

RESOURCES DEVOTED TO CIVIL RIGHTS ENFORCEMENT IN MINNESOTA: AN UPDATE

**Briefing Report of the Minnesota State Advisory
Committee to the U.S. Commission on Civil Rights**

September 2011

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Minnesota State Advisory Committee to the U.S. Commission on Civil Rights

Shamus O'Meara, Chair
Minneapolis, MN

Robert L. Battle
Maplewood, MN

Lester R. Collins
St. Paul, MN

Kenneth O. Doyle
St. Paul, MN

JoAnn C. Enos
St. Paul, MN

John A. Gilbertson
Marine on St. Croix, MN

Kirk O. Kolbo
Minneapolis, MN

Velma J. Korbel
Andover, MN

Teresa J. Nelson
St. Paul, MN

Craig D. Taylor
Minneapolis, MN

Neva R. Walker
Richfield, MN

Lawrence A. Wohl
Saint Peter, MN

Michael Yang
St. Paul, MN

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Introduction

In 1996, the Minnesota Advisory Committee to the U.S. Commission on Civil Rights (“Committee”) was concerned about how Minnesota was adjusting to the “marked change” in the “State’s racial and ethnic composition.”¹ The Committee was specifically concerned about economic gaps between white residents and residents of color based upon median income statistics, poverty rates, and labor force statistics.² In addition, the Committee found home ownership rates between the majority white Minnesota residents and the minority residents of color “troubling.”³ Because the Committee could not measure actual incidents of discrimination, it determined that “discrimination complaints are the next best measure of how people of all racial and ethnic groups are valued in Minnesota.”⁴ Therefore, the Committee undertook an examination of local and federal civil rights enforcement agencies in the State.

Among specific recommendations to agencies, the Committee made the general conclusion to its investigation:

The Minnesota Advisory Committee recognizes that for there to be an effective enforcement of civil rights, there needs to be an extant political will. To put this political will into action at times of diminishing resources, elected and appointed officials at all levels may need to undertake more creative and imaginative steps to keep the promises of civil rights enforcement.⁵

Since 1996, Minnesota has become increasingly diverse and resources for civil rights enforcement have continued to diminish for many agencies. Most notably, the Complaints Investigation Unit of the Minneapolis Department of Civil Rights came close to being shut down and turned over to the State in December 2009. In light of this event and other resource concerns at the Minnesota Department of Human Rights, the Committee decided to hold a briefing to follow up on the 1996 report. Similar to the 1996 Committee project, representatives from local, state, and federal civil rights enforcement agencies participated and provided the Committee with statistical information regarding their funding and staffing levels. Unlike the 1996 report, the Committee undertook this project as a monitoring activity and not a Committee report with findings and recommendations. However, the Committee believes it useful to publish the statements of the many presenters who discussed the issues at the meeting as well as a summary of the events that took place.

¹ Minnesota Advisory Committee to the U.S. Commission on Civil Rights, *Resources Devoted to Local and Federal Civil Rights Enforcement in Minnesota*, June 1996, p. 2.

² Ibid.

³ Ibid, p. 3.

⁴ Ibid.

⁵ Ibid., p. 57.

Summary of Proceedings

First Panel

Artika Tyner

Ms. Tyner, a clinical law fellow at the University of St. Thomas School of Law and the Community Justice Project, stated that there is work to be done in order to achieve equal justice under the law within the state of Minnesota. She also concluded that since the Minnesota Advisory Committee's 1996 report on the subject, the lack of resources for civil rights enforcement in the state has worsened, leaving Minnesota in a "crisis mode." Specifically, she said that in her discussions with community members and civil rights leaders, civil rights enforcement needs to be strengthened in four areas: criminal justice, education, employment, and housing.

According to Ms. Tyner, community members have lost faith in law enforcement because of alleged police misconduct, excessive force, and brutality. She also said that even when civil rights groups assist individuals in filing complaints, there are rarely any disciplinary actions administered. Citing a statistic showing Minnesota is among eight states with the highest disparity between white youth and youth of color in juvenile detention, Ms. Tyner said community members are rightfully concerned about racial profiling and biased policing. Given these complaints, Ms. Tyner said additional resources are needed for investigation of complaints, monitoring and analyzing trends and complaints, hiring of community liaisons, and training members of civilian review commissions. Ms. Tyner also said resources were needed to monitor racial disparities in the criminal justice system, specifically at the juvenile justice system.

In the area of education, Ms. Tyner discussed the need for resources to be devoted to addressing the achievement gap in Minnesota schools. She provided statistics that only 34 percent of Minneapolis' black students graduate from high school in four years compared to nearly 70 percent of white students. She also argued that this achievement gap is directly correlated to the disparity between white and black youth in prison. She cited as evidence the use of third grade reading scores as a factor to project the number of prison beds that the Minnesota Department of Corrections would need in the future. Ms. Tyner thus concludes that more resources are needed to ensure all students have equal access to quality education regardless of their race or ethnicity.

Ms. Tyner stated that the 1996 Minnesota Advisory Committee report cited a growing economic disparity in the state between white households and households of color. She highlighted disparities in unemployment rates as well as labor marketplace discrimination as factors in this economic disparity. In light of this, Ms. Tyner recommended devoting resources for employment training and promoting diversity in hiring practices in governmental agencies.

Since the 1996 Minnesota Advisory Committee report, the availability of affordable housing in Minnesota has declined, according to community members with whom Ms. Tyner spoke.

In conclusion, Ms. Tyner stated that community members need a commitment to sustaining and maintaining current resources devoted to civil rights enforcement and an increase in resources for areas of need. She said the challenge for civil rights enforcement agencies is to be more innovative. For example, Ms. Tyner recommended that governments should develop more mediation programs because such programs may resolve conflicts constructively, build community, increase response rates, and aid in eliminating the backlog of cases most agencies now have. She also recommended that agencies should encourage more community engagement and input. Similarly, she encouraged government to create additional state ombudsperson positions with their specific focus on civil rights enforcement. Finally, Ms. Tyner recommended that resources be used for employment training opportunities, such as the St. Paul's emergency medical technician program and the NAACP's apprenticeship program because such programs may close the gap in the economic disparities she cited.

Paul Slack

Reverend Slack is Pastor of New Creation Church in Brooklyn Park, Minnesota, and co-Chair of the Clergy Religious Caucus in Isaiah, which is a collaborative of 100 congregations in Minnesota. After hosting numerous conversations throughout the state with community members and their elected officials, Rev. Slack said Isaiah found great concern with how Minnesota's Department of Transportation used money from the American Reinvestment and Recovery Act ("Stimulus Act"). Specifically, he was concerned that the investments from the Stimulus Act did not go to the areas with the highest poverty or unemployment, which oftentimes are areas with the highest percentage of people of color.

According to Rev. Slack, 6 percent of the contract values from the Stimulus Act went to disadvantaged business enterprises, even though there was an original goal of 15 percent in July 2009 that was later reduced to 9 percent. Likewise, despite a goal of 11 percent, only 6.1 percent of the jobs on state Transportation projects went to minorities. Rev. Slack found these numbers even more disturbing because they were calculated at the height of the construction season, and it did not separate data for actual hours worked, job classifications, or how long a person was on the job. In light of these questions, Rev. Slack called for greater transparency in the state transportation agency.

Rev. Slack also called for resources to be devoted to enforcement issues in the Department of Transportation. He said that there simply are not enough people to enforce civil rights laws in regard to disadvantaged business enterprises in Minnesota, so no one knows what truly is happening.

Pastor Karsten Nelson

Karsten Nelson is pastor at Our Redeemer Lutheran Church in St. Paul and an Isaiah member. Pastor Nelson discussed the voluntary compliance agreement between the U.S. Department of Housing and Urban Development ("HUD") and the City of St. Paul that arose from St. Paul's noncompliance with Section 3 of the Housing and Urban Development Act of 1968. This Section is intended to ensure that recipients of certain HUD financial assistance, to the greatest extent possible, provide job training,

employment, and contract opportunities for low- or very-low-income residents in connection with projects and activities in their neighborhoods.⁶

Pastor Nelson said the voluntary compliance agreement gives low-income residents \$1 million. However, over the last four years, Pastor Nelson estimates there may be tens if not hundreds of millions of dollars that should have been provided to these communities under Section 3.

