helps explain some of the treatment that they have faced since 09/11. The government, in June of 2003, issued a racial profiling ban that had long been awaited and yet was not satisfactory to the ACLU because of the fact that it separated the racial profiling ban into traditional law enforcement activity, where it did ban racial profiling, but failed to provide any remedies or call for any data collections. There is no way to identify some of the problems that I've already outlined with the federal agencies. In addition, it created an exception where national security is involved and there created a broad and undefined exception that

would legitimize racial profiling at airports and borders and wherever else in the past federal agents could frivolously invoke national security to justify violations. And as I said, the guidelines do nothing to detect racial profiling by federal agencies and there are no provisions for accountability or discipline of violators. And in my report, I make reference to articles that refer to both named and unnamed intelligence sources who say that this racial profiling is ineffective. Now as far as the Act itself, when I say the Patriot Act, I not only refer to the act itself, but the executive orders and regulations changes post 09/11 that have given the government sweeping new information gathering powers while reducing judicial oversight. And my point today is that with technological advances, the government's history of racial profiling, and the repeal and abuse of constitutional rights wherever "war" is declared domestic or otherwise, and the historical targeting of civil rights and activists group of color exercising their free speech assembly and rights are all now in the mix and make the inevitable targeting of traditional people of color – well making that targeting inevitable. So, the Patriot Act just briefly will, Sections 411 and 802 will label a person a terrorist if they belong to an activist group and the definition is very vague. Definite domestic terrorism is defined as acts dangerous to human life that are in violation of the criminal laws – that seems very clear. And then appear to be intended to intimidate or coerce a civilian population and that is not legal drafting and anyone who has dealt with courts or the law would know this – if something appears to be intended is not an intent standard

and the vagueness of this definition would allow First Amendment activities and would allow non-violent civil disobedience activities would have allowed our civil rights movement that was so pivotal in this country to have been stopped, based on the vagueness of this language. In addition, the earliest activities that were carried out by agencies such as the FBI against the constitutionally protected activities of domestic groups including Dr. King and the Southern Christian Leadership Conference, all would have fallen under this exception – SNICK, the early black power movement, the anti-Vietnam war groups, and others who were investigated despite the fact that they were involved in constitutionally protected activities by the counter-intelligence program or Cointel Program of the FBI. This definition would also include solicitation of funds or giving material aid to organizations once they were defined as those that fall into those vague categories and that would have precluded assistance to South Africa's African National Congress during the anti-apartheid campaigns. The Act also provides for search of a home without the person being informed – that's under Section 213. Section 215 would allow collecting of information about what books are read, what people study, their purchases, and medical records and there is no requirement that these be linked to a terrorist investigation. Access to personal business records, educational, as long as the purpose is "to protect against terrorism." Take away property without a hearing, seize the assets of an individual without prior notice under the domestic terrorism definition, that's Section 806. Monitor e-mails and watch internet sites.

And routing information like e-mail addresses, while it's aimed at lawbreakers, it sweeps broadly because e-mail and internet traffic of innocent individuals can't be separated from the activities of targeted individuals – that's Section 216. It allows, under Sections 203 and 901, the vast array of information gathering on U.S. citizens to be collected and shared with the CIA and other non law-enforcement individuals without proper judicial oversight, which puts the Central Intelligence Agency back into the business of spying on Americans. And although prohibited from domestic surveillance historically in the past, the CIA and the NSA illegally investigate thousands of Americans in the '60s and '70s as part of Operation Chaos to spy on the anti-war movement, student movements, the black power movements, and shared that information with other organizations according to a Senate report that was issued at the time. After the abuses were exposed, reforms were introduced to attempt to end those activities and this section of the Patriot Act would tear down those safeguards and once again allow those practices and potentially those abuses to continue. There are sections that allow immigrants – Section 412 allows immigrants to be jailed indefinitely. Section 216 allows wiretap on a warrant that does not even include a name – basically a nationwide blank warrant issued by a judge without specifying the search location, which allows law enforcement to fill it in later and to actually move it from place to place. The constitutional requirements that were originally only for foreign intelligence spying under FISA, Foreign Intelligence Surveillance Act are now also applied to any surveillance as long as –

before it had to be primarily for the purpose of foreign intelligence and now – well before it had to be a primary purpose and now it's as long as it's – and I'm sorry – I just lost that standard, but as long as it's now relevant to a criminal investigation. And now the Act which was sold as being for the purposes of stopping the kind of terrorism that we saw in the 09/11 attacks – it's now coming out as predicted opponents of these sections of the Act that it's now being used in non-terrorist investigations. The Department of Justice reports cites dozens of instances of its use of expanded powers to investigate a strip club owner, drug dealers, white collar criminals, blackmailers, money launderers, and even a lovesick woman and acknowledged that these represent a small sample of all the non-terrorist investigations that they are conducting under the Act. And of course, like anyone else, we want to see these types of crimes investigated, but we believe that none of these crimes justify a lowering of the constitutional requirements that have been in place for so many years. Now there are other policies – there's been – there have been major changes in the area of FBI spying and government dossier gathering on ordinary citizens. The Attorney General has gutted restrictions on FBI spying on domestic religious and political organizations. Many of these guidelines were put in place in the '70s when it was found that the Bureau had engaged in – I had mentioned earlier that domestic surveillance under the Cointel Program including very serious and in-depth surveillance of Dr. Martin Luther King. And according to agents of repression, the FBI's secret war against the Black Panther Party and the

American Indian Movement by Wards, Churchill and Jim Vanderwol – such methods as eavesdropping, bogus mail, fabrication of correspondence, propaganda, fabrication of groups, flyers and publications, disinformation, release of false information to the media, harassment, arrests, repeated arrests on false charges to keep members jailed, tie up lawyers and divert critical funds, use of infiltrators and provocateurs to encourage illegal activities that would justify police response and disrupt meetings, pseudo gangs, activists appearing extremists groups to confuse, divide, and undermine legitimate groups...

Hardin: Mr. Downey...

Downey: Yes.

Hardin: Um, I hate to stop you at this time, but our call needs to be concluded by a certain time, so could we get into the Q&A because most of the committee members, they did receive your document. And that's the very most important point to us and we need to conclude this call as soon as possible.

Downey: And at some point if you – I did come prepared with recommendations which I think was probably one of your interests, so if there's time for that.

?: Let me ask you this. I knew you say that this was being recorded, but when this is transcribed, will this be sent to each one of us?

Robinson: Yes it will.

?: Good.

Robinson: Mm hmm. Okay. Are there – Alice...

Hardin: Yeah, questions – if there are no questions – anybody got any questions? Your recommendations, Mr. Downey, you said you had some recommendations. Could we go through those real quickly?

Downey: Yes. Yes, the – we would ask that the Commission in the southern region support a ban on consent searches – this has been done in California and by the New Jersey Supreme Court. That's where we have seen the most violations of racial profiling. Support the federal racial profiling bill that's soon to be reintroduced. Repeal of the Sections of the Patriot Act that were cited today and support resolutions to that effect. There have been resolutions passed in 221 communities and 35 states; I'm sorry to say none in the southern region support the passage of state racial profiling laws where those laws are not in place to support the voluntary data collection by state and local police in those areas. Investigate to be sure that racial profiling is not used in federally funded agencies and task forces. This was a problem with the DEA's Operation Pipeline which effectively nationalized racial profiling as a practice. Examine the role of federally-funded anti-drug task forces – I don't know how familiar you are with the situation of Natulian Hearne where – and elsewhere in Texas where these task forces have been targeting African Americans, primarily, for drug investigation and arrest. Support the circulation of Know Your Rights information which the ACLU also distributes to inform people as to what their rights are when it comes to stops and searches. Support civilian review of boards, recommend that federal records be kept of use of force, something which is not

done among all of the information that's collected. Outreach to organizations that are working on the racial profiling issue.

Borg: Okay, this is Lorna Borg. May I state, Madame Chair?

Hardin: Yes, you may.

Borg: Mr. Downing, first of all, I want to commend you on what is really a chilling, compelling and challenging testimony before us. The question I have is, do you believe that the National Civil Rights Commission should address this as a national issue and failing that, a coalition of the State Advisory Committees should attempt to have, either in person, or telephonic hearings that are focused solely on this issue, and would there be a response to it?

Downing: Let me start with the last part first. When you say...

(End of Tape 2, Side A)

Borg: ...response from those who would – would there be high interest in this from those persons who would have something to say about the civil rights impact of these issues that you're speaking about – racial profiling and the Patriot Act – if there were to be such hearings, would there be a large interest, in your opinion, on this?

Downing: I would answer yes to all those questions. Part of my job is to strategize around the issue of racial profiling and I have found that I've had to work from the top down and from the bottom up. Defining the bottom here as the State Advisory Committees locally gathering this information has created a ground swell that has assisted the issue but also attention from the above – from the U.S. Commission as

well. And I think we're really – this is an area where we're right at the cutting edge because now that the Act is beginning to be applied to these other areas, we're really ahead of the curve if we begin to take testimony about the inevitability of this happening.

Hardin: Other questions? Okay. We thank you for your testimony and at this point, I'm going to turn it over to Farella. Farella, can I adjourn or do you need to...

Robinson: Okay. Yes, um, what um, I would like to thank everyone that presented today and take the time out of their busy schedule to sit here for about 2½ hours as well as the SAC members. I think we gathered some good information that we can use to develop future activities. We do have Thursday, December the 4th, another briefing meeting which will address the issues related to environmental justice, immigrant issues and predatory lending. So we welcome the listeners' participation. On tomorrow, we will convene at 9:00 a.m. and if you have additional questions regarding the information gathered in this meeting, you may contact the Regional Office. Is there anything else that any of the SAC members would like to say or make a comment on at this time?

Stokes: Well I think it's been an excellent presentation. All of the presenters and I, for one, am very grateful for all the information that we have been given.

Madden: This is Robbie Madden. Especially the last presenter, he was just...

Hardin: Okay. Anything else? Anybody else want to have a parting word? If not, then we look forward to you all being – all of us being on the call for tomorrow morning.

Robinson: Okay, very good. Thanks again.

Hardin: Thank you.

Robinson: Okay, bye bye. Have a good lunch.

(End of Teleconference)

**TRANSCRIPT
TELECONFERENCE MEETING
OF THE
ALABAMA, ARKANSAS, LOUISIANA &
MISSISSIPPI ADVISORY
COMMITTEES**

**WEDNESDAY, DECEMBER 4, 2003
9:00 a.m.**

CONFERENCE #20104671
December 4, 2003

Sprint: Okay, at this time the conference is being recorded, and we'll bring the other people in on "listen only" and thank you for using Sprint.

Comment: Thank you. Ann, we're ready for you to ...

Shumaker: Okay. Good. The meeting of the Alabama, Arkansas, Louisiana and Mississippi Advisory Committees to the U.S. Commission on Civil Rights shall come to order. Good morning. My name is Ann Shumaker. I'm Chairman of the Alabama Advisory Committee to the U.S. Commission on Civil Rights. I speak before you today on behalf of the Alabama, Arkansas, Louisiana and Mississippi Advisory Committees. With me today are other members of the Advisory Committees. Would the Alabama members please introduce themselves? Please tell your name, as well as your city.

Maharaj: Raphael Maharaj, City of Mobile, Alabama.

Shumaker: Martha?

Stokes: This is Martha Stokes from Carrollton, Alabama.

Shumaker: Michael?

Davis: I'm Michael Davis. I'm in Mobile, Alabama.

Shumaker: Do we have any other Alabama members on line? Okay, Arkansas members.

Guerero: This is Andre Guerero. I'm in Little Rock.

Hall: John Wesley Hall from Little Rock, but I'm in Key West right now.

Shumaker: Are there any other Arkansas members on line? Okay. Mississippi?

Powers: Elizabeth Powers, Greenwood, Mississippi.

Foster: Willie Foster, Hattiesburg, Mississippi.

Shumaker: Louisiana?

Madden: Roberta Madden. I'm Chair of the State Advisory Committee, Baton Rouge.

Dukehart: Barbara Dukehart, Natchitoches, Louisiana.

Borg: Lorna Borg, New Iberia, Louisiana.

Gradney: Clark Gradney, Baton Rouge, Louisiana.

Shumaker: Are there any other Louisiana people on line? Okay. Also present with us are Farella Robinson, Civil Rights Analyst at the Central Regional Office, and Ivy Davis, Chief of Regional Programs Coordinator in Washington, D.C. My colleagues and I from the four Advisory Committees serve without compensation as the eyes and ears for the Commission. The Committees are mandated by statute to report on civil rights developments in their respective states and report these to the commissioners. Based in part on the work of our committees and similar bodies in each of the 50 states, as well as the District of Columbia, we report to the commissioners, who report to the President and Congress on civil rights developments. We are here today for a briefing on several civil rights issues of interest to the committees, such as predatory lending, racial profiling, the Patriot Act, immigrant issues in the South, voter rights, environmental justice and the impact of the No Child Left Behind Act upon minority students in schools. We have specifically invited representatives of community groups and organizations who are knowledgeable about these issues. The information received will be used to assist the SACs in their planning activities. At the outset, I want to remind

everyone present of the ground rules. Each day the meeting will convene at 9:00 a.m. and continue until 11:30 a.m. However, if more time is needed, an additional hour has been scheduled. The meeting will start with a role call to include introductions of SAC members, as we have already done, the staff and presenters. Therefore, we are asking presenters to be available at least 15 minutes prior to their designated time to accept the Sprint operator call. Also, you are welcome to listen in on the full proceedings of the meeting by calling 1-800-377-4841, number 20104654, December 3, and today, 1-800-377-4527, number 20104671. That is today's number, 1-800-377-4527. Each presenter will have up to five minutes to summarize their major points and/or statements and will have ten minutes for questioning from the SAC members and staff. Open lines will be available to the media, public and interested organizations to listen in lecture mode. They will not be able to speak. The proceedings at this meeting are being taped. An opportunity for the public and interested organizations to submit information in writing will be made available through January 5, 2004. Information should be sent to the U.S. Commission on Civil Rights, Central Regional Office, 400 State Avenue, Suite 908, Kansas City, Kansas, and that zip code is 66101. Or, information and comments may be faxed to area code 913-551-1413. That's 913-551-1413. We urge all persons making presentations to be judicious in their statements. The Advisory Committees appreciate the willingness of all participants to share their views and

experiences with the committees. Ms. Robinson, do you have any remarks as we begin?

Robinson: I would just like to sort of go over our agenda from yesterday for those listeners who were not able to listen onto the call. On yesterday, we discussed information related to predatory lending, new and emerging issues in the South, the No Child Left Behind Act and its impact upon minority students in schools, voter rights and racial profiling as it related to the Patriot Act. Did any of the committee members have any comments or impressions they would like to share at this time regarding yesterday's meeting?

Powers: Farella, this is Elizabeth. I just want to say that I was really pleased with the way the meeting went yesterday. I had no idea that it would go so well and that we would get as much good information as we did and good questions and good comments and I was just real pleased with it.

