

## U.S. COMMISSION ON CIVIL RIGHTS

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## COMMISSION BRIEFING:

DISCRIMINATION AGAINST NATIVE AMERICANS  
IN BORDER TOWNS

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FRIDAY, NOVEMBER 9, 2007

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The meeting convened in Room 540 at 624  
Ninth Street, N.W., Washington, D.C. at 9:30 a.m.,  
Abigail Thernstrom, Vice Chairman, presiding.

## PRESENT:

ABIGAIL THERNSTROM, Vice Chairman  
JENNIFER C. BRACERAS, Commissioner  
GAIL L. HERIOT, Commissioner (via telephone)  
ARLAN D. MELENDEZ, Commissioner  
ASHLEY L. TAYLOR, JR., Commissioner  
MICHAEL YAKI, Commissioner

KENNETH L. MARCUS, Staff Director

## STAFF PRESENT:

DAVID BLACKWOOD, General Counsel  
TERESA BROOKS  
CHRISTOPHER BYRNES, Attorney Advisor to the OSD &  
Acting Deputy General Counsel, OGC  
DEBRA CARR, Associate Deputy Staff Director, OSD  
PAMELA A. DUNSTON, Chief, ASCD  
LATRICE FOSHEE  
MONICA KIBLER  
ROBERT LERNER, Assistant Staff Director for OCRE  
SOCK FOON MacDOUGAL  
EMMA MONROIG, Solicitor/Parliamentarian  
EILEEN RUDERT  
KARA SILVERSTEIN  
KIMBERLY TOLHURST  
AUDREY WRIGHT  
MICHELE YORKMAN

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## COMMISSIONER ASSISTANTS PRESENT:

DOMINIQUE LUDVIGSON  
LISA NEUDER  
RICHARD SCHMELCHEL  
KIMBERLY SCHULD

## PANELISTS:

STEPHEN L. PEVAR  
FRANK BIBEAU  
ALVIN WINDY BOY, SR.  
JAMES RUNNELS  
BARRY D. SIMPSON  
DUANE H. YAZZIE

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P-R-O-C-E-E-D-I-N-G-S

(9:37 a.m.)

**I. INTRODUCTORY REMARKS BY CHAIRMAN**

VICE CHAIR THERNSTROM: On behalf of the U.S. Commission on Civil Rights, I welcome everyone to this briefing on discrimination against Native Americans in border towns.

Today, November 9th, 2007, the following commissioners are present: Commissioners Braceras, Melendez, Yaki, Ashley Taylor, and myself. And I believe that Commissioner Heriot is going to participate on the phone.

Gail, are you there?

COMMISSIONER HERIOT: Yes, I'm here.

VICE CHAIR THERNSTROM: Welcome to the Commission. Commissioner Kirsanow has asked me to convey his regrets that he can't be here. He is hearing oral arguments in a major case as part of his duties as a member of the National Labor Relations Board. And the Chair, Gerald Reynolds, also regrets his absence. He has extremely important business in California.

So we address today a question that actually is not new to the Commission. It has been before the State Advisory Commission. And there has

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1       been a recent report by the New Mexico Advisory  
2       Committee on precisely this topic, which is obviously  
3       an important one.

4               So past studies of the U.S. Commission on  
5       Civil Rights and its State Advisory Committees have  
6       investigated the claim by Native American reservation  
7       members that some non-Native residents, non-Native  
8       American residents of border towns, have willfully  
9       violated their civil rights.

10              The Commission will examine three  
11       questions:     one, the number of civil rights  
12       violations, whether the number of civil rights  
13       violations has changed over time; two, what has been  
14       done to improve relations between the two groups and  
15       reduce incidents of discrimination; and, three, the  
16       nature of current problems.

17              The Commission has assembled a panel of  
18       experts to discuss this topic. And the speakers are  
19       -- and if I mispronounce anybody's name, please  
20       forgive me and correct me -- Mr. Stephen Pevar.

21              MR. PEVAR:   Pevar.

22              VICE CHAIR THERNSTROM:   Pevar. Thank you.

23              And I hope I remember it the next time.

24              -- Senior Staff Attorney, American Civil  
25       Liberties Union. Mr. Frank Bibeau, is that?

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1 MR. BIBEAU: Yes, ma'am.

2 VICE CHAIR THERNSTROM: Oh, made one of  
3 them.

4 -- is an attorney with the -- hope I get  
5 this pronunciation here correctly -- Anishinabe. Is  
6 that correct?

7 MR. BIBEAU: Yes, ma'am.

8 VICE CHAIR THERNSTROM: -- Legal Services;  
9 Mr. Alvin Windy Boy, Sr., former Chairman of the  
10 Chippewa-Cree tribe, Rocky Boy's Reservation, Montana;  
11 Mr. James Runnels, Chief of Police at Farmington, New  
12 Mexico; Mr. Barry D. Simpson, Superintendent, Bishop  
13 Union Elementary School District; and Mr. Duane H.  
14 Yazzie, President, Shiprock Chapter, Navajo Nation.

15 The record will be open for 30 days.  
16 Public comments may be mailed to the U.S. Commission  
17 on Civil Rights, Office of Civil Rights Evaluation,  
18 room 740, 624 9th Street, Northwest, Washington, D.C.  
19 20425.

20 So we have divided our experts into two  
21 panels. And panel one consists of Stephen Pevar. Got  
22 it right this time. Thank you. He was a graduate of  
23 Princeton University and the University of Virginia  
24 Law School.

25 From 1971 through 1974, Mr. Pevar was a

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1 staff attorney with the South Dakota Legal Services on  
2 the Rosebud Sioux Indian Reservation. From 1976 to  
3 the present, he has been a national staff counsel for  
4 the American Civil Liberties Union.

5 He has litigated over 200 federal cases  
6 involving constitutional rights. His specialties  
7 include free speech, Indian rights, prisoners' rights,  
8 separation of church and state. He is the author of  
9 The Rights of the Indians and Tribes.

10 Frank Bibeau is an attorney for the -- oh,  
11 here we go again -- Anishinabe Legal Services -- did I  
12 mess up this time? -- serving White Earth, Leech Lake,  
13 and Red Lake Reservations in northern Minnesota.

14 He is an enrolled member of the White  
15 Earth Reservation, has four cases before the Minnesota  
16 Court of Appeals addressing different Indian civil and  
17 treaty rights.

18 He has been in private practice and worked  
19 as a tribal attorney for the Leech Lake Reservation  
20 from 2000 to 2004. He has also been an attorney for  
21 the State of Minnesota.

22 Please swear and affirm the information  
23 you have provided is true and accurate, to the best of  
24 your knowledge and belief.

25 (Whereupon, there was a chorus of

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1 affirmative responses.)

2 COMMISSIONER MELENDEZ: Madam Chair, I  
3 would like to read a statement before we hear the  
4 testimony, if possible. It's just acknowledging this  
5 month as --

6 VICE CHAIR THERNSTROM: Sure.

7 COMMISSIONER MELENDEZ: I want to announce  
8 that November has again been proclaimed National  
9 American Indian Heritage Month by the President. The  
10 President said that American Indians and Alaska  
11 Natives continue to shape our nation by preserving the  
12 heritage of their ancestors and by contributing to the  
13 rich diversity that is our country's strength. Their  
14 dedicated efforts to honor their proud heritage have  
15 helped others gain a deeper understanding of the  
16 vibrant and ancient customs of the Native American  
17 community.

18 We also express our gratitude to the  
19 American Indians, Alaska Natives who serve in our  
20 nation's military and work to extend the blessings of  
21 liberty around the world.

22 VICE CHAIR THERNSTROM: Thank you very  
23 much for that statement.

24 Well, I welcome you to the Commission once  
25 again. I am calling on you in the order you have been

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1 given for the record. So, Mr. Pevar, you will speak  
2 for ten minutes. Please watch the clock. And we are  
3 really going to try to keep this on time because  
4 obviously we have a lot of speakers. Please proceed.

5 MR. PEVAR: Thank you very much. You  
6 know, ten minutes is cruel and unusual punishment.

7 **II. SPEAKERS' PRESENTATIONS**

8 MR. PEVAR: I want to acknowledge the  
9 Commission for continuing these investigations and for  
10 inviting me to participate in these discussions.

11 Border racism against Indians exists. It  
12 is pernicious. It is virulent. And it manifests  
13 itself every day in scores of ways: law enforcement,  
14 in the public schools, in voting rights, housing  
15 discrimination, and in banking, to name just a few.

16 I know it exists because I have seen it  
17 with my own eyes. I saw it happen numerous times when  
18 I lived on the Rosebud Sioux Indian reservation in the  
19 early '70s: the suspicious looks that I and my  
20 clients would receive when we went off the reservation  
21 to courts, the racial profiling that I saw occur, the  
22 seemingly unfair and harsh sentences that my clients  
23 often received.

24 In the question and answer period, I would  
25 love an opportunity to discuss one case in particular,

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1 which for me manifested inexcusable racism against my  
2 Indian client in Murdo, South Dakota. I also know  
3 that it still exists.

4 I and my colleagues have filed race  
5 discrimination cases. The Voting Rights Project of  
6 the ACLU has been a leader in filing voting  
7 discrimination cases that have proven race  
8 discrimination in Colorado, Nebraska, South Dakota,  
9 and Montana. Federal court decisions have recognized  
10 that communities just off the reservation were where,  
11 let's say, school districts encompass portions of the  
12 reservation, have deliberately and intentionally  
13 discriminated against Indian citizens, such as by  
14 having block votes to elect their members.

15 In a school district, for example, there  
16 may be 40 percent Indian and they're all located in,  
17 let's say, the southeast portion of the district. If  
18 delegates were voted on by district, then the Indian  
19 population would likely be able to elect two people.  
20 Knowing this, communities have deliberately chosen to  
21 elect their representatives on an at-large basis,  
22 resulting in no Indian ever being elected to the  
23 school board.

24 In the past 18 months, I have been one of  
25 the staff ACLU attorneys pursuing a lawsuit entitled

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1 Antione v. Winter School District in South Dakota,  
2 which alleges race discrimination against Indians in  
3 the public school system in Winter, Tripp County.  
4 This school district borders on the Rosebud Sioux  
5 Indian Reservation and has a sizeable Indian  
6 population.

7           Just very quickly, to give you an idea,  
8 the school's own records suggested rampant  
9 discrimination in virtually every aspect of the school  
10 administration. For instance, regarding out-of-school  
11 suspensions, expelling, kicking kids out of school, in  
12 the middle school, between 2001 and 2006, one in every  
13 5 Indian students was suspended from school but only  
14 one in every 27 white kids.

15           Even though Indians are only 20 percent of  
16 the population of the middle school, they receive 60  
17 percent of the school suspensions. The comparison of  
18 graduation rates was shocking. In the high school in  
19 2003, for instance, only 11 percent of the Indian kids  
20 who began as a freshman or freshman ultimately  
21 graduated, a 90 percent failure rate, 90 percent. The  
22 graduation rate for white kids was 82 percent.

23           There is also in that school system what  
24 we call the school-to-prison pipeline, where Indian  
25 kids in our view were discriminated against and where

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1        infractions if committed by a white student were  
2        viewed as "Well, boys will be boys," but if committed  
3        by an Indian student, it represented some violent act,  
4        some enormous threat to the school.

5                Between 2001 and 2006, 11 percent of  
6        Indian students were referred to the police, so one  
7        out of every 10 nearly. For white kids, it was less  
8        than one out of 50.

9                Now, here is the good news that I'm very  
10        pleased to report. To the enormous credit of school  
11        officials in Winter, South Dakota, a very proactive  
12        settlement of our lawsuit was agreed upon.

13                Just a couple of months ago, we negotiated  
14        an excellent remedial plan that I will be happy to  
15        discuss if anyone asks questions about it or needs  
16        more details. I will even submit a copy of the final  
17        decree to the Commission.

18                We are appearing December 10th in federal  
19        court in Pierre, South Dakota. Both sides are urging  
20        the court to adopt this remedial plan. And it will if  
21        implemented properly change virtually everything about  
22        the discrimination that has been rampant for decades  
23        in the school system.

24                Now, as the author of the book, The Rights  
25        of the Indians and Tribes, I keep a file on the

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1 subject of discrimination against Indians. Obviously  
2 I do not investigate these issues throughout the  
3 United States. It would be impossible to do so.

4 But I do keep a sizeable file on that  
5 subject. And in preparation for these remarks, I  
6 reviewed my file. And, indeed, I did find articles or  
7 copies of studies on virtually every aspect of our  
8 society.

9 One article that I brought with me that I  
10 would be happy to leave, it's a December 24, 2003  
11 article in "Indian Country Today" reporting on a  
12 survey conducted by the U.S. Department of Housing and  
13 Urban Development in the States of Montana, Minnesota,  
14 and New Mexico. And it found discrimination. And I'm  
15 reading now from the article, "Discrimination against  
16 American Indians occurred 28.5 percent of the time  
17 when families or individuals attempted to find  
18 adequate rental housing."

19 More than one-quarter of the Indians who  
20 sought to rent an accommodation were denied. But then  
21 when they sent a white person to rent the same  
22 facility, it was told that it was available.  
23 Hispanics were next at 25.7 percent, followed by  
24 African Americans at 21.6 percent and Asians 21.5  
25 percent. So the HUD study found that Indians were the

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1 most likely racial minority to experience race  
2 discrimination.

3 Now, I will also submit as part of my  
4 written materials as soon as I have an opportunity to  
5 gather them other articles or studies involving race  
6 discrimination against Indians. Indians have every  
7 constitutional right, both on the reservation and off,  
8 that every other citizen has. But these rights often  
9 are violated due to race discrimination.

10 No one, no one, should be made to feel  
11 inferior as a result of his or her race, not in this  
12 country and not anywhere. Racism cheapens and  
13 diminishes all of us. We all need to improve our race  
14 relations, all of us.

15 Thank you very much.

16 VICE CHAIR THERNSTROM: Thank you very  
17 much, coming in early even.

18 Okay. Mr. Bibeau, you are --

19 MR. BIBEAU: Thank you.

20 VICE CHAIR THERNSTROM: You have got ten  
21 minutes.

22 MR. BIBEAU: I appreciate being here  
23 today. And I'm glad that Bill couldn't come so I  
24 could come for Mr. Lawrence. And his remarks have  
25 already been presented. I'll try not to duplicate

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1 those or Mr. Pevar's, which I think are accurate for  
2 almost every reservation.

3 It's interesting that he mentioned voting  
4 rights. The ACLU has set up a project in the  
5 three-reservation area where I live. And they worked  
6 on the voting rights. We had tribal IDs made, and we  
7 were allowed to use those for identification in the  
8 elections.

9 Shortly after that, because they didn't  
10 have the little strips on it that give all the other  
11 information on everybody like a credit card, our IDs  
12 were determined by the state to no longer be useful  
13 for anything.

14 We even have in one county where the  
15 police go and tell the pawn shops that they can't use  
16 the Red Lakers IDs to identify them for pawning  
17 whatever. And that pawn dealer actually takes  
18 pictures of the individuals because he wants to make  
19 sure he knows who he is dealing with. But, yet, the  
20 police have a habit of telling the businesses what  
21 they can and can't use for an ID, which seems very  
22 odd.

23 You are probably familiar with the Red  
24 Lake shootings that happened at the high school a  
25 couple of years ago. Interestingly enough, there's a

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1 lot of problems between trying to figure out where you  
2 want to have your kids, whether you want to have them  
3 in a reservation school or off reservation.

4 One of the adjacent communities that we're  
5 working through a couple of issues with right now, a  
6 town called Kelliher, the school board has put a max  
7 class size, which I would say coincidentally mirrors  
8 the non-Indian population size for the people who  
9 attend the school in an effort to prevent Red Lake  
10 children from going to that school. It's very odd to  
11 see those kinds of things, and we're going to be  
12 working through that as well. But those things do  
13 happen.

14 Minnesota is a different state in that  
15 it's a Public Law 280 state. And it confuses, I  
16 think, the state and the government that exists there  
17 because in 1953, when the federal government gave  
18 criminal jurisdiction and some limited civil  
19 jurisdiction to the state, the state assumed all  
20 jurisdiction.

21 In 1987, when some of the casino stuff  
22 came up with the Cabazon decision, people started  
23 realizing that the civil jurisdiction wasn't quite as  
24 broad as everyone had assumed being 100 percent. And  
25 since that time, we are trying to regain the rights

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1 that we have always had but people don't want to let  
2 us have.

3 One of the problems that I come across is  
4 that -- and I will just tell you one of the little  
5 stories. I was in county court. And when I go into  
6 county court and I represent somebody, oftentimes the  
7 other Indians in the room will come and stop me  
8 because they also realize that I understand more about  
9 what is going on.

10 There was a young man in there who was  
11 about 20 years old. And he was in there for a ticket  
12 for what they called the "Not a Drop" rule. And that  
13 means that between ages 18 and 21, if you have any  
14 amount of alcohol whatsoever and you're caught  
15 driving, it's a zero tolerance violation.