Fredrick Newell

Pastor Newell is a business owner and pastor of a congregation in St. Paul. He said for 15 years St. Paul and minority communities have struggled over contracting. In 1995, St. Paul commissioned the Institute on Race and Poverty at the University of Minnesota to conduct a disparity study, which found that St. Paul was passively discriminating against minority community contractors. St. Paul then implemented the Targeted Vendor Program, later called the Vendor Outreach Program. In 2005, the minority community in St. Paul performed an audit of this program. The audit, known as the Hall Equal Access Audit, was conducted in 2006, and found that Minority Business Enterprises received less than 3 percent of city contracts. The MGT Disparity Study conducted in 2008 found that St. Paul underutilized all minority groups and that the disparity levels from 1995 were little changed.

Pastor Newell discussed the experience he had trying to garner contracts with the City of St. Paul for his company, Newell Abatement Services. Because he provided a fraction of services to St. Paul as he did to Minneapolis over a 10-year period, Mr. Newell's company filed a lawsuit alleging the City of St. Paul did not comply with Section 3. In the course of litigation, which has since been dismissed, it was found that St. Paul had not filed any of their HUD summary reports for 10 years.

According to Pastor Newell, Housing and Urban Development then developed a three-year resolution plan with the city, where, if the city met stated goals at the end of the three years, they would not be found in noncompliance with Section 3. He said that HUD also entered into a Voluntary Compliance Agreement with St. Paul without community involvement, and the community lost hundreds of millions of dollars because of the lack of enforcement of Section 3.

Discussion

Chairman O'Meara asked the panel if any of them considered how the disabled communities are affected by the current resources devoted to civil rights enforcement. Pastor Slack stated that the Minnesota Department of Transportation currently has a collaborative of which he is a part and disabilities issues are part of their discussions. However, he said the disabilities issue is not part of his report.

Committee member Battle asked about a 1992 program instituted by then-Mayor Norm Coleman where all major state contractors were asked to sit down voluntarily with potential minority contractors. This program resulted in three major city jobs that had

⁶ U.S. Department of Housing and Urban Development, "Section 3 – Economic Opportunities," n.d., <http://www.hud.gov/offices/fheo/section3/section3.cfm> (last accessed March 8, 2011).

minority contractors working on them. He suggested that minority contractors visit St. Paul's current mayor, Chris Coleman, and revisit the program.

Pastor Paul Slack responded that, although he was thankful for such programs, he believed these programs were exceptions. He illustrated this point by stating that he believed only seven contractors won prime contractor bids with the Minnesota Department of Transportation. Thus, he is hoping for a change in the contracting industry so that it becomes an enforceable state policy – and not an exception – for project contractors and laborers to be diversified.

Committee member Walker asked Pastor Slack what were the minority recording requirements that contractors had to fulfill. Pastor Slack responded that all federal government contractors must complete a one-page report that shows one week during July – the busiest time for construction companies – and reports how many disadvantaged business enterprises won bids and how much work those bids represent. He said that he knows less about state reporting requirements. However, the state reporting seemed to differ from the federal, and the state gathered data but did not compile it. He said that, like federal reporting, hours worked are not gathered for state contractors. He concluded by stating that he found it troubling that contractors did not have to report to the state legislature the number of people on the worksites or how many hours they were working, let alone demographic classifications or corrective actions for noncompliant contractors.

Committee member Nelson asked Ms. Tyner, in regard to police abuse advocates, if she had any comments on the possibility of adding a layer of enforcement at the state level rather than the local level. Ms. Tyner said that could potentially be useful, but she would have to consider the models.

Second Panel

Kristin Siegesmund

Ms. Siegesmund, managing attorney at the Housing Discrimination Law Project of the Legal Aid Society of Minneapolis, stated that her agency, beside investigating and doing enforcement on its own as a federally-funded testing enforcement agency, refers cases to the Minnesota Department of Human Rights and HUD. She said that, although the Minneapolis Civil Rights Department will receive housing complaints, her agency does not normally refer cases to them because the Department is in a transitional state, has a backlog of complaints, and has unclear enforcement policies.

Ms. Siegesmund stated that when her agency refers cases to the Minnesota Department of Human Rights, they investigate and determine whether the case has probable cause. If probable cause is found, the Commissioner can then refer the case to the Attorney General's Office to proceed with litigation. Ms. Siegesmund then discussed what she called hurdles in dealing with the Minnesota Department of Human Rights. First, she said that intake workers for the Department screen cases or make legal decisions about whether or not a person filing a complaint has standing, and she questions whether that is an appropriate decision for an intake worker to make. Second, Ms. Siegesmund said that the letter the Department sends out when it decides not to take a case states that the case is not being considered because it lacks merit or there are no

resources to pursue it. Ms. Siegesmund would prefer that the letter state one or the other reason for the denial because the reason for the denial is important to the complainant.

Ms. Siegesmund said that she understands nearly every agency currently is lacking resources to pursue complaints. However, she also stated that most complainants do not have the resources to bring their own litigation. Thus, if the Attorney General's Office does not pursue litigation even when there is probable cause, those complainants have no other recourse.

Ms. Siegesmund told the Committee about a case involving an African American woman who was refused and steered away from housing by a landlord. Her agency's testing program confirmed that this was happening, but the Department of Human Rights did not refer the case to the Attorney General's Office because the matter involved only one complainant. Ms. Siegesmund said there is reluctance among enforcement agencies in general to take cases that do not impact more than a few people. Although she stated that she understands why agencies do this, she also acknowledged that it leaves individuals who suffer from discriminatory acts no recourse.

In regard to HUD, Ms. Siegesmund stated that they have a very active enforcement arm and have done excellent work for her agency. However, she said that there are gaps that exist because of lack of resources or decision-making. For instance, she said that both HUD and Minnesota Department of Human Rights have the power to demand rent rolls and pattern and practice material as part of their civil investigatory authority. Groups like the Housing Discrimination Law Project cannot acquire this type of information without litigation. In addition, she claimed that HUD and the Department of Human Rights too often drop claims when landlords refuse to provide requested information. Finally, she said HUD has not provided clear direction and procedures regarding testing programs. She stated that too often her agency will be told that their tests are not good enough, but they are provided no guidance on what a "good enough" test includes. Given that most landlords who discriminate do not do so overtly, Ms. Siegesmund feels it is very important to have clear testing procedures for what constitutes a test that is good enough to show discriminatory actions.

In conclusion, Ms. Siegesmund stated that too often investigatory agencies are overly cautious and move on complaints only when there is a smoking gun. She retold one case where a landlord who was a sexual predator asked women for sex on more than two dozen occasions. Despite the large number of victims, most of them were very vulnerable women and many had been employed in the sex industry or had criminal backgrounds. The HUD office in Chicago did not want to bring the case because the victims were considered not good witnesses because of their backgrounds. Luckily, the Department of Justice ended up taking the case and won the claim for the victims.

Pamela Hoopes

Ms. Hoopes, the Legal Director for the Minnesota Disability Law Center, explained that her organization is a federally-designated protection and advocacy agency for people with disabilities in Minnesota. Her advocacy brings her into contact with civil rights enforcement agencies on the local, state, and federal levels.

Federally, Ms. Hoopes explained one of the biggest issues for people with disabilities is to live and receive services in integrated settings, free from isolating

institutions. She explained that the U.S. Department of Health and Human Services, Office of Civil Rights (“OCR”) and the Department of Justice (“DOJ”) have responsibility for enforcing the Supreme Court’s *Olmstead* decision, which broadly stands for the proposition that people with disabilities must be allowed to receive services and live in the most integrated setting possible if they so choose and are clinically able to do so.⁷ OCR and DOJ required all states to have a formal plan to move disabled people out of isolated settings and into integrated communities. However, Ms. Hoopes stated that because Minnesota and a few other states had such a large and well-developed array of service settings for disabled individuals, OCR and DOJ waived this requirement. Now, because of serious state budget problems, Ms. Hoopes says that the services provided to support the integrated, community-based living have been cut drastically, and the effects of these cuts on the viability of these services in lieu of an *Olmstead* plan are not being considered. Ms. Hoopes recommends that the state develop an *Olmstead* plan, which should be subject to OCR and DOJ review. She also recommended that OCR and DOJ require more interagency discussions and collaboration in regard to oversight to ensure Minnesota does not abdicate its *Olmstead* responsibilities.