Shumaker: I'd like to second that. This is Ann Shumaker. I do appreciate all the questions that SAC members did formulate and ask. I think it stimulated some good discussion. Okay, if there are no other comments, is Ivy on the line yet? Ivy, do you have any comments?

Robinson: I don't think she's joined the meeting at this time. However, I would like ... This is Farella Robinson. I would like to indicate that there has been an addition to our agenda for today. Ann, would you like to share the addition that we received this morning?

Shumaker: I'll be happy to do that. Okay. We have a quartet of attorneys from the Alabama Department of Education. They will be discussing litigation in regard to desegregation suits for K through 12. They will be added after Dr. Gregory Squires. And, I will introduce them individually and give their titles when it is time for their presentation.

Robinson: I know that this expands our meeting, and more than two and a half hours is quite a long time. However, if you have to disjoin yourself from the meeting, feel welcome to do so.

Shumaker: Okay. If there are no further comments, we'll begin with our first presenter for the day.

Robinson: Okay, I will call the Sprint operator at this time.

Shumaker: Okay.

(Dialing noises)

Shumaker: Since we finished with our introductory remarks in ten minutes, perhaps we will be able to get this in by the 11:30 deadline.

Robinson: Yeah. They're calling Monique Harden at this time.

Operator: Excuse me. Miss Harden is joining.

Harden: Good morning.

Several: Good morning!

Shumaker: Monique Harden?

Harden: Speaking.

Shumaker: Monique Harden, I'm Ann Shumaker. I'm presiding for the first section of the meeting this morning. I'm the Chair of the SAC committee in Alabama. We do appreciate your coming. I'll just give a brief intro of you and then we will ask you to begin your presentation.

Harden: Sure.

Shumaker: Monique Harden is Co-Director of Advocates for Environmental Human Rights in New Orleans, Louisiana. She will discuss environmental justice. And, again, Ms. Harden, thank you for participating.

Harden: Thank you for inviting me to this call. I guess I'll begin by saying that the U.S. Commission on Civil Rights has a very critical role to play with regard to the Environmental Protection Agency's development of enforcement tools under Title VI of the Civil Rights Act, as well as reforming current practices and policies are just not workable or consistent with the civil rights law. The materials that I have provided you set out three key areas of focus with regard to the activities of the Environmental Protection Agency on civil rights complaints that have been filed by – in most cases, it's organized communities around the country, challenging decisions by state or local agencies that have resulted in burdening their communities with significant levels of toxic pollution. This can be from, perhaps, an environmental permit issue to an oil refinery that wants to expand its units and increase pollution in that way or other destructive projects, environmentally destructive projects. In the states of Alabama, Arkansas, Mississippi and Louisiana,

the complaints that have come out of these states comprise roughly 30% of the total cases that are now before EPA, and among these cases, you will find – EPA's own information shows that the agency itself has failed to comply with its own regulations with regard to investigating and rendering decisions on the complaints that have been filed with the result that access to civil rights protections are, for all practical purposes, access to civil rights protections is denied to these communities. And, I guess one of the things that is a barrier to really, you know, figuring out solutions to this problem is that, in a lot of respects, environmental laws, regulations create – or present – very complex technical subjects in terms of, you know, from, you know, health effects of various kinds of pollutants to recognized and allowable concentrations released by industrial facilities or other types of developments. But then, I guess, a very simple way of approaching this matter from a civil rights viewpoint is that, clearly, environmental laws and regulations are not designed to protect communities of color who are disproportionately burdened with toxic pollution sources. And, for that reason, civil rights law plays an incredibly important role in providing these communities with the protection they so deserve in ways that existing current environmental laws and regulations are not designed to provide that level of protection. And with that, I can open it up to any questions or comments you may have.

Shumaker: Okay. Does anyone on any of the committees have any questions for Ms. Harden?

Guerero: This is Andre in Little Rock. If the agency itself is, to use my own word, lax, then what are the recourses you have? Is it a straight shot to the courts or is it public pressure through stockholders, on the industry? What I'm thinking of, for example, here in Little Rock, the environment, among other things, the environmental complaints have dealt with fecal matter that is being discharged by one of our large industries, the poultry industry, Tyson's in particular. These are also often located in areas where the residents don't have Title VI protections because they're basically poor, rural whites. So anyway, I'm just asking, where does one go then if EPA itself is not doing its job?

Harden: That is, you know, I guess, 25-million-dollar question because in the situation where the citizens don't have Title VI civil rights protections, it really falls on a, you know, very creative, innovative look in legal strategies for using existing laws and regulations and also, you know, advocating in the court of public opinion and putting pressure on the companies that are creating, you know, these – or having a damaging effect on the environment and public health. But again, in this particular situation where we have clearly, you know, established law and regulations, what we find is that there's no enforcement by the Environmental Protection Agency, and I'm specifically talking about Title VI of the Civil Rights Act. And, you know, and what we have instead are pretty hollow attempts by the agency to try to address the problem, but it's clearly not working.

Operator: Pardon the interruption. We have Dr. Kelly joining.

Shumaker: Good morning, Dr. Kelly.

R. Kelly: Ah, good morning.

Shumaker: This is Ann Shumaker, one of your neighbors in northeast Alabama.

R. Kelly: Good morning. Good to hear from you.

Shumaker: And we have just had Monique Harden discussing environmental human rights.
She's from New Orleans, Louisiana.

R. Kelly: Okay. All right. That's great.

Shumaker: Does anyone else have questions for Ms. Harden?

Robinson: I think Monique had not completed her answer.

Shumaker: Okay. Excuse me, Monique. I am so sorry.

Harden: Well, actually, I thought ... Is this Ms. Robinson?

Robinson: Yeah.

Harden: Yeah. Hello. Good morning. Actually, well, I go in, I can elaborate more in terms of, for the purpose of this call, I really wanted to focus in on an area I thought would be under the rubric and interest of the State Committees on the U.S. Commission of Civil Rights, which is, how is EPA enforcing civil right in the country? And in presenting you with information, very key areas in which EPA is failing to enforce this very important civil rights law. And in the situation with Tyson's Food that was raised as an example of a problem – what do you do there? – where you have citizens who are facing or experiencing environmentally damaging effects of a poultry production unit that's degrading the waters in the area, the

answer for that is one where, you know, it will take innovative use of existing laws; for example, the Clean Water Act, and regulations. Implementing the Clean Water Act, as well as, you know, strategic public advocacy and campaigning, so you're operating in both the judicial court system as well as the court of opinion.

However, in the case of civil rights law, which is protective of ... Well, basically, you know, obviously, prohibits racial discrimination. We have very clear situation in this country where people of color are disproportionately burdened with toxic pollution, and we have an agency that is charged with the responsibility of correcting that problem and an agency that has a number of tools to implement in developing and creating solutions to protect the health of people, as well as their environment. And what we're seeing is, after several years of attention to Title VI of the Civil Rights Act by a diverse constituency and stakeholders is that we still have very hollow attempts by the Environmental Protection Agency with regard to its enforcement. And it's a situation where, for every one step forward made in advancing civil rights enforcement, we have two to three step back taken by the EPA. And, in particular, just getting into details, it's ... EPA itself has established or promulgated federal regulations implementing Title VI of the Civil Rights Act, which set forth deadlines on which the agency, upon receiving a civil rights complaint, must take action. And what we find is that, in every single one of the case complaints that have been filed with the EPA, those deadlines have been missed. And while that's a procedural issue, it's one that comes with a heavy

message when you have an agency that consistently fails to reach decisions and take actions in accordance with its own regulations. And that's a very disturbing message to complainants and other potential complainants who have, are facing similar problems of environmental racism and discrimination, is that there is no solution for you. There is no civil rights protection for you. And that's one where I would imagine that members of the U.S. Civil Rights Commission would not want to tolerate, but it nonetheless continues to persist with this agency.

Borg: This is Lorna Borg from Louisiana. I have two questions, but the first one is sort of a ... I'm sorry to say I'm not as knowledgeable about all of the implications of the Constitution and the Bill of Rights, but you're an attorney as I understand it.

Harden: Yes, I am.

Borg: And I wondered if there's not a way of going around Title VI. I mean, the ultimate civil rights violation is depriving someone of their life, and a lot of these environmental cases, in fact, do just that, even so disproportionately on certain protected classes. And I wondered if just using other aspects of the Constitution, like depriving me of life, would be a way that you could highlight and have some successes on this that would sort of circumvent the ineffectiveness that you're speaking to of the EPA. And my second question is, "What specific recommendations do you have for the Commission to do something about the problem that you site?"

Harden: Well, okay. To answer the first question in terms of constitutional protections, going beyond Title VI of the Civil Rights Act, to look at constitutionally challenging disproportionate pollution burdens and those kinds of harms as an issue of denying a person the right to life is an interesting one, but there's not a lot of precedent or case law supporting ... In fact, there's case law just to the contrary in terms of looking at a right to, you know, a clean and healthy environment is not recognized in the Constitution according to Supreme Court decisions that have been handed down. So that doesn't look like a very promising course to, you know, plot out in terms of litigation, but in ... So, that, I hope that satisfies your first question. In terms of the second, your recommendations, I think it would be, it would be wonderful if this body would begin looking at EPA's actions under Title VI of the Civil Rights Acts, and one of the places to start is EPA's own web site and it's in particular its Office of Civil Rights, and it has, on that web site under the EPA's Office of Civil Rights, it's a, there's a chart or summary of Title VI complaints. And you will see those complaints that have been dismissed, rejected or still pending, and you can look at the dates and see those where there are clear violations of EPA's own federal regulations. In fact, those particular regulations are also on the EPA Office of Civil Rights web site. So, I mean, in terms of being able to get a sense of the lay of the land and how Title VI complaints are handled, that web site is informative. The second thing is that we need a clear directive, I think, to EPA that say, "Look, you know, if we're going to do this the right way, you're making

decisions without really having any tools for making substantive decisions on the merits of what, in fact, constitutes a Title VI violation.” And we should look to establish civil rights judicial decisions that set a number of standards that EPA should follow, but at this point is not following. In fact, what we have is EPA issuing draft guidance that is extreme... just opposite of established civil rights jurisprudence. So, you know, step number one would mean revamping the guidance and actually establishing regulations that clearly comply with civil rights jurisprudence is the first order of business. Second thing is addressing the backlog of civil rights complaints and especially for those complaints that have been, you know, in some cases, they’ve been, you know, they’ve been filed five years ago and they’re still in pending status, and that should not, and that is clearly violative of established regulations. And do you all have the handouts that I ... Ms. Robinson, were you able to distribute the handouts?

Robinson: Some of the committee members do have the handouts, but for those members that I didn’t have a fax number for, they did not receive it.

Harden: Okay. Well, I hope ... For those of you who do have it, the last four slides or pages of my presentation goes into details about specific actions that I would recommend EPA’s enforcement of Title VI, and one of those things would mean recognizing that civil rights law is not something that is a sub-part to existing environmental laws and regulations, that it’s its own independent legal authority. And, and, and, and also recognizing that existing environmental laws and

regulations really don't address the issue of discrimination that comes, that exists, that is pervasive in so many communities around the country. And that will mean that the permitting decisions that are made by agencies will need to also comply with civil rights law so that you don't wind up with situations of disproportionate pollution burdens that fall along racial lines. It's not enough anymore for an agency to justify its decisions by saying that they've complied with existing laws and regulations, again, because those laws and regulations don't carry within them provisions that would prevent or otherwise remedy racially disproportionate pollution burdens. Title VI, of course, does have that prohibition and should be read into all permitting decisions and enforcement actions by state and local agencies. And EPA should be enforcing that.

Guerero: Look. This is Andre. Look, I don't know that ... I'm very frustrated in listening to your presentation – not with your presentation itself, but just kind of my mind racing on what the hell we can really do at this point. Who's watching the chicken house? I mean, I ask, can you go to the courts? Obviously, the legislative and executive branches, both parties, fat cat, the list serve of their fat cat donors, of CEOs pick up the phone and call EPA and that's it, you know, and nothing gets done in a particular, at a particular plant or whatever. And these new proposed diminishment of the allowable levels of mercury is something that's just come up. It's terribly disturbing. But in any event, Farella, is there, is there, or is this done all the time – does the Commission in Washington, the U.S. Commission, does it ever

just issue a report asking that another federal agency begin enforcing civil rights or asking why other agencies, government agencies, such as the EPA, is not enforcing civil rights with regards to this issue, for example? Is that something that's already been done or tried? I mean, I'm not sure at what level right now pressure can be put that's going to be effective.

Robinson: The Commission, that is one of their primary responsibilities is to review and make recommendations to federal agencies regarding their civil rights enforcement, and so they have jurisdiction over that and that is done on ongoing basis to various agencies.

Guerero: Has it been ... I mean, it sounds to me in this case, as with so many other, justice delayed is justice denied, as they say. What, you know, what have they done recently on the EPA, with regards to the EPA's, the civil rights oversight that our presenter has outlined for us, with regards to EPA's own internal rules and regs and procedures?

Robinson: The Commission recently conducted a review of EPA regarding civil rights enforcement. I would like for Ivy to address that. A report was issued. Ivy, are you on the line? No, she's not on the line. But there was a report issued and accepted by commissioners. I don't know what type of follow up has been done with EPA on some of their concerns that were indicated in the report, but the Commission has conducted a review of EPA's civil rights enforcement.

Borg: This is Lorna Borg, Monique.

Harden: Yes.

Borg: I wondered if you'd followed the news accounts in the change in policy regarding the coal mining ...

Harden: [She laughs] Yep.

Borg: And what you think might be, I think it's called cap and trade or something like that, where if I'm a cleaner polluter and you're a bad polluter, I can give you some of my credits if you will, so that you can pollute more.

Harden: Right.

Borg: Is it your opinion from your experience that certain communities will have cleaner emissions that they will trade off to other communities to the smokestacks and other communities that will have a disproportionate impact on those protected classes that we're concerned about?

Harden: Ah, that's an absolutely great question, and let me just say that this new proposal on the mercury emission trading by oil- and coal-fired power plants actually follows after another initiative under the Bush administration that actually – it really repeals a key section of the Clean Air Act. And it's a section that focuses on public health protections but that requires all new facilities and any old facility existing prior to this law that expands or does any major change at the existing facility in a way that would increase pollution, that in both those situations, the facilities would have to install state of the art pollution control devices and equipment and for the reason that we want to reduce air pollution. Simple as that. Well, this law's been in effect

for the last 30 years, and it wasn't until the middle and through the end of the Clinton administration that the Department of Justice and EPA began getting information and gathering data that showed that oil refineries and power plants, among other industrial facilities, had violated this law and had been violating this law for years, meaning that they've been making serious, significant changes and modifications at their facilities and not installing pollution control and pollution lowering devices and equipment. And so, Shell Oil, along with Conoco Oil Refinery, just to name a few, were among the initial facilities that entered into consent decrees with the U.S. government in which they, you know, were now under obligation to install these devices and pay penalties for violating the law. When the Bush administration entered, a lot of these companies that were moving along the same, towards the consent decree decided to pull out of the litigation because they realized that this was going to be an administration that was going to give them a free pass. And in fact, what we've found is that new rules have been, are now, have now been devised and are on their way to being put in place that would allow these facilities to continue increasing their levels of pollution without having to install pollution control or pollution lowering devices and equipment on their facilities. So now, so that happened about a year ago, and this is all part of the, you know, the national energy policy. And what we find is that, you know, this applies to 17,000 facilities in the United States, the bulk of which are located in predominately people of color communities. I mean, you're from Louisiana. These

are oil refiners and petro-chemical facilities. They're located in predominately African-American communities. And these would be the facilities that would be allowed to continue increasing their levels of pollution without any pressure or obligation or rule requiring them to install devices or equipment that would lower and reduce those pollution levels. Following that is now this new plan of mercury emissions trading. It will have the same effect of increasing pollution levels, and it's all kind of under this concept that, if we work with polluters with voluntary programs, somehow or another, the environment will be protected, and just the opposite will happen.