16 I asked him how did he get stopped, and he  
17 said he didn't have any license plates on his car.  
18 And I said, "Well, did he give you a ticket for that?"

19 He said, "Well, no."

20 And I said, "Well, what about  
21 registration?"

22 He says, "I didn't have that either."

23 I said, "Well, did he give you a ticket  
24 for that?"

25 And he said, "No."

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1 I said, "Do you have a driver's license?"

2 He said, "No."

3 I said, "Did you have insurance?"

4 And he said, "No."

5 I said, "He only gave you the ticket for  
6 'Not a Drop'?"

7 He says, "That's it."

8 Unfortunately, the "Not a Drop" rule is  
9 perceived as criminal where we live, and the other  
10 four are perceived as civil regulatory. And they  
11 would go to tribal court. The police feel that the  
12 Indian people do not punish their own people severely  
13 enough or properly enough. And so they also don't  
14 want to write tickets and waste their time to go and  
15 testify at court for what may have happened for safe  
16 driving conduct for everybody in Minnesota.

17 Oddly, at the same time, because  
18 everybody's budgets are shrinking, they're looking for  
19 every penny they can find. And so they write tickets  
20 for what they think they can extract from Native  
21 Americans through their court system, as opposed to  
22 sending people to ours.

23 The opposite is happening on the White  
24 Earth Reservation. In White Earth, the casino was  
25 placed on non-trust land at the time. It's in trust

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1 now.

2 They pay their taxes under protest. And  
3 for the last three years, the taxes have approximately  
4 reached \$12 million. Mahnomen County is wholly within  
5 that reservation and cannot come up with \$12 million.

6 They are so mad that the county attorney  
7 has told the records person for the county that they  
8 cannot give marriage licenses to tribal members who  
9 have been divorced in tribal court because it's not  
10 recognized by them. They can go to the next county  
11 over and get a marriage license, but they can't get  
12 one from that county.

13 When tickets are given to tribal members  
14 and they realize that the tribal members have a right  
15 to have it transferred to tribal court, rather than  
16 having it transferred to tribal court, they just  
17 dismiss it because it would cost time and money to put  
18 a letter together and send it over to tribal court.

19 Tribal court might actually collect the  
20 fine. So you actually don't have prosecution. But,  
21 yet, when they could recover the money for a marriage  
22 license or other things, they would rather just tell  
23 the Indian people no.

24 It's a very weird environment to live in  
25 because I grew up here in Manassas 25 years ago. I

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1 moved here during the '60s and '70s during civil  
2 rights and everything else. Civil rights have not  
3 reached the Indian people.

4 Oddly, at this time, because of casinos  
5 and gaming, you have internal oppression as well and  
6 also good pieces. Minimum wage where I live is  
7 probably \$7.50 because of the casino jobs. And most  
8 often reservations are the largest employer in the  
9 counties.

10 That has enabled us to get credit. That  
11 has enabled us to get cars and houses and things.  
12 That also means that we have patronage in our politics  
13 and that you can be fired just because you're in the  
14 wrong family.

15 When that happens, when we lose our jobs  
16 and our credit, the people who are adjacent to us in  
17 the non-Indian communities can't always tell who we  
18 are and what our backgrounds are. And so they don't  
19 want to give us credit again maybe.

20 We have destabilized our adjacent  
21 communities at the same time. It's a form of racism.  
22 It's a form of discrimination. I don't see it so much  
23 with the people, but the police I certainly see it.  
24 And the police, both internally, the tribal police, as  
25 well as the county police, have even come to some

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1 agreement when if they perceive it's a tribal member  
2 who is called, they try to have the tribal police go  
3 out there because the county doesn't think they have  
4 to anymore.

5 It's falling apart, instead of coming  
6 together in a lot of ways. And it leaves people in a  
7 vacuum. It leaves people unsure of what rights are  
8 going to be enforced.

9 At the same time, I work on treaty rights  
10 in state court. A particular case that I have been  
11 working on for some time is called civil forfeiture.  
12 And you may be familiar with the concept that you've  
13 had drunk driving two or three times, fleeing from  
14 maybe a drunk driving or something. They call it a  
15 criminal thing. And they go to take your car.

16 Because it's civil and it happens on the  
17 reservation to tribal members, it's civil regulatory  
18 and it belongs in tribal court and state lacks  
19 jurisdiction, while I have been able to get cars back  
20 for many years and the county attorneys know I can get  
21 those cars back, they will not voluntarily release  
22 those cars when they know they have taken them from a  
23 tribal member on their reservation. They will attempt  
24 to keep that vehicle and sell it, hoping I don't find  
25 out.

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1 I have finally gotten a judge to rule  
2 against me. I've taken it to the Court of Appeals now  
3 also. And hopefully I'll get a precedent set for  
4 tribal members on their reservations throughout  
5 Minnesota.

6 In the meantime, people are trying to  
7 collect everything they can from the poorest people.  
8 They're keeping us poor. We're helping ourselves  
9 sometimes keep us poor. But it's very difficult where  
10 I live for the distances. If you don't have a car,  
11 you don't have a job, you don't maybe get to keep your  
12 house, you don't maybe get to keep your family and  
13 kids.

14 There are people who go through CHIPs,  
15 Children in Need of Protection, because they are  
16 homeless. There was a woman who didn't have the  
17 proper refrigeration for insulin for the diabetes for  
18 her child. And so they took her child out of the home  
19 until she could get a home. Well, it's hard to get a  
20 home without a car and without a job.

21 It's very weird how the laws are starting  
22 to impact us. We're bringing a lot more stuff into  
23 tribal court, but we really don't always have the  
24 resources. And I'm not so sure that the counties and  
25 the state really want us to.

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1                   And in many ways, you know, it's sad for  
2 me, as much as I try to be friendly with all the  
3 attorneys. These are some of the smartest people in  
4 the world who know exactly what they're doing, who  
5 know they're doing things that I believe are against  
6 the law, and they continue to do them for the welfare  
7 of their own budgets.

8                   When you talk about civil rights, I think  
9 people who are in positions of power in the  
10 establishment who understand what your rights are and  
11 intentionally look the other way or, contrarily, even  
12 penalize you, I find that very offensive. It's very  
13 sad. And there are things like that that I think  
14 people need to understand that still exist.

15                   It's not very much different than what the  
16 South was 30-40 years ago, when I was a kid. It still  
17 arrived. And it's in the United States.

18                   Thank you.

19                   VICE CHAIR THERNSTROM: Two witnesses who  
20 have used their time extremely well, and we thank both  
21 of you. It is now open to questions and comments by  
22 commissioners. Yes, Commissioner Yaki?

23                   **III. QUESTIONS BY COMMISSIONERS AND STAFF DIRECTOR**

24                   COMMISSIONER YAKI: I would like Mr. Pevar  
25 since he opened the door to tell us about the one case

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1 in South Dakota that he wished to discuss.

2 MR. PEVAR: I was appointed to represent  
3 an Indian man who lived in the town of Murdo. Murdo  
4 is a relatively small town, but it's on U.S. 90. And  
5 he was accused of possessing stolen property.

6 When I spoke with him, he told me the  
7 story that late one night, four Indian fellows, whom  
8 he didn't know, stopped off at his house and asked if  
9 he would give them \$20 if they left this saddle with  
10 him.

11 And being Indian and this being part of  
12 his culture, he agreed. And he gave them \$20. And  
13 they said that they were going to Rapid City and later  
14 in the week would come back and pick up the saddle.

15 They never came back. Three months later  
16 he then took the saddle to a rancher, whom he knew had  
17 horses, and offered to sell him the saddle. The  
18 rancher immediately recognized the saddle as his own  
19 saddle that had been stolen. The rancher then called  
20 the police. And they came and arrested my client.

21 At trial, I called three witnesses,  
22 including a former Chairman of the Rosebud Sioux  
23 tribe, as well as two very prominent Indian business  
24 people, all of whom testified that in Indian culture,  
25 you help one another, you don't question, you don't

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1 worry, if you can help somebody, you do and that they  
2 had given money out to many Indian people who appeared  
3 needy at the time, took property, and about half the  
4 time, people came back for the property and the other  
5 half didn't.

6 In other to prove this crime, you would  
7 have to show intent that this gentleman knew that the  
8 property was stolen when he possessed it. Now,  
9 obviously he could not have known that it belonged to  
10 the very person whom he tried to sell it to. No one  
11 is that stupid. And the evidence showed that in the  
12 Indian world, it was perfectly reasonable for him to  
13 do exactly what he did do.

14 We also called as a witness the white  
15 woman whom this man worked for. And she reported that  
16 he had been working for her for almost two years, he  
17 was totally reliable, she gave him the key to his  
18 house, and he often did work inside the house, that  
19 she couldn't believe that he would have deliberately  
20 either stolen property or possessed property.

21 It took the jury less than 60 minutes to  
22 come back with a guilty verdict. I was stunned. I  
23 started crying. My client went like this to me as if  
24 I was the only one in the entire courtroom who  
25 actually thought that he would be found not guilty.

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1           The next day the white woman who had  
2 testified called me to report that she drove her car  
3 out of her driveway that evening and the brakes failed  
4 and that when she took it to the shop in the morning,  
5 the mechanic told her that someone had slashed the  
6 fluid cable to her brakes.

7           This is the kind of thing that I in Legal  
8 Aid and my other co-counsel in Legal Aid experienced  
9 routinely. It is the kind of shocking thing that  
10 probably the majority of us don't experience or I  
11 should say the majority of white people anyway unless  
12 they might live in some minority community or minority  
13 country, don't even have a clue as to what goes on.

14           To this day, I am just so horribly  
15 disappointed at my fellow citizens in Murdo, South  
16 Dakota who sent to prison for a year this man, whom I  
17 am absolutely convinced was innocent. That's the  
18 criminal case.

19           VICE CHAIR THERNSTROM: Other questions  
20 from commissioners?

21           COMMISSIONER MELENDEZ: Yes. Mr. Pevar,  
22 you talked about recent voting rights discrimination.  
23 Could you comment a little more on specific cases?

24           MR. PEVAR: There have been four or five  
25 cases that I am aware of handled by the ACLU Voting

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1 Rights Project: Thurston, Nebraska; in Martin, South  
2 Dakota; in northern South Dakota; in Montana; and in  
3 Colorado.

4 And all of them involve the same basic set  
5 of facts, as I mentioned. It was either the county  
6 commissioner's office or a school district in which  
7 there were substantial minority, Indian minority,  
8 populations. But they were congregated in an area, in  
9 a region within the voting district. And, rather than  
10 make voting by districts, they had an at-large  
11 election.

12 And, as a result, if the Indian population  
13 was less than 50 percent, as it was in all of these  
14 situations, Indians routinely lost the elections. All  
15 five of these cases resulted in federal court decrees  
16 finding intentional discrimination.

17 COMMISSIONER MELENDEZ: One more question  
18 I have, could you please talk more about voter ID  
19 requirements? I know that not every Native American  
20 person drives as far as a driver's license and the  
21 issue on using tribal enrollment cards and those types  
22 of things. Can any of you --

23 MR. PEVAR: Frank mentioned that subject  
24 and not me. The issue about voter IDs is a national  
25 issue, not only for Indians but a number of people who

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1 might not have driver's licenses. And it is a  
2 pressing problem. I know it is for Indians that they  
3 have difficulty registering to vote if they don't have  
4 a picture government ID.

5 I don't have any personal information  
6 about this. So I need to qualify this. But I have  
7 heard that a number of Indians have had difficulty  
8 registering to vote, even when they have had tribal  
9 IDs.

10 But Frank may have more personal  
11 information about that than I do.

12 MR. BIBEAU: And I think his comments are  
13 accurate for where we are at. It was surprising for  
14 us, as a number of reservations, to go through the  
15 effort to try to get IDs out to everybody in concert  
16 with the state.

17 And then I think it was a year later they  
18 basically said, "Well, your IDs don't have all the  
19 stuff we like to have on, whether it's the PATRIOT  
20 Act, the Homeland Security Act."

21 We don't mind people knowing who we are  
22 and knowing where we live, but, you know, we also like  
23 a little privacy. And we don't just want the man who  
24 always seems to know where we live and when to find us  
25 to just be able to do it that much easier either.

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1                   And it seems odd that we would go through  
2 this. And now that we have met one hurdle, now let's  
3 put this little magnetic strip on there. And, as  
4 Indian people, we're not going to know what's on that  
5 magnetic strip. We don't know what kind of  
6 information is on there.

7                   It's a very strange world in that sense.  
8 It just seems like as soon as you meet one barrier,  
9 another one comes up. And I guess that's the real  
10 problem because I know that I have gone to vote in  
11 what I would call white. And I use the term "white"  
12 like Mr. Pevar because in Indian law, you're either  
13 Indian or white. I mean, that's kind of how the  
14 language works.

15                   So I have gone to vote there. And you can  
16 bring an electric bill. It shows your address. It  
17 shows you're currently there. It's strange. But  
18 they've gotten things now. And supposedly -- and you  
19 are aware of the other attorney general's firing.  
20 There was one in Minnesota that was intentionally  
21 fired. They're not sure. And a new one came out  
22 there.

23                   The rumor around the reservations is that  
24 she is looking at the voting rights issues because  
25 tribal members when we go to our elections, we give a

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1 lot of people rides because they don't have cars, they  
2 don't have driver's licenses, and they don't like --  
3 and I say, "they." I'm guessing the Republicans don't  
4 like the way we turn out to vote. And I guess we help  
5 each other with gas money or whatever. And so they  
6 think that maybe we're doing this, which is in a  
7 predominantly DFL state.

8 And so supposedly the U.S. Attorney  
9 General is going to be looking at the way we do our  
10 voting on reservation to see how it may impact off  
11 reservation as well. And we're not that big a people  
12 to impact the vote.

13 Are people looking for a problem? I don't  
14 know. Are they making a problem? I don't know. It's  
15 interesting.

16 COMMISSIONER YAKI: Aren't there also some  
17 sovereignty issues involved? I mean, don't you have  
18 the ability to make your own ID? What is it that in  
19 that interplay between the notion of a sovereign  
20 nation and the neighboring town that enables them to  
21 say that "We're sorry. We decide not to recognize  
22 your own sovereign form of ID"? Has anyone brought  
23 that up or how has that been --

24 MR. BIBEAU: I don't think it's the people  
25 so much. Minnesota is a very diverse population.

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1 Even in the early turn of the Nineteenth Century and  
2 the late 1800s, you have many, many ethnic groups that  
3 were all discriminated against over the years.

4 And so they have all been intermarried for  
5 10 decades, 15 decades. But it's the system. I  
6 perceive it's the actual institution. If we don't  
7 have a Minnesota driver's license, we haven't paid  
8 \$18.50. They want us to pay them for the stuff that  
9 they recognize.

10 I perceive it as a way to keep us in  
11 poverty in a sense. I don't get it. Our tribal IDs  
12 used to be free. We have to pay a little bit for them  
13 now. But it seems odd that who I am, even as an  
14 attorney at times, I still have to be able to prove  
15 much more of who I am to be able to do things. And it  
16 all seems economic. Almost every problem I look at,  
17 if you look at it, there's an underlying dollar sign  
18 problem.

19 And that's what I think is happening with  
20 the budget problems and everything everywhere in the  
21 United States. In Indian country, when you are  
22 dealing with a lot more poor people, it just becomes a  
23 lot more obvious.

24 COMMISSIONER MELENDEZ: Just one more  
25 question I had. Can you talk more about how legal

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1 jurisdiction on and off reservation affects the  
2 enforcement of criminal and anti-discrimination laws?

3 MR. PEVAR: Yes. Chapter 8 of my book  
4 goes into this in detail. Criminal jurisdiction on  
5 Indian reservations is enormously complicated. And  
6 who has jurisdiction over a particular crime will  
7 depend on where the crime occurred, whether on Indian  
8 land or non-Indian land. It can also depend on the  
9 race of the victim as well as the race of the  
10 perpetrator. And all of those factors have to be  
11 considered in determining whether the tribe, the  
12 state, and/or the federal government has jurisdiction.

13 There have been a host of court decisions  
14 as well as several federal statutes that help decide  
15 many of these questions of criminal jurisdiction. But  
16 having said all of that, let me emphasize, as I do in  
17 my book, that one of the very unfortunate and shameful  
18 aspects of the complex and complicated set of  
19 jurisdictional laws is that, as Frank mentioned, many  
20 law enforcement agencies simply throw up their hands  
21 and say, "Well, I'm not going to spend my time and my  
22 money prosecuting violators on an Indian reservation."  
23 And, as a result, there's a vacuum of law enforcement.

24 I don't know if this Commission has been  
25 aware of the recent Amnesty International report on

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1 violence against Native American women, but if not, I  
2 cannot urge you more strongly to incorporate that into  
3 your findings.

4           Amnesty International found that women,  
5 Native women on the reservation, were two and a half  
6 times more likely to be raped than non-Native women  
7 off the reservation, and the majority of the time by  
8 white men. In the vast majority of these instances,  
9 there's no prosecutions.