On the state level, Ms. Hoopes is concerned about the Minnesota Department of Human Rights’ (“Department”) inconsistent application of legal standards. She said these inconsistencies arise frequently in communication access cases for deaf individuals. For instance, in some cases, the Department will find probable cause when a deaf citizen is denied interpreter services at a hospital. Then, in another case, possibly in another county with similar or even worse facts, no probable cause may be found. Ms. Hoopes said this inconsistency is confusing to clients and makes it difficult for advocacy agencies to assess with accuracy the strengths and weaknesses of a case. Ms. Hoopes assumed that this inconsistency was the result of a lack of internal control mechanisms at the Department. She recommended that the Department establish a position for a legal officer to provide internal oversight and set clear standards for probable cause for certain categories of cases where there is a repeated fact pattern. Ms. Hoopes speculates that a lack of resources contributes to the lack of consistency in reviewing cases.

Ms. Hoopes’ second concern is that the Department will not litigate a case after they find probable cause. Because of this, the probable cause decision by the Department is only useful if the charging party is able to hire an attorney or employ an advocacy agency that provides free service. However, for those unable to get an attorney, the probable cause finding by itself gives the complainant little recourse. Ms. Hoopes recommends that the Department create standards for when they litigate and develop a willingness to litigate.

Ms. Hoopes also stated concerns regarding local agencies’ enforcement of building code violations. She said that there are many buildings in Minneapolis and St. Paul that do not meet the basic accessibility requirements, regardless of whether the building is new or reconstructed. She concluded that there is no clear path to enforcement or accountability regarding these concerns because the local agencies do not have the resources to enforce, and the state building and licensing agencies do not enforce these laws. She used the example of an apparent trend in Minneapolis bars to remove accessible tables and replace them with standing drink tables. She said that most people with disabilities will likely be too discouraged to go to these places, which can then lead

⁷ *Olmstead v. L. C.*, 527 U.S. 581 (1999).

to greater isolation. Ms. Hoopes recommends that there needs to be a systemic enforcement and oversight mechanism in place, which would include a disability review of architectural plans and granting of building permits.

Myron Orfield

Mr. Orfield, a professor of law and Director of the Institute on Race and Poverty at the University of Minnesota Law School, discussed the lack of enforcement with regard to intentional racial segregation in education. After reviewing what he considered Minnesota's positive historical record on racial segregation, Mr. Orfield said it was now sad to realize that in the past 10 years the Twin Cities metropolitan area has gone from having nine racially segregated elementary schools to 109 during a time of growing racial diversification. He said that this growth in segregated schools coincides with the state's lack of enforcement of civil rights rules as defined by the decision of the U.S. Supreme Court in *Keyes v. Metropolitan Denver School District*.⁸

Mr. Orfield submitted reports published by the Institute on Race and Poverty that conclude numerous Minnesota school districts drew boundaries that made their schools more segregated than the neighborhoods of those particular cities. Mr. Orfield says the state has not enforced the *Keyes* decision because, even when school districts have asked the state for advice about how to administer the desegregation rule, the state has not provided school districts with advice other than that the school districts should not violate the rights of white children in those school districts.

Mr. Orfield also spoke about charter schools, which he characterized as almost twice as segregated as public schools. He asserted that many charter schools advertise themselves as ethnic specific. Furthermore, he stated that charter schools under Minnesota law are exempt from all state civil rights regulations under Minnesota Rule 35.35. He also stated that despite often locating themselves in racially poor neighborhoods with underperforming public schools and promising to do better than those neighborhood schools, charter schools have shown over the past 20 years to underperform public schools at all levels of race and poverty. Yet, they are growing without having to comply with any state civil rights regulations.

In regard to mortgage lending, Mr. Orfield stated that the Federal Fair Housing Act and Title VIII ensure that individuals are not discriminated against based upon race in applying for mortgage lending and that neighborhoods are not discriminated against on the basis of race in terms of credit. Mr. Orfield then introduced into the record a report by the Institute on Race and Poverty entitled, "Communities and Crisis: Race and Mortgage Lending in the Twin Cities." This report concludes a strong disparate pattern exists for individuals and neighborhoods in the Twin Cities. For example, Mr. Orfield stated that black families in the Twin Cities that earn \$157,000 per year are less likely to have prime loans than white families that earn \$40,000 per year. Given this disparate lending as well as the disparate impact the report found in terms of credit provided to black and Latino neighborhoods, Mr. Orfield questioned the enforcement agencies in regard to their responsibility to do proactive testing and to respond to the lack of credit that has gone into these neighborhoods for decades.

⁸ *Keyes v. School District No. 1, Denver, Colo.*, 413 U.S. 189 (1973).

Finally, Mr. Orfield expressed concern that the state of Minnesota is not enforcing federal rules in regard to its production of low-income public housing. Mr. Orfield explained that, beyond the Federal Fair Housing Act and President Kennedy's Executive Order to integrate public housing, a Code of Federal Regulation (24 C.F.R. 941.202) was implemented after a Third Circuit decision and created a presumption that states should not locate public subsidized housing in racially segregated neighborhoods or in racially-mixed neighborhoods that are defined as neighborhoods that are unstably integrated.⁹ Despite the state doing one of the best jobs in the country at following 24 C.F.R. 941.202, according to Mr. Orfield, he finds it tragic that today almost all the federally-funded low-income housing is built in racially segregated or unstably-integrated neighborhoods.

Discussion

Committee member Kolbo, speaking to Mr. Orfield, said that he was surprised to learn that Minnesota charter schools are exempt from enforcement under Minnesota civil rights statutes. He asked if there were remedies under state or federal constitutional laws for intentional discrimination at a charter school. Mr. Orfield stated that those remedies exist. Furthermore, he said that Minnesota's constitution recognizes a fundamental right to education so there is a heightened obligation on the part of charter schools.

Committee member Battle asked Mr. Orfield if there was a correlation between the highly segregated schools and the low graduation rates in St. Paul public schools. Mr. Orfield responded that in the Twin Cities and throughout the nation 50 years of research has shown that the segregation of race and poverty has a dramatic, long-term effect on depressing graduation rates and college attendance rates.

Committee member Taylor asked Ms. Hoopes to elaborate on what she meant by persons with disabilities being trapped in an institutional setting. Ms. Hoopes explained that, in the past, individuals with developmental disabilities or serious mental illness would live for years at state hospitals. Because of a case brought by her agency 25 years ago, the state was forced to develop community-based houses with services on small levels. She said that 20 years ago, an individual in a state mental hospital would have an average length of stay for eight years. Today, the average length of stay is about 60 days, and only one large state mental hospital in Anoka and the Minnesota Security Hospital exist. Ms. Hoopes continued to make the connection between these small community homes and state resources. She said that when budgets shrink drastically, some of the support services that are critical in order for people to stay in the community homes are cut. These cuts can result in individuals who need those services being re-institutionalized.

Third Panel

Judge Donovan Frank

Donovan Frank, a federal judge for the District of Minnesota, said that when governments cut budgets in difficult economic times such as the present, those cuts strike

⁹ Shannon v. U.S. Department of Housing and Urban Development, 436 F.2d 809 (3d Cir. 1970)

communities of color, immigrant communities, and the disability communities first. He added that if the true measure of a civilized and democratic society is how it takes care of those most in need, specifically how it takes care of minority groups, the disabled members of society, and the poor, he does not think that we as a society are living up to the traditions of the founding fathers.

Judge Frank said that when he began on the federal bench in 1998, the General Services Administration was required to contract with nonprofit 501(c)(3) organizations to recruit and hire people with disabilities. The federal court hired 22 full-time maintenance employees who were all developmentally disabled. However, Judge Frank said that when GSA was helping the court move to a new facility, they wanted to layoff the maintenance workers to hire a new maintenance staff. Judge Frank stopped them from doing this.