Borg: I have another question. This is Lorna. It's in follow up to that. If in fact the administration has seriously pushed the No Child Left Behind Act and if in fact the increased mercury emissions that you just stated are going to have a disproportionate effect on protected classes on the Civil Rights Act, is it not, because mercury damages the neurological system and the learning capacity of those children, is not the coal emissions and the mercury emissions trading policy directly counter to the fulfillment of the No Child Left Behind Act because, on the one hand, you're holding them to certain quality performances and, on the other hand, you're allowing policies in which will harm them in such a way that perhaps they can't even perform?

Harden: You're absolutely right. It's absolutely, it's counter to Leave No Child Behind. It's also, and if you consider that not just ... Keep in mind that this mercury initiative is

just another piece, right? Because prior to that we had this repeal of the new source review law of the Clean Air Act that requires that pollution lowering device installation. That controlled the kinds of pollution that could trigger asthma attacks and respiratory diseases. And recognizing that many of the school day absences for children is due to asthma and asthma attacks and we have ... And again, and the incidence of asthmas, in particular deaths from asthma, also have racial disproportionate results, where it's Latino and African-American children are hospitalized more often and die more frequently from asthma than children of other races. So, you know, look at, you know, the things that are needed for a child to do well and succeed educationally means having a healthy body. And means, and it also means not, which also would therefore means not being impacted by significant amounts of toxic pollution. Clearly one is working against the other, and if you talk to people who are experienced in educational matters, they will point out to you ways in which in the Leave No Child Behind Act really doesn't work and fails children. But clearly these environmental policies that are coming out of the Bush administration, most recently with this mercury admissions trading, outrageous proposal, it would definitely have damaging effects on the health of children, who are more vulnerable to these kinds of pollutions than adults because they, pound for pound, breathe more air than adults do. They drink more water and eat more food. So, therefore, they're more exposed to the pollutants that would be in any of those media.

Guerero: Monique, what are then two or three strategies that advocates for environmental human rights have adopted for this year's goal that we may be able to give some help with or consider ourselves? Clear, specific strategies for doing something about this?

Harden: Well, one of the things that we're doing is focusing on raising awareness about these Bush administration proposals and what it means to people's health. Bottom line, these are unhealthy measures and these are measures that can lead to the death of people. And that's scientifically already proven and well established that you can look at an amount of pollution increase and be able to calculate how many deaths from asthma would result from those increases in pollution. So that's one thing. The second thing that we're doing is designing – or I should say designing, but developing litigation in support of communities that are suffering from, you know, massive levels of industrial pollution. And another thing that we're doing is looking at various kinds of policies that can be adopted – in particular, enforcing and strengthening civil rights laws and human rights standards in this country that focus on health and nondiscrimination.

Shumaker: Monique, could you reiterate for us, please (this is Ann Shumaker in Alabama) when this, the trading act did take effect?

Harden: At this point, I'm not certain if it's taken effect yet. I think it's, right now, it's a proposal.

Shumaker: Okay. All right. Would you be able to give the web site address for the EPA Title VI? Would you have that in your mind?

Harden: Yeah. It's www.epa.gov, and then you would click on "About EPA."

Shumaker: Okay.

Harden: And then you would click on "The Office of the Administrator."

Shumaker: Okay.

Harden: And then, from there, you will see "Office of Civil Rights."

Shumaker: All right.

~~Harden: And then, once you click on "Office of Civil Rights," you'll see a column on your,~~
on the left side of the screen that will say, among other things – it's a list. And one of the things, I think, is "Title VI External Compliance."

Shumaker: Okay.

Harden: And if you click on that, you will have a text description about the work, with things that you can click onto that are highlighted in the text, such as the summary of complaints, decisions by the agency, the federal regulations that the agency has implemented under Title VI and should therefore follow but, obviously, is not doing, that you can click on and get more information and get the actual text itself.

Robinson: Monique, this is Farella. Who currently is the staff director of the Civil Rights Division there?

Harden: I'm not sure who it is at this point.

Robinson: Okay, 'cause I know at one time there was only acting or either no one was in the position.

Harden: Right. Go ahead.

Robinson: You know, Justice was on a big roll several years back, maybe about five years ago, three or four years ago, and there were a lot of tools instituted within the federal government, as well as outside the federal government, to address environmental issues. How would you describe the current climate now with the current administration on some of these issues?

~~Harden: Well, I think the current administration is moving in a very dangerous direction~~
with regard to instituting and developing rules and regulations that fly in the face of public health and environmental protection. And we've just gone over two key ones, but, you know, you also, it's almost, you know ... They give them these really life, beneficial sounding titles and then, when you read it, what it says, it's, you know, how can you tell me that you're protecting public health when you will allow a facility to look back over their last ten years of pollution emissions and, from those last ten years, they can use two of the worst years in which they've released the highest levels of pollution, and use that as their standard? And in terms of their standard of operation, so that they can make anything they do to that facility, as long as it doesn't exceed the two worst years of their operations, they don't have to do anything to reduce pollution, to install pollution control equipment. That clearly flies in the face of public health when it's, you know, it's very clear

that, over the last ten years, environmental laws were not as strong as they were right prior to the Bush administration taking over. So that's ... And in terms of the details of how does that get into EPA work on environmental justice, we are seeing a troubling trend by the divisions of EPA that focus on environmental justice and civil rights, and that is coming up with reports and policies purported to be about achieving environmental justice that really move backwards and move off of environmental justice, so that you don't ... I mean, the reason why we got into this fight is because, you know, you can go to communities in Louisiana, communities in New York – you pick a state, we can find communities where you have a significant amount of pollution and toxic waste sites right where people are going to school, where their homes are, where their playgrounds and churches and schools are all located. And so the fight was focused on changing that situation, because people are dying and are suffering. A number of diseases related to the toxic chemicals that are generated by those waste sites and facilities. And what we have is that the EPA's Office of Environmental Justice is really putting together reports that focus more on the procedure, focus more on participation ...

(End of Side A of Tape 1)

Harden: ... on stopping racially disproportionate pollution burdens or even, because the EPA's Office of Environment Justice is broader than just racial disproportionality, but also looking at the disproportionate pollution impacts on low income people, regardless of their race.

R. Kelly: Right, right. A classic example is in Hopson City, which is outside of Anniston, and it's a, just about an all Black town. And, of course, this is in today's Anniston paper, but from toxic waste dumpsites, they found out hazardous levels of selenium mercury and arsenic in the ground, as well as the water samples. And so we're at the beginning stages right here of applying for a grant for clean up. We're applying for a Brownfield clean up and redevelopment program grant to determine the extent of the contamination. So I will be calling on you, if I could get your number, you know, for some directions in this specific area.

Harden: Sure. No problem. My office number's 504-304-2275.

Shumaker: 2275?

R. Kelly: Okay. This is Reverend Randy Kelly.

Harden: Okay. Nice to meet you, Reverend Kelly.

Shumaker: Ms. Harden, we do so appreciate your participation this morning. To be able to stay on our schedule, we can probably take one more question if we have any more, but I do want to say thank you for really shaking us up on this topic, and I hope that each one of the members of the committees will, as individuals, make contact with members of Congress and EPA. We can't do it as a member of the committees, but we can do it as individuals, and I do want to encourage everyone to do that.

Robinson: I have a question.

Borg: [At same time as Ms. Robinson] Ms. Harden, this is Lorna. I did have one final question. Do you believe that there would be any merit then to a class action suit,

perhaps against the Department of Education or whoever, for the inability to comply with the No Child Left Behind Act due to the failure of the EPA to enforce the environmental protection of the children that have to comply with that act?

Harden: I ... It doesn't sound meritorious to approach it that way, but I think the ... You're focusing on what does this mean for children's health is a very important one and one that does have potentially, you know, some support and through litigation, but maybe not in particular through that route that you've just laid out.

Guerero: This is Andre. I think Lorna's point, I think, in terms of standing, is a stretch, but I think it's a beautiful argument for bringing attention since No Child Left Behind is so much in the news, and in terms of public awareness, to demonstrate how all these policies weave themselves together in service or in detriment to citizens, communities and so forth. So my sense is that, even though I think it might be a stretch under No Child Left Behind, it would certainly be good to prepare information and to show how the, look at the untoward effects on children with their, the way, and then that resonating against the school performance.

Harden: Hmm, mm, hmm, mm.

Guerero: This is one aspect, since the 15 minutes or 15 seconds of publicity now that No Child Left Behind is getting, the spotlight is trained on it and this is one of the items of the moment. This is a good time to jump in and say, "Well, you're looking at academic performance. Look at the things that cause poor performance and among

them is health, and this is a terribly important issue.” Anyway, I’m just thinking in terms of public awareness and public information, it may be a very good strategy.

Harden: I would agree with that, and one thing I would add on, if you guys are, you know, serious about working that up and putting together information, know that there are a lot of organizations that focus on asthma and children who can give you tons and tons of information and would be willing to work with you on it. And one thing I wouldn’t leave out is lead exposures, which also has a tremendous negative impact on childhood development, and there are initiatives by the Bush administration that would, not are not, that really roll back lead prevention policies and programs.

Operator: Pardon the interruption. I have ...

Shumaker: Thank you so much, Ms. Harden. We appreciate that. You might want to stay on line. Our next presenter is Yvonne Powell, whose topic is environmental issues in Mississippi.

Operator: Pardon the interruption. Yvonne Powell is on the line.

Harden: Okay. I’m going to have to sign off, though, but I appreciate that, and you all have my phone number, so if you want to continue this conversation later, I’m available and interested.

Shumaker: Thank you very much, Ms. Harden.

Harden: Thank you all. Bye bye.

Shumaker: Welcome, Ms. Powell. Yvonne Powell, is that correct?

Powell: That’s correct.

Shumaker: Okay. We are delighted that you are willing to be with us this morning.

Powell: Yes, I wish the caller would have stayed on, because I think I might had something to, that she could listen to.

Shumaker: Hmm, mm. I'm sorry that she couldn't. But just to introduce you to everybody on the line, Yvonne Powell is a community activist and a member of Community Against Environmental Pollution in Columbus, Mississippi. She will discuss some of the environmental issues in Mississippi, and I'm sure that her issues will definitely relate to similar topics in Alabama, Louisiana and Arkansas. But, Ms. Powell, thank you for participating.

Powell: Yes. Let me correct something.

Shumaker: Okay.

Powell: My environmental project is PEACE, called People Effective Against Chemical Eugenics. And it's ...

Shumaker: Okay.

Powell: [A word or two not discernible while Ms. Shumaker spoke] ... Mississippi. What the impact is ...

Shumaker: Okay. I'm sorry. I had the incorrect information ...

Powell: That's okay.

Shumaker: ... on the bio.

Powell: Right. Well, what happened, in my community, I lived in Richton, Mississippi, for a number of years near a wood treatment facility. My father was employed at this

wood treatment named Joslin and Danahue, and Danahue is out of Washington, and Joslin is out of Chicago in the north. But what happened was they used to make CCA wood treatment blocks and dioxin pentol (?) and PCPs. My father and others were given block that we could bring home and burn in our fireplace, and we were given these blocks. Some we had to pay for, like ten dollars a load. And we would bring them home and burn them in our fireplace for over 20-something odd years. The impact was that our house was full of smoke. You couldn't breathe. It got in our clothes and it got in our beds. It got in our mattress. And we started recently, after the 20 years of exposure, seeing a lot of lupus, leukemia, non-Hodgkins lymphoma, children dying with brain cancer. We had an eight year old die this summer with brain cancer from these wood treatment blocks that we used in our fireplaces. EPA came in. We were looking for what could have caused this health problem, because we knew that something was happening with all these rare diseases in our community. So we called EPA in and Environmental Justice in, and the Environmental Justice program, to me, is a reverse discrimination. In other words, they take Blacks and use them in these positions to go against people of color. The impact was so bad until now, this year, I was diagnosed with lupus, which is an incurable disease. Also, it's just a horrible thing that has happened to us – the impact of these industries knowing, and we recently found out that they knew that they wasn't supposed to give us those blocks. But this kept down their expenses for taking them to a incinerator company where they should have taken

them for years. We paid the cost with our lives, and we're dying. My sister has heart disease, diabetes too. In other words, my community is dying. And EPA said, "We do not address past exposure." And I told them, "Past exposure! Your past has a way of catching up with us, you." My people take 15 to 20 pills a day just to live. And it's, it's horrible because these industries are multi-billion dollar companies, and they know they'd doing us wrong, but yet they do not want to pay the cost. We have been paying the cost for years now, you know. And that's what I'm saying. The Environmental Justice Department of Region 4 with Jimmy Palmer – it's not working. And we really need you all to come in to help us. And it's not only my community. We're finding that all over the South and southern part of Mississippi, these wood block from these wood treatment facilities were given to us and sold into our houses and we breathed them for years and years and years. And now our people are on kidney dialysis. The world want to know why are we sick. We are sick and someone knows why. It's eugenics from these wood treatment facilities in the South that are taking our life.

Shumaker: Could you tell me, have any portions in the media, or has any portion of the media emphasized this? Has this been brought out to the public?

Powell: I think that it is finally coming. This is the first year since I got involved I've testified in Washington. I've testified in Atlanta. And we are really ... This is the first time that you could really prove the contamination, not exactly from the water. We believe it was from the water. But from our chimneys. I've had samples taken.

Dioxins are all in our houses. High levels of dioxin. And they're in our fatty tissues, and we have autoimmune diseases, where we can't fight off the common cold. Our children, my daughter has rashes that have just destroyed her skin. I mean, yes, this is something new.

Borg: First of all, ...

[Ms. Robinson speaks over as Ms. Borg continues an indiscernible question.]

Robinson: Ms. Powell, this is Farella Robinson. What type of legal measures have been taken thus far and what type of activities or what type of efforts have been made by the state EPA?

Powell: The state is denying. They're not coming out with what happened to the people, although the doctors in the town talk about how they would come in to deliver the babies in our houses and said that they couldn't hardly deliver the babies because the smoke from the wood would just stifle them. You know, they couldn't hardly breathe. But the state, with Jimmy Palmer, as being the Director of EPA in Atlanta, would not give them very much, because he himself was the Director of DEQ in Mississippi, so he was very much aware of what was going on in state. So we can't get any help through EPA Region 4 because Jimmy Palmer is there.