10           So that is a very dramatic way of trying  
11 to answer your question. I could, if you would like,  
12 spend some time and explain who does have jurisdiction  
13 on Indian reservations. Let me just pick one example.

14           In 1885, Congress passed the Major Crimes  
15 Act. And he had authorized the federal government for  
16 the first time to prosecute people who violate any one  
17 of then seven major crimes, including rape. A number  
18 of crimes have been added.

19           As a result of the MCA, the Major Crimes  
20 Act, anyone now who commits a major crime on the  
21 reservation, whether an Indian or a non-Indian,  
22 against an Indian -- the victim would have to be an  
23 Indian, but the perpetrator could be either Indian or  
24 non-Indian -- would then be prosecuted in federal  
25 court for committing that felony. But, here again, I

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1 can report that there is a vacuum in law enforcement.

2 On the Rosebud reservation, for example,  
3 the nearest federal court is 100 miles away. That is  
4 where the marshals are. That's where the FBI is. And  
5 they're simply reluctant to spend that much time and  
6 energy, days of investigating 100 miles from their  
7 home these heinous crimes.

8 COMMISSIONER BRACERAS: Can I ask a  
9 question?

10 MR. PEVAR: Sure.

11 COMMISSIONER BRACERAS: Because I think I  
12 am not disputing that there's a lack of prosecution of  
13 these crimes, but you have taken quite a leap in  
14 positing why that might be.

15 MR. PEVAR: And I will defend it.

16 COMMISSIONER BRACERAS: With what  
17 evidence?

18 MR. PEVAR: Years of experience.

19 COMMISSIONER BRACERAS: I'm not doubting  
20 that there is a lack of prosecution. What I am asking  
21 you is, you're asserting that it's because they don't  
22 want to spend the time and money, right?

23 And what I want to ask you is, what do the  
24 federal authorities say is the reason for the low  
25 number of prosecutions?

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1 MR. PEVAR: You will have to ask them.

2 COMMISSIONER BRACERAS: Have you ever  
3 pursued that with them or do you just jump to  
4 conclusions that it's because of money or  
5 discriminatory reasons?

6 MR. PEVAR: I believe that there are a  
7 number of reasons. I know that Indian people often  
8 distrust white people. And I'm sure that prosecutions  
9 have been hampered by Indians not wanting to testify  
10 against others.

11 I mean, your point is very well-taken.  
12 And I certainly --

13 COMMISSIONER BRACERAS: And whose fault  
14 would that be? I mean, in other words, if witnesses  
15 aren't going to come forward to help law enforcement  
16 prosecute a case, you can't very well blame law  
17 enforcement.

18 MR. PEVAR: You're absolutely right.

19 COMMISSIONER BRACERAS: You see that in  
20 many domestic violence cases, right?

21 MR. PEVAR: Yes, I do.

22 COMMISSIONER BRACERAS: Across races?

23 MR. PEVAR: Yes, I do. I still believe  
24 that the primary reason, though, -- and this was  
25 discussed in the Amnesty report as well -- is that the

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1 U.S. Attorney's Office simply lacks the funds to  
2 adequately prosecute many crimes.

3 COMMISSIONER BRACERAS: Right. And so if  
4 I understand you correctly, you're saying it's a lack  
5 of resources, which doesn't single out crimes on  
6 Indian reservations. I mean, my guess is that the  
7 lack of resources hampers prosecutions across the  
8 state in a major city as well as in rural areas and on  
9 reservations.

10 MR. PEVAR: I'm sure it does. I still  
11 stand by my statement, though, that in my professional  
12 opinion based on years of experience, including living  
13 on an Indian reservation and begging U.S. attorneys to  
14 become involved in heinous crimes, that the only  
15 explanation other than intentional discrimination --  
16 and I don't want to go there -- is a lack of  
17 resources.

18 COMMISSIONER BRACERAS: But I guess what I  
19 am asking you is, if you don't want to go there, why  
20 are we here? Because our jurisdiction as a commission  
21 is to investigate discrimination, not a lack of  
22 resources, right?

23 I mean, all law enforcement agencies and  
24 federal prosecutorial offices are, arguably,  
25 under-funded. And there's nothing this Commission can

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1 do or say to affect that debate.

2 MR. PEVAR: The reason that I don't go  
3 there is that I have not studied that. I did go there  
4 with respect to the voting rights cases. I did go  
5 there with respect to the school cases.

6 COMMISSIONER BRACERAS: Right.

7 MR. PEVAR: But, as you have pointed out,  
8 and properly so, I have not looked into why, exactly  
9 why, these men and women are making those choices.

10 COMMISSIONER BRACERAS: I guess what I'm  
11 wondering, though, as far as --

12 MR. PEVAR: But I think you should.

13 COMMISSIONER BRACERAS: That is what we  
14 are trying to do. And in bringing you forward, we're  
15 looking for evidence from you as witnesses, right?

16 MR. PEVAR: Then you have asked the wrong  
17 person because I haven't studied that issue. I can  
18 report on what I did report. But you then should call  
19 some people who are criminal lawyers, which I am not.

20 You should call some U.S. attorneys and  
21 show them that "You have had 100 rapes or sexual  
22 assaults reported on this reservation and, yet, 4  
23 prosecutions. Why?" You should ask them those  
24 questions.

25 I am charitably saying it is a lack of

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1 resources, but I haven't studied it. And I hope you  
2 will.

3 COMMISSIONER BRACERAS: Right. And I'm  
4 charitably saying that the U.S. Commission on Civil  
5 Rights doesn't investigate issues of under-funding.  
6 We only investigate allegations of discrimination. So  
7 what we're looking for from you as witnesses is  
8 evidence and data that support an allegation of  
9 discrimination. If there is no data or evidence that  
10 supports such an allegation, I am not sure what we are  
11 supposed to do.

12 MR. PEVAR: Well, I don't think you should  
13 be blind to evidence that is out there. I am just  
14 saying that I don't have it. But I know that others  
15 have investigated this.

16 COMMISSIONER BRACERAS: Well, I guess what  
17 I would ask from you, all of the witnesses as well as  
18 our staff, is to try to uncover that evidence and  
19 submit it to us before the time we close the record  
20 because --

21 MR. PEVAR: I am giving you the evidence  
22 in my area of expertise. If you want evidence on some  
23 other area, then you should ask someone else.

24 VICE CHAIR THERNSTROM: Mr. Bibeau?

25 MR. PEVAR: And I hope you will.

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1 VICE CHAIR THERNSTROM: Mr. Bibeau, you  
2 have something to say.

3 MR. BIBEAU: I would just like to add a  
4 little bit. And this comes back to jurisdictional  
5 questions as well and sovereignty as well. And that  
6 is where some of these problems occur.

7 In the middle '90s, there were two trials  
8 in Minnesota on White Earth and Leech Lake  
9 reservations. And they convicted three tribal leaders  
10 on each reservation. On White Earth, it was voting  
11 fraud and other kinds of kickbacks. And on Leech  
12 Lake, it was basically theft and things like that.

13 While the United States wants to say, on  
14 one side, you know, "You guys are sovereign. We don't  
15 want to butt into your affairs," at the same time the  
16 feds come in and they arrest a number of people and  
17 prosecuted and convicted three of them.

18 They never told us how we were being  
19 ripped off. They never told us who else was ripped  
20 off. They took three people out and let the entire  
21 system in there that was ripping us off continue.  
22 That is criminal in my mind.

23 Someone owes us an explanation of how they  
24 know that these things are ripped off, not just that  
25 millions of dollars were taken but tell the victims so

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1 we can correct it. Don't leave us wondering who else  
2 was in there. That's part of the problem.

3 The other thing is sometimes these guys  
4 just -- they don't know. And Mr. Pevar was getting to  
5 that. The Indian people don't know who they can rely  
6 on because you give information, and it seems like  
7 nothing is done.

8 The prosecutions that took place, Bill  
9 Lawrence, who is not able to be here today, probably  
10 spent five or six years trying to convince the feds,  
11 giving them information on a weekly basis before  
12 something happened. I've tried giving things to the  
13 fed.

14 On the other side -- now I'm talking about  
15 the AGs, the Attorney Generals. The FBI in Bemidji --  
16 when I was fired from Leech Lake as a tribal attorney,  
17 I didn't know it when I had served a lawsuit on the  
18 chief of police that I had been reported to the FBI as  
19 an al-Qaeda terrorist. They actually attached my  
20 complaint to their complaint report and gave it to the  
21 FBI. I didn't find out until March.

22 When I found out, I directly went to the  
23 agent in Bemidji. And I asked him what the hell was  
24 going on. And he said, "Oh." He said, "I read the  
25 papers. I know you're not a terrorist."

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1                   And I'm thinking, "The chief of police of  
2 a reservation says, 'al-Qaeda terrorist' and gives it  
3 to the FBI. And the FBI knows that the chief of  
4 police is full of crap and does nothing for months  
5 because he knows there is no reliability in our system  
6 because nobody wants it to be reliable. They want us  
7 to not succeed."

8                   If we are successful, we may be able to do  
9 a lot more than people understand. And keeping us  
10 impoverished, that's how you keep the third world in  
11 its place.

12                   COMMISSIONER BRACERAS: That's a very  
13 broad accusation that the government in general or the  
14 government in your state wants to keep all Indian  
15 peoples impoverished.

16                   MR. BIBEAU: Well, I'm just looking at how  
17 the result is. I can't say that they wake up in the  
18 morning or saying their prayers at night.

19                   COMMISSIONER BRACERAS: But you basically  
20 did just say that. You said that their goal and  
21 objective is to keep Native American peoples  
22 impoverished and politically powerless.

23                   MR. BIBEAU: In a technical sense, 98  
24 percent of the resources of the United States have  
25 been taken from the Native Americans. They're looking

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1 for the last two percent.

2 VICE CHAIR THERNSTROM: Well, that does  
3 not answer the question that Commissioner Braceras  
4 just raised, which is you have made a very broad  
5 statement about intent to keep --

6 MR. BIBEAU: Could be omissions.

7 VICE CHAIR THERNSTROM: Well, I mean, I  
8 find that, the accusation, troubling in its breadth.  
9 I mean, that's the kind of statement, it seems to me,  
10 that needs a lot of evidence.

11 But people have their hands raised here,  
12 and I will go to them. I have a few questions myself,  
13 but I will let others continue. Commissioner Yaki?

14 COMMISSIONER YAKI: Yes. Thank you.

15 I just wanted to respond briefly to  
16 something that Commissioner Braceras had said when she  
17 said she was looking for direct evidence. To me part  
18 of the Commission's duties is to look at whether or  
19 not resources are being properly allocated for the  
20 enforcement of civil rights.

21 Prior to this year, we had always put out  
22 a report documenting how much money the federal  
23 government was spending in different agencies on civil  
24 rights enforcement. And I think that when you get a  
25 report from Amnesty International talking about the

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1 disproportionate rape and sexual assault cases of  
2 Native American women and the lack of prosecution  
3 thereof, I think that is a legitimate question in  
4 terms of the enforcement of our civil rights statutes.

5 And it may be a resource issue. It may  
6 not. But, even if it is a resource issue, you can  
7 always ask the question, why is there one U.S.  
8 attorney and one deputy for a 5,000-mile territory? I  
9 mean, that's the way.

10 In the old days, that's how you carried  
11 out non-justice if you wanted to do it. You posted  
12 your lousiest attorneys out to the middle of nowhere,  
13 where they had to go eight months riding from one  
14 place to another to administer justice. And that  
15 evidence gets stale. Things happen. Community  
16 pressure gets involved. So I think that we have to be  
17 careful when we talk about resources not being a civil  
18 rights issue. It absolutely is when it comes to  
19 enforcement.

20 Second of all --

21 VICE CHAIR THERNSTROM: Can I just ask you  
22 a question, Michael?

23 COMMISSIONER YAKI: Yes, yes. Feel free.

24 VICE CHAIR THERNSTROM: I mean, if there  
25 was disparate distribution of resources for law

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1 enforcement that had a disparate impact on one area,  
2 in this case a disparate impact on law enforcement in  
3 the areas we're talking about, then you would say,  
4 yes, it's a civil rights --

5 COMMISSIONER BRACERAS: Wait. Or even if  
6 there's a lack of funding with respect to civil rights  
7 types of cases, --

8 VICE CHAIR THERNSTROM: Right.

9 COMMISSIONER BRACERAS: -- as opposed to  
10 other types of crimes.

11 VICE CHAIR THERNSTROM: Right.

12 COMMISSIONER BRACERAS: I think you could  
13 then also --

14 VICE CHAIR THERNSTROM: Right.

15 COMMISSIONER BRACERAS: -- make that case.  
16 But I see no evidence on that question today.

17 MR. PEVAR: Have you asked for it?

18 COMMISSIONER BRACERAS: Well, that's why  
19 we're holding the hearing, isn't it?

20 COMMISSIONER YAKI: Wait, wait, wait,  
21 wait, wait. First of all --

22 MR. PEVAR: I don't know.

23 COMMISSIONER YAKI: First of all, no,  
24 that's not -- we can talk about the scope of the  
25 hearing later, but just to say one, what you're

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1 saying, Madam Temporary Chairwoman, is that --

2 VICE CHAIR THERNSTROM: Just call me Vice  
3 Chairman.

4 COMMISSIONER YAKI: -- is a legal standard  
5 that goes toward a burden of proof brought by the  
6 plaintiffs or appellants in a case. That's not what  
7 we're here for. We're here and have been here for 50  
8 years to determine whether or not our government is  
9 doing the job and doing --

10 VICE CHAIR THERNSTROM: But if it is --

11 COMMISSIONER YAKI: I'm sorry. Now, with  
12 regard to --

13 VICE CHAIR THERNSTROM: It shows a lack of  
14 resources in every nook and cranny with respect to law  
15 enforcement or prosecutorial offices. You cannot say  
16 there's particular discrimination.

17 COMMISSIONER YAKI: Well, then I think  
18 that we ought to take a look at the Amnesty report and  
19 incorporate that into the record and, if need be, call  
20 in witnesses from DOJ to respond to that report,  
21 respond to other instances.

22 We've heard that they have been responsive  
23 on, at least it seems to be responsive on, some of the  
24 voting rights issues, which is good. So we know that  
25 there has been some interaction there. But just in

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1 terms of the scope of the briefing, I think that we  
2 need to respect what questions the witnesses were  
3 given by staff and how they responded.

4 If they are saying to us with some genuine  
5 surprise about some other parts of this, it means  
6 that: A) they were not asked to do it. So b) we  
7 should not criticize them for not having it. And c)  
8 if that's something where the Commission needs to go,  
9 then we should promulgate some interrogatories, send  
10 out some subpoenas, and get the information that we  
11 need to make this a fuller thing because there's one  
12 thing that I want to hear from them and from the next  
13 panel, you know, and that's the topic that we're kind  
14 of dancing around, which is why is this endemic to  
15 borders, to towns bordering Indian reservations. What  
16 is it about that unique set of circumstances that  
17 causes this kind of hearing to be held and the  
18 friction that seems to be resulting there from?

19 VICE CHAIR THERNSTROM: Commissioner  
20 Braceras, do you want to answer this?

21 COMMISSIONER BRACERAS: Well, I just want  
22 to be perfectly clear. I'm not in any way blaming the  
23 panelists. I very much value your testimony and hope  
24 that you will supplement it in whatever ways you feel  
25 necessary to support some of the points that you're

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1 making. And I welcome that.

2 To the extent that I'm blaming anyone, I  
3 think that, you know --

4 COMMISSIONER YAKI: You can blame me,  
5 Jennifer.

6 COMMISSIONER BRACERAS: No, I'm not  
7 blaming you, but I guess I would say that it's going  
8 to be difficult for us, I think, to do a report with  
9 any findings and recommendations when the topic is so  
10 broad and to some extent nebulous as to sort of defy  
11 proof, right?

12 I mean, you know, the summary of the  
13 methodology here says that panelists will present  
14 information on: One, the number of reported incidents  
15 alleging discrimination; two, the state of race  
16 relations. I mean, what is that, the state of race  
17 relations? We could write volumes and volumes on that  
18 topic alone. Three, examples of discrimination in  
19 border towns. Four, what, if any, changes have  
20 occurred in the way discrimination is inflicted, felt,  
21 and understood in border towns?

22 So I think I have a problem with the scope  
23 of the briefing, not that all of those issues aren't  
24 important and relevant, but, as I sit here and listen  
25 to the testimony, I am beginning to wonder how we are

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1 going to sort of put this all together into  
2 recommendations for policy-makers that can be useful.

3 Does that make sense?

4 MR. PEVAR: It makes perfect sense. And  
5 when I was invited, the first thing that I said is,  
6 how could any one person respond to everything that  
7 you want them to respond to?

8 I mean, you're obviously a knowledgeable  
9 person in this area. If I were to put a microphone in  
10 front of you and say, "Okay. You know something about  
11 discrimination against women. Tell us about  
12 discrimination against women in health care. How  
13 about law enforcement? How about employment?" --

14 COMMISSIONER BRACERAS: Right.

15 MR. PEVAR: -- I mean, the list is  
16 endless. And I said I feel very comfortable in  
17 speaking about the areas about which I know.