Judge Frank also discussed the problem poor people and oftentimes people of color have in obtaining counsel to defend them when they believe their civil rights have been violated. He said that despite Minnesota having an active pool of pro bono attorneys, legal aid groups are still overburdened. Thus, oftentimes there is no access to counsel for the most vulnerable segments of society. He stated that he oftentimes has to personally ask and “beg” lawyers to take a case, but argued that private attorneys should not have to be overburdened with pro bono cases because they cannot be a substitute for full-time legal aid advocates. Judge Frank recommends the implementation of an advanced loan forgiveness program for law students who enter public interest law.

Judge Frank was also critical of the backlog of Social Security disability appeals in federal administrative court. Because it is taking four years to get an appeal heard before the Social Security Administration, the American Recovery and Reinvestment Act allocated \$500 million to the Social Security Administration to hire judges and referees so that the backlog can be addressed.

Fourth Panel

Taneeza Islam

Taneeza Islam, an investigator with the Complaint Investigation Units of the Minneapolis Department of Civil Rights (“department”), described her agency’s mandate. She explained that the department has a contract compliance unit that monitors affirmative action plans, small and under-utilized business programs, and prevailing wage and labor participation. In addition, she explained that the Civilian Review Authority, which investigates police misconduct, was made a part of the department in 2003. She also related how the Multicultural Services Unit was a part of the department until 2009 when it was dismantled. According to Ms. Islam, the dismantling of this unit was a huge loss because the department used this unit “90 percent of the time” during its interactions with Hmong, Latino, Hispanic, and Somali communities.

Ms. Islam then discussed the unit of which she is a member, the Complaint Investigation Unit. This unit investigates all charges of discrimination in a wide variety of areas including, but not limited to, employment, housing, education, and lending practices. Ms. Islam stated that since the Committee’s 1996 report, the department has had two major cuts in funding. The first, in 2003, cut 40 percent of the department’s

budget. In 2010, there was a 20 percent cut after the mayor initially called for the complete elimination of the Complaint Investigation Unit. Currently, Ms. Islam's unit has three full-time investigators and one manager.

Ms. Islam then discussed the backlog of complaints her unit has and the ways in which these complaints are now being handled in light of the budget cuts. Ms. Islam explained that the backlog complaints are any complaints that are received in one calendar year and are not resolved in the same calendar year. The new streamlined process for handling complaints begins with an in-person intake. After taking all allegations of discrimination from complainants, the unit then has a triage process where they determine if a complaint is dismissed for lack of merit or frivolousness, or further investigated and put into immediate mediation. Complainants who have their complaints dismissed have the right to appeal the decision to the Minneapolis Commission on Civil Rights ("Commission"), a three-person panel that acts as an appellate body.

In cases where the unit finds probable cause, there is a mandatory 60-day conciliation period where voluntary neutral mediators attempt to bring the parties together to reach a resolution. If no agreement between the parties is reached, the probable cause finding goes to the Commission for a hearing and remedy. Ms. Islam stated that her unit's final product, the determinations, has been streamlined from approximately 20 pages of legal analysis to the much smaller no probable cause ("NPCs") determination. The unit now also depends on local law school interns, using 36 such interns since 2008. Finally, Ms. Islam stated that the cuts have not allowed the unit to go into communities to educate citizens and conduct training on their rights and the Department, but they have created public service announcements in several languages and posted them on Youtube, so people with computer and internet access can learn what the Department can do for them.

Toni Newborn

Toni Newborn, a complaint investigator at the Minneapolis Department of Civil Rights, discussed the Department's productivity. She stated that, despite the budget cuts, the department has increased productivity dramatically in the past two years as a result of its streamlined process and the work of management and staff. She stated that the backlog started in 1995 when there were 64 cases put into a backlog for the following year. By 2008, the agency had 25 cases in the backlog. According to Ms. Newborn, 2009 was the most productive year for the agency. Despite a budget cut in February of that year and a loss of staff, the agency closed 374 cases and continued to decrease the backlog. She recommended that the agency fund eight full-time investigators to handle the workload.

Ronald Brandon

Mr. Brandon, manager of the complaint investigation unit for the Minneapolis Department of Civil Rights, discussed the political appointment process for the director of the Department. Under the current process, the mayor appoints the Director of the Department to a two-year term. However, Mr. Brandon stated that there have been six different directors since 2003. He argued that this type of turnover makes it difficult for the Department to receive consistent guidance and function as efficiently as possible.

Mr. Brandon also discussed the factors related to the growing immigrant communities in Minneapolis. He stated that the Department is dealing with an increase in cases from the Latino, Somali, and Hmong communities, which are proving difficult because of a lack of an interpreter program.

Discussion

Chairman O'Meara opened up discussion so members could specifically address questions to the representatives from the Minneapolis Department of Civil Rights. Committee member Taylor began the questioning by asking what resources were needed to address the backlog problem at the agency. He also asked in general how the Department's Disadvantaged Business Enterprise (DBE) program was working. Mr. Brandon stated that the backlog consisted of 80 cases, and, given proper resources, the Department could eliminate the backlog in six to eight months. In regard to the DBE question, Mr. Brandon stated that the DBE program currently had one staff member who is setting the goals for the program. However, Mr. Brandon said the Department is planning to do a disparity study in concert with the City of St. Paul, which will revamp the program.

Committee member Wohl asked for an explanation for the decline in probable cause findings. Mr. Brandon responded that the agency processed more complaints in 2007-2008. In addition, he stated that there was an "onslaught" of allegations of police misconduct because of race, but a large number of these complainants did not follow through on their initial complaints.

Committee member Kolbo asked whether complainants receive advice about whether it is better or speedier for them to file their civil rights complaints at the municipal, state or federal level. Mr. Brandon, who mistakenly believed that complainants could not concurrently file with all jurisdictions, stated that the Department was a neutral agency and did not provide legal advice, but they did let complainants know of their filing options. He also said that the EEOC "transfers" about 100-150 cases to the Department every year.

Luz Maria Frias

Ms. Frias, Director of the Department of Human Rights and Equal Economic Opportunity for the City of St. Paul, explained how the Department of Human Rights was an independent agency until approximately one year ago. At that time, Mayor Chris Coleman commissioned a study to determine whether disparities existed in how the city awarded business opportunities to minority-owned, women-owned, and small businesses. The study concluded disparities did exist, and it was decided that a new department should exist. In the new department, human rights is a separate division along with contract and analysis services, contract compliance and business development, river print, and a division for Census 2010. Ms. Frias explained that the purpose of the change was to address the problems holistically and to integrate the work so that the new department could be more strategic and make a more meaningful impact on the city.

Because the new agency separates human rights and compliance into two separate divisions, Ms. Frias stated that the human rights investigators can now deliver services on

a much more expedited fashion. In addition, affirmative action compliance is now more efficient. She also stated that her agency has no backlog although there are one or two cases that are near the one-year mark as a result of the staff changes.

Ms. Frias stated that Mayor Coleman has been very committed to preserving the size of the investigatory unit and increasing the type of oversight that the department undertakes. She also said that the agency hired its first compliance unit supervisor, a Section 3 administrator, and a person who does the Limited English Proficiency (“LEP”) work and plans.

Ms. Frias said the agency also faced serious challenges. Specifically, she said the agency likely will have its funding cut between 10 and 19 percent. She did not provide specifics about how the agency planned on handling those cuts but did mention that they will try to stave off hiring individuals for any openings.

Comparing the work of St. Paul’s civil rights agency to that of Minneapolis, Ms. Frias pointed out that her department does not investigate cases of police misconduct because the City of St. Paul has its own internal affairs unit for those cases. She also gave statistical information about the cases her department handles. For instance, she said that most cases handled are race-related, about 35 percent. The categories of age, disability, and sex or gender each make up about 14 percent of cases. By far, most cases deal with employment discrimination, about 85 percent. Public accommodation cases make up about seven percent of the agency’s work, and real property make up six percent.