Guerero: Have you gone to your congressional delegation and issued a complaint specifically against him?

Powell: Ah, no, we have talked to Senator Lott, but he has not returned any of my correspondence that I've written to him. In Mississippi, the wood treatment facility

is the biggie, and we have had the doctors from the Erin Brokovich movie, Dr.

Levine ...

Guerero: Yes.

Powell: ... came in, and he tested and he said never before had he seen such high levels of contamination within the blood system of our people. We have autoimmune. We have aplastic anemia. Everything you see on [???] on rare diseases, we have emphysema (sp?) syndrome. Any rare disease you can find in Richton, Mississippi.

Shumaker: How many, what is the population of your town?

Powell: It may be 10,000 at the most, and we have diseases that's supposed, never supposed to be here, based upon the population.

Borg: Madam Chair, may I finish the question I had started earlier?

Shumaker: Oh, yes. I'm so sorry.

Borg: Thank you. This is Lorna. Ms. Powell, as I was saying, I was really sorry to hear of the impact. There is someone here, and I hear you've worked with a doctor, a medical doctor. Are there any other scientists that you worked with, and there's one I would like to recommend to you. She's a chemist, and she works with community, grass roots community groups all over the country to assist them in solving some of the problems like you're talking about. Her number is 3 ... You have something to write this with?

Powell: Yes. I'm ... Yes. Go ahead

Borg: Her number is 337-367-2218, 1-6, excuse me, 2216. Her name is Wilma Supbra, S-U-B-R-A. She is probably one of the most knowledgeable persons, who's a scientist that works with community groups to help them reach solutions on this. So I recommend that you give her a call and use my name, please. It's Lorna, L-O-R-N-A, and she'll know who it is.

Powell: Lorna. Okay, and I would like to give my number out. My number is 601-731-1898. And if there is anybody that would be interested, a scientist or doctors that's listening in, we welcome you to come to Mississippi, because if you're looking for lupus in a cluster, we have it. If you're looking for non-Hodgkins lymphoma, we have it. The rare diseases are here.

Guerero: This is Andre. Is anybody from Mississippi Advisory Committee that's on line today, has this ...

Comment: Yes.

Guerero: ... presenter – has Chris – or Yvonne gone before you and have you all heard this and what's happening with regard to your Advisory Committee on this?

Foster: This is Willie Foster in Hattiesburg, Mississippi. I did talk with Ms. Powell. As a matter of fact, this is ... she's one of the persons I recommended ...

Powell: Thank you.

Foster: ... to be a presenter. We, hmm. We have, I have talked to ... I've just met with the group. I hadn't officially met with the group, and the group hadn't officially met with the Mississippi Advisory Committee, but I did talk with Ms. Powell

personally and then did give her the information that she could be a part of this presentation. To expand on some of the things she said, it's about, it's all over Mississippi. It's not only Richton, Mississippi. It's all over south Mississippi. And people are having problems with environmental injustice, but we've, as a group, the Mississippi Advisory Committee had not, not gotten involved in it because, well, this is the first time we've had any big concerns from a particular group to voice opposition or have concerns about it. But we've always known that the pollutants are in Mississippi, along with these wood treatment plants. And ...

Robinson: Dr. Guerero, this is the first time we've been presented with this information. I contacted Ms. Powell per Willie Foster, and so, certainly, there should be some follow up by the committee. Unfortunately, Alice Hardin, the chairman, is not here, but I certainly will conduct some follow up with Alice to see what we can do in this endeavor. Alice Hardin, of course, is well known in the state because she is State Representative. So, hopefully, we can try to get some things going.

Guerero: Well, that was my immediate intent in asking Yvonne that question. I mean, if any ... If this had come up in Arkansas, given the limitations of when we can meet and when we're allowed to meet ...

Robinson: Right.

Guerero: ... and all that, we couldn't have done much anyway. So I'm not pointing the finger at Mississippi, but just to suggest, as I think in our own states, the folks on that Advisory Committee probably are pretty well connected and have lots of ...

They may not be wealthy, but I think they have lots of resources, activists, advocate resources. And that was my intent in asking if, in asking Yvonne if she had gone to the Advisory Committee there, because in addition ...

Operator: Pardon the interruption. I have Ivy Davis joining.

Shumaker: Thank you.

Guerero: In addition to Senator Horton, I'm sure there are others there that could get on the ball and give her some help.

Powell: I would appreciate it.

Shumaker: Okay, are there other questions for Ms. Powell, please?

Stokes: Yes, I have a question. This is Martha Stokes from Alabama.

Shumaker: Okay.

Stokes: When, for my information, what year was the label put on that wood, "Do not burn"?

Powell: We never, we never received a label telling us not to burn in our wood, our fireplaces. Up and until 2000, they were still giving it, letting people get it, until I became involved in what was going on. We were never told, but the people that purchased the products were told that this was hazardous waste.

Stokes: Do you know what year that label was put on the purchased product? I was thinking that we bought some like in '91, and we were surprised at that label because we wanted to burn the leftovers.

Powell: Well, I don't know, but I had arsenic in my body in 1993 at 23 I think was the blood level, which was high in my blood system, and we've already dead children and we're finding arsenic and thadium(?) in their hair. So, we are finding it. But, in my conclusion, I would like to read something. It's the Declaration of Independence. "We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among those are Life, Liberty and the pursuit of Happiness. That to secure these Rights, Governments are instituted among Men, deriving their just powers from the consent of the governed." What I meant by this, who deprived? They deprived us of one of our constitutional rights, and that's the right to life. We don't have that anymore. I know that my destiny is not long because of lupus. Lupus is a very uncurable disease, and we're losing people by the thousands with this disease. So, if there is anybody out there that is willing to help to help us to bring this to the government, to their attention, that wood treatment facilities did not do what they were supposed to do with their waste. They gave it to people of color that didn't know any better, and we burned it for years. We barbecued with it. We cooked with it. It went into our system all kinds of ways. So, you know, I really thank you all for this opportunity to listen.

Robinson: Ms. Powell, I will contact you as soon as possible.

Powell: Okay.

Robinson: Per some creative strategies that ...

Powell: Thank you.

Robinson: ... maybe we can come up with ...

Powell: Thank you.

Robinson: ... to see where we can get you some help.

Powell: Thank you.

Shumaker: Ms. Powell, we do appreciate your coming. You have our prayers and best wishes...

Powell: Thank you.

Shumaker: ... as you face all of these topics that you have discovered, and I will say, just to encourage you individually, I'm very sorry to hear about your lupus, but I have a friend who has lived 23 years with it. So, hang in there.

Powell: Okay, thank you.

Shumaker: But, thank you again, Ms. Powell.

Powell: Okay.

Shumaker: And you have a very good day.

Powell: You, too. Bye bye.

Shumaker: Is Ms. Coombs on the line yet?

Robinson: Is Ms. Combs in the ... on line?

Operator: Pardon the interruption. Ms. Combs is on line with you now.

Coombs: Hello. This is Kristin.

Shumaker: Thank you very much. Kristin, for the benefit of everyone on the call, could you pronounce your last name correctly for us, please?

Coombs: Sure. No problem. Kristin Coombs.

Shumaker: Coombs? Okay.

Coombs: That's correct.

Shumaker: We had heard three or four different pronunciations, and I wanted to make sure we had that right.

Coombs: That's fine.

Shumaker: Well, we appreciate your coming, and just to introduce you to the members of the Alabama, Arkansas, Mississippi and Louisiana State Advisory Committees to the U.S. Commission on Civil Rights, I will just read a couple of sentences from your bio here. Kristin Coombs is Coordinator of Multi-Cultural Resource Center for Catholic Charities in Birmingham, Alabama. Catholic Charities work with individuals, families and communities to help meet their needs and eliminate social injustices. Catholic Charities has a very active immigrant outreach program. Ms. Coombs will discuss the outstanding and emerging civil rights issues for immigrants in Alabama. And if you would like to add anything to your short bio there, I would be happy for you to do so.

Coombs: Not to use up the precious time of the committee, but to give a little background about what we do here, the Multi-Cultural Resource Center is a new program in conjunction with Hoover, which is our municipality. It's one of the first in our area

that is a collaboration between a municipality and a nonprofit organization, trying to address some of the arising concerns of the immigrants in our community that the communities have been a little slow to recognize. There are 47 different languages spoken in our local public school system, and the predominately Hispanic and Latino population has more than tripled in the last 5 years. These are ... I provide this information just to give a little bit of a background to what we do as a center. We work also with 20 different community groups and organizations, nonprofits and churches to provide this service to the community. The information I sent was three highlights, and I'll focus predominately on two of those. The first that we have been addressed and been in meetings about to address is the Memorandum of Understanding, which has recently taken effect in Alabama, that allows state police to become essentially immigration enforcement. We have had meetings with Department of Public Safety about this issue, who has tried to reassure us of their intent not to discriminate based on racial profiling; however, story after story has come to us through our clients of individuals that have already been discriminated against, individuals, third generation individuals, citizens of the state, who are being pulled over, and the first thing they're asked for is: "Let me see your immigration papers." And most people that are citizens, no, you don't have any immigration papers, and this is causing a lot of problems. In addition, one of the biggest concerns with local police that we work very closely with here in Hoover is the fact that it has destroyed the relationship that they've been working very hard to

establish with local communities, to be able to report crime, report abuses, come to the police in cases of domestic violence. This memorandum has undermined the slow progress that was being made towards having faith in local police officers. We have tried ... We have sent representatives to the State to try and work with them on how to minimize this. The State has worked very hard to reassure us that this is not going to be an issue, but from our level, which is a community-based forum, we are already hearing the problems of the implementation. I would also address briefly as a statement the concerns over having inadequate identification for immigrants, both documented and undocumented, in our state. The only reason I bring that up as a civil rights issue is it, again, has led to discrimination, immigration documentation being held at driver's license facilities. You know, I had a Nigerian immigrant that wanted to get his driver's license on a student visa and the person at the driver's license facility said, "Well, I don't believe this documentation. We're going to hold it. You can pick it up next week at your local customs office." That is our primary concern in terms of advocacy, is that it, again, this fear of leading to misinformation and not enough people are being trained to be able to identify the appropriate documentation. The third item that I have listed that is causing problems and concerns for both nonprofits and, you know, as a social worker, advocates is the language barrier in terms of interpreters and having access to care is one aspect, but more importantly, being very concerned about having informed consent with medical treatment and having due process in the court

systems. There is no formal certification process in the state for language interpreters. Individuals are being encouraged: "Oh, bring your own interpreter to court." Or, bring your own interpreter to the hospital, and while the law requires that anybody that is receiving public funds is required in both of those settings to provide an interpreter, the reality is that that is not being done. And that has led to misdiagnosis. That has led to having many situations where people are not receiving their due process. Those members that are on from Alabama are probably familiar with the DHR case lately that has surfaced where an interpreter was not provided to a mother of a child that spoke her language and, therefore, it has led to many court proceedings and the removal of the child – that we're missing the gap there. You know, in a court, the judge will say to an individual, "Do you understand me? Do you speak English," and if an individual says "yes," then they proceed. That would be like asking a five-year-old child "Do you speak English?" Well, yes, but that does not mean that they can consent to medical treatment, and that does not mean that they are in any way capable of defending themselves in court, having the appropriate language for those settings. Part of our job is advocating for poor and underserved, and the immigrant populations in our community are very much being abused and underserved on parity with the mainstream populations. That's the piece I wanted to present briefly and open up to questions, because I know our issues are very much surface level that need to be

community-based. And if there are any questions that I can answer, you'll need to go ahead.

Shumaker: For the benefit of the people who are on other SAC committees other than the Alabama one, could you give your location as a Birmingham suburb and maybe tell the population of Hoover, please.

Coombs: Sure. Hoover is located south of Birmingham. It has a population running close to 100,000 that has been exploding lately. It's the fastest growing segment of metropolitan Birmingham and in terms, like I said, of diversity, we have our numbers for immigrants based primarily on the public schools, where we have 47 different languages and approximately 20% of the students are of a foreign birth.

Shumaker: Which area of foreign birth citizens would be the greatest in your area?

Coombs: Latin American and South American.

Shumaker: Okay. And most of these are working in what kind of career?

Coombs: The Latin American and South American are predominately service industries, whether it's retail or restaurant and hotel area or construction. But also we have a large population of immigrants that are working in the, not quite as close, but the automobile plants. That we have a Mercedes plant, we have a Hundai plant, and we have a Honda plant.

I. Davis: This is Ivy Davis. Can I ask a question, please, about the distinction between Latin American and South American? Can you give an example of a country from each of those?

Coombs: Latin American are those we consider to be Central American – Guatemala, for example.

I. Davis: Okay.

Coombs: Versus South American, which could be Brazil and Chile and ...

I. Davis: So would the Caribbean be included in the Latin American?

Coombs: We do consider that ...

I. Davis: But you don't have them mainly?

Coombs: No. No. We have some Cuban and Puerto Rican and some Haitian, you know, if you're looking in your island communities, but not as a predominate community.

I. Davis: Okay. Thank you.

Coombs: Hmm, mm.

Shumaker: Do any of the members of any of the committees have questions?

Guerero: Well, this is Andre. Just a general – and the rest of you will know this probably very well. It's a phenomenon that's all over the South now – the influx of immigrants, mostly but not exclusively Hispanic. In Arkansas, for example, 87% of the non-native speakers of English in the school system, more or less, you can do mathematical modeling and carry that out into the general population, using census data, speak Spanish at home, although, of course, it's not exclusively that. And the myriad issues that you brought up are excellent and they hit on not just the appropriate access to services across the board, whether it's a driver's license or the justice system or the juvenile justice system or the health care system, when they

have access to that, or the child welfare system or the employment system, whatever, not just the issue of language, the language barrier, but the actual provision of services even if you have an interpreter available is a major issue. One just brief thing and I'll stop, 'cause I could go on and on with this. But, with regards to driver's license, one of the tactics we used in this state when this came up earlier, in terms of what identification and people were turned away and having documents challenged, our legislative Black Caucus that is very advocacy-for-human-rights-focused and centered in our state and has been a tremendous legislative, state legislative, support network for immigrant and especially Latino groups. We went to them and they were able to get some hearings put together on this issue, along with other legislators that were not members of the caucus, and we brought in Captain, Colonel or I'm not sure what the rank is of the Highway Patrol or whatever agency that handled the driver's licenses, issuing them here and brought up the issue of challenging documents. And we just sort of snuck in the notion that if you ask someone who looks Latino or Cambodian or whatever for proof of citizenship, that under due process and under consistency, if you do not ask a native-born white Arkansan to produce documents, not just previous driver's licenses or Social Security cards, but to produce documents proving citizenship and have them go back to their county clerks or whatever and scramble for a birth certificate, if you don't ask them, then you're being inconsistent and discriminatory. And, of course, very quickly they saw what an uproar that would cause in turning

native-born Arkansans away, and so that was one of the things we got to have them back off a little bit on that issue. But interpreters and the consular-issued cards and all that, it's still a big issue here in Arkansas.