18 COMMISSIONER BRACERAS: Right.

19 MR. PEVAR: And to the extent I could  
20 contribute, that would be great. But since you and  
21 the Commission, and rightfully so, have an interest in  
22 law enforcement issues, I could not urge you more to  
23 get experts in that field. I can tell you that there  
24 are people who would have no qualms about sitting here  
25 and accusing the United States of absolute racism in

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1 law enforcement.

2 COMMISSIONER BRACERAS: Well, accusations  
3 mean nothing unless they're supported by --

4 MR. PEVAR: And they would have that  
5 support. I don't. It's not an area that I have  
6 investigated.

7 COMMISSIONER BRACERAS: Right. I just  
8 think -- and this is for the staff and not the  
9 panelists -- that as we go forward and begin to cull  
10 through the testimony presented today and the evidence  
11 presented today, we may need to think about narrowing  
12 the scope for purposes of putting together a report.  
13 And that may require asking more specific questions,  
14 more targeted questions, either of these witnesses or  
15 additional witnesses, because it's, as I said, too  
16 vast right now.

17 MR. PEVAR: It is.

18 VICE CHAIR THERNSTROM: I know,  
19 Commissioner Melendez, you have had your hand up, but  
20 Commissioner Taylor hasn't had a chance to speak at  
21 all. Would you give him a chance first?

22 COMMISSIONER TAYLOR: Mr. Pevar, you  
23 mentioned early but briefly a remedial plan that you  
24 are apparently submitting along with the defendants  
25 for approval by a federal court presumably and then to

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1 a consent decree, et cetera. And you said you were  
2 hopeful that that would bring about change.

3 And to Commissioner Braceras' point, that  
4 sounded like an area where you were not only  
5 experienced but you had obviously submitted a  
6 complaint to a federal court. And the complaint was  
7 presumably based on allegations of discrimination,  
8 disparate discipline within the school setting.

9 So I wanted to hear about the specifics  
10 with respect to the remedial plan and on some aspects  
11 of the plan and what you hoped would be the result  
12 once the plan was implemented.

13 MR. PEVAR: Thank you.

14 My own feeling -- and this is really what  
15 has been a motivating force for me in my life -- is  
16 that reasonable people can reach reasonable decisions.

17 And if they will sit down and shed their initial  
18 cloaks of prejudice or whatever, you could come up  
19 with a decision and a resolution that is in everyone's  
20 best interest. And that's exactly what we did.

21 The federal judge appointed a U.S.  
22 magistrate and literally locked us in a room for two  
23 days.

24 VICE CHAIR THERNSTROM: What was the  
25 charge that was before the judge?

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1 MR. PEVAR: We had filed a massive lawsuit  
2 accusing the Winter School District of discriminating  
3 against Indian students in virtually every aspect of  
4 --

5 COMMISSIONER BRACERAS: Do you have the  
6 case name or docket number?

7 MR. PEVAR: The case name. I could give  
8 you both. The case name is Antoine, A-n-t-o-i-n-e, v.  
9 Winter School District. And I could give you the case  
10 number.

11 COMMISSIONER BRACERAS: You don't have to  
12 do it right now. That's fine.

13 MR. PEVAR: Okay. And the result that we  
14 came up with is phenomenal. Among other things, it  
15 requires that the school district will hire someone  
16 who is Indian.

17 COMMISSIONER BRACERAS: I'm sorry. Before  
18 you talk about the remedy, can I just get a little  
19 more information?

20 MR. PEVAR: Sure. Yes.

21 COMMISSIONER BRACERAS: So the case was  
22 filed in federal court alleging violations of what  
23 statute, Title VI or --

24 MR. PEVAR: Of the equal protection and  
25 Title VI. That's correct.

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1 COMMISSIONER BRACERAS: Okay. So it was  
2 Title VI and a constitutional violation as well?

3 MR. PEVAR: And equal protection. That's  
4 right.

5 COMMISSIONER BRACERAS: Okay. And you  
6 said that the district court judge sent it to a  
7 magistrate and the parties working with the magistrate  
8 came up with its remedy?

9 MR. PEVAR: That's correct. We were  
10 involved in months of discovery.

11 VICE CHAIR THERNSTROM: So there was never  
12 a trial here?

13 MR. PEVAR: There was never a trial. And  
14 both sides were not looking forward to a trial. For  
15 one thing, it would polarize the community. The  
16 Indians would be calling school officials racists.  
17 And school officials would be calling Indian parents  
18 all manners of things.

19 So everyone knew that this was not in the  
20 best interest to actually go to trial and force the  
21 plaintiffs to prove race discrimination. But the  
22 statistics were so glaring that it assisted us in  
23 reaching a settlement.

24 VICE CHAIR THERNSTROM: These were  
25 statistics on student performance or --

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1 COMMISSIONER BRACERAS: Discipline.

2 MR. PEVAR: Discipline.

3 VICE CHAIR THERNSTROM: But also on  
4 student performance? You were concentrating on  
5 discipline here or --

6 MR. PEVAR: Well, we showed that Indian  
7 kids, as I mentioned, were far more likely to leave or  
8 be expelled from school.

9 VICE CHAIR THERNSTROM: Right. But were  
10 there other issues as well on the table?

11 MR. PEVAR: The other side would have  
12 argued that the reason is not because of racism but  
13 because Indian kids couldn't compete, which we felt  
14 was --

15 VICE CHAIR THERNSTROM: The reason for the  
16 disciplinary problems?

17 MR. PEVAR: I'm sorry?

18 VICE CHAIR THERNSTROM: The reason for the  
19 disciplinary problems?

20 MR. PEVAR: The reason for failing in  
21 school, not doing well.

22 VICE CHAIR THERNSTROM: So you are talking  
23 about student academic performance as well as  
24 disciplinary. Those were both before the judge?

25 MR. PEVAR: More discipline --

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1                   COMMISSIONER BRACERAS:     Departures from  
2 school both because of expulsion and discipline or  
3 because of academic reasons, right?

4                   MR. PEVAR:    Yes, that's right.   All right.

5                   So the result is this wonderful consent decree that  
6 we trust Judge Kornmann will sign December 10th in a  
7 hearing.   And, among other things, the consent decree  
8 requires the district to hire an Indian ombudsperson,  
9 who must sit in on every disciplinary hearing with a  
10 principal or a vice principal and represent the  
11 interests of the Indian child.   There is also a  
12 requirement of having several programs each year  
13 student or school-wide that commemorate Indian culture  
14 and Indian history.   Every child must have certain  
15 courses on Indian history and the contributions that  
16 the Lakotas made to South Dakota.   There's a  
17 requirement that parents be notified of certain  
18 instances and be given an opportunity to meet with  
19 school officials.

20                   We focus on informal resolutions.   And  
21 only if nothing else succeeds, then discipline and  
22 expulsion can be considered.   But it is very proactive  
23 in terms of the culture of the Native Americans and  
24 seeking to arrive at remedies that involve the family  
25 and the community.

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1 COMMISSIONER BRACERAS: But will the  
2 disciplinary procedures be the same for white students  
3 and Native American students? In other words, you  
4 described --

5 MR. PEVAR: The punishments will be the  
6 same.

7 COMMISSIONER BRACERAS: The punishments  
8 will be the same. But you described a new --

9 MR. PEVAR: Process.

10 COMMISSIONER TAYLOR: Process.

11 COMMISSIONER BRACERAS: -- framework and  
12 process for adjudicating claims of student misconduct  
13 that you believe are more consistent with Native  
14 American culture. Are those processes equally applied  
15 --

16 MR. PEVAR: No.

17 COMMISSIONER BRACERAS: -- to white  
18 students?

19 MR. PEVAR: The only difference --

20 COMMISSIONER BRACERAS: So the Native  
21 American students get an ombudsman or defense counsel,  
22 if you will? And the Caucasian students are on their  
23 own to face down the principal?

24 MR. PEVAR: Yes.

25 COMMISSIONER BRACERAS: And that's equal

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1 how?

2 MR. PEVAR: That is an accommodation of  
3 what we felt was historic discrimination.

4 COMMISSIONER BRACERAS: Interesting.

5 VICE CHAIR THERNSTROM: I still don't  
6 quite understand this.

7 MR. PEVAR: Let me just mention one other  
8 main thing about the lawsuit. The school district  
9 must contract with a federal agency, the Inter-West  
10 Mountain -- the name escapes me, but it is federally  
11 funded -- it works out of Colorado State University --  
12 to go up and to analyze in South Dakota why there have  
13 been these problems in the first place. They have a  
14 set of techniques and studies that they have used  
15 throughout the United States, not just for Indians but  
16 in minority school districts where minorities have  
17 been underachieving.

18 And there is a host of variables from  
19 ignoring bullying to not having teachers being  
20 adequately sensitive to the needs of minority  
21 students. The Inter-West Agency will then make  
22 recommendations.

23 COMMISSIONER BRACERAS: Well, wait a  
24 minute.

25 MR. PEVAR: Sure.

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1                   COMMISSIONER BRACERAS: Let me just stop  
2 you there because I don't doubt that those things are  
3 true, but a red flag is raised in my mind when  
4 somebody tells me that a school district, an agency of  
5 the government is going to be applying different  
6 disciplinary procedures depending on the race of the  
7 child.

8                   MR. PEVAR: No. They're not going to.  
9 They're going to make recommendations as to why are we  
10 where we are today --

11                   COMMISSIONER BRACERAS: No, no, no. But  
12 --

13                   MR. PEVAR: -- and what you need to do or  
14 what suggestions they could present to the school  
15 district to --

16                   COMMISSIONER BRACERAS: So under the  
17 consent decree, the school district is not obliged to  
18 adopt different disciplinary procedures for Native  
19 Americans versus --

20                   MR. PEVAR: No. I didn't say that either.  
21 I acknowledged that under the consent decree, they  
22 would be required to.

23                   COMMISSIONER BRACERAS: Oh, okay because I  
24 --

25                   MR. PEVAR: And that's the ombudsperson.

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1                   COMMISSIONER BRACERAS: Right. And that  
2 is something I have to say that raises a red flag for  
3 me as somebody who teaches Title VI and somebody who  
4 has read and studied and written a great deal on  
5 issues of civil rights and education. Equal processes  
6 are at the heart of what the equal protection clause  
7 is all about.

8                   MR. PEVAR: Well, then you may want to  
9 attend the hearing and object.

10                  VICE CHAIR THERNSTROM: There's some --

11                  COMMISSIONER BRACERAS: I don't think I  
12 want to go that far. I'm just pointing out that the  
13 rights of the same procedures and the same process,  
14 the same due process, is, regardless of race, inherent  
15 in the equal protection mandates of this country. So  
16 I find it bizarre that that would be the remedy that  
17 you would seek.

18                  I'm not in any way questioning that there  
19 were violations or that there needs to be some remedy.  
20 I'm just questioning the choice of remedy.

21                  MR. PEVAR: Right. Fine.

22                  VICE CHAIR THERNSTROM: You know, I have  
23 --

24                  MR. PEVAR: I don't find it bizarre.

25                  VICE CHAIR THERNSTROM: I'm still confused

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1 on a basic point here. When you have a  
2 disproportionately high number of Indian suspensions  
3 from school and other disciplinary actions, what was  
4 the process?

5 I mean, getting suspended from schools is  
6 -- this is not something that happens in general  
7 easily without quite an elaborate process, a hearing.  
8 Parents have rights. And schools have got their hands  
9 tied in terms of getting rid of troublemakers in  
10 general or kids they perceive as troublemakers.

11 So what was the process before this  
12 remedial action? Surely, the principal couldn't wake  
13 up one morning with a kid sitting in his office whom  
14 some teacher had been unhappy, whose behavior had  
15 provoked some teacher, and the principal says, "Out."  
16 I mean, there had to be a process in place and --

17 MR. PEVAR: There were numerous processes,  
18 almost all of which we contended were racially  
19 discriminatory, starting with a subjective evaluation  
20 of the severity of what the child had done.

21 VICE CHAIR THERNSTROM: Who did that  
22 evaluation?

23 MR. PEVAR: The school did. We subpoenaed  
24 the school disciplinary records. And we sat there  
25 literally for weeks looking at how teachers and the

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1 principals and administration described the events  
2 that resulted in various punishments.

3 And you could just sit there and see that  
4 Bill and Johnny, whom you later find out are two white  
5 kids, were engaged in horseplay. And, therefore, they  
6 were given detention.

7 You then read another report of Johnny  
8 White Owl, who was engaged in the identically  
9 described conduct and was cited for violence or was  
10 cited for insubordination, a much higher offense. So  
11 one thing that --

12 COMMISSIONER BRACERAS: If the underlying  
13 conduct is the same --

14 MR. PEVAR: The underlying conduct was  
15 identical.

16 COMMISSIONER BRACERAS: -- but it's being  
17 simply described differently and punished differently,  
18 then that's --

19 MR. PEVAR: Exactly. That was one thing.

20 COMMISSIONER BRACERAS: That is  
21 discrimination.

22 MR. PEVAR: Right. That was one thing we  
23 --

24 COMMISSIONER BRACERAS: I understand what  
25 your concern is, but --

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1 MR. PEVAR: Right. That was one thing  
2 that happened. Another thing that happened -- and  
3 this was part of the lawsuit -- is that -- and 95  
4 percent of the victims of this were Indian -- they  
5 brought the kid in. They refused to allow him or her  
6 to contact their parents. And they kept him in that  
7 room until he or she signed a confession, which then  
8 the principal, who was a notary, conveniently  
9 notarized. And they sent it to law enforcement.

10 The very first thing that happened after  
11 we filed the lawsuit and brought this to everyone's  
12 attention is that they said, "Okay. We'll stop doing  
13 that." That was a Fifth Amendment claim under  
14 self-incrimination. They forced these kids to write  
15 statements.

16 And in the complaint, you will see that  
17 the allegations were that they denied them even  
18 bathroom breaks and would keep them hours until they  
19 "confessed." So that was another part of the process.

20 But the end result -- and it's listed in  
21 detail in the complaint -- is that we believe that the  
22 conclusions, the disciplinary confessions, were  
23 tainted from start to finish and that they were  
24 unreliable and that they were discriminatory.

25 COMMISSIONER TAYLOR: One follow-up

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1 question.

2 VICE CHAIR THERNSTROM: Yes? Yes, we  
3 interrupted Commissioner Taylor here.

4 COMMISSIONER TAYLOR: Did you find that  
5 the reaction of the school district was any different  
6 if the teacher or the principal was Indian?

7 MR. PEVAR: Very good question. There's  
8 only one Indian employed in the school district. And  
9 she -- I think it's a she -- is not a teacher. That  
10 was another aspect of our lawsuit. Even though  
11 there's such a high percentage of Indians in the  
12 community, they have never been actively recruited.

13 We weren't able to get information as to  
14 who applied and if they were denied employment, but we  
15 have been swamped with applications for the  
16 ombudsperson position.

17 Now that the school district has had to  
18 advertise for a position filled by an Indian or Indian  
19 preference, the outpouring has been enormous.

20 COMMISSIONER TAYLOR: One more question.  
21 How have you described the "discrimination"? I'm  
22 presuming when you meet the school officials, they  
23 aren't foaming at the mouth and "racists" such that  
24 they are using racial slurs and et cetera. So I'm  
25 presuming that's the case.

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1                   What do you characterize as the  
2 discrimination?

3                   MR. PEVAR: In the closed door sessions, I  
4 took somewhat of a leap. And I said, "I lived here 35  
5 years ago. And I wanted to file this lawsuit then.  
6 And I regret that I didn't.

7                   "I feel in my heart that you are  
8 discriminating against my clients. I don't want to  
9 have to prove it. And I don't think it's in anyone  
10 interest to go to court over this.

11                   "But one of two things must be true.  
12 Either Indian kids as a class are miscreants far more  
13 violent, far more likely to engage in trouble than  
14 non-Indians or there's race discrimination. It has to  
15 be one or the other. The statistics were so glaring.  
16 How could you explain having 20 percent of the  
17 population be Indian and 60 percent being expelled  
18 from school? They're either worse kids or there's  
19 subjective or intentional" --

20                   COMMISSIONER BRACERAS: Or a little bit of  
21 both.

22                   MR. PEVAR: Or a little bit of both.  
23 Exactly. So I started out by saying, "Let's not try  
24 to figure that out. Let's make a commitment to doing  
25 the right thing in the future and to having people in

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1 place," such as Inter-West, who has had decades of  
2 experience with this, "of having an ombudsperson, of  
3 having an open door policy and meeting with parents to  
4 discuss particular concerns." And I think in the end,  
5 everyone agreed that that is the right way to go.

6 VICE CHAIR THERNSTROM: You know, one  
7 thing that is bothering me about this -- and I know  
8 that Commissioner Melendez wants to talk. And I  
9 certainly am not going to hog the mike here.