Gessner Rivas

Mr. Rivas, a human rights specialist for the City of St. Paul’s Department of Human Rights and Equal Economic Opportunity, began by discuss the intake process of the Department. He said there is a screening process when a complaint is filed that includes determining whether the Department has jurisdiction over the complaint or if a more appropriate office should handle the complaint. Mr. Rivas added that the screening includes determining whether the accused is a party, such as the police or a state agency, over which the Department does not have jurisdiction. The screening process also involves determining whether the statute of limitations has run, which is one year. Mr. Rivas added that currently the Department is trying to spend more time on intake because it normally speeds the process. Finally, Mr. Rivas stated that the Department was putting more effort into outreach and providing information to St. Paul citizens, such as by including more information on their website.

In regard to staffing levels, Mr. Rivas said that in the past five years the staffing level has dropped from five full-time investigators in 2005 to three full-time investigators and one part-time investigator currently. However, Mr. Rivas added that when the Department reorganization occurred in 2009, investigators no longer had to perform compliance work and began to work primarily on discrimination cases. Three of the current investigators are lawyers, and one has a law degree from a foreign law school. Investigators perform conciliation work when a case is found to have probable cause. Mr. Rivas stated that these conciliations mostly involve working towards remedies that are agreeable to both parties.

Mr. Rivas then discussed caseload. He said that as of the date of the briefing, the Department had received 22 cases in the year plus cases that carried over from the

previous year. He said some of the backlog cases are the result of the reorganization, and the Department goal is to finish cases within one year.

Mr. Rivas concluded that the diversity of the staff at the Department is beneficial to their outreach efforts. He said that he and another investigator are bilingual, the part-time investigator is Asian American, and another investigator is from Africa and speaks Amharic.

Discussion

Committee member Nelson began questioning by asking Mr. Rivas to confirm that the investigator who finds probable cause also does the conciliation work for the Department. She wanted to know if this ever raised issues from employers who were accused of discrimination. Mr. Rivas responded that normally the investigator who finds probable cause will also work the conciliation, but if there were issues that arose, another investigator could come in to do the conciliation. Ms. Frias added that this has not been an issue.

Committee member Gilbertson asked about the process once conciliation fails. Mr. Rivas responded that if the conciliation is not successful, the Department issues a right to sue letter at which point the complainant normally finds her or his own attorney to file a lawsuit. He added that if a case had broad impact then the city Commission may be willing to hear the case, but the case must have a broad impact because of lack of resources. Ms. Frias added that in the event a case is sent to the city Commission, the City Attorney's Office would prepare the case. Committee member Gilbertson's second question asked about the appeals process for complainants who do not receive a probable cause finding. Mr. Rivas responded that complainants have 20 days to appeal an investigator's decision to the director, who reviews the entire file.

Chairman O'Meara asked whether there have been any innovative solutions developed between the St. Paul and Minneapolis civil rights enforcement agencies that utilize joint powers, cooperatives, or other collaborative arrangement to share resources. Ms. Frias responded that there have been no such efforts in regard to human rights but some discussions have taken place regarding Section 3 compliance. She also added that there is a collaboration regarding certification of business vendors. Mr. O'Meara followed up to ask if the state was involved, and Ms. Frias responded that the state was involved in the preliminary discussions around the Section 3 work only.

Committee member Battle asked for the percentage of work done for the city by minority contractors over the past two or three years. Ms. Frias did not have percentages prepared but stated that the Department had exceeded its goals for 2009. She guessed that the work done by minority contractors was around 13 percent. She added that in 2009 the Department broke down the jobs and served as an intermediary in the bidding process. Previously, the city would award a large project to a contractor who would then bid out the subcontracts. Now, the Department's senior buyer breaks down the numerous subcontracts, which allows minority businesses an opportunity to compete.

Committee member Kolbo asked if either of the agencies send complainants letters that state their case has been dismissed because of lack of probable cause or lack of resources. Both Mr. Brandon and Ms. Frias said no. Ms. Frias said that on their notice of dismissal forms there is a section where the basis for the dismissal is stated, and lack

of resources is not a basis. Mr. Brandon stated that their dismissals are based upon frivolousness or lack of merit, and either one is clearly explained. He also added that complainants have the right to appeal dismissals to the Minneapolis Commission on Civil Rights. Chairman O'Meara added that he believes the comment regarding a dismissal notice that state lack of resources was made by Pamela Hoopes, and she was discussing a dismissal by the Minnesota Department of Human Rights.

Committee member Battle made a comment that he believes it is very difficult for minority small businesses to get work through the City of St. Paul because of excessive paperwork that needs to be completed. Ms. Frias responded that St. Paul now has an online system called Demand Star. Her Department goes out into communities of color and targets women-owned businesses to teach them how to use this system. Once a business is signed up, they will automatically receive emails with project openings in the City of St. Paul. She also added that there is no cost associated with the system. Ms. Frias also stated that in 2009 there were three target outreach programs to communities of color where four departments and the mayor were all represented, and approximately 100 people turned out. She also said the City initiated a new and successful partnership called the Architectural and Construction Engineering Projects, which was an opportunity for smaller, minority-owned and women-owned companies to network with large contractors.

Committee member Taylor commented that he was concerned specifically about the Minneapolis Department of Civil Rights and its staffing level of 19. He said he believes more strategic thinking is necessary and is interested in recommendations to addressing the lack of resources issue. Committee member Gilbertson added that he has observed over the past 10 years mayors of both cities either adding unfunded responsibilities to these agencies or cutting their budgets while saying such moves do not lessen their commitment to human rights. He believes one cannot characterize it any other way because it is impossible to do their jobs without resources.

Fifth Panel

James Kirkpatrick III

Mr. Kirkpatrick, the Deputy Commissioner for the Minnesota Department of Human Rights, stated the agency's budget has decreased from \$8.2 million in 2002 to \$6.4 million. He added that the number of full-time employees has also decreased over that time from 65.4 to 39.5, with the expectation of decreasing by three or four more. He stated that the most complaints the Department has received in a year was approximately 1,500, but only 974 charges were filed in 2009. Mr. Kirkpatrick reasoned that because a large portion of the charges brought are in regard to employment discrimination and unemployment was high in 2009, there were fewer charges filed. He also said that each investigator carries a load of 26 cases. The 20 investigators who work for the Department are divided up into the following departments: 11 in case processing, five in intake, three in compliance, and one in legal affairs.

Mr. Kirkpatrick then discussed the procedure for filing a charge with the Minnesota Department of Human Rights. He said that the intake staff screens charges for jurisdiction and statute of limitations issues. Then, the intake staff will draft the charge

for the charging party and send it to them for their signature. Mr. Kirkpatrick stated about 60 percent of these charges are signed and returned to the Department. The charge of discrimination is then sent to the respondent who has an opportunity to answer the charge. This answer is sent to the charging party who may reply before the respondent has another and final opportunity to respond. The documents are then sent to the Department's most senior investigators who review all documents to determine whether an investigation will ensue or the case will end.

If the investigators determine a charge merits being investigated, they will do so and return a finding of probable cause or non-probable cause. Given either finding, both parties have an opportunity to appeal. If after appeal, a probable cause finding is still held, the case is referred to the Attorney General's Office for conciliation. If conciliation fails, the Department determines whether to litigate the case. However, Mr. Kirkpatrick stated that given the expense of litigation, the Department has only litigated four cases in the past two years. He recalled a case the Department litigated that became so costly the Department had to lay off staff, so they now avoid litigating cases themselves whenever possible.

Mr. Kirkpatrick also stated that mediation is offered for all charges before investigation begins. He said the Department has an extensive group of mediators throughout the state who volunteer their services and allow the Department to mediate cases wherever the parties are located in Minnesota. The mediators are only paid travel expenses. If, in the course of investigation, parties show any interest in mediation, the case is referred to a senior investigator who is not investigating the case. This senior investigator will then mediate the case and attempt to reach a settlement.

Finally, Mr. Kirkpatrick addressed the previous raised issue of whether his Department sends letters to charging parties that state a case is dismissed because of lack of merit or lack of resources. Mr. Kirkpatrick stated that the Department does send form letters stating lack of merit and "does not warrant additional resources." He said an additional memo is included that explains the particular problems for the charging party.