Coombs: And I know that these are issues that are constantly brought to the attention of the Commission, I'm sure, in many different locations. They are our top concerns in this state right now, and the colonel of our Public Safety is always reassuring those of us that have met with him that this will not happen. "Oh, no, that's not our policy. There is no racial profiling. We will not ask for those papers." The reality is that it is happening. Our hope is that enough people will continue to come forward and tell us that it is happening that they will be forced to back down in their practice with that.

Guerero: On a human rights commission that was established for the City of Little Rock, and I was on that for awhile, one of the ways we tested out racial profiling in terms of, for example, police procedures and complaints filed against police, for example, is that we ourselves, those of us who spoke Spanish and those that were African American, went in dressed very modestly as someone off the street, speaking Spanish or asking to file a, in the case of police complaint, asking to file a complaint, and we had a fellow member of the commission accompany us and write down the procedures, what happened, a description, who we spoke with, and several things came out that were very, very interesting and beneficial. That might be one way. I don't know, if you get a TV camera, it would be too obvious, but you

may want to send some testers. And as the real estate, as folks looking at housing discrimination and rental and in sales often do, they send in these testers to see if they're steered towards certain areas and so forth.

Coombs: And I'm sure that did reveal some very interesting results. As we have seen, I'm sure that would probably be a good idea to address. I am not originally from Alabama, and it has been an affront in many ways to have to deal with these issues. Many states are much more forward thinking in how they have addressed immigrant issues.

Guerero: I wouldn't count on it. There's a ... I think that the list of partners that you have, that was on the Multi-Cultural Resource Center letterhead that Farella shared with us, is a very impressive list. Incidentally, those 17 partners, it looks like you all have some resources there.

Coombs: We are working on gathering. There are a lot of people concerned about immigrant issues. We work with our local universities to try and address both the cultural awareness, trying to put educational pieces out into the community and businesses and schools, as well as being individual advocates for those that come to our center.

Guerero: Has either Loulack (?) or Mulduff (?) in your state asked for any relief on these issues? Have you asked them for any help on these issues?

Coombs: Mulduff has ... We've been working with Mulduff out of Atlanta, actually, is our closest contact for that, who has been very helpful in providing information to try and combat some of the issues. But we have a Department of Public Safety that is

not willing to consider any more the use of the ITIN (?) or the use of the consulate IDs as forms of identification. So that has led to broader discrimination because the identifications that some people can provide are not being accepted.

Guerero: Do the banks accept them? One of the back doors into getting the agencies to accept them is that the commercial enterprises recognize the potential for business in having someone they can document and selling all kinds of things, whether it's car insurance or whatever. Is there any resonance there with the commercial sector to accept those cards so that they can begin doing business with the community?

Coombs: On an individual basis, we have one bank that will work with people right now, and it's still very much an underlying ... People are afraid to come out in support of using that due to political pressures, locally, that do not want the acceptance of an integration of immigrants in this community, to try and make a politically appropriate statement there.

Shumaker: Kristin, just for my own information ...

Coombs: Sure.

Shumaker: ... do you keep a list of volunteer translators, slash interpreters, at your facility?

Coombs: Yes, we do. We also sometimes work to have to find, actively find, interpreters. We had a request a couple weeks ago for a Bulgarian interpreter from our school system, so slowly our list is getting longer and longer. We have also submitted grants to try and develop with our partner organizations and 800 language hotline that, on a nonprofit basis – you know, AT&T does a helpline that's language, but all

the doctors that we know locally won't utilize because, for a \$45 doctor visit, they're going to have to pay a \$75 interpreting fee. And so we've tried to look at a number of ways ... Our first proposal for that was denied, and we have to keep working for it.

Guerero: Another route is to take a look ... You may have done this. One of the things I did was to work with those folks that were receiving federal funds and take a look at the reports. The Department of Health, for example, here. And, you know, I guess about maybe two or three elections ago, the demographics were obvious, and all of a sudden the Hispanic thing – I know there are many other immigrant groups – but the Hispanic voting thing or voting power hit. And so all of a sudden the stuff coming out of D.C., the proposals ... I know in our State Department of Education they popped up. Language minority, ESL, LEP began popping up all over the place and how do you address the needs of this community in the application, the continuing application. The states now submit in these consolidated applications for funding and are reviews. And that may be one way to go ahead and work with those folks to see what they put in and, if they didn't provide for translators, they may be in violation – you've heard this before – you know, but in violation of their own rules and regs, and you might begin, you know, that way, to make a little impact. And then anybody that receives Department of Health funding, community clinics and others, would be asked through the state agency to collect the data and to see how they're in compliance with that.

Operator: Excuse me. Sheila Gomez is on the line.

Shumaker: Thank you. Well, thank you very much, Ms. Coombs. We do appreciate your participation with us today. I think you have enlightened a lot of us on the problems that many of our immigrant friends have encountered.

Coombs: Thank you for ...

Shumaker: And we wish you much luck, and you have our best wishes at your resource center.

Coombs: Thank you for having me and for the work you're doing.

Shumaker: Thank you. I understand that Sheila Gomez is on the line. Is that correct?

Gomez: Yes, I am.

Shumaker: Okay. Roberta Madden from the Louisiana Advisory Committee will conduct the question and answer sessions for our next two presenters.

Madden: All right. Welcome, Ms. Gomez. My name is Roberta Madden. I'm Chair of the State Advisory Committee for Louisiana. And let me introduce Ms. Gomez and then we'll let you make your statement. Sheila Gomez is Director of Social Services for Catholic Charities in Little Rock, Arkansas. She will discuss outstanding and emerging civil rights issues for immigrants in Arkansas. She will also provide an update on the immigrant problems identified in 1998, during a fact-finding meeting of the Arkansas Advisory Committee. Ms. Gomez, go ahead.

Gomez: Thank you. My name is Sheila Gomez and I'm Director of Catholic Charities of Arkansas. My statement is as follows. I've been involved in community outreach with the immigrant community since the early 1990's and have witnessed the ebb

and flow of this population growth. I've been in a position, as Assistant Director to Hispanic Ministry Director of Catholic Immigration Services and now as Director of Catholic Charities of Arkansas, to have an insight of the reality of our newest residents to Arkansas. My experience is that when those with authority and power in government are proactive in efforts to integrate, educate and promote harmony in the community at large, that the results are positive. Conversely, when those in authority are reactive to integration, the results are then negative or, at the very least, ineffective. In Arkansas, during the early 1990's, the state government was proactive in promoting integration with immigrants. The Governor's Office had a commission to study the situation and to make recommendations. Some of the recommendations were later implemented with positive results. After a change in leadership, the commission was disbanded. The influx of immigrants, mainly Latino, from Mexico continued and grew by leaps and bounds and remains one of the fastest growing immigrant populations in the United States. The infrastructure in the state was not ready to absorb all of the new residents and, therefore, there were breakdowns and glitches in the system. Those glitches led to discriminatory patterns in law enforcement, delivery of government services and misunderstandings in the general population. Some dedicated and community-minded citizens formed grassroots groups to bring awareness to this situation and to educate the community. The state and local governments responded, and I believe that real progress was being made before the attack on 9-11. I believe that the

aftermath of 9-11 has contributed to an accepted discrimination against persons perceived to be foreign. The term, "illegals," contributes to a generalized attitude that all persons of a foreign national origin are suspect of being criminal and, therefore, are treated as such, especially persons of darker skin color and persons from the Middle East. This is a serious situation.

(End of Tape 1)

Gomez: ... in our communities and in our nation. We need to educate our communities on what constitutes national origin, discrimination and document abuse. I believe that in most cases people are unaware that their actions and policies are discriminatory. We need to educate, educate and educate some more, both the immigrant community and the community at large, and we need to implement consequences for document abuse and national origin discriminatory behavior and policies. And that's my statement.

Madden: Thank you, Ms. Gomez. Do members of the committees have questions?

Gomez: Okay.

Guerero: Sheila, this is Andre. Could you ...

Gomez: Hi, Andre.

Guerero: Hi, love. Great statement and couldn't agree more with everything you said.

Sheila, could you talk a little bit about the, maybe, the way in which, since 9-11, anything they have changed for Ms. Houlihan's office, where you used to be? Has

that caseload increased? What's happening for people who are trying to get legalized and any civil right issues that you see emerging there?

Gomez: The caseload has, of course, increased because the flow of immigrants keeps coming, and it is that much more complicated since we have all the changes at INS and with our policies these days. So everything is much more complicated. More people have to be fingerprinted. The FBI is overloaded. So waiting, you know, before people can be reunified – families – the time period is just doubling. It's lengthening and things are just much more complicated.

Guerero: Two specific things that happened since 9-11. One – both of which I attribute indirectly to 9-11 – is that there was an attempt and a movement of folks to get through the legislature some legislation already passed in some states that would allow older students, high school students, who were here without papers, to establish a process – I know the Dream Act in Congress ...

Gomez: Right.

Guerero: ... also addressed this. But, in our state, to get a process in place that would allow them, not just once they're able to stay here, to qualify to enter our state-supported institutions of higher education at in-state rates. Once 9-11 happened, that just stopped all that because of the hysteria about immigrants. The second thing was a very curious incident that happened here that the rest of you all may be interested in. An official with Homeland Security, that now is the umbrella that includes what used to be called the Immigration and Naturalization Service, an official of one of

the regional offices here in central Arkansas called a high school principal in our state. Now, as many of you all know, it's been my experience anyway, it's very difficult to intimidate a high school principal. They've seen it all and they're pretty grounded in their, what they've got to deal with on a daily basis – parents, the press, whatever, students. And I got a call from a high school principal almost in tears, and she was not a shrinking violet type. One of the officers of INS had called her and told her that he wanted to know who in her school was an illegal alien and she had better provide that information to him, and she knew who they were, and she'd be in trouble if she did not provide that information.

Comment: [Indiscernible word or two] I'd be gone.

Guerero: You know. Well, of course ...

Comment: I thought you were going to go out of town. I thought you were going to leave.

Comment: Well, I've got my keys and I'm going to go down to the ...

Comment: I think we have some interference on the line.

Comment: Well, "think."

Guerero: Okay, in any event, after I calmed down, I went absolutely ballistic on this. I began going backwards, and I called the field office. I got the agent on line, and I've never been dealt with ... And I was very calm. I slept on it to make sure I would not be offensive in my language when I talked to this officer, and I just asked him what the procedures were. His response to me was that, unless I was an official of his office, he did not have to answer any of my questions and would not and hung

up the phone. Well, I then called back and I asked for the agent in charge of that office, who wasn't in. The agent in charge did call me back two days later, returned the call, and we had a very rational conversation. He said that was not their procedure, that this was a rogue agent – I took all that with a grain of salt – and that it would not happen again. I then contacted one of our U.S. Senators, Blanche Lincoln's office, and dealt with a member of her staff, two members of her staff, about this abuse. They were so livid about it, they want to have a visit to this field office to gather information to send on to the appropriate supervisor in Washington. But, in any event, that is one incident that happened and it happened, you know, maybe three or four months after 9-1-1, once school was back in session. And it was just very disturbing, and I think that ... I don't know if this has happened again. I don't know what these agents are telling people in schools, but I'm very concerned about it.

I. Davis: I know, for clarification, Andre, this is Ivy. Madam Chair, may I ask a question of...?

Madden: Go right ahead.

I. Davis: Okay. I was curious as to whether there is any kind of written documentation or letter, either from you as the Chair or a letter from the Central Regional Office to either, to the agent in charge, for example, sort of recounting your conversation and his statement that this person was acting outside the scope of his duties?

Guerero: I didn't put it in writing. After dealing with senator's office, they said that they would come over and work with me on that and then move on. Quite frankly, I didn't follow up on it. I probably should have. Sort of waiting for them to take the initiative. However, I did call the principal back because the agent's supervisor told me he was going to call the principal, clarify it and apologize. And when I called her, she said that the supervisor did call, did apologize and she felt fine about it. So, my issue ... With me, the issue was not did he apologize and did we accept it but is this happening? And very much like in these offices where driver's licenses are issued, do you have people at the head either winking or saying it doesn't happen, but you have rogue agents acting this way?

Gomez: May I ask the commission? Were you able to get my statement? I faxed it yesterday, and I don't know if you got it in time.

Robinson: Sheila, this if Farella. We received your statement yesterday. However, we were unable to distribute to the ...

Gomez: Okay. Right.

Robinson: ... SAC members.

Gomez: I apologize. I was in a car accident and have been out of commission for a couple of weeks, so ... with a concussion, so ...

Robinson: All right.

Gomez: Can I read some of the things that I put on there? What I did is I contacted our contacts in the different areas of the state and got some instances of what is happening around the state. Would you like to hear that?

Comment: Yes.

Comment: Go right ahead.

Comment: Yes.

Gomez: Okay. In northwest Arkansas, I have seven. Number one was that local citizens and community-based organizations brought a racial profiling suit against the City of Rogers. The suit alleged that racial profiling was being systematically conducted by the Rogers Police Department under direction from the mayor of Rogers. The suit was settled a few months ago with concessions by the Rogers Police Department. And they did write up a policy on racial profiling. Number two: Our immigration office in the northwest has heard numerous complaints from persons have I-9 issues in the workplace, because of having a foreign appearance, in small to medium sized businesses. The employers are asking for specific and more documentation based on national origin and appearance. Is everyone familiar with document abuse? Document abuse is, surrounds the issue of when we are asked for specific documentation. When someone applies for a job, the rules and regs stipulate that that person has to be hired on the basis of whether they can or cannot do the job, and then they themselves have three days to produce either a document from List A or a document from List B – one from B and one from C – to show that

they are eligible to work in the United States. However, what happens is that when someone shows up to apply for a job, if they have an accent or they look, quote unquote, foreign, then oftentimes the employer, say, will write out, say, before they're even hired or ask questions, "Let me see your green card." Or they'll say, "Come back tomorrow with a green card and a Social Security card." So they, in essence, are saying which documents that person has to produce, and they are asking only person only of certain national origins for documents. Whereas if someone from Arkansas shows up with an Arkansas accent, they are not asked for those specific documents. So, that's happening. Number three: Our immigration office has heard a number of complaints from persons with valid employment authorization documents and/or valid legal permanent resident alien cards, green cards, not being considered for a position in the workplace due to not being a citizen. Number four: Non-English speakers are being refused the ability to open a bank account even though they have the required documentation. Number five: In Siloam Springs, Spanish-speaking people must produce a Social Security Number in order to donate blood to the Red Cross. Number six: In Springdale and Rogers, there are reports of people systematically being selectively asked for documentation to renew a driver's license based on appearance. So they're renewing their driver's license and they look foreign, they have to come up with more documentation than someone who does not. Number seven: In Springdale, there were numerous instances of children being automatically placed in ESL classes without testing,

based on a positive answer that another language was spoken at home. At least four of these children were U.S. citizens born in California. In central Arkansas, I have a few instances. Number one: In Pine Bluff, again, Spanish-speaking people must produce Social Security Numbers in order to donate blood to the Red Cross. That sounds like it might be a policy of theirs. Number two: In the Dardenelle area, there are numerous reports about worker rights being abused and problems with work accidents in smaller poultry plants. Now, these aren't the poultry plants that are – not the big industry poultry plants, but the smaller, local kind of poultry plants. Number three: In Little Rock, people have reported that they have problems in government offices when they speak English with an accent and that they are treated differently. There are reports from our immigration office that clients with valid employment authorization documents have been refused Social Security card applications. Persons are systematically being selectively asked for documentation to renew driver's licenses if they appear to be foreign. And, in southeast Arkansas, there were complaints from immigrant farm workers concerning employers charging \$50 to fill out the W-2 form. So, those are the different examples that I had written up for you.