10 But, I mean, in most schools, just leaving  
11 aside the question of the disparate impact, which  
12 obviously is extremely important and at the heart of  
13 our concern here, just leaving aside that for a  
14 second, I mean, making it more difficult for schools  
15 to in general, whatever the ethnicity, color, race of  
16 the kid, for schools to remove kids who were  
17 disciplinary problems is not doing a service to the  
18 educational quality in the school. I mean, most urban  
19 schools in America can't get rid of the 10 percent of  
20 kids who make it impossible for the other 90 percent  
21 to learn. That's not a good thing.

22 MR. PEVAR: And nothing prevents that from  
23 occurring in our case.

24 VICE CHAIR THERNSTROM: Prevents what from  
25 --

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1 MR. PEVAR: Getting rid of the bad  
2 student.

3 VICE CHAIR THERNSTROM: I hope that that  
4 is the case because it --

5 MR. PEVAR: I think the school --

6 VICE CHAIR THERNSTROM: -- is a nationwide  
7 problem that schools can't do anything --

8 MR. PEVAR: I agree.

9 VICE CHAIR THERNSTROM: -- with kids who  
10 are extremely disruptive in the school and are  
11 stopping learning for --

12 MR. PEVAR: And I'm sure that school  
13 officials wouldn't have agreed to this settlement if  
14 they thought that their hands were tied.

15 VICE CHAIR THERNSTROM: Commissioner  
16 Melendez, you have had your hand up for a while.

17 COMMISSIONER MELENDEZ: Yes. The question  
18 I had was I think some of the disputes between  
19 students -- I thought that I had read that it did have  
20 something to do with racial dialogue between the  
21 Native Americans and --

22 MR. PEVAR: In the Antoine case?

23 COMMISSIONER MELENDEZ: I think that I had  
24 read that.

25 MR. PEVAR: Yes.

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1                   COMMISSIONER MELENDEZ:   And some of that  
2                   was there.   It wasn't as if it wasn't present.   And  
3                   then also I had read also that I believe in the  
4                   Winter's material that basically the Office of Civil  
5                   Rights was basically the first investigative agency to  
6                   look at this issue.

7                   And they basically sounded like the ACLU  
8                   was saying that they were kind of maybe not agreeing  
9                   that there was a problem or there was actually  
10                  agreement that they were trying to make sure the  
11                  agreement was kept between some type of agreement to  
12                  make sure that all of these issues were met.   But it  
13                  sounds like when the ACLU came in basically on top of  
14                  them and said, well, they weren't really addressing  
15                  the issues.   Is that correct?

16                  MR. PEVAR:   You raise two issues.   And let  
17                  me comment on both.   First, it's true that part of our  
18                  proof that we would have introduced at trial is that  
19                  school officials were ignoring discrimination,  
20                  peer-on-peer discrimination.

21                  Indian kids were being called all kinds of  
22                  racial epithets and were reporting that, both the  
23                  students and the parents, to school administrators.  
24                  And the allegations were that the administrators were  
25                  not doing anything about it, "lazy Indian," "dirty

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1 Indian." A favorite, if you'll pardon the expression,  
2 was "prairie nigger." That is what seemed to be one  
3 of the worst things that white kids were often calling  
4 Indian kids. So that was another aspect of our case.

5 To go into your question, yes, the parents  
6 back about ten years ago filed a complaint with the  
7 Office of Civil Rights with the Department of  
8 Education and came out and the school district entered  
9 into a settlement in which the district essentially  
10 acknowledged, although that is not required in these  
11 settlements, that they needed to do more to help  
12 Indian kids.

13 The school district then sent in a host of  
14 papers that the U.S. Commission agreed was sufficient.  
15 We looked at the same papers and couldn't believe that  
16 the commission was willing to sign off on the paltry  
17 amount of information and to close the case.

18 We did a fresh analysis and decided that  
19 things, if anything, were worse than before the U.S.  
20 Commission had begun. And we filed our lawsuit.

21 VICE CHAIR THERNSTROM: We really need to  
22 move on to the next panel here. We are ignoring good  
23 people who have been very patient in the wings.

24 MR. BIBEAU: I would just like to add  
25 something because she has asked some very interesting

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1 questions. One of the cases I have is a tribal member  
2 who lives off reservation.

3 The state has made an agreement with the  
4 reservation governments to where even if you live off  
5 reservation in certain counties, that you can't use  
6 public services. And so everybody in Aitkin County is  
7 allowed to go in and use the MFIP, the Minnesota  
8 family stuff, in poverty but tribal members. And it's  
9 only some tribal members.

10 I like equal protection, too, but it  
11 doesn't work for us very often. When it doesn't work  
12 for us, they call it a political class or a political  
13 group when we call it racism. And so when you say  
14 these things, I think, "Well, sure, that sounds great  
15 out here, but it doesn't play very well out West."

16 COMMISSIONER BRACERAS: Well, I think  
17 there are a lot of people trying to have it both ways,  
18 both on the part of the government and probably  
19 sometimes with respect to tribe members. It's  
20 difficult, you know, the dual sovereignty. And it  
21 does sometimes create incentives for actors on both  
22 sides to try to have things both ways. But in my  
23 view, that's always wrong.

24 VICE CHAIR THERNSTROM: Thank you very,  
25 very much for your participation this morning. And

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1 please do feel free to supplement your record in any  
2 way that you think would be responsive to the  
3 questions this morning.

4 COMMISSIONER TAYLOR: Particularly with  
5 information on the case.

6 VICE CHAIR THERNSTROM: Yes, particularly  
7 with information on the case Commissioner Ashley just  
8 requested.

9 COMMISSIONER TAYLOR: Yes.

10 VICE CHAIR THERNSTROM: And I do second  
11 that request.

12 So we move on at this point. I should  
13 have asked the Staff Director whether he had any  
14 questions. I actually had some questions myself, but  
15 in the interest of time, I do want to move on here.

16 COMMISSIONER YAKI: Madam Chair?

17 VICE CHAIR THERNSTROM: Yes?

18 COMMISSIONER YAKI: Could I ask that the  
19 record be open for 60 days? Some of the panelists  
20 were only notified this week that they were to come.  
21 We can afford them a little more time to get their  
22 stuff together.

23 VICE CHAIR THERNSTROM: Do we have any  
24 problem with that?

25 STAFF DIRECTOR MARCUS: I don't see a

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1 problem with giving 60 days. We will have to look at  
2 whether we need to have a formal motion when we have a  
3 business meeting, as opposed to that, but if there's a  
4 consensus here, well, assume that we're doing that and  
5 see if we need further formalities.

6 MR. PEVAR: Just so that the record is  
7 clear, please if I don't file anything, for example,  
8 about criminal prosecution --

9 VICE CHAIR THERNSTROM: Now, we'll  
10 understand that is not your area.

11 MR. PEVAR: Okay. Yes. I told the person  
12 who invited me that I am just extremely busy and that  
13 I don't think I could even do a written statement. So  
14 I apologize at the outside and don't --

15 COMMISSIONER BRACERAS: No worries. Can  
16 we take a vote right now to keep the record open?

17 VICE CHAIR THERNSTROM: If we have a  
18 quorum.

19 STAFF DIRECTOR MARCUS: We don't have a  
20 business meeting.

21 VICE CHAIR THERNSTROM: No. We cannot.  
22 We do not have a business meeting.

23 COMMISSIONER BRACERAS: We do not have to  
24 have a business meeting to take a vote. We just need  
25 a quorum.

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1 STAFF DIRECTOR MARCUS: You need a notice.

2 COMMISSIONER BRACERAS: But this was  
3 noticed.

4 VICE CHAIR THERNSTROM: Only as a  
5 briefing.

6 COMMISSIONER YAKI: This is a  
7 consequential --

8 COMMISSIONER BRACERAS: That's absurd.  
9 That's absurd. That can't be right because we used to  
10 do it all the time, have meetings and briefings in one  
11 session.

12 VICE CHAIR THERNSTROM: I know we did, but  
13 we're not doing that today.

14 STAFF DIRECTOR MARCUS: If you want to  
15 take a break, then we can look at it, but I will tell  
16 you that it was formerly the case that we would have  
17 meetings and briefings in both sessions, that we would  
18 notify them as such.

19 COMMISSIONER BRACERAS: And this wasn't  
20 notified as such?

21 STAFF DIRECTOR MARCUS: Right.

22 COMMISSIONER BRACERAS: No.

23 STAFF DIRECTOR MARCUS: This was to be a  
24 briefing only. So it was noticed --

25 COMMISSIONER BRACERAS: I am a huge

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1 proponent of separating out the business meetings and  
2 the briefings, but for the purposes of keeping our  
3 options open, I think you should notice that it's both  
4 so that if we want to vote on something, we can  
5 because things arise in the course of hearings that we  
6 may want to ask the staff to look into or what have  
7 you. And it is absolutely absurd that we can't then  
8 take a vote and we have a quorum. Am I right?

9 VICE CHAIR THERNSTROM: That is to be  
10 brought up at the next --

11 COMMISSIONER BRACERAS: You have got to at  
12 least agree with me on that one.

13 COMMISSIONER YAKI: I am.

14 VICE CHAIR THERNSTROM: Jennifer, it seems  
15 to me that is to be brought up at the next --

16 COMMISSIONER BRACERAS: It's just my  
17 parting advice.

18 VICE CHAIR THERNSTROM: It is to be  
19 discussed, but it creates a bunch of problems to have  
20 both. So let us leave that for the time being and  
21 welcome the next panel.

22 Mr. Windy Boy, an enrolled member of the  
23 Chippewa-Cree tribe. He serves on the Chippewa-Cree  
24 Tribal Council, served on numerous national boards,  
25 the National Indian Health Board, the National Tribal

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1 Self-Governance Advisory Committee among them. In  
2 addition, he has worked to convey concerns to  
3 congressmen, senators, congressional subcommittees  
4 that affect Indian country and federal government  
5 services. He has met with the President on numerous  
6 occasions as an advocate for Indian people.

7 James Runnels, Chief Jim Runnels, has been  
8 with the Farmington, New Mexico Police Department for  
9 over 21 years. He was appointed chief in December  
10 2006 after serving in a variety of other capacities.

11 Prior to his time -- Commissioner Yaki?

12 COMMISSIONER YAKI: What?

13 VICE CHAIR THERNSTROM: Are we having a  
14 discussion in the wings here or are we part of this?  
15 Okay.

16 Prior to his time with the Farmington  
17 Police Department, Chief Reynolds spent ten years with  
18 the Fort Worth, Texas Police Department. He has a  
19 B.S. in criminal justice, M.A. from the University of  
20 Colorado. He holds degrees as well from the FBI  
21 National Academy, the FBI Southwest Command College,  
22 and the Northwestern University Traffic Institute  
23 School of Police Staff and Command.

24 Barry D. Simpson, currently Superintendent  
25 of Bishop Union Elementary School District in Bishop,

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1 California. He previously served as superintendent in  
2 two California school districts. Mr. Simpson received  
3 his Bachelor of Arts degree in economics from Whittier  
4 College, his Master's degree in education from Chapman  
5 University, and is currently a doctoral candidate at  
6 the University of LaVerne.

7 Duane Yazzie. Mr. Yazzie is a  
8 self-educated man who has technical training in  
9 computer programming, has taken a variety of classes  
10 at the Navajo Community College.

11 He has been an activist since the 1960s.  
12 He's regarded as a leading Navajo advocate against  
13 civil rights abuses. He has been in public service  
14 for 32 years, mostly in service with the community of  
15 Shiprock Navajo Nation. He served on the New Mexico  
16 Human Rights Commission for six years.

17 Please swear and affirm that the  
18 information you have provided is true and is accurate,  
19 to the best of your knowledge.

20 (Whereupon, there was a chorus of  
21 affirmative responses.)

22 VICE CHAIR THERNSTROM: Well, I welcome  
23 all of you on behalf of the Commission. And I call on  
24 you according to the order you begin for the record.

25 So, Mr. Windy Boy, please start. And,

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1 again, you have ten minutes each. And we are watching  
2 the clock.

3 MR. WINDY BOY: I was hoping to interject  
4 the last dialogue.

5 (Native language spoken.)

6 MR. WINDY BOY: Good morning. That would  
7 be my first language or the only language that I know.

8 What I am going to be talking to you is  
9 from a second language. So if I misuse a word, it's  
10 not intentional. I don't have a Ph.D. I don't have  
11 an M.P.H. I don't have a B.A. or an A.A. But I am  
12 just plain old Al Windy Boy, Rocky Boy.

13 Background that was not mentioned is law  
14 enforcement, trained at the Federal Law Enforcement  
15 Training Center, Marana, Arizona; served as a  
16 livestock inspector with the State of Montana; and a  
17 rancher; and, most importantly, a great grandfather, a  
18 grandfather, and a father, the oldest being 37 years  
19 old, and my youngest 10 months old, and all points in  
20 between.

21 After saying that, before I begin this  
22 testimony, I want to start my reaffirmation of the  
23 Foundation of Sovereign Status of Tribes with a quote  
24 from a well-respected former tribal leader, a good  
25 friend of mine by the name of Joe DeLaCruz, where he

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1 said, "No right is more sacred to a nation, to a  
2 people than the right to freely determine the social,  
3 economic, political, and cultural future without  
4 external interference. The fullest expression of this  
5 right occurs when a nation freely governs itself," the  
6 late Joe DeLaCruz, former President of the Quinault  
7 Nation from '72 to '93.

8 The over-arching principle of tribal  
9 sovereignty is that tribes are and always have been  
10 sovereign nations. Tribes preexisted, the federal  
11 union, and draw our right from our original status of  
12 sovereigns before European arrival.

13 The provisions of health, education, and  
14 welfare service as tribes is a direct result of  
15 treaties, executive orders, and other acts of Congress  
16 entered into between the United States government and  
17 tribes. This federal trust responsibility forms the  
18 basis of providing health, education, and welfare  
19 services to tribal people.

20 This relationship has been reaffirmed by  
21 numerous court decisions, proclamations, and  
22 congressional laws. One area that -- and you heard  
23 from the previous panel those dealing with education.  
24 The situation today I want to talk a little bit about  
25 is access to health care.

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1           You know, racism comes in many forms and  
2 is often a domino effect of racist attitudes and  
3 actions that negatively impact my tribal people. The  
4 result of these negative impacts could be defined by  
5 racial and ethnic disparity, American Indian, Alaska  
6 Native health disparities.

7           You know, American Indians have long  
8 experienced lower health status when compared with  
9 other Americans, disproportionate poverty,  
10 discrimination in the delivery of health service, and  
11 cultural differences. It has contributed to the lower  
12 life expectancy and disproportionate disease burden  
13 suffered by American Indians. American Indians born  
14 today have a life expectancy that is 2.4 years less  
15 than U.S. all races.

16           American Indians die at higher rates than  
17 any other American: from tuberculosis, 600 percent  
18 higher; alcoholism, 510 percent higher; motor vehicle  
19 crashes, 229 percent higher; diabetes, 18 percent  
20 higher; unintentional injuries, 152 percent higher;  
21 homicide, 61 percent higher. And these statistics I  
22 derive from many congressional testimonies done by  
23 people in the health industry, tribal health industry.

24           Some of these health disparities are  
25 historic. Alcoholism continues to be a serious

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1 challenge to American Indian health. Since  
2 introduction to tribal health people in this nation's  
3 history, alcohol has done more to destroy Indian  
4 families, individuals, and tribal communities than any  
5 other disease. Today in 2007, tribal people are dying  
6 at a rate of 510 percent higher than any other  
7 Americans from alcoholism.

8 The overall impact of these health  
9 disparities made us, "at risk" communities, weakened  
10 and vulnerable. In fact, as reported in the national  
11 news, Billings area tribes, which is within Montana,  
12 Wyoming, a tribe was targeted by Mexican drug cartel  
13 because of their history with alcoholism. The drug  
14 dealers figure that the tribal community, already  
15 inundated in alcohol addiction, would be easy to  
16 infiltrate for drug distribution.

17 Their business plan included marrying into  
18 the tribe, give free samples to get people addicted,  
19 and then get them to distribute to support their  
20 addiction. This approach is being implemented  
21 throughout Indian country. And this happened to be on  
22 a friend of mine's reservation on the Wind River.

23 As the federal government develops models  
24 or "best practices," that aim to reduce or eliminate  
25 racial and ethnic disparities, closing the gap, a

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1 balance seems to be made between the federal deficit  
2 model in comparison to all U.S. races and a positive  
3 development model. Otherwise health policy and the  
4 subsequent allocation of funding toward Indian health  
5 care will be determined on the basis of tribes being a  
6 marginalized minority and not as sovereign nations  
7 with distinct treaty rights, which have been  
8 negotiated with the "full faith and honor" of the  
9 United States of America.

10 Indian health care funding, given the  
11 significant health disparities that tribal people  
12 suffer, funding for Indian health care should be given  
13 the highest priority within the federal government.  
14 Many of the diseases that tribal people suffer are  
15 completely preventable and/or treatable with adequate  
16 resources, funding.