Jaime Pedraza

Ms. Pedraza, Director of the Fair Housing Division of the Minneapolis Office for the U.S. Department of Housing and Urban Development, said that her office handles fair housing issues in the state of Minnesota. As a presenter at the fact finding meeting for the Minnesota Advisory Committee's 1996 report, Ms. Pedraza said her staffing level has fluctuated since then. She said she went from just herself and a secretary in the office, to having six employees, to now having two other investigators. She said the office also relies on volunteer legal interns who work eight to ten hours a week.

Ms. Pedraza stated that the Fair Housing Division has three primary responsibilities. The largest responsibility is complaint investigation, but the division also does program reviews and outreach. Regarding complaint investigation, Ms. Pedraza said that all intake is done by the Chicago regional office via an 800 number or by submitting a complaint form. In cases that involve violations of the Fair Housing Act such as reasonable accommodation for people with disabilities, the Chicago office determines if the complaint occurred in the past year and whether it involves a violation of the Fair Housing Act. After the intake, Ms. Pedraza says her division investigates complaints that

deal with Minnesota properties. She stated that the goal is conciliation, which is the first step. Ms. Pedraza stated that, unlike 15 years ago, the conciliation agreements are now legally enforceable but they do not state whether there is cause or no cause. In cases that do not reach a conciliation agreement, the Division does a thorough investigation and writes a report that is submitted to the Chicago office. The legal team in Chicago reviews the reports to ensure that they are substantive and adequate, as well as to ensure consistency between the different Division offices. If reasonable cause that discrimination occurred is determined, the parties receive a notice of the finding. The parties then determine if they want a copy of the full report to have it reviewed by an administrative law court, a HUD official from Washington, DC, or to take the case to U.S. District Court. Ms. Pedraza added that efforts to conciliate continue throughout the process until the case goes to court.

If the complaint involves a violation of Section 504 of the Rehabilitation Act of 1973 or Title VI of the Civil Rights Act of 1964, the process is different. These claims involve programs or housing developments that receive HUD or other federal funds. Ms. Pedraza explained that under these types of complaints, the intake involves a review of whether the entity received federal funds and if they certify that they would comply with Section 504 to the broadest extent possible. She explained that often one act of discrimination may involve a violation of multiple laws so the intake must determine which laws apply in each case.

Ms. Pedraza stated that the two most common complaints her division handles are related to race and mental illness. She said after those two, familial status is the next most common case. In the past, Ms. Pedraza stated that race was by far the most common but disability, specifically mental illness, is now sometimes more common depending on the month.

Ms. Pedraza also said that, unlike 15 years ago, the Fair Housing Act now covers all newly-constructed multi-family buildings. She said this includes design construction to ensure a certain degree of accessibility. She explained that five years ago she and her counterparts across the country were giving design guidance to builders regarding the Fair Housing Act requirements, but she is now very relieved that she no longer holds those duties. Because of inconsistency in the guidance, HUD now provides builders with an 800 number that they can dial to receive guidance from a HUD-contract design firm, Bearing Point. Ms. Pedraza stated that these compliance issues are a major problem in other states, but Minnesota is fortunate not to be as severely affected.

Ms. Pedraza concluded by stating the City of Duluth Human Rights Office is the one substantial equivalent agency in the state. She stated that this designation means that Duluth's human rights laws and federal fair housing laws are so similar that a complainant should be able to file his or her complaint in either jurisdiction and receive the same decision and options. Therefore, HUD pays the Duluth Human Rights Office to investigate housing claims in the city. Ms. Pedraza stated that 20 years ago, Minneapolis and St. Paul had similar designations but no longer.

Julie Schmid

Ms. Schmid, the Director of the Minneapolis area office of the Equal Employment Opportunity Commission ("EEOC"), explained that the EEOC enforces a number of

federal laws that prohibit discrimination in the workplace based upon the federally protected categories as well as anti-retaliation clauses. Normally, the EEOC's enforcement authority begins when an individual files a complaint with a field office. Staff at the field office secures evidence from the charging party and the employer in order to issue a finding. If a finding of discrimination occurs, the matter then goes into conciliation.

At the EEOC, conciliation occurs after a finding is made. Ms. Schmid explained that, unlike conciliation, mediation occurs prior to the investigation and before any finding is made. If conciliation is unsuccessful, the EEOC has the right to bring suit, but Ms. Schmid stated that, given limited resources, the EEOC is targeting systemic discrimination cases for litigation in order to yield a broader impact. If the EEOC does not file a lawsuit, Ms. Schmid stated that it provides the complainant with a notice of right to sue for them to pursue the matter individually in federal court.

Since the 1996 Minnesota State Advisory Committee report on the subject, the EEOC now enforces the recently passed Title II of the Genetic Information Nondiscrimination Act ("GINA"), the Lilly Ledbetter Fair Pay Act, as well as the broadly construed definition of disability under the Americans with Disabilities Amendments Act of 2008. In addition to its new responsibilities, the EEOC also underwent a field reorganization. There are now 53 field offices under the aegis of 15 district offices, which is down from 23 district offices. The Minneapolis office is now an area office under the Chicago district office. Ms. Schmid stated the Minneapolis office also now takes complaints from North Dakota and South Dakota.

Ms. Schmid stated that in 1999 the EEOC established a nationwide mediation program. She said mediation is offered in most cases and there is one full-time mediator on staff, and the office also employs contract mediators as the need arises. Parties enter into mediation voluntarily and the process is kept confidential. Ms. Schmid stated that her office resolved 91 cases through mediation in 2009.

Ms. Schmid concluded by stating that the Minneapolis office struggled in the last decade because of a paucity of investigators. Nationwide, she said the number of investigators declined 33 percent from fiscal year 2000 to fiscal year 2008. However, she said because of a recent redirection of funds, her office has gone from five investigators in fiscal year 2007 to ten investigators. She said this increase was essential because the Minneapolis office receives an average of 1,200 charges of discrimination per year with each investigator handling 225 cases per year in fiscal year 2008 and 214 cases in fiscal year 2009. Ms. Schmid said this increase in staffing has corresponded to an increase in funding as the Chicago district office's operating budget went from \$648,408 in fiscal year 2008 to \$906,114 in fiscal year 2009.

Finally, Ms. Schmid corrected previously erroneous statement by Mr. Brandon by stating individuals are allowed to file charges in more than one jurisdiction. She said that when charges are filed with EEOC, the charge is automatically cross-filed with other Fair Employment Practice Agencies ("FAPes"). For example, she said that if an individual in St. Paul files a complaint against a St. Paul employer with the EEOC, the complaint is automatically filed with the Minnesota Department of Human Rights and the City of St. Paul. The EEOC has a work-share agreement with these FAPes where they receive federal money for complaints received and investigated.

Carmen Navarro

Ms. Navarro is the Director of the Minneapolis District for the Office of Federal Contract Compliance Programs (“OFCCP”) of the Department of Labor. Her office administers and enforces Executive Order 11246 as amended, Section 503 of the Rehabilitation Act of 1973 as amended, and the Vietnam Veterans Readjustment Assistance Act of 1974 as amended. She stated that these laws ban discrimination and require federal contractors and subcontractors to take affirmative actions that ensure all individuals have equal opportunity in their employment processes without regard to race, color, religion, sex, national origin, disability or status as a special disabled veteran, veteran of the Vietnam era, recently separated veteran or other protected veteran. The Executive Order requires any federal contractor with 50 or more employees and receiving \$50,000 or more to have a written affirmative action plan. Ms. Navarro stated that her office conducts audits of federal contractors’ affirmative action plans and their personnel practices to ensure compliance with the three laws mentioned. If an audit finds that a contractor is in noncompliance with the affirmative action plan or the federal contract, the OFCCP will request the contractor to enter into a conciliation agreement to remedy the deficiencies identified. If a contractor refuses conciliation, Ms. Navarro said OFCCP’s ultimate tool is to file an administrative complaint that could result in the contractor being barred from federal contracts.

Ms. Navarro said that the Obama administration believes the OFCCP has been allowed to get too small and is working to restore the office to previous levels. Ms. Navarro said the Midwest Region was at a low staffing level of 104 compliance officers in 2009. As of the day of the briefing, the number of compliance officers increased to 157. She also said that the Minneapolis office went from three compliance officers in 2009 to 10 currently.