Madden: Thank you so much. We appreciate that. Are there other questions? Members? Anyone else have questions?

Guerero: Sheila, this is Andre. What is Catholic Charities' priorities for this year for either those or other issues that you think are pressing?

Gomez: Our priority is, as I have said before, educate, educate, educate, and to get out, we're providing workshops to employers ...

Guerero: Good.

Gomez: ... about this situation and what is the law, because I really believe that, in many cases, it's because people don't know and people are in this ... I believe we're under this umbrella that there's certain people that it's okay to discriminate against, those being foreign people – that it's all right; we'll be protected if we do. So people feel that that's normal and natural and okay and even patriotic in some cases. So, I think the answer is to educate, right now. And educate the immigrant community so that they understand that this is not to be tolerated.

Guerero: I went to one of those employer workshops about two years ago. It was excellent. Do you have any plans to do any of those for state agencies?

Gomez: Well, we've been working with the police in Springdale, in the northwest ...

Guerero: Yes.

Gomez: ... and have had wonderful results, wonderful results with them. And I'm also talking to, in contact with the prison system to educate the workers in the prisons, in the state prisons.

Guerero: I'm just wondering if a general workshop for driver's license offices or ...

Gomez: That would be wonderful.

Guerero: ... you know, okay.

Gomez: Hmm, mm. That's a very good idea.

Madden: Are there other comments? I believe our time is almost up. Ms. Gomez, thank you much for participating in this conference.

Gomez: Well, thank you for inviting. I appreciate, always appreciate a chance to talk.

Guerero: Hope you feel better, Sheila.

Gomez: Well, thank you. I appreciate that. Okay, I was ...

Madden: Very enlightening.

Gomez: ... I was stopped at a red light, so ...

Guerero: God.

Gomez: Yeah, when it happened.

Guerero: It rains on the just and unjust.

Gomez: [Laughs] Yeah, in a U-Haul truck.

Madden: Ms. Gomez, feel free to stay on for the rest of our call. We have some other presenters.

Gomez: Well, I appreciate it. Thank you so much.

Madden: Thank you.

Gomez: Bye bye.

Madden: Our next presenter is Dr. Gregory Squires. Is he on the line yet?

Squires: Yes, I am.

Operator: Dr. Squires is on. Thank you.

Madden: Let me introduce Dr. Squires. He is a sociologist at George Washington University, and he is going to be discussing predatory lending. He's an expert on inequities in the financial services industry. Dr. Squires, please go right ahead.

Squires: You know, my understanding is that you want me to talk for about five minutes. Is that right?

Madden: Right, and then we'll have some questions.

Squires: Okay. Sure. Well, I guess the basic message that I want to deliver is that, when it comes to home mortgage lending, there has been some very good news in recent years and there's been some not-so-good news in recent years. The good news is that access to credit has increased significantly for low income and minority borrowers and neighborhoods, thanks to things like the Community Reinvestment Act and fair housing law enforcement and the organizing of nonprofit community-based organizations. There is clear evidence that the share of loans and the number of loans going to these distressed markets has increased significantly in the last ten or fifteen years. The bad news is that, in recent years, we've learned that while the quantity of credit has been increasing, there's some concern with the quality of credit. In other words, the type of loans that people are getting are increasingly loans that are in the so-called sub-prime market, many of which are predatory loans, and I'll talk a little bit about what I mean by "predatory" in a minute. But we've seen – and let me just run a few numbers by you. Between 1993 and 2000, the share of home purchase loans that were accounted for by sub-prime lenders grew

from 1 to 13%. We know that Blacks are three times as likely as Whites to finance homes with sub-prime loans. We know that residents of Black areas are five times as likely to finance homes with sub-prime loans. We know that sub-prime borrowers are eight times as likely to default. We know that Fannie May and Freddie Mac have each independently estimated that anywhere from 30 to 50% of borrowers who are currently getting sub-prime loans would actually qualify for prime loans. So, we see people being channeled into sub-prime lending categories, particularly in low-income and minority areas. And sub-prime lending doesn't necessarily mean predatory; but clearly, the predatory lending activity that does occur is occurring in the sub-prime market. And while we don't have – there's no explicit definition of predatory loans or no precise quantitative estimate, it's clear that predatory lending has increased. And the kinds of practices we're talking about, just to give you a few examples, would be loans that have interest rates and fees that are much higher than could be justified by the risk posed by the borrower. These are loans that often have high balloon payments. So somebody could be making monthly payments for three or four or five years and then owe several hundreds, not hundred, several thousands of dollars at the end in one large payment, and if they don't have that money, they would lose their home. Often lenders will require single-premium credit life insurance and require that the annual premium be paid up front. This simply increased the cost of the loan throughout the life of the loan. In other cases, there's what's called "forced place homeowner's insurance,"

where you're told which insurance policy you will buy and from which company, and often this is not in the interest of the consumer. Another common feature is high prepayment penalties, which trap borrowers in these high-cost loans. So you have a loan but you're told, if you want to pay it off completely, you have to pay a high fee, which people don't have, and then they're trapped in these loans.

Sometimes we see that there's financing fees for services that are literally not provided. Sometimes we see loan flipping, where people are encouraged to just continue refinancing a loan at apparently better rates but, in fact, with all kinds of fees built in so it becomes increasingly costly for the borrower. And the final example I'll mention is lending which is based on the property value rather than on the income of a borrower. So if you have an elderly couple that has a low income now, but they own their home and their home is worth a fair amount of money, they may be offered a loan based on the value of the property, but they really don't have the income to pay it back, so they eventually default and may even lose their home. Now there's a number of reasons why such lending is increased. Let me offer just a couple that occurred to me. One, I mean, predatory lending is obviously a problem and we need to be concerned about the behavior of predatory lenders, but I think we need to begin by understanding that it's the withdrawal of mainstream, conventional institutions that create a market opportunity for these predatory actors to succeed. And we see, for example, between the mid-70's and mid-90's, the number of banking offices in low-income areas declined by over 20% while they increased

29% overall. Between the mid-80's and mid-90's, we see a tremendous increase in check-cashing outlets from around 2,000 to over 5,500, concentrated in lower-income neighborhoods. We also see a weakening of the impact of the Community Reinvestment Act. As you may know, the Community Reinvestment Act covers depository institutions – basically banks and savings and loans. But mortgage lending is increasingly being made by mortgage banks, some that are affiliated with conventional banks, some that are independent. We see insurance companies and security firms making mortgage loans. So the share of loans covered by the CRA has dropped from around 70 to 80% of all loans to less than half of all loans that are made today. Now, what can be done? A number of things are being done. There are at least six states and nine cities that have passed anti-predatory lending laws that would prohibit or limit some of the kinds of practices that I just mentioned. There are some local fair-housing and consumer organizations that are working with borrowers to help move them from predatory loans to conventional loans. The Federal Trade Commission has settled a number of large complaints with predatory lenders, providing hundreds of thousands of dollars in remedies, but at the same time, there's for every step forward, there's the proverbial step backwards. A number of the bank regulatory agencies have introduced or examined preemption laws or rules, which eliminate the effect of state or local anti-predatory lending laws. There's a bill in Congress right now, submitted by Ohio Congressman Ney, that would simply preempt all state and local anti-predatory lending bills. So let me

conclude by suggesting three things we might think about doing in the future. One is we need to revise the Community Reinvestment Act so that it brings independent mortgage banks, insurers and security firms under the umbrella so that the CRA once again covers the lion's share of the mortgage market. It seems to me we need to discourage Congress from considering the Ney bill and give more consideration to bills that have been introduced by Senator Sarbanes and Congresswoman Jan Schakowsky from Chicago. And we should probably encourage more lenders and community organizations to develop these kinds of rescue funds that I mentioned that are helping people that are in predatory loans – get them out from under those loans. And I guess, finally, I guess a fourth proposal I would offer: Everybody's in favor of financial literacy training and home ownership counseling, and these are good ideas and we want to encourage them. We are now beginning to see, as more and more service providers are out there in the market, some of them are exploitative and predatory, and there's now some concern with the quality of the services being made by at least a handful of entities that claim to be home-buying counseling and credit counseling organizations. That's it.

(Applause)

Madden: All right. Thank you so much, Professor. Are there questions? I'm sure Lorna Borg will have some questions.

Borg: Ha, ha, ha. Well, I'm never shy about that. That's true enough. Thank you. I found your paper, that you submitted to us, just brilliantly done, and I want to thank you for that and the quality of your testimony here this morning.

Squires: Thank you.

Borg: I do have a couple of areas to talk, to ask about. One is how would you recommend that this commission highlight this in the country as a civil rights issue in addition to it being a bank regulatory issue? And then, secondly, would you have some kind of estimate of the impact on protected classes? I know that this is billions of dollars that, in my opinion, are removed each year from the most vulnerable among us and maybe, over a ten year period, it would probably approach half a trillion dollars, perhaps. Do you have any estimate of that, is the second question.

Squires: Take the second question first. No, I don't, and I'm not sure if anybody does, but that doesn't mean it isn't out there. There are so many groups now that are getting involved in predatory lending. In fact, if you wanted to give me an email address, I can send you a list of at least 20 organizations that I know of -- housing and consumer advocacy groups -- I can send you their web sites and brief descriptions -- that are all working on various aspects of predatory lending.

Borg: I would ask Farella if she would get that for the Commissioners and make that available to us, please?

Squires: And, but I don't know if anybody has come up with a hard or frankly even a soft estimate. On your first question, though, I think the best way to try to make this a

civil rights issue is by revisiting and doing more research on the racial effect here by looking at the disparities between the share of Blacks and Whites and other groups that are using sub-prime as opposed to prime loans or looking at the neighborhoods in which these loans are going. And a number of organizations like the Center for Community Change, the Woodstock Institute, the National Community Reinvestment Coalition, are all doing research on this and have turned out research clearly showing that sub-prime loans are disproportionately going to minority borrowers and minority communities. And I believe that the National Community Reinvestment Coalition, in the next week or two, was going to come out with a fairly significant new study looking precisely at this issue.

Borg: Are you familiar ...? This is Lorna Borg again. Are you familiar with Southern Exposure, a summer of 2003 issue, "Banking on Misery"? It's a ...

Squires: Yes, I have seen that.

Borg: ... whole piece on CitiGroup, Wall Street and the fleecing of the South particularly.

Squires: Right, and unfortunately ...

Borg: And they have a whole section in there about who's targeted ...

Squires: Right.

Borg: ... and the numbers.

Squires: Yeah. I have seen that. That's an excellent piece. Unfortunately, what they're describing is not unique to the South.

Borg: So you would say that this is a national civil rights, serious economic impact against protected classes issue?

Squires: I would, for sure. And the primary protected class here, I think, is race. I mean the elderly are a targeted group, and low-income folks, I think, are targeted. But in terms of at least the Federal Fair Housing Act, the primary protected group is race.

Borg: You might, under the Civil Rights Act, be able to argue that there are at least three protected classes – race, ... We also find it with women, so that would be a fourth. Elderly and by income.

Squires: Yeah, but under the Federal Fair Housing Act, age and income are not protected classes. Obviously, there are other state and local statutes in which they are.

Guerero: What specific law do you all ... or are there many or any ... I mean, it just seems to me this is one, another example that this sort of market force has gone wild that we have now in our, in our country. But if someone puts a lousy rate out there and somebody, because they're desperate, hooks ... It's like buying a used car at exorbitant prices. What law actually is there that protects the consumer – specific law against, you know, the caveat emptor principle. I mean, what ...?

Squires: Well, I would look ... The state of North Carolina was the first state to pass an anti-predatory lending law, and there has now a fair amount of research on the impact of that law, and there's some debate. The issue is, do these laws dry up legitimate sub-prime borrowing opportunities, and the reas... There's one study by Michael Steadman, who used to be at HUD, that looked at the North Carolina law,

the impact in the few years that it's been in place, and found that, indeed, it did result in some decline in sub-prime lending, but it was a decline of those sub-prime loans that had predatory characteristics attached to them. So, in other words, it was having the intended effect.

Guerero: Yeah.

Squires: Other researchers -- there's a couple of people at Georgetown University here in Washington and I forget their names, but I think I cited them in the paper -- have suggested that these laws are basically just having an adverse effect on the supply of credit. They ...

Borg: This is Lorna Borg again. I have a question of Ms. Davis. Is she on the phone?
Ivy?

I. Davis: Hmm, mm.

Squires: Ms. Davis?

Borg: I know that, under the ...

I. Davis: Hey, Greg.

Borg: ... Federal Fair Housing Act that that may be the case, what Dr. Squires is saying, but is not our mandate the protective classes, including gender, class, race and age?

I. Davis: Yeah. Hmm, mm.

Borg: Thank you.

I. Davis: May I ask a question of Greg?

Madden: Yes, go ahead. Is this Ivy?

I. Davis: Yes. Greg, during the previous administration, at the federal level, there was a real emphasis on dealing with the predatory lending issues. It was a major initiative of the Cuomo administration at HUD, for example. Has there been any shift of that at all?

Squires: You know, I don't know that I'm in a position to answer that. I certainly am not aware of any significant activity that's come out of HUD, but that may well be my lack of familiarity with what's going on. My understanding is, I know that Secretary Martinez has made homelessness a major issue, and President Bush has talked a lot about increasing minority home ownership. And I'm sure that there are people at HUD that are looking at the predatory issue, but I'm not aware that this is being a major initiative and certainly not receiving the attention that it had a few years ago.

I. Davis: Okay.

Squires: Now, having said that, some of the FHIP agencies are heavily involved in predatory lending issues.

Comment: Which agencies?

Squires: FHIP, the Fair Housing ...

Guerero: Okay. Yes.

Squires: It's Fair Housing Initiative ...

I. Davis: Program.

Squires: Yeah. These are nonprofit organizations around the country that get financial support from HUD to basically educate people and implement the Fair Housing Act.

Comment: Right.

Guerero: How could we proceed with this as a group or as a recommendation to the Commission in Washington?

Squires: Well, a couple of things occur to me. I think you should learn about the Ney bill and the Sarbanes and Schakowsky bills and learn as much as you can as to where these things stand and voice your serious concerns with the Ney bill and your support for the Sarbanes/Schakowsky bills. And you might want to contact the folks at the National Community Reinvestment Coalition or at ACORN or at the Center for Community Change. I mean, they're involved in an ongoing battle with Capitol Hill and with the regulators, and they're much more tuned into with where these debates currently stand on the Hill. I don't mean to suggest that any of these bills are about to be voted on tomorrow.