17 For some time now, the United States has  
18 not funded the true need of health services for  
19 American Indian and Alaska Native people. The medical  
20 inflation rate over the past 10 years has averaged 11  
21 percent. The average increase for the IHS, [The  
22 Indian] Health Services, over the same period has been  
23 only four percent. This means that IHS tribal urban  
24 health programs are forced to absorb the mandatory  
25 costs of inflation, population growth, and pay cost

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1 increases by cutting health care services.

2 There simply is no other way for the  
3 Indian tribes and urbans to observe these costs. And  
4 the basis for calculating inflation used by government  
5 agencies is not consistent with that used by the  
6 private sector.

7 OMB, Office of Management and Budget,  
8 usually increases ranging from 2 to 4 percent each  
9 year to compensate for inflation when the medical  
10 inflation rates range from 7 to 13 percent, you know,  
11 the disparity and level of quality of care. This  
12 question has never been investigated in Havre,  
13 Montana.

14 And the question always arose, do Indians  
15 receive different care at local hospitals in  
16 comparison with other patients? Are Indians  
17 discriminated against by hospital staff? And is the  
18 level of care provided to Indians different because of  
19 financial factors? Indian Health Service and Tribal  
20 Health have reduced rate agreements with the hospitals  
21 for lack of empathy.

22 You know, I can only speak from my own  
23 experience, but I do know that my experience I shared  
24 by many other tribal people. You know, for the first  
25 time in my life, I am covered by private insurance

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1 through my wife's employer, Montana State University.  
2 She's the bioenergy director.

3 I never though that I would receive  
4 different health care from the hospital due to my  
5 status as a recipient of health care through our IHS  
6 compacted tribal health facility.

7 This past spring, this past spring, we had  
8 an epidemic. And I am a rancher by choice, because I  
9 want to. We had an epidemic of trichomoniasis in our  
10 bulls. So then the ranching organization then rounded  
11 up all of these bulls and got them tested.

12 I took mine in to the local vet in Havre,  
13 which is close to 40 miles away. And this particular  
14 vet place, there was only women working there. And  
15 they were trying to chase one of my bulls in. And  
16 they were getting him more heated up, getting him  
17 mean. So I told them, "Here. Let me do it."

18 So I jumped over the fence. And when  
19 clearing the top rail, I slipped. The bull turned  
20 around and just beat the heck out of me. And I often  
21 wondered what Elvis Presley felt like, all those girls  
22 screaming.

23 (Laughter.)

24 MR. WINDY BOY: So, anyway, as a result of  
25 that, the bull stepped on me. I ended up in the

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1 hospital for about three and a half days. And the  
2 doctor that I was assigned to was on call. When I  
3 first was admitted, my wife hadn't received her proof  
4 of insurance card and although I was covered at the  
5 time, the hospital emergency room billed my care to  
6 our tribal health facility in Rocky Boy. And I was  
7 run through the process of tests and X-rays.

8 I was admitted for my injuries and then  
9 released two or three days later. I was still in  
10 pain. My mobility was limited to crutches and a cane  
11 for the next several weeks. And part of my injuries  
12 included a big abrasion from my knee down to my ankle,  
13 where the skin was taken off.

14 And although I followed up on care with  
15 that same doctor who treated me during my initial  
16 hospital stay, I developed an infection serious enough  
17 for my wife to insist that I return to the emergency  
18 room, which ultimately was a staph infection. And  
19 this time --

20 VICE CHAIR THERNSTROM: I hate to tell  
21 you, but you do need to wind this up because you are  
22 way over time.

23 MR. WINDY BOY: Well, this time my private  
24 insurance information had entered the hospital  
25 database. So the second time I went through this, I

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1 went through a cadre of tests where they had four  
2 blood pressure cuffs on my legs, determined the  
3 circulation in my leg. And they also went through a  
4 CAT scan and found that I had a broken hip on my upper  
5 bones. So I guess, to make a long story short, that  
6 was one of many incidents.

7 Do you know Paul Harvey, you know, the guy  
8 that says "the rest of the story"? You know, he said  
9 one time "If you want to get away with murder, do it  
10 in Hays, Montana," next reservation over, small town  
11 located. You know, that's synonymous with this  
12 country.

13 You know, what I talked about, the  
14 disparities, the disparities is in a wide range. In  
15 fact, you've got a team here. You've got a team we  
16 call the Washington Redskins. You know, to me that's  
17 derogatory. The Atlanta Braves, where they sing some  
18 funky song, you've got a guy running around, parading  
19 around in the gymnasium, Illinois, you know, that's  
20 derogatory. If a guy paints his face, that's  
21 derogatory to me because we go through great measures  
22 to get our face painted. And there is a process. And  
23 for somebody to come by and mock that, that's  
24 discriminatory against me.

25 VICE CHAIR THERNSTROM: Why don't you come

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1 back to these in the question and answer period, if  
2 you would, because it's just not fair to the rest of  
3 your panelists to keep talking when you are way over?

4 MR. WINDY BOY: Well, I wish it would have  
5 been fair for me even for the previous panel to also  
6 look at the time that was spent.

7 VICE CHAIR THERNSTROM: Well, wait a  
8 minute. They were under the ten minutes, both of  
9 them.

10 Sir?

11 MR. RUNNELS: Madam Chair, members of the  
12 Commission, I appreciate this opportunity to come  
13 here. I have been told to express my regrets that  
14 Mayor Standley couldn't be here. He's far more  
15 involved in the cause that we're going to talk about  
16 here today than I am, but I also appreciate the  
17 opportunity.

18 The City of Farmington is no stranger to  
19 the Civil Rights Commission. You have been there  
20 twice since 1974. Regrettably, the incidents of 1974  
21 have left a stain on Farmington that I don't know will  
22 ever be erased, but we are making some efforts to do  
23 that.

24 For those of you who aren't familiar with  
25 Farmington, Farmington is still, and not as much, an

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1 oil and gas center in northwest New Mexico. Because  
2 of that, Farmington has traditionally been a boom and  
3 bust town. During the boom periods, for a while  
4 there, they average every 10 to 15 years.

5 During these boom periods, you would  
6 experience population growth of 200 to 300 percent.  
7 The busts would come along. And these people would  
8 leave.

9 Part of the problem with boom periods is  
10 the people that are coming in are often from out of  
11 state. Any time you have a huge influx of a  
12 population that is not from the area, is not aware of  
13 the cultural differences, and is not willing to take  
14 the time to learn what the issues are, this creates  
15 problems. And I feel that is probably part of the  
16 problems we have had in the past.

17 There are definitely issues of racial  
18 discrimination in Farmington. There is no question  
19 about that. I am not an expert in very many areas,  
20 but I have seen it in my 20-something years I have  
21 been there.

22 In the educational system, there is still  
23 a lack of a willingness, I believe, to incorporate  
24 cultural education into the current system. I say  
25 this because one of my other roles is I am an adjunct

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1 faculty member for the local community college.

2 You know, I have to grade the papers. And  
3 I feel like, you know, that there hasn't been an  
4 effort to incorporate the style of writing from the  
5 Native American into the current English system. And  
6 you see that in the papers that we have.

7 You know, the opportunities in school are  
8 often dependent upon the home life. And I know for a  
9 fact that a lot of these students endure long, tenuous  
10 bus rides to get to and from class. And this doesn't  
11 make for the best opportunities.

12 The business community has a very poor  
13 record with Native Americans in Farmington. We often  
14 in law enforcement deal with this on the other end of  
15 it as far as, you know, being called on so-called  
16 civil standbys.

17 You know, we deal with a lot of the Native  
18 elders who are not fluent in the English language and  
19 don't understand the legal documents they have signed.  
20 When there is a question as to why, you know, these  
21 people are here to repossess whatever they're after,  
22 you know, we're caught in the middle of that often.  
23 And I think that is probably one of the bigger issues  
24 we have there.

25 Customer service in the past has always

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1       been an issue in the Farmington area as far as the way  
2       Native American clients were treated. I will have to  
3       say that customer service in Farmington is poor  
4       regardless. I have been just as unhappy as some other  
5       people there, but that is part of what is going on in  
6       Farmington.

7               Of course, law enforcement I do know  
8       about. You know, I don't think there's any question  
9       that the criminal justice system in New Mexico and in  
10      San Juan County is discriminatory against minorities.  
11     Now, it's not much different than it is in other parts  
12     of the state depending on the population, but we see a  
13     predominant number of the people that we arrest, you  
14     know, often wind up in the hands of public defenders.

15              Now, you know, we have some good public  
16     defenders. We have some not so good public defenders.  
17     Personally I would like to make sure everyone gets the  
18     best legal services they can. It makes our job  
19     easier, believe it or not. Now, you don't really hear  
20     law enforcement saying much complimentary about  
21     attorneys, but it does make our job easier.

22              Misconceptions from law enforcement with  
23     Native Americans. You know, I'll tell you a short  
24     story that in my resume, I spent ten years in Fort  
25     Worth. I was born and raised in Fort Worth. I come

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1 to New Mexico. I am suddenly working among Native  
2 Americans, predominantly Navajos.

3 We had a huge problem with Native  
4 Americans not having insurance on their vehicles. So  
5 the prominent misconception amongst my fellow officers  
6 back then, who were predominantly white, was one of  
7 two things. Either they couldn't afford it or they  
8 felt like they didn't have to have insurance.

9 Well, cultural awareness training was not  
10 very common as far as law enforcement or any city  
11 employees at that time. So after I had been there  
12 probably three or four years, we have our first  
13 training. And it is finally explained to me that one  
14 of the reasons Native Americans don't have insurance  
15 is because some of them felt like by having insurance,  
16 then you were creating your destiny that you were  
17 going to have an accident. It was a superstitious  
18 act. And, you know, once these kinds of things were  
19 explained, you know, it made a lot more difference  
20 there.

21 Another issue that we work with as far as  
22 law enforcement is recruiting Native Americans. We  
23 have had a lot of success lately, but I will tell you  
24 the standard around the country is a battery of five  
25 psychological tests. I wish I could tell you the five

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1 names, but, you know, we are offering the MMPI and  
2 some of the other testings like that.

3            Luckily, we have a local psychologist who  
4 does our psychological testing. And he calls whenever  
5 he has a question. And he will go on the record  
6 anywhere saying that he feels like a lot of these  
7 psychological tests are not based on tribal cultures  
8 and they will tend to show up in the negative on these  
9 tests, but we're willing to talk about these things.  
10 Now, are we the exception? I don't know. But that is  
11 one of the issues that they deal with as far as the  
12 legal system.

13            I am here to say that I think in the  
14 20-some odd years I have been in Farmington, that we  
15 are making some progress. You know, the City of  
16 Farmington has an affirmative action plan. It's  
17 updated every year. We're not under any type of court  
18 decree to do this. It's something that we believe in,  
19 something that we have done for a number of years.

20            We strongly recruit Native Americans in  
21 the police department. I can say within the last  
22 probably three to four years, we have doubled the  
23 number of Native Americans we have. Is it a lot? No.  
24 I mean, I believe right now we have about 12 Native  
25 American officers out of 135 sworn, but we are making

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1 some in roads on that.

2 You know, the city council and the mayor  
3 have done a lot in the past couple of years as far as  
4 dealing with the alcohol issue. You know, we have  
5 created what we call the Total Behavioral Health Unit,  
6 which has actually worked towards a treatment program,  
7 instead of a solely incarceration program.

8 In the business community, the city has  
9 gone out with the Chamber of Commerce in creating a  
10 cultural awareness program to get the business people.  
11 All City of Farmington employees are required to go  
12 through this. This has gone a long way.

13 The biggest thing the city is involved in  
14 now which is a result of the report from 2004 from the  
15 Civil Rights Commission is the creation of the  
16 Community Relations Commission. The resolution was  
17 introduced last Tuesday for this. And hopefully they  
18 will have that on board in the next month, as soon as  
19 they get through all the legal work that they have to  
20 for the city commission.

21 I think the biggest thing that the City of  
22 Farmington and that Farmington as a community by and  
23 large has realized is that the Native American  
24 population is needed. They are an integral part of  
25 what we do.

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1           You know, we're not an oil and gas town.  
2           We still have it, but we are a retail center. We need  
3           to work with everyone. You know, they are valued  
4           customers. We see that more and more. At least I do.

5           So I think we have made some progress. We  
6           have worked successfully with a number of tribal  
7           members, including Mr. Yazzie. And hopefully we can  
8           continue to move forward with this.

9           Thank you.

10          VICE CHAIR THERNSTROM: Thank you very  
11          much. And thank you for keeping under the ten  
12          minutes. I very much appreciate it.

13          Yes?

14          MR. SIMPSON: First, I would like to thank  
15          the Commission for allowing me the opportunity to take  
16          part in this briefing. And I appreciate the chance to  
17          hear the other panelists' views on our topic today.  
18          My hope in attending was that I could find some ways  
19          to strengthen the ties with our Native American  
20          community within our community in Bishop.

21          I will start by telling you a little bit  
22          about Bishop, California. We are located in beautiful  
23          Owens Valley on the eastern slope of the Sierra Nevada  
24          mountain range. We are a small community. Our school  
25          district services 1,300 students. Of those 1,300,

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1 approximately 20 percent are Native American, 28  
2 percent are Latino, 48 percent white, and 4 percent  
3 representing other groups.

4 Our school district boundaries border the  
5 Paiute-Shoshone Indian Reservation, which has  
6 approximately 2,000 members. Our school district is  
7 currently identified as a program improvement school  
8 under the guidelines of No Child Left Behind. In  
9 addition, our schools are experiencing declining  
10 enrollment, having lost over 250 students in our  
11 district over the past 5 years. The reasons for this  
12 decline are due, in large part, to increased housing  
13 costs in our area. We're a resort-type area near the  
14 Mammoth Mountain ski area. In addition, there are few  
15 opportunities for employment.

16 Still, with the many difficult challenges  
17 that face our district, I would probably say that we  
18 have a strong teaching staff that is caring and  
19 dedicated to providing a positive environment for all  
20 of our kids.

21 You might be asking, what makes Little  
22 Bishop School District significant for this briefing?

23 And the answer to that question is that my attendance  
24 today is a direct result of an incident that occurred  
25 on our middle school campus in October of 2005. The

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1 incident resulted in a complaint being filed with the  
2 American Civil Liberties Union.

3 Two years ago the conduct of our school  
4 resource officer was called into question during an  
5 incident that took place on our campus. It was  
6 alleged that the school resource officer acted in a  
7 physical and threatening manner in an attempt to  
8 resolve an issue with a group of Native American  
9 students.

10 In addition, a second complaint was filed,  
11 alleging that our school district had engaged in a  
12 pattern of discriminatory discipline. While I wasn't  
13 the superintendent of the district at the time, nor  
14 employed by the district, it's clear after my review  
15 that many mistakes were made in resolving this issue.  
16 It boiled down to a young man who was wearing a  
17 headband. That does violate our dress code, but it  
18 escalated quickly. So obviously there is certainly  
19 some concern there.

20 It's also true that after a review of our  
21 disciplinary data, disciplinary actions involving  
22 Native American students have occurred at higher rates  
23 compared to other student populations. These are  
24 facts that can't be denied.

25 As the Superintendent of Bishop Union

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1 Elementary School District, it became my  
2 responsibility to work on these issues. And I believe  
3 that we have had some success in that area. In  
4 September, the district reached an agreement with the  
5 ACLU. This agreement includes several actions that I  
6 will believe will make a positive impact on the entire  
7 district.

8 Our agreement includes ongoing staff  
9 development on cultural awareness and diversity issues  
10 as well as the integration of conflict resolution and  
11 cultural diversity awareness into the day-to-day lives  
12 of our students. We have also agreed to discontinue  
13 the school resource officer program, although that can  
14 be reinstated by a vote of our school board.

15 While this agreement has only recently  
16 been signed, many changes have been taking place in  
17 our district, which I am very proud of. Disciplinary  
18 actions have been reduced. And recent state testing  
19 data shows that our Native American students at the  
20 middle school level have exceeded all proficiency  
21 targets in mathematics and language arts. So I'm  
22 proud to say that we're making some academic  
23 improvement there.

24 I realize that these are just the first  
25 early steps in our path to improvement, but it's my

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1 goal to see this continue. And, again, my hope here  
2 was to learn about new ways to strengthen the ties  
3 between our two communities.

4 I would like to take a few minutes to  
5 briefly address the questions that are included in my  
6 invitation to this meeting. I admit it's difficult  
7 for me to comment on the forms of discrimination that  
8 Native Americans face in our border towns. However, I  
9 have taken some time this week to meet with our tribal  
10 leaders in Bishop, ask for their input on any concerns  
11 that they would like to express to me.

12 One statement I would share from our  
13 Indian Education Center director was he pointed out to  
14 me that the parents that I work with want their  
15 children to be treated as students, not Indian  
16 students, "We do not want special treatment. We want  
17 our students to behave. We want them to learn, to be  
18 successful." He stressed to me that his tribe is  
19 diverse, that not all of those families act in the  
20 same way, that all children are individuals and should  
21 be treated as individuals.

22 This resonated with me because I believe  
23 that we often spend too much time thinking about how  
24 to work with groups of children, rather than working  
25 directly with the individual student.