In regard to workload, Ms. Navarro stated that in fiscal year 2007, the Minneapolis office conducted 283 audits of supply and service contractors and two audits of construction contractors. In 2008, the office scheduled 50 audits of supply and service contractors and one audit of construction contractors. In 2009, the office scheduled 138 audits of supply and service contractors and no audits of construction contractors, but she said the office was actively monitoring the Central Corridor Light Rail Transit Project. She said when this project officially starts, the office will then begin to conduct its audits of the construction companies.

Ms. Navarro also stated that the Obama administration was broadening the focus of OFCCP, returning to a focus on contractors’ compliance with their obligations to individuals with disabilities and covered veterans and not solely on systemic discrimination. The new focus requires more on-site presence, which the increase in compliance officers will allow.

Discussion

Committee member Battle asked Ms. Schmid where the money for the staffing increase came from and who was responsible for the decision to increase staff. Ms. Schmid responded that the total number of staff in her office increased from 13 employees in fiscal year 2008 to 18 staff currently. She said the money was not stimulus

money. She said that the EEOC has received a small increase in funding from Congress and the new Chair of the agency decided to shift money to the field offices to hire more investigators.

Committee member Taylor asked Ms. Schmid for a breakdown on the type of cases her office receives. She responded that nationwide about 36 percent of the cases the EEOC receives are race cases and an equal percentage is retaliation cases. She also noted that an individual could list more than one category as the basis of a charge.

Chairman O'Meara asked Ms. Navarro about protests regarding the light rail project that relate to the exclusion of individuals with disabilities. He also asked her to speak specifically about any particular contractual preferences relating to minority business, women-owned business and people with disabilities for that project. Ms. Navarro stated that she did not have information about either question but would be willing to get back to the Committee with an answer.

Statements: First Panel

[NOTE: All statements are unedited.]

Artika Tyner

Clinical Law Fellow, University of St. Thomas School of Law and the Community Justice Project

In our work in the Community Justice Project, we work closely with communities to advocate for public policy reform and protection of their civil rights. I'm honored to be here today to discuss the present state of civil rights enforcement from the perspective of concerned communities of color. I've heard the personal accounts of community members at town hall forums and also met with civil rights leaders in preparation for my remarks. The common consensus has been that we still have more work to do in moving forward and reaching equal justice under the law within the state of Minnesota. In my brief remarks, I will provide first an assessment of the resources devoted to civil rights enforcement in Minnesota from the community's perspective and secondly offer some key recommendations for change.

Starting with resources, time and time again communities of color have voiced a sense of urgency related to remedying civil rights issues and ensuring racial equities and economic justice. Since the 1996 report on resources devoted to local and federal civil rights enforcement in Minnesota, civil rights concerns have continued to persist and some have even said that the problems have only worsened leaving the state of Minnesota in a crisis mode. The community is concerned that there are not sufficient resources to protect their civil rights and a need to strengthen civil rights enforcement statewide in the areas of, one, criminal justice; two, education; three, employment; and four, housing.

First, starting with criminal justice, community members lost faith in the enforcement of civil rights protection in the areas of police misconduct, excessive force and brutality. In fact, Minneapolis and St. Paul rank in the top five nationally for rates of police misconduct for law enforcement agencies at the mid-range level. Civil rights groups have assisted community members in filing complaints to the Justice Department and local civilian review commissions. However, these cases are rarely substantiated and disciplinary actions are rarely administered. This is likely to diminish faith in the justice system and the promise of procedural fairness. Further, community members have also raised concerns related to racial profiling and bias policing. Hence, patterns of racially discriminatory practices have emerged leaving some community members questioning oversight and enforcement practices which diminishes overall the strength of community police relations. There is a need for additional resources to be used for investigation of complaints, monitoring and analyzing trends and complaints, hiring of community liaison and also additional training for members of civilian review commissions and best practices and also legal standards of review.

Since the last report, racial disparities in the criminal justice system and juvenile justice system have also continued to increase. For example, if we look in the context of juvenile justice, Minnesota is among eight states with the highest disparities between white and youth of color

and juvenile custody. Also, the rate of arrest among youth of color is three times higher than the rate of arrest for white youth. These statistics are alarming and demonstrate the eminent need for reform in the criminal justice system and juvenile justice system. Hence, there is a need for the close monitoring of racial disparities in the criminal justice system. And if we look specifically at the juvenile justice system, there is a need for oversight in looking at data collection to eliminate disproportionate minority contact and more specifically look at those entry points into the pipeline of prison.

As we look then at education and the achievement gap in Minnesota, we know that a quality education is integral to the success of each child in Minnesota by creating opportunities to learn and grow in the future. Children of color are not realizing the success or the stream of education which is evidence by our ever-widening achievement gap. For instance, in Minneapolis only 34 percent of the district's black students graduate from high school in four years compared with almost 70 percent of whites. Also the gap between eighth grade African-American students and white students has received national attention as one of the largest gaps in the nation. The effect of the disparate educational opportunities has also played a role in the creation of the school-to-prison pipeline as we look at 86 percent of African-American fourth graders in Minnesota are not reading at grade level. This leads to a direct correlation between some of our prison rates as well. Studies have shown that between 70 percent and 75 percent of the prison population are illiterate. We also know that in the state of Minnesota third grade reading scores are used to project the number of prison beds needed in the future. So we can no longer ignore these key links and direct correlations. The Department of Justice report highlighted that illiteracy and crime are closely related. The link between academic failure and delinquency, violence and crime is welded to reading failure. Therefore more resources are needed to ensure that all children have equal access to quality education. And this is not limited by the color of their skin or ethnicity.

Next I'd like to briefly talk about the economic gap in Minnesota. The 1996 report highlighted that there was a growing economic gap between the earnings of households of color which has continued to worsen and that we see has continued to widen today. There are many factors that influence this gap, but I will only highlight a few, which are racial disparities and unemployment rates and also labor marketplace discrimination. The impact of these economic injustices is long-lasting since they affect family stability, accumulation of generational wealth and the ability to fully participate in the democratic process. The concerns of community members should be addressed by providing additional resources for employment training and promoting diversity in hiring practices even starting with our governmental agencies.

And then finally as we look at affordable housing, community members would also like to see additional resources for affordable housing. Once again, since the 1996 report there has also been a negative increase in the availability of affordable housing. One community member characterizes this as a big problem since affordable housing is so critical and in short demand for families and individuals in need.

So as you can see, there is still yet a number of civil rights issues to address before the community's vision of a future of civil rights can be fulfilled. The community envisions civil rights enforcement that is equitable, efficient and effective, and most importantly, just. The community also would like to see matters handled in a timely manner and a reduction in backlogs. One community member asked me that if we don't have effective and responsive civil rights and human rights enforcement, where do we go? With that question being left unanswered, community members have become reluctant to report civil rights complaints which would cause

inaccuracy in discrimination reporting and lead to missed opportunities for eliminating racial injustices.

So as we look for key recommendations, community members would like to see a commitment to sustaining and maintaining the current resources available for civil rights enforcement and also an increase in areas of need. This is a matter of political will and also moral commitment for change, the challenge of civil rights enforcement agencies to be more innovative and to think out of the box and seeking opportunities for eliminating structural inequities. Some key recommendations that I would like to include are first developing more mediation programs to allow for opportunities for resolving conflicts in a constructive manner and also fostering a sense of community. These additional mediation resources can also increase response rates and also aid in eliminating current backlogs. Secondly, I also would like to encourage more community engagement and community input in this process as you are thinking of new ways to allocate resources. This will foster the power of community collaboration in transforming relationships and also empowering the community. Thirdly, building more employment training opportunities. I've heard positive results related to the St. Paul's emergency medical technician program and also the NAACP's apprenticeship program. These programs can be used to address the economic gaps that I highlighted earlier by providing marketable job skills training. And finally, looking at the opportunity of creating additional states ombudsman person position with a narrowly tailored focus on civil rights enforcement. This individual would monitor and analyze trends in civil rights, utilize creative problem-solving techniques and promote more collaborative practices.