Guerero: No.

Squires: And maybe not even in this session of Congress. But it seems to me that's one way that the Commission could effectively engage this issue.

Borg: It seems that there might be another way that would be interesting. If in fact the civil rights of persons are being violated by a large, high profile bank or a series of banks, to receive testimony about them owning the subsidiaries that are, in fact,

extracting billions of dollars from protected classes might have a dampening effect and might hasten the public education and, thus, promote the civil rights corrections that need to be made. Would you agree?

Squires: Oh, I would agree, and maybe one avenue along those lines is particularly in the case where there's mergers and acquisitions in play, then the CRA enters in, and right now there's a couple of major mergers. You know, one involving Bank of America and Fleet, I believe. And this is, this has already been challenged, I think, by a group in New York.

Comment: Wow.

Squires: But it's ... That's the best opportunity to both bring public attention to these issues and have an impact. When there's an application under consideration with a regulatory agency for a merger or an acquisition, that's when the lender is most vulnerable.

Borg: So the Commission on Civil Rights could hold a hearing or could give testimony, I guess, conceivably, at the national level, about some of these things. I just curious to know how often this topic has been approached – pure civil rights issue, in addition to the other aspects of it from banking and predatory lending and so on.

Squires: Well, almost every report that you see on this makes some reference to the racial dimension of this and talks about it at least in reference to this being a violation of the Fair Housing Act, and the Federal Trade Commission has jurisdiction here. So I think it has been noted. I don't know that, if the weight has been given to this as it

might. One of the problems with the Commission here is these applications sometimes stretch out for a few months, but to get something on the Commission's calendar and get it on their next meeting. I mean, the Commission acts more like a university researcher sometimes. It takes them a long time to turn out a product. And that can undercut the timeliness. But, you know, the Bank of America/Fleet merger won't be the last one. There will be another one. And if the Commission were poised and ready to go, maybe they could have an impact.

Guerero: Are you familiar with any lawsuits based on civil rights that have been brought on this issue that were concluded successfully in terms of the plaintiff, or any success stories in negotiating with any of these lenders?

Squires: Yeah, there, actually, there have been a number, and John Relman, who is a civil rights lawyer in Washington D.C., actually wrote a chapter for a book that I edited recently, describing a couple of cases, and off the top of my head, I don't remember those titles.

Guerero: Well, that's fine.

Squires: But I know that ACORN has negotiated a couple of agreements. In fact, they just announced a 72 million dollar agreement, I think, with Household last week, which is a follow up to a 480 million dollar agreement that the FTC had negotiated. So, yeah, there are lots of examples out there. One of the cases – does Hargraves ring a bell? Does that word mean anything as a case? I'm just guessing off the top of my head. But I know there had been some complaints filed, some civil rights cases

filed and successfully negotiated. But John Relman would probably be the best source of information on that. And you might talk to the folks at the National Fair Housing Alliance. I'll bet they could give you more specific information.

Borg: How do you spell John's last name, please?

Squires: R-E-L-M-A-N. If you hold on a second, I can pull something off my bookcase that might have the name of that case. Let me see if I can find it here. Just give me a minute.

Comment: This is wonderful work you're doing.

Squires: Oh, thank you.

Borg: What is your take on the ... Well, that's what you were talking about earlier, I guess – the Sarbanes bill and the other bill – because there's so ... Every time there are laws passed locally ... This is Lorna again. It seems that there's a national law that says it will take precedence over the state laws and, in fact, it weakens it.

Squires: Well, that's right. I think the Ney bill will preempt state and local statutes. The Sarbanes and Schakowsky bills do not. By the way, the case – it's Capital City Mortgage – was the case that John wrote about. And he's actually doing a chapter. I'm doing a edited book on predatory lending right now, and John is writing another chapter describing cases he's involved in.

Madden: Are there other questions or comments?

Squires: Har... I'm sorry. Hargraves versus Capital City Mortgage Corporation. 1998.

Borg: Hargraves?

Squires: Yeah. H-A-R-G-R-A-V-E-S. Capital City Mortgage.

Borg: '98? Okay.

Madden: Other questions?

Squires: I would urge you to contact people like John Relman and like ACORN and like the National Community Reinvestment Coalition. I mean, as I said to say before, I think everything I know about this issue is contained in that paper that I sent you, and there's just so much more to know about the issue.

Madden: Your presentation has been very enlightening, Dr. Squires. Thank you so much.

Squires: Well, thank you.

Madden: All right.

Squires: Good luck.

Madden: See, you're welcome to stay on. We have a couple of other presenters who will be coming on in just a moment.

Squires: On this issue?

Madden: I'm not sure what they're speaking about. Can you tell me, Ms. Shumaker?

Shumaker: These are four attorneys from the Alabama Department of Education in Montgomery, and they will be discussing litigation of a desegregation suit relating to K through 12.

Squires: Yeah. I'm ... Actually, I shouldn't have even asked the question. I do have to go. We're recruiting candidates here today, and I have an appointment in 15 minutes to meet with one.

Madden: Okay. Well, thank you ...

Squires: I'm going to have to go.

Madden: ... so much.

Squires: Thank you all.

Guerero: Thank you so much.

Squires: Hmm, mm. Bye.

Madden: All right, Ms. Shumaker, I'm going to turn it back over to you, since the other presenters are from your state.

Shumaker: Oh, thank you so much, and I appreciate your handling the question and answer sessions for Ms. Gomez and Dr. Squires.

Comment: Both were just excellent.

Shumaker: Do we have the Alabama Department of Education representatives on the line now?

(Indiscernible comment)

Operator: Excuse me. Mr. Sorrells is joining. Also Mr. Squires just disconnected. Was that okay?

Shumaker: Yes, that is fine.

Operator: Great. Thank you.

Shumaker: Okay. Mr. Sorrells is on the line? Is that correct?

Operator: Yes, ma'am.

Shumaker: Okay, how about Ms. Kelly, Mr. Craven and Ms. Tudor.

Comment: We are present.

Operator: Yes.

Shumaker: Okay, good, good. Well, I will give all of your names and the titles that I have been given. We do appreciate your participating. And, for those of you who have just come on line, this one is not on the agenda. These people agreed just a few hours ago to make a short presentation for us. I would like to tell our Alabama Department of Education representatives that we have a five-minute time for a statement, and then we will have ten to fifteen minutes for questioning by the members of the SAC or the State Advisory Committees from Alabama, Arkansas, Louisiana and Mississippi. We have Reginald Sorrells, who is General Counsel with the Alabama Department of Education; Anita Kelly, who is the Associate General Counsel; Larry Craven, who is also an associate general counsel; and Susan Tudor, who is a legal research assistant. Do I have those titles correct?

Comment: Yes.

Shumaker: Well, we certainly appreciate your being willing to discuss this issue with us this morning, and we will now let you begin and, after five minutes, we will, I'm sure, have questions from members of the committees.

Sorrells: Okay. This is Reggie Sorrells, and we are making this presentation on behalf of Representative Richard Lindsey with the Alabama Legislature.

Shumaker: I might say that Richard Lindsey is Chairman of the Education Committee.

Sorrells: Yes. He is. Alabama has made significant progress and continues to work toward the goal of equal protection of the law for all of its citizens. Ten years after the

decision of *Brown v. Board of Education*, a lawsuit was filed in Alabama styled *Anthony Lee v. the Macon County Board of Education*. The lawsuit was filed in 1963 with the intent of providing equal educational opportunities for African-American children. In 1997, the United States District Court of Middle District of Alabama, on its own, concluded that it was time to move toward unitary status and toward termination of the school desegregation litigation. A declaration of unitary status means that the local school system has demonstrated a commitment to the equal protection guarantees of the Constitution, to the extent practicable removed the remaining vestiges of discrimination that existed when Alabama operated a dual school system, and further has demonstrated a good faith commitment in the future to the underlying principles of the United States Constitution. Unitary status also means that the federal court returns control of the school system ...

Operator: Excuse me. Ms. Robinson had somehow dropped off accidentally. She's back on.

Several: Thank you.

Sorrells: Unitary status also means that the federal court returns control of the school system to the local Board of Education. Approximately 70% of the public school systems in Alabama have been declared unitary or have permanent injunction status. Thirty-four school systems have been declared unitary. Twelve of the 34 school systems with unitary status were declared unitary in 2002 and 2003. Fourteen other local school systems, located in the Middle District of Alabama, are actively seeking a declaration of unitary status. In the context of the *Lee v. Macon*

litigation, SDE entered into a five-year consent decree with private plaintiffs, NAACP Legal Defense Fund and United States Department of Justice to address issues regarding the over-representation and under-representation of African-American students in certain special education exceptionalities. Somebody is moving papers or something that is -- you might want to mute your telephone. The SDE is working with the Lee v. Macon plaintiffs to also address issues involving facilities. In 1997, the United States District Court of the Middle District ordered the parties of the school desegregation litigation to identify any unresolved statewide issues. In 1995, Alabama had already enacted into law provision requiring local boards of education to develop comprehensive capital plans for the purpose of identifying substandard classrooms and other school facilities, with the goal of bringing all facilities up to acceptable standards. Beyond the context of the Lee v. Macon litigation, Alabama is addressing other issues that impact on equal education opportunities. Leadership at the administrative level and in the classroom is a key component of eradicating discrimination. The leadership of Alabama schools on the local level was found in the local superintendents of education and the local boards of education. In 1996, a lawsuit was filed by a candidate for a superintendent position in Talladega County, challenging the selection process of superintendents. In the complaint, the plaintiff alleged that he was not selected for a superintendent position in Talladega because of vestiges of segregation in schools in this state, which has resulted in Black educators not being selected to run

majority White school districts. A similar case was filed by another superintendent candidate in Flint City in 1998. The parties agreed to a compromise by entering into a consent decree in this case in April of 1999. The consent decree requires the State Superintendent of Education to oversee a comprehensive training program with two major components to it. The first component involves establishing a training program for prospective superintendents that will give minority superintendents an opportunity to get the training that will help them to be more attractive candidates for superintendent positions. Under current law, superintendents are now required to have certain training in law and finance courses. The superintendents' academy ...

(End of Side A of Tape 2)

Sorrells: ... training in those courses. By having completed this training, attendees have an advantage over other candidates for superintendent positions. The academy is functioning very well, and many minority superintendent candidates have completed the program. The second component of the comprehensive training program is to provide training to local school boards in cooperation with the Alabama Association of School Boards. This training is to include informing school boards of the history of discrimination in Alabama schools and the local school board's leadership role in eliminating these vestiges of discrimination in making hiring decisions. This training has been conducted periodically at AASB's conferences and conventions. Further, the State Superintendent of Education is

developing a library of materials to be used in further training of local school board members on these issues. This library will contain video tapes and literature and will be distributed to all local school boards when completed. Teacher testing. In October 2002, the Alabama Board of Education ended a 17-year hiatus of teacher testing by unanimously adopting a resolution reinstating the testing of future teachers. The components of the Alabama Prospective ...

(Mechanical tones sound.)

Sorrells: Does that say my time is up? Or what does that mean?

Robinson: No, I'm not ... This is Farella Robinson. I'm not familiar with that sound. If someone has their cell phone or some other type of item there that's creating that sound, please mute your phone.

Sorrells: Okay. Well, I have about one more minute.

Shumaker: Go right ahead.

Sorrells: In October 2002, the Alabama Board of Education ended a 17-year hiatus of teacher testing by unanimously adopting a resolution reinstating the testing of future teachers. The components of the Alabama Prospective Teacher Testing Program are the result of a compromise reached in 1999 between the attorneys representing the parties in the Allen v. Alabama State Board of Education lawsuit, which was filed in 1981. It challenged the fairness of teacher testing in Alabama. In late 1999, a three-person monitoring committee was established as a result of the consent decree entered into by the parties, and the committee members were charged with

overseeing the fairness of a basic skills test for future teachers. All parts of the Alabama Prospective Teacher Testing Program were favorably reviewed by the monitoring committee for fairness and compliance with sound testing principles. Any prospective teacher who wants to teach in any of Alabama's 1,547 public schools must pass the applied mathematics assessment, the reading-for-information assessment and the writing assessment. The test component were developed using the work-keys system established by ACT, Inc. and validated by worldwide interactive network for use in Alabama. Subject-specific tests are the next step in teacher quality, accountability and compliance with the highly qualified teacher requirement of the federal No Child Left Behind Act of 2001. Alabama expects to offer selected subject matter tests for the Practice II series offered by Educational Testing Service as a voluntary option for meeting the definition of highly qualified status pursuant to the No Child Left Behind Act of 2001. Tests are currently being validated and will be available January of 2004. There is work yet to be done as Alabama continues to work toward the goal of full participation by all of its citizens. And that is the completion of our report. We'd be happy to answer a question.

R. Kelly: Yeah, this is Randy Kelly from Gadsden. Yeah, we still have a whole lot of work to be done. I'm in a city where we have one of those unresolved cases. It has not been declared unitary, and it's the Katherine Miller versus the Board of Education. Are you familiar with that one?

Sorrells: Ah, Anita Kelly will answer, will respond to that one.

A. Kelly: Yes. I am familiar with that litigation.

R. Kelly: Right. One of the things that [three words not recognizable], you have disparity in the infrastructure of the schools. In fact, the largest Black-populated school is housed in a mental school facility. You have a disparity in the teachers throughout the system, discrepancy in the access of technology, and you just don't have a clear commitment to diversity. In fact, in this school named Gadsden High School, there's four Black teachers in the entire school system, and only two of them made the core courses. Then there's a couple of schools named after Ku Klux Klan. Got one named after Nathan Bedford Forrest and another one named Emma Simpson High School after a daughter of a Confederate that actually saved Forrest from being captured during the Civil War. And so you have a situation where the predominately Black school, the largest predominate Black school, was taken over because of neglect from the Board of Education and what have you. That hasn't been too long ago, because they had teachers that were teaching outside of their fields. So, and then, as far as this matter of hiring African-American teachers, when we addressed the Board of Education, then they pretend that they can't find any Black teachers to put in the school system. Even though the school system, entire school system, is predominately Black, and practically every one of these colleges that are Black colleges, they started out as teachers colleges. Besides, the White

colleges where Blacks were [???] an education and what have you. So we have a long way to go in that specific area.

A. Kelly: I am, again, aware of the consent decree that was recently entered into between the private plaintiffs, the United States Department of Justice and the NAACP Legal Defense Fund. I also know that faculty recruitment and hiring, particularly of African-American teachers, was one of the major areas of concern. And that was a part of the consent decree, and the school agreed to undertake certain efforts to increase the number of African-American teachers in the Gadsden city school system. We established some goals in that litigation, and it is my understanding that the Gadsden City Board of Education is working towards that goal. I think we all have to acknowledge that Gadsden, perhaps, is not where it should be, but we are making efforts to make changes in the system so that we do have adequate representation of African-American teachers in that school system, not only for African-American children, but for all children in that school system.

R. Kelly: That's right. The presence of African-American teachers is not just for African-American children, Black children. It's for the benefit of all children who are going to have to interact one day with Black people. Then the system is so bad until there's one school, ?Diskew? Middle School, that don't have a single Black teacher in it, period. So, as far as being unitary, it's the difference between it being unitary than the difference between heaven and hell. And, of course, even Gadsden High is 50-some percent Black, the one that has four Black teachers in it. And then

Litchfield High School is at least 97% Black, but they have a consent decree where they have a cap on the amount of Blacks that can teach at Litchfield High School, and there's very few that are teaching in core courses. So we're not making that much progress in the Gadsden area.

A. Kelly: Sir, this is what I would suggest that you do, and I cannot speak to the specifics of what is going on at Litchfield, but there are attorneys representing the private plaintiffs in this litigation, the Grey firm out of Tuskegee, Alabama, and the NAACP legal defense fund.

R. Kelly: I'm aware, I'm the political field coordinator for the local NAACP chapter, and I've been working with this specific suit for quite some time. In fact, I testified in court when it came up the last time.

A. Kelly: Yes, sir.

Powers: Excuse me just a minute. This is Elizabeth Powers in Mississippi. Farella, I'm going to have to get off the line now.

Robinson: Okay, fine.

Powers: Thank you so much for this day. Appreciate everyone's participation.

A. Kelly: Mr. Kelly?

R. Kelly: Hmm, mm.

A. Kelly: My recommendation would be that you contact those attorneys and that you continue to be in contact with those attorneys to express your concerns, because

they need to be made aware of any concerns that you have before these problems can be corrected.

R. Kelly: Right. They're aware of it, but I was just, you know, just giving you the picture of Gadsden. We may have made some progress in the state, but actually I've been working with this Gadsden lawsuit for quite some time.

A. Kelly: Yes, sir.

Stokes: This is Martha Stokes. I'd like to ask a question. You mentioned the teacher testing. I have understood that most tests are in public libraries now as a service to students to be able to practice taking the tests. Is that teacher test in the libraries as a practice?

Sorrells: You're talking about student tests and not teacher tests, and I would ...

Stokes: What I'm asking: Is that teacher test available for practice in the public libraries in Alabama.

Sorrells: I do not know. I do not think that it would be.

Craven: No, nor do I.

Guerero: This is Andre from Arkansas, Little Rock. Most of the, we, this is, listening to the conversation is so interesting. It's, as they say, déjà vu all over again. We've gone around and around here in our state, and the teacher tests that are out there, it's to the, usually the company's benefit. They've got a practice manual and on line and everything, but you can practice taking, it's like taking the college entrance exams, board exams. There are, and there are outfits that prepare them for it and all that, so

it's ... Because of the profit motive, I'm sure – well, I shouldn't say I'm sure – but more than likely, there is something out there to help teachers prepare for this. I want to just comment on the unitary status and, maybe, the member of our fellow Advisory Committee, the member that was raising the questions, can respond. You know, Pulaski County, which includes Little Rock, North Little Rock and Pulaski County school system, just achieved unitary status. It was very interesting to listen to the original plaintiff attorneys argue before the federal judge why the counties should not be released from court oversight because of the unfinished agenda. And I'm wondering if, what advocacy groups there in your state played that role to keep the feet to the fire – the school districts and the state – which, if they were brought in as a party to the lawsuit, to make sure that indeed what needed to happen, before unitary status was granted by some judge, actually did happen?

R. Kelly: Right. In this state, Katherine Miller versus the Board of Education and the City of Gadsden was styled 40 long years ago by the Alabama Democratic Conference, which is the largest Black political conference in the state of Alabama. And, of course, the Alabama Democratic Conference has been working with it since. But also the NAACP.

(Indiscernible comment by Mr. Guerero)

R. Kelly: The NAACP also has been at the forefront. And, of course, we have a consortium of leaders from the community that meet consistently. In fact, we have a meeting

next week, dealing with the Board of Education. We've met frequently with the Justice Department, the attorneys from the Justice Department.

A. Kelly: And there is also a biracial advisory committee ...

R. Kelly: Biracial committee. That's correct.

A. Kelly: ... that is a part of the consent decree in this Miller litigation. And, of course, that includes people from all parts of the community so that they have an opportunity to address the Lee v. Macon issues before a declaration of unitary status is even applied for or granted by the court.

R. Kelly: That's correct.

Guerero: Well, there are some pressure points for you in making sure that, that proceed along the lines of the community is interested in, and especially in addressing these, this large menu you just gave us of unfinished business in that particular district.

R. Kelly: Right. Dennis Parker was the original attorney from the Justice – not the original – he was not the original, but he was one of the recent attorneys from the Justice Department. But now it's Lee Epperton. She's basically the contact at the Justice Department, but this is a lawsuit that is a long way from being resolved, a long way from being resolved.

Guerero: Let me tell you what happened in Little Rock. Basically, because of White flight, the district is now almost ... Well, it's a majority Black and getting more and more minority. There are fewer and fewer non-Blacks to integrate anything with because of White flight, because of, to a lesser extent, home schooling, because of Christian

academies and other private schools that have sprung up and because of housing patterns here that have moved outside that jurisdiction. And so the tax base is also eroding and the public confidence among that tax base, judging from the way in which they have not supported millage increases, unfortunately – I always vote for them – is another piece of evidence of what's happening in the schools here.

Shumaker: We certainly appreciate our Alabama Department of Education representatives ...

Robinson: Ann, this is Fay. I do have a question for the representatives there regarding the presentation. Unfortunately, the SAC members did not have the privilege of reviewing the actual statement, because we just received it this morning. But on Page 2 of your statement, you indicate that leadership at the administrative level and in the classrooms is the key to eradicating discrimination. Could you more clearly define what you meant by that? What are some of the factor related to leadership at the administrative level and in the classroom?

Sorrells: Through our superintendent training, we are trying to develop leadership skills that, number one, would ... Well, first you have to identify the vestiges that are remaining in the system, and then the training is trying to develop leadership skills that would help not only the superintendent, who has the lead job, but school board members with skills and in dealing with the political realities, dealing with the community perceptions, dealing with the realities as far as the legislature is concerned, what it will provide as far as funds. One of our biggest problems is getting the community to provide local funding for schools. So, of course, the

superintendents training was to help develop a larger pool of Black candidates that had the skills and training necessary to be available to be chosen as a superintendent. But, basically, it's aimed at developing strategies and skills that would help people exhibit a leadership role in reversing these -- and eradicating -- these various vestiges of discrimination.

Robinson: So, in other words, you need more African-Americans or minorities in administrative leadership roles, as well as in the classrooms? Is that the point?

Sorrells: Certainly that's what the whole focus of the superintendent training is, to increase the pool of African-American candidates for superintendent positions.

A. Kelly: Let me also add. And this is, again, Anita Kelly with the State Department of Education. Because we have a diverse student population, we have to be culturally sensitive to all of our students. And so, as it is with the Lee versus Macon litigation, so as it is with teacher testing and with the superintendents academy, our goal is to understand our students so that we can help them learn, because that is the end goal of the educational process, to have students learn. And we recognize that there are different learning styles, that there are cultural differences that we must be aware of, and that is what we are attempting to do here in the state of Alabama, is to understand each other, to understand the various student populations, so that we can fulfill our mission and goal of educating all children in the [noise drowned out word or two]. We believe without any ... Well, let me say this. Is that we believe that the educational process is key and critical to everything that we're trying to do and

everything that you're trying to do with the Civil Rights Commission, because it's through the educational process that we learn that we're more alike than different, that we learn to be more sensitive, that we learn to be more respectful. And then we also maximize the potential for students and all persons to contribute at the local, state and national levels of our government.

Comment: Who hires the superintendents over there? Is it school boards?

R. Kelly: In Gadsden, Alabama, the superintendent is appointed by the mayor and the city council. And, in fact, I says to a gentleman, talking about the diversity as far as administration is concerned, in this city, we only have one Black mayor in the central office. And he doesn't have an office. His office is basically his truck. He rides around in his truck. He deal with something like truancy. And so what we want to see here is a commitment in diversity in all levels, from top all the way down to the bottom.

Guerero: Well, the ...

Shumaker: Andre, from a training ...

Guerero: The training and the goals that set up as part of the compliance, are the appointing or hiring entities required to go through that, and is there any accountability for a hiring process that would be sensitive to the procedures and criteria relative to diversity? I mean, what are the accountability follow up to the required training that was mentioned?

R. Kelly: Well, there has not been any accountability. That has been one of the problems. And one of the problems, too, is an appointed board, rather than an elected board. See, we have board members that don't even visit the schools, that represent the schools, that don't visit the schools. And they're basically just political favors from the council people that represent the specific district. So you have board members that -- one board member is White over the largest, well the predominately Black school in the city. School has 98%. And when the -- 98% Black. And when the governor came after this school was released from take-over, they didn't even show up. Even for the presence of the governor to celebrate that the school was free from state take-over. So there's no accountability, and that's one of the problems there, is the accountability factor.

Shumaker: There is a move, Andre, to have all school boards elected. A majority of the superintendents in the state, county systems, of course, are elected. Some of the city systems have the appointed superintendents.

Guerero: I just wondered what the connection was, or the vehicle, for the goal as beautifully articulated by the previous speaker there, the lady attorney, and the reality that was described, what is the vehicle for achieving that goal in terms of regulations, criteria, oversight procedures? That's what I was getting at.

A. Kelly: Hmm, mm.

Stokes: This is Martha Stokes again. I live in a county that is, that has an elected Superintendent of Education and the makeup of the voting population is about 55

White, 45 Black. And we overwhelmingly elected a Black superintendent recently.

So it can be done.

Guerero: You know, there's lots of talk about No Child Left Behind, but as the criteria for performance kicks in, after three years of successive data on all populations, including sub-populations, and those are defined to include racial minorities, and the accountability to – the rubber meets the road on accountability in the various school districts, communities will really be hard pressed in terms of continuation so that there won't be take-overs by other entities – hard pressed to deliver educationally. And that might be used as a vehicle to reexamine the competencies and the performance that would include multicultural sensitivity and sensitivity to different learning styles and racial differences in terms of learning styles, such as they may be. But No Child Left Behind might be turned around, as we like to say – Farella keeps pointing out, taking lemons and making lemonade – without a civil rights budget, we may be able to take some of that No Child Left Behind and make lemonade out of it in terms of pushing for some of these reforms.

Shumaker: Are there other comments or questions? We are pushing on time a little bit.

R. Kelly: Right. I think that the state attorneys could probably also push for racial sensitivity training, which is, I think, critical, particularly with some of these unresolved suits, because you've got an old crowd here that's still fighting the Civil War. And as long as that mindset doesn't change, then there's really not going to be any

substantive change. There might be change to get this litigation off of them, but they're going to be back to business as usual once the lawsuit is over with.

A. Kelly: Mr. Kelly, this is Anita Kelly again from the State Department of Education. Let me say this, is that the state has begun some of the sensitivity training that you're talking about, under the Lee v. Macon litigation, the special education consent decree. One of the major components of that litigation is the training that we provide teachers and, again, what we're training teachers to do is to be more culturally aware and sensitive to all of their students. And we went from zero training to about 16 hours on an annual basis for special education teachers. So, we're beginning the process, and I think, as Mr. Sorrells indicated earlier, we've made significant progress, but there is work yet to be done. We acknowledge that. We can't run from that. But we're working on that. And with citizens like you involved in your particular community, I think that we can – to the extent that we can, remove these vestiges of discrimination that existed when we operated these dual school systems.

Shumaker: Thank you, Ms. Kelly. Are there other comments? We thank you so much to Mr. Sorrells, Ms. Kelly, Mr. Craven, Ms. Tudor. Thank you for your presentation and your answers to our questions and comments. Farella, do you have any closing comments?

Robinson: No, I would just like to thank everyone who participated and listened onto this important briefing meeting, and that the proceedings of the meeting are being taped

and an opportunity for the public and other interested organizations to submit information in writing will be made available through January 5.

Borg: Madam Chair, this is Lorna Borg. I do have a question of Ivy and of Farella. Is it possible, sometime in the first part of the year, to convene this four-state Commissioners Advisory Committees again so that we might kind of sift through with several types of lenses the testimony that we've heard and come up with sort of a plan of action as we're sort of mandated to do in this new approach that we're using?

Robinson: This is Farella. Yes, that was one of my intentions, to do a follow up to this meeting so we can utilize this information, which I think is some great information, to ?solidify? some type of specific effort.

I. Davis: And, if I may, I would just like to thank you all, really, for conducting this type of meeting over the phone. I've been listening in for the last two days. There have been a couple of glitches, but I hope -- and I really would like to hear from you, or if you would, you know, let Farella know, from your standpoint, how it went. I think it's a terrific model for the other regions and how they might find ways in order to engage with each other on a more frequent basis. So, I really thank you from the bottom of my heart.

Shumaker: Thank you. It's good to hear everyone on all of the committees. We certainly appreciate your participation, and we hope that someday soon we can all meet face to face.

Guerero: And let me ... This is Andre in Little Rock. I'm just ... I'm humbled by listening to these two days. It doesn't make me feel so isolated. It has made me aware – I knew it on an intellectual level or – but I feel now that our issues are so similar and our concerns and our – also our mindset and approach – that these are issues that require us as committee, as Advisory Committee members, to respond to at some level. I just think that communication is critical on this for my education and to keep me – we all have very full plates outside of our Advisory Committees, and we're adding some new helpings in this, but I don't ... Somehow, I don't feel depressed about it or overwhelmed. I feel energized. And I am very grateful for the opportunity to do that.

Comment: Thank you, Dr. Guerero.

Maharaj: This is Raphael to Dr. Guerero. I'll give you a call tomorrow morning, and we'll talk some more about the information that you need.

Guerero: Yes, thank you. I'll look forward to that.

Maharaj: Is your area code 510, and your phone number is 682-5054?

Guerero: Yes, the area code is 501, actually.

Maharaj: Five, zero, okay. Thank you. I'll give you a call tomorrow morning.

Guerero: Thank you.

Madden: This is Robbie Madden. I'd just like to thank Fay for organizing this whole enterprise. It's been quite a project for you, and I appreciate it.

Comment: Amen.

Robinson: Thank you, Robbie.

M. Davis: Hello, Fay. This is Michael Davis in Mobile.

Robinson: Hi, Mike.

M. Davis: Hey, Fay. This has been wonderful. I've been quite enlightened, and whatever me and Raphael can do to help, just let us know.

Robinson: Okay. You know I'll give a shout out.

M. Davis: Okay. Thank you.

Shumaker: Happy holidays to everybody.

Guerero: Thanks, Ann.

Robinson: Likewise.

Maharaj: Farella, I'll see you the week of December the twelfth.

Robinson: Okay then. Do a drive-by.

Maharaj: Thank you, ma'am.

Comment: Merry Christmas.

Robinson: Merry Christmas.

Shumaker: Merry Christmas, everyone.

Comment: Bye. Thanks.

Comment: Bye.

(End of Teleconference)