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1           To continue, I would like to comment on  
2 some of the current issues facing the public education  
3 system. It is impossible to discuss these issues with  
4 Native American students without discussing No Child  
5 Left Behind and its significant impact on our nation's  
6 schools, especially in our Native American  
7 communities.

8           Although the goals of the No Child Left  
9 Behind Act are noble, I think we can agree that the  
10 implementation has been less than perfect. Its  
11 desired result of 100 percent proficiency will be  
12 difficult, if not impossible, to attain. And this is  
13 probably a discussion for another meeting, but I felt  
14 it was important.

15           In an environment where schools are facing  
16 the demands of high stakes testing, it has become  
17 increasingly difficult to provide a well-rounded  
18 curriculum. School administrators and teachers are  
19 faced with mounting pressure to raise test scores,  
20 often sacrificing other important curricula, including  
21 the arts, music, or cultural offerings. In fact, many  
22 struggling students are now forced to take additional  
23 courses in math and language arts and forego  
24 electives, where they may have significant ability. I  
25 have seen firsthand where this has led to low teacher

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1 morale, student and parent frustration, as well as an  
2 increase in dropout rates.

3 It is my fear that many students, Native  
4 American students included, will become increasingly  
5 disengaged as many programs slowly become eliminated.  
6 Clearly this legislation has had some unintended  
7 negative consequences.

8 Finally, I would like to take highlight a  
9 few steps that we have taken in our school district  
10 and community to improve relations. Our school  
11 district employs three Native American liaisons, whose  
12 responsibilities include providing a vital link  
13 between school and home. Our liaisons offer before  
14 and after school academic support as well as bringing  
15 in guest speakers and performers in an effort to share  
16 the Native American culture with our students. We  
17 also offer a Paiute language course.

18 Each year our school board holds a board  
19 meeting on the reservation at the tribal council  
20 chambers. This meeting is devoted to discussing the  
21 progress of our Native American students. Our  
22 administrators meet regularly with the Indian  
23 Education Parent Committee.

24 These efforts are producing positive  
25 results. However, we feel there are many more ways to

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1 explore to help strengthen this tie. I understand  
2 this will take time. We're not going to make this  
3 improvement quickly. But we are dedicated to this  
4 improvement effort.

5 Once again, I would like to thank the  
6 members of the Commission for this opportunity. I  
7 look forward to hearing more steps that we can take to  
8 improve our district.

9 VICE CHAIR THERNSTROM: Thank you so much  
10 and again for your concise remarks.

11 Mr. Yazzie?

12 MR. YAZZIE: Madam Chair, commissioners,  
13 Mr. Marcus, your staff, I will be reading from my  
14 statement that was distributed by staff here after you  
15 started your session.

16 Yeigo, Naas to Farmington, the Selma,  
17 Alabama of the Southwest, declared Fred Johnson our  
18 leader as 2,000 strong, Natives and non-Natives,  
19 supporters, marched on a beautiful idyllic Saturday  
20 morning in the Summer of 1974. We marched to protest  
21 the mistreatment of our people by the racist minority  
22 of the stragging border town across the river from  
23 the Navajo Nation.

24 The march boycott, one of seven that we  
25 did on successive Saturday, was our answer to decades

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1 of outright discrimination on the streets by regular  
2 folks and over the counter by conniving, greedy  
3 business people.

4 The breaking point, what brought us to the  
5 streets of Farmington with pounding drums, our  
6 medicine people, our elders, and young, was the murder  
7 of three of our Navajo brethren by three young Anglos  
8 engaging in their sport of Indian rolling. This is  
9 where, usually under the influence of booze, drugs, or  
10 just raw hatred of people of colors, young white guys  
11 would go cruising the late night streets in search of  
12 the right prey, a stranded Indian in need of a ride or  
13 a coming-down-off-of-a-high Indian in need of a drink.  
14 With promises of a ride or a drink, the unsuspecting  
15 Native is whisked away to Chokecherry Canyon or other  
16 similar isolated location where the young white guys  
17 proceed to beat their victims.

18 In the case of the three murdered Navajos,  
19 the separate scenes were described by the then Sheriff  
20 Doug Brown. The white boys after beating the victims  
21 proceeded to place firecrackers in the ears and anuses  
22 of the victims and exploded them. They also burned  
23 their genital areas over an open fire. They then took  
24 rocks the size of basketballs and slammed them down on  
25 the heads of the desperate and pleading Indians to

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1 make sure they would die. That was the Summer of  
2 1974.

3 I am sure the Commission is also  
4 interested to hear about our current condition. In  
5 June of 2006, William Blackie, a Navajo man hoping to  
6 get a ride out of town, ended up getting hauled out to  
7 Chokecherry Canyon by three young Anglo men. They  
8 proceeded to beat him up while barraging him with  
9 racial slurs, including, "you brown nigger."

10 Mr. Blackie survived his ordeal. The  
11 three men received sentences averaging six years each.  
12 The sentences were enhanced by the New Mexico hate  
13 crime law. This is the first time the DA has ever  
14 filed hate crime charges, despite Farmington's history  
15 of crimes against Navajo people.

16 One week after the Blackie beating, a  
17 young inebriated Navajo man was shot pointblank four  
18 times by a white police officer, Farmington police  
19 officer, three shots to the chest, one shot to the  
20 head.

21 There remains an equally divided  
22 contention whether Clint John was armed with the  
23 police officer's baton. The Farmington Daily Times,  
24 the area newspaper, has declared that the unarmed  
25 Navajo man was shot by the white police officer.

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1           The officer has been cleared of any  
2 wrongdoing by the San Juan County Sheriff's  
3 Department, the appointed investigating entity. The  
4 police officer was an officer in the City of Aztec,  
5 the county seat, and the sheriff is a former  
6 Farmington city police officer. We tend to contend  
7 that this might be one of those good old boy  
8 situations.

9           We do not deem the shooting of Clint John  
10 a hate crime. We more question the standards that  
11 dictate the use of lethal and excessive force by the  
12 Farmington Police Department against Natives.

13           On September the 1st, 2006, we marched on  
14 Farmington again. This time we termed it a walk for  
15 peace and justice. We have made this an annual event.  
16 This past September, we did the walk in Cortez,  
17 Colorado, another border town where a consistent  
18 string of incidents that are termed "crimes of hate"  
19 continue to be reported.

20           In November 2006, we also protested  
21 Gallup, New Mexico, New Mexico's area history of  
22 discrimination against Native people. The Navajo  
23 Nation has 13 border towns. And every single one has  
24 a history of racial mistreatment of Native Americans.

25           In the month after the Clint John killing,

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1 other examples of police misconduct in Farmington  
2 occurred. And several separate attacks on Native  
3 Americans in Cortez were reported in November 2006.

4 As a result of these incidents as recent  
5 as January 2007, there were incidents of harassment  
6 and intimidation by armed Forest Service officers  
7 against Native individuals offering traditional  
8 religious prayers on the San Francisco peaks. The  
9 spiritual leaders say that they were detained at the  
10 base of the mountain by county sheriff deputies and  
11 interrogated about what they were doing on the  
12 mountain.

13 After the recent resurgence of these hate  
14 crime situations, the Navajo Nation Council took  
15 measures to document the incidence of hate crimes  
16 against Navajo people in the border towns. The Navajo  
17 Nation Council approved the Navajo Nation Human Rights  
18 Commission Act.

19 The act authorized the establishment of  
20 the Navajo human rights office. This office is to  
21 work proactively to document border town hate crime  
22 against tribal members and to work proactively with  
23 the border town governments and civic groups to  
24 minimize such crimes, if not to prevent them.

25 DNA, the Navajo Branch of the People Legal

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1 Aid Service, produced a report called "Race Relations  
2 Report." And I have submitted a copy of the report  
3 for the record.

4 The report reviews statistical data from  
5 the 13 border towns about the quality of life of  
6 Navajos. Although we do know that most adult Navajos  
7 have either encountered such treatment firsthand or  
8 have heard descriptions of such treatment directly  
9 from family or community members, of the border towns  
10 that provided information in response to the data  
11 requests, only two reported that they had received  
12 reports of discrimination or mistreatment of Native  
13 Americans, either through hate crimes or police  
14 brutality.

15 Thus, we asked, is it possible that  
16 Navajos are victimized in the border towns but they  
17 simply do not report it? If so, why is that? To  
18 answer this question, the report cites the study of  
19 Dr. Barbara Perry entitled "In the Name of Hate:  
20 Understanding Hate Crime" and "Crime by Any Other  
21 Name, the Semantics of Hate."

22 The study provides a substantive and  
23 detailed analysis on hate crime summarized as follows.  
24 Hate crime against Native Americans is so widespread  
25 as to be considered normative by community members.

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1           In spite of the extensiveness of racial  
2 victimization, fewer than five percent of victims  
3 report incidents to police. The two main reasons  
4 given for the unwillingness to report were: one, the  
5 perception that police do not take Native American  
6 victimization seriously and, thus, failed to respond  
7 appropriately; and, two, the fear of secondary  
8 victimization, harassment, or violence at the hands of  
9 police officers. The fear of secondary victimization  
10 arises from individual and collective experiences and  
11 perceptions of police misconduct.

12           The forms of discrimination that our  
13 people continue to be subjected to include occasional  
14 snide racist remarks and outward verbal abuse,  
15 treating less formally educated Navajos by charging  
16 excessive interest rates and contracts for loans,  
17 particularly with vehicles and mobile homes.

18           The graphic situations that I shared with  
19 you earlier are hopefully incidents far and between.  
20 However, we do have numbers of people who are missing  
21 who have been missing for years. And there has been  
22 speculation that some of these individuals may have  
23 fallen prey to those who would do us deliberate harm.

24           The common forms of discrimination we see  
25 today appear to be less aggravated and fewer in number

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1 than what we experienced in the '60s, into the '70s.  
2 Even so, some have surmised that perhaps this is just  
3 that perpetrators have only become more adept and have  
4 more refined their culture of hate.

5 Even as this appears to be the situation  
6 in the Four Corners region, the Federal Bureau of  
7 Investigation's 2005 statistics on hate crime reports  
8 that while Alaska Natives and American Indians  
9 represent only one percent of the United States  
10 population, they are victims of two percent of  
11 racially motivated crime.

12 To their credit, the border town  
13 communities of Farmington, Gallup, and Cortez have  
14 taken definitive steps to attempt to address the  
15 scourge of hate crime. And we participate in these  
16 efforts.

17 We accept that definitive and long-lasting  
18 results are dependent on attitude change of entire  
19 communities. And, as such, these efforts will take  
20 sustained and patient work. Much of the reason why  
21 opportunity arises for discrimination is economic.

22 In that the Navajo Nation has a limited  
23 retail economy, this condition compels us to have to  
24 go to the border towns to shop. Another cause is that  
25 our reservation is dry. And those that need to drink

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1 are also forced to go where the booze is.

2 This results in the situation where the  
3 border towns have to contend with panhandling,  
4 inebriated street people, Native people. Thus, to a  
5 certain extent, we do bring the problems of abuse  
6 through discrimination and exploitation upon  
7 ourselves.

8 We do, however, openly submit that we  
9 recognize the vast majority of these of our non-Native  
10 neighbors are people with good hearts and that the  
11 race problems are exacerbated by a small redneck  
12 and/or white supremacist minority.

13 The diligent scrutiny that the U.S.  
14 Commission on Civil Rights maintains on such  
15 situations certainly has a positive impact by bringing  
16 pressure on the border towns and our tribal  
17 governments to take these crimes against human rights  
18 and human dignity seriously and that it is an  
19 important issue enough to continue to address.

20 I am pleased to report that your colleague  
21 John Foster Dulles has been a true advocate for  
22 justice and equality such that we have accepted him as  
23 a friend and brother.

24 We realize that, unfortunately, racial  
25 hate crime is a phenomenon that has always been with

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1 humankind and will probably always be with humankind.  
2 But, as my dad once told me, just because you know a  
3 situation is going to be, don't just let it be. Do  
4 something.

5 Thank you for this tremendous opportunity.

6 VICE CHAIR THERNSTROM: And I thank you  
7 and all of the panelists. And we now go to questions.  
8 And we start with Commissioner Melendez.

9 COMMISSIONER MELENDEZ: Yes. Thank you,  
10 all panelists, for coming.

11 **III. QUESTIONS BY COMMISSIONERS AND STAFF DIRECTOR**

12 COMMISSIONER MELENDEZ: I would like to  
13 know from Mr. Yazzie. You said that many people don't  
14 really report the crimes. It's probably  
15 under-reported. What do you think? And basically  
16 along with reporting, there are probably statistics  
17 that need to be gathered, either from federal agencies  
18 or state agencies, that really tell the true picture  
19 of what is actually happening out there.

20 What do you think could be actually done  
21 to enhance that more because we want to have a clear  
22 picture of how serious are the things that are  
23 happening out there in Indian country as far as  
24 discrimination?

25 MR. YAZZIE: Thank you, Commissioner

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1 Melendez.

2 One of the efforts that the City of  
3 Farmington is making is to establish a process where  
4 people can report these types of crimes. And the  
5 observation and recommendation that I made to  
6 Farmington is that you need to have people whom these  
7 people, whom these victims can relate to.

8 What I have seen is that they tend to have  
9 people our version of the Uncle Tom, the successful  
10 downtown Navajo business person, sit there expecting  
11 to receive these complaints from the people from the  
12 south side.

13 That isn't going to happen. Until  
14 Farmington and other border towns develop the  
15 mechanism that truly works and that is available to  
16 have our people volunteer to bring these issues forth,  
17 that will not happen.

18 VICE CHAIR THERNSTROM: Other questions  
19 from commissioners? Commissioner Heriot, you haven't  
20 been heard from all morning. Do you have questions?  
21 And are you still with us?

22 COMMISSIONER HERIOT: I'm sorry. I don't  
23 have any questions right now, but I am still here.

24 COMMISSIONER MELENDEZ: I think some of  
25 the panelists wanted to comment on my question

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1 further.

2 VICE CHAIR THERNSTROM: Sure. We would  
3 welcome that.

4 MR. WINDY BOY: In reference to it, with  
5 the civil rights, the Commission on Civil Rights, when  
6 you step back and take a look globally, that is what  
7 is happening with people in Indian country now. The  
8 panel before me talked about victims.

9 Maybe a recommendation from this  
10 organization to the powers that be would be  
11 recommendations of trying to address racism on border  
12 towns needs to be twofold from a tribal perspective  
13 and from whether it would be a city or a county  
14 government. They both have to work together.

15 Two things that happen in my area, the  
16 University of Montana, there is a big report that came  
17 out that hit the newspaper airways. The reporters  
18 came from my neighbor's place. They asked if I wanted  
19 to do an interpretation of racism.

20 Oh, he suggested, "You don't need to  
21 write. Go there and tell them. Ask them about  
22 Indians. They will write it for you." Sure enough.  
23 And that's where this report came out of.

24 The second panel before me talked about  
25 the FBI and their inability to follow up on a number

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1 of cases because we have many of those in Rocky Boy.

2 But how can you as the Commission on Civil  
3 Rights address these when the highest form of this  
4 government doesn't even recognize the indigenous  
5 rights of indigenous people? Four countries, the  
6 United States being one of them, Canada being the  
7 other, Australia and New Zealand, where there are  
8 indigenous people, won't sign onto this supposedly  
9 treaty.

10 Rights of our people, the Ojibwa,  
11 Anishinabe, Na-Kah-Wi-No-Wuc, we have a treaty called  
12 the J treaty. That's not even recognized yet. The  
13 homeland security bill came in absent our  
14 recommendations in Indian country.

15 So this racism is a lot bigger, a lot  
16 bigger. And whether your suggestion goes forward, you  
17 know, we need to address this. And it needs to be  
18 real. And we need to come up with some solutions  
19 because Washington Redskins are still going to be here  
20 in 20 years, Atlanta Braves are still going to be  
21 here. Those things have to change.

22 VICE CHAIR THERNSTROM: Well, we would  
23 welcome anything you would like to add to the record  
24 you submitted in the way of recommendations.

25 Do other people -- yes?

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1 MR. RUNNELS: I would just like to add a  
2 little to what Mr. Yazzie said to Commissioner  
3 Melendez. For a number of years, Farmington has had  
4 the Citizens Police Advisory Commission, which was  
5 created basically to hear complaints against police  
6 officers.

7 And one of the issues that we have dealt  
8 with, like Mr. Yazzie talked about, is, how do we get  
9 out there? And I say "we" because it falls under the  
10 direction of the city manager's officer, not the  
11 police department, but we are working on ways to get,  
12 the Commission is working on ways to get out into the  
13 community, where people are more inclined to bring  
14 forth issues like that.

15 One of the things, as I mentioned, is the  
16 Community Relations Commission. And I don't know  
17 where that is going to go. You know, it's out of my  
18 bailiwick. But one of the things we saw from CPAC  
19 meetings was we would have a number of Native  
20 Americans that would come to these meetings, but their  
21 complaints would be on predatory business practices.  
22 Of course, we have absolutely no control over that.  
23 You know, we could give them some advice, but we're  
24 treading on legal ground there we don't want to go on.