In conclusion, the struggle for the protection of civil and human rights has been an ongoing battle since the onset of the civil rights movement. For instance, in 1966 Dr. King warned that the plan of freedom is only a bud and not yet a flower. Still today, 44 years later we have not reached full blossom. This is evidenced by the diminished quality of life experienced by the communities of color and the racial disparities in the criminal justice system and juvenile justice system, poor quality educational opportunities, limited access to quality healthcare and generational poverty. And that's just a short list. So my hope is today, as we are all here together, that we will explore key steps that we can use to reach that full blossom of freedom. So I would like to thank you all for your time.

Paul Slack

Pastor, New Creation Church of Brooklyn Park, Minnesota, and Co-Chair, Clergy Religious Caucus of ISIAH

Isaiah is a collaborative of 100 congregations in Minnesota, co-creating healthy communities in which there is racial and economic justice. As a faith organization, we meet with people from all sectors of Minnesota's communities, as we did last year when we held a people's hearing on transportation; 425 people attended from 35 cities. In Minnesota, five congressional offices were there represented, state legislators and city officials among many others. We heard from people about their lived experiences, about how the lack of transportation caused them both lost jobs, inability to be able to get to their healthcare professionals and fresh foods and just to maintain their jobs in the communities which all are factors which affect health. Former Congressman Jim Ramstad said of Isaiah -- said that people are our special interest; and so they are. So we believe that all of our voices are needed to create equitable opportunities for all communities.

For several years we've worked with Professor John Powell who is a professor at Ohio State University, director of the current institute and one of the world's foremost thinkers on issues of race, poverty and matters of equitable opportunities. Through that -- and also he was formerly of Race and Poverty Institute of the U and we obviously see the current director of that institute here today. Through our partnership with Professor Powell, we sponsored a series of conversations with stakeholders throughout Minnesota discovering that our institutions and systems are aligned in ways that unfairly disadvantage communities of color and the low income. We've also discovered that we can act in ways to create equitable advantages for all communities. We can reinvest in communities of color and low income communities strengthening all of our communities.

I want to talk a little bit about the transportation industry where I worked with the Department of Transportation here in our state. And one of the things we did to analyze what is currently going on is we looked specifically at what happened with the stimulus money. So we talked about who benefited from our transportation dollars, did the transportation investments in Minnesota help poor people, people of color, and women, and what does this experience teach us? People of color have been in a recession for nearly five years is what our report showed us. And we have not only been in a recession, but we entered a depression when the rest of the country was in a recession. And our source for that is United For a Fair Economy. In the American Reinvestment and Recovery Act ("ARRA") principals, one of the principals of ARRA said that those dollars were there foremost to assist those most impacted by the recession. And so the outcome that we were looking at with the ARRA dollars is that they would go to those communities that need it most first. According to Mn/DOT, in July 2009, 95.7 million bids were won by contractors at that time, 5.4 million of those dollars went to disadvantaged business enterprises, amounting to just 6 percent when the goal was 15 percent at that time and it has been reduced to 9 percent, which we would argue is the wrong thing to do.

Out of 1,873 jobs, 114 went to minorities, just 6.1 percent, and there is a goal on projects of 11 percent; 6 percent of contracts and 6.1 percent of jobs frankly is just not enough. The highest transportation investments were not in areas with the highest poverty. It was not in areas with the highest unemployment, nor the highest percentages of people of color. What's not completely apparent by this report is that this report only represents one week in July which is the busiest time in the construction industry. It doesn't talk about hours worked, actual hours worked by people of color in the low income. It doesn't talk about how long a person was on the job nor their job classification. We need better transparency in our transportation industry.

When Isaiah met with Congressman Oberstar last year, he said the federal government doesn't require this kind of reporting. I ask -- suggest that this kind of reporting becomes a federal requirement, that we demonstrate how many hours people have worked, what their classification is and that we actually begin to track them through the industry to discover whether or not our people are being tracked towards careers and not just merely being hired one week out of one year to boost a report that's sent to the federal government. We need to know exactly what's going on that requires transparency.

What the report also doesn't demonstrate is currently we don't have enough people who are working on enforcement issues in the transportation industry. We merely don't have enough people to follow every project that happens in the state of Minnesota to truly determine what is going on. There is a process for collecting reports throughout the years, but there is no compilation of that nor is the data disaggregated to determine where the jobs are really going, nor where the contracts are going. Conclusion is that ARRA investments and transportation jobs

has reinforced the underrepresentation of people of color and women. Our current funding streams, policies and practices are willfully inadequate and incapable of producing equitable outcomes. What we need is an effective, inclusive public process, targeted investments to meet the needs of those who need it most. We can't merely just have a policy that says that that's what we are going to do. We actually need to go about investing in communities that have typically been disenfranchised. We need availability of public information.

One of the disappointing things that we have discovered over the five-years-plus that I have personally been involved in this process is it's nearly impossible to get the kind of information we need to figure out what's going on in our communities and what needs to happen in order to correct what is currently wrong with investments in communities that need investments the most. We need targeting of jobs and businesses to those who need it most as well.

We are also recommending that we invest -- increase investment in public transportation. Previous speaker talked about investing specifically in training. One of the things that we've asked for and that we are pursuing is one-half percent of all projects, federal dollars that come in for highway heavy investments in our state and that those money go towards recruitment, training, placement and retention of minority and low-income workers. Currently contractors are required to do something that is called good faith. And good faith is not about outcomes, it's merely about them reaching out to both DBEs, contractors of color and women and also minority, low-income workers. But reaching out could be merely sending the fax one week before the project actually goes to scale to ten, 20, 100 companies and not really talking to anyone in person about bringing DBE in nor communities of color. Frankly we can and we should do better if we are talking about diversifying the workforce and diversifying contractors who are on the projects. And so we say that one-half of one percent should go towards diversifying the workforce.

We should also have an equitable investment for contractors as well to ensure the DBE contractors are both bidding on the jobs in the Department of Transportation -- I can talk a lot about that if you care to later -- and that they are actually certified with the Minnesota Department of Transportation and that we're looking not just at women contractors being certified but also contractors of color being certified and actually getting projects from the job and that when we look at -- any of you have drove down Minnesota's highways, our state's -- kind of a little humor, but when we look on the work sites, when I look on the work sites, and I have driven on a lot of project sites, most of what I see with my physical eyes as what I have discovered in this report are white males. People of color and women are missing. They are lacking. They are not on the job sites. And frankly we can and we should do better on those fronts. So that investment, specific monetary investment to increase our workforce and further diversify our workforce.

We should also have a willingness to hold contractors accountable for a diversified workforce. We have some laws. We need more. We have some policies about that. But what has been missing is both the people to actually work on enforcement and a will in the transportation department itself to hold contractors accountable for diversifying workforce. And what we have been working for is not some punitive measures but we've been working for real change in what's happening on many of our transportation projects throughout our state. And so we believe that there ought to be corrective actions, followed up corrective actions, following up on corrective actions and actually look at what outcomes are being produced rather than just merely some sense of good faith; someone has tried. It's not good enough in my mind that we try, we

make efforts. What is good enough is that we actually produce a different kind of outcome in our industries. We know that it is possible, and we want to move it from it being possible to that actually being the reality.

So we are looking with many stakeholders throughout the state that represent many factors from our communities, both those who have traditionally been in the employment field and transportation department and those who have been disenfranchised. We believe that there is a solution for it and that when we have an outcome focus report, then we'll actually be able to get to where we want to get to in a way that benefits all of our communities in the state of Minnesota, not just merely those that have been disenfranchised. But what our reports have also demonstrated is that when we all do well, when everyone has jobs and has access to healthy foods, have access to their healthcare, when we all do well, we actually all do well and we actually all do better. So thank you very much for this opportunity.

Karsten Nelson

Pastor, Our Redeemer Lutheran Church, St. Paul, MN

I am feeling rather lucky these days. I walked into a church the other day, sat down in their pew and found a dime, passed it on to whoever was next to me that I said: You are going to have to decide what you're going to do with that dime. Came into St. Paul and ended up finding a dollar today, found -- pretty lucky. The only problem is I was kind of anticipating finding a \$5 bill today, maybe even a ten. There may have been a 20, possibly even a \$100 bill. What I found was a \$1 bill. I'm not sure if I am supposed to