25 And that's one of the things that the

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1 Community Relations Commission hopefully will provide  
2 is a point of contact for those types of complaints as  
3 well as, you know, if they're more comfortable, if  
4 they bring a complaint as far as, you know, police  
5 action, then that will be forwarded on to the CPAC  
6 Commission.

7 COMMISSIONER MELENDEZ: Let me ask you a  
8 question. What about within the police department  
9 itself? Do you think that there needs to be a public  
10 relations person that is actually a Navajo or somebody  
11 that actually could interact directly from the  
12 Farmington Police Department to the community?

13 I've seen that happen in some cities. In  
14 Reno, Nevada, they have tried to reach the  
15 Afro-American community with an Afro-American person  
16 that's part of the police force that kind of tries to  
17 bring relationships better, working relationships.

18 MR. RUNNELS: Actually -- and I'm glad you  
19 mentioned it because now I know I have a contact, who  
20 to go talk to. Yes, we're looking at that. You know,  
21 the Farmington Police Department, the City of  
22 Farmington is probably unique in a lot of places in  
23 that, really, we have a lot of money. You know, you  
24 all buy gas. So you know where the money is going.

25 And, you know, we have just now recently

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1 been able to staff at the levels we need to. And we  
2 are looking at a number. We had talked about a public  
3 relations-type position.

4 The City of Farmington just hired or  
5 created a public relations position. But, to be  
6 honest, I had never thought about one just gearing  
7 specifically toward the Native Americans. But, you  
8 know, right now I can think of a couple of good  
9 candidates for that. So I appreciate that comment. I  
10 will certainly know how to get a hold of Reno.

11 COMMISSIONER MELENDEZ: Okay.

12 VICE CHAIR THERNSTROM: I thank you very  
13 much.

14 Yes, Mr. Yazzie?

15 MR. YAZZIE: Madam Chair, I just want to  
16 elaborate a little bit on Commissioner Melendez's  
17 question. I think one avenue to look at would be to  
18 look at the model that the Navajo Nation is looking  
19 at, you know, rather than having this Commission or  
20 any of your associates from the outside recommend how  
21 we can generate that information that is needed.

22 The Navajo effort is from the inside. And  
23 I would think that the process that the Navajo Nation  
24 is putting in place to document border town  
25 discrimination really takes into the consideration the

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1 experiences that we have all had in the problem of  
2 generating those statistics.

3 So I think the Commission here might  
4 recognize the Navajo Nation's effort with this Navajo  
5 Nation Human Rights Commission and support that effort  
6 and see if we can't do a better job from the inside in  
7 generating the information.

8 VICE CHAIR THERNSTROM: Commissioner Yaki  
9 has a question.

10 COMMISSIONER YAKI: Oh, yes. I just  
11 wanted to say, one, thank you all for being here,  
12 especially Mr. Yazzie. It's always great to have  
13 someone whose name follows mine in the alphabet.

14 A couple of points I wanted to make. One  
15 is this is obviously not an isolated issue. We have  
16 had similar reports in other states other than New  
17 Mexico regarding border town issues. At the same  
18 time, each of it is individually localized.

19 One of the interesting things I heard --  
20 and this just goes to my admitted ignorance of just  
21 how large some of the nations are -- is that Mr.  
22 Yazzie talked about 13 or so border towns around the  
23 reservation.

24 The question I had for both Mr. Simpson  
25 and Mr. Runnels is, to what extent have you either

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1 networked or attempted to find common ground or common  
2 lessons or common strategies with other jurisdictions  
3 that also touch upon the same nation, the same  
4 reservation, whether it's Chippewa-Cree or whether  
5 it's Navajo? I mean, there is a commonality of a  
6 people there.

7           And then, as you said, you are doing a  
8 community relations commission, which, quite frankly,  
9 is something that is an offshoot of a lot of large  
10 cities nowadays. My own hometown of San Francisco has  
11 something called the Human Rights Commission. The  
12 Human Rights Commission deals with the issues that  
13 would be brought up that you talked about that you  
14 could not with the citizens advisory committee, which  
15 we call the police commission in our town. But it  
16 deals with economic development. It deals with issue  
17 of human rights, civil rights, that type of stuff.

18           But I guess the question is, how have you  
19 worked with other communities that also border the  
20 Navajo Nation I guess for both of you?

21           MR. SIMPSON: For us I have to say very  
22 little to be quite honest. Each of our school  
23 districts in our county, -- there are seven school  
24 districts -- all have border reservations in some way  
25 or another. So we do do some connection that way. We

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1 have made some communications with other school  
2 districts in regards to starting a Native language  
3 class and those kinds of things.

4 But, quite honestly, part of my attendance  
5 here was to hear about these kinds of things and find  
6 a way to --

7 COMMISSIONER YAKI: Has the state taken  
8 any proactive role in encouraging the school districts  
9 to get together and trying to work on this issue  
10 together?

11 MR. SIMPSON: Not that I am aware of.

12 COMMISSIONER YAKI: Okay.

13 MR. RUNNELS: Well, of course, one thing  
14 about, as Mr. Yazzie said, 13 border towns, you know,  
15 that is a huge reservation. And, of course, the towns  
16 closest to Farmington are Gallup in New Mexico and  
17 Cortez in Colorado.

18 Now, we talk to Cortez, especially on a  
19 law enforcement stand, but not as much because, you  
20 know, Colorado laws are way different than New Mexico  
21 laws. But we do talk and compare notes and ask advice  
22 from Gallup a lot. As a matter of fact, this Monday,  
23 you know, my deputy chief, assistant city manager, and  
24 a couple of officers are going to Gallup to meet with  
25 their mayor and the police chief on some issues that

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1 we share together.

2 So I know the mayor, Stanley, has been in  
3 constant contact with Gallup because we share a lot of  
4 the same issues and they have tried to put their heads  
5 together to come up with common solutions.

6 VICE CHAIR THERNSTROM: Let me just see if  
7 anybody else, people have already asked questions.  
8 You're okay. Has Jennifer left? Okay. All right.  
9 Well, Mr. Melendez, you're on.

10 COMMISSIONER MELENDEZ: One of the  
11 questions, my understanding, it really gets down to  
12 this is a broad issue, you know, as was stated at the  
13 beginning. But at one point, we were -- in the Rocky  
14 Mountain region, we were trying to basically work on a  
15 project back in 2003. Basically it was designed to  
16 find common things that were happening within the  
17 Rocky Mountain region because basically they had some  
18 of the same problems.

19 So my understanding in 2003 under John  
20 Dulles, he was trying to organize like a project where  
21 all these different border towns within the different  
22 states could actually come together and basically  
23 dialogue to find out what are the top issues because  
24 there's a number of them out there, everything from  
25 all the things that were mentioned here.

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1           But you can see the issue on the  
2 importance of SACs and how they should have been  
3 allowed to complete that project, which had been ideal  
4 coming into this hearing today. If that would have  
5 gone forward and we could have had some great answers,  
6 we would have narrowed it down to some real specific  
7 areas here. Now we're still broad.

8           So I'm just saying when we have those  
9 things on the table back from 2003, we should have  
10 kept that going. And we would have had at least the  
11 Rocky Mountain region really having some specific  
12 dialogue between each other. And it would have been  
13 clear today.

14           So that's my point, that we need to put  
15 more funding into the SACs to help us basically deal  
16 with these regional areas so that we can bring them  
17 all together. And I think that is very important to  
18 do in the future, even though we kind of missed the  
19 boat on it.

20           MR. WINDY BOY:    So is that initiative  
21 still on the table or --

22           COMMISSIONER MELENDEZ:  I don't know. It  
23 was basically a funding issue or something.

24           STAFF DIRECTOR MARCUS:  I really don't  
25 think so. And, frankly, I'm a little puzzled by the

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1 way you're describing it. There were a number of SACs  
2 that were chartered and that were looking into border  
3 town issues. Within that region, at this point,  
4 unfortunately, we have, as I recall, one chartered  
5 SAC. And it's in the State of Utah.

6 I encouraged them to continue in this  
7 project. And, in fact, they did meet since they were  
8 rechartered. I believe it was approximately last  
9 year, might have been earlier this year. And they  
10 looked at the project.

11 Of course, the Utah State Advisory  
12 Committee has their own discretion as to whether they  
13 want to continue on that subject or to look at another  
14 subject. They do have a meeting coming up. And they  
15 will have to make that decision.

16 We are trying to get the other states  
17 chartered as quickly as we can. As they do get  
18 chartered, of course, they will be able to decide  
19 whether they want to look at this topic or some other  
20 topics at their discretion.

21 COMMISSIONER MELENDEZ: My point was at  
22 the time before we started rechartering all of these  
23 SACs, I think there was interest in doing that through  
24 John Dulles at the time. Now he is gone also as a  
25 regional director.

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1           So at the time that the SACs were in  
2 place, we could have. We were moving in that  
3 direction. And, all of a sudden, now, really, what  
4 we're saying is because of rechartering, we're going  
5 to have to start all over and start the whole idea  
6 again if that's what we want to do.

7           STAFF DIRECTOR MARCUS: The one thing I  
8 would add is that, even while some of these have not  
9 been chartered, I did provide funding so that regional  
10 staff could continue doing research on this topic  
11 without the SAC so that they wouldn't have to get  
12 started again.

13           Now, again, whether these SACs will want  
14 to address this issue or another issue is up to the  
15 SACs when they are rechartered.

16           MR. WINDY BOY: That brings us to a point.  
17 You know, the three, four reservations in north  
18 central Montana that border the Canadian border as a  
19 result of this University of Montana report, in other  
20 words, not only the Commission on Civil Rights but the  
21 Department of Justice came in on four, five occasions  
22 to hold these city commission, Hill County commission,  
23 and Rocky wanted Fort Belknap to come up with a plan.

24           Whatever that plan was that was  
25 implemented a year and a half ago, we hadn't heard in

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1 Indian country what it was or even what the report  
2 looked like. Even me prior to coming wanted to take a  
3 look at, what was the end result? That one is still  
4 unbeknownst.

5 So yes, that would be a good  
6 recommendation or suggestion to reinstitute or reenact  
7 those projects to enjoin, embody those people in  
8 authority, tribal governments, city commissions,  
9 county commissions. This isn't going to go away.

10 COMMISSIONER MELENDEZ: Just one more  
11 question I had. We had talked about business  
12 practices against Native Americans. It is almost like  
13 discrimination through economic suppression or  
14 whatever we call that.

15 I know that Mr. Reynolds had commented a  
16 little bit about business practices. Could you  
17 comment, or anybody that wants to weigh in, on the  
18 kind of discriminatory practices against Native  
19 Americans, whether it is interest rates or gouging  
20 them because there's a language barrier also?

21 MR. RUNNELS: Well, in New Mexico,  
22 predatory lending has always been an issue, not  
23 necessarily specifically against Native Americans but,  
24 you know, a lot of people in New Mexico and, you know,  
25 the whole payday loan thing. And, of course, the

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1 State of New Mexico just last legislative session  
2 finally passed a law regulating payday loan  
3 businesses, but it still doesn't have a lot of teeth  
4 to it.

5 I know, again, just what I have been told  
6 in the research that I have done that that is an issue  
7 and, you know, if you are familiar with the whole  
8 process, the interest rates that are charged and  
9 things like that.

10 I do know that from personal experience,  
11 you know, from being on the law enforcement side as  
12 far as, you know, reading contracts, you know,  
13 specifically in the area of automobile purchases and  
14 mobile home purchases, that oftentimes depending on  
15 the person that's buying them, they may not understand  
16 the contract. And there's always the little caveats  
17 put in there that really, you know, open the buyer up  
18 to legal action.

19 Vehicle purchases, you know, for a long  
20 time there, there was, you know, an issue in  
21 Farmington as far as them selling vehicles, basically  
22 "Here are the keys. You drive away with it. And  
23 we'll take your credit and let you know later if the  
24 loan is approved."

25 Well, then two or three days later, they

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1 come back and say, "I'm sorry. Your loan hasn't been  
2 approved. You know, you need to return the car. But  
3 we're going to charge you a usage fee" or whatever  
4 kind of language they wanted to make up to justify it.  
5 That's not as predominant as it used to be I have been  
6 told.

7 You know, I think some of the business  
8 practices have bettered themselves. You know, Mr.  
9 Yaki asked, what are we doing with other -- you know,  
10 the City of Gallup is probably a third the size of the  
11 City of Farmington. But that's one of the major  
12 retail centers for the Navajo Nation.

13 And, you know, everything revolves around  
14 dollars. And so the city council and the business  
15 members in Farmington went to Gallup and wanted to  
16 know, "Why are you getting this business and we can't  
17 because we have so much more to offer?" Well, it was  
18 the way they treated their customers. And so there  
19 has been a huge push, you know, in Farmington to  
20 improve customer service.

21 Part of the reason I think, you know, that  
22 some of the business practices have improved is the  
23 fact that, again, it revolves around dollars. And,  
24 you know, New Mexico is a gross receipts tax state,  
25 you know, very little property tax.

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1           So if you want money for your community,  
2           it comes from sales. So you have seen people finally  
3           realizing that everyone is a valued customer. You  
4           know, you treat them right, your profit is better.  
5           And so the city grows.

6           VICE CHAIR THERNSTROM: I would like to  
7           try to wrap this up. It's past noon, and it's been a  
8           long morning, as valuable as this is, unless people  
9           have important questions that are still on the table.

10          MR. WINDY BOY: I don't know. I would  
11          like to leave a copy of the commission --

12          VICE CHAIR THERNSTROM: Absolutely.

13          MR. WINDY BOY: -- several documents --

14          VICE CHAIR THERNSTROM: And please  
15          supplement your testimony in any way that you would  
16          like.

17          MR. WINDY BOY: -- that deal with the  
18          former Governor Stan Stephens' initiative with --

19          VICE CHAIR THERNSTROM: Absolutely. And  
20          if you don't have enough copies, we will copy for you.  
21          But it will also become part of the record.

22          Commissioner Yaki, you don't want us to  
23          wrap it up. You want to say something further.

24          COMMISSIONER YAKI: I will just say  
25          something really briefly. And that is through the

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1 years, there's a lot of institutional memory out there  
2 amongst current and former SAC members about reports  
3 previously done, reports in progress, ideas, other  
4 kinds of things. I think that we ought to take full  
5 advantage of that.

6 I don't believe that this is a topic that  
7 lends itself easily to a simple briefing and report.  
8 I think it lends itself more to a hearing. I think  
9 that we should consider perhaps using the slot that I  
10 have in June that I said that I might not want to use  
11 for that particular hearing to go out to the field and  
12 do a full-blown hearing and hear from people from many  
13 different jurisdictions, hear from state and local  
14 governments, and explore this in greater detail  
15 because this is obviously an issue for a discrete  
16 segment of our population, that the problems repeat  
17 itself over and over again, notwithstanding a change  
18 in jurisdiction, whether it's this state or that  
19 state.

20 So I would just put that on the table and  
21 again thank you all for coming and thank you, Madam  
22 Chair.

23 VICE CHAIR THERNSTROM: Thank you.  
24 Obviously at a business meeting, we can raise that  
25 question of having an actual hearing.

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1 COMMISSIONER HERIOT: Can I say something?

2 VICE CHAIR THERNSTROM: Absolutely. We  
3 are delighted to hear your voice.

4 COMMISSIONER HERIOT: I am in favor of  
5 that motion. I agree that this is such a  
6 broad-ranging topic that I don't know that it makes a  
7 very good subject for a briefing report. There's just  
8 so much that we have covered.

9 I really appreciate everything that the  
10 witnesses have brought to the table here, but there  
11 are a lot of different issues within this. And it may  
12 be that we should break one of them off and do a  
13 hearing on that particular topic so that we can draw  
14 conclusions.

15 I think we have bitten off an awful lot  
16 here for a briefing report. And even a hearing is an  
17 awful lot. And we need to think about ways that we  
18 can focus this discussion and make something  
19 productive out of it. And a hearing may be the way to  
20 go.

21 VICE CHAIR THERNSTROM: Well, we need to  
22 discuss this at a business meeting, which this is not.  
23 So let us bring it up at the next business meeting. I  
24 will count on Commissioners Yaki, Heriot, and Melendez  
25 to raise the issue. But let us not discuss it now

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1 since this is not a business meeting.

2 COMMISSIONER MELENDEZ: Just wanted to say  
3 thank you to all of you for being here, the tribal  
4 leaders and also all of our panel. I think you did a  
5 great job here. So we really appreciate you being  
6 here and coming a long distance to be with us.

7 VICE CHAIR THERNSTROM: And I thank you as  
8 well. It's been two very, very good panels. And so  
9 we have begun the process of going down a road of  
10 looking at what everybody agrees is an enormously  
11 broad topic.

12 And, with that, without objection, I bring  
13 the briefing to a close.

14 (Whereupon, the foregoing matter was  
15 concluded at 12:18 p.m.)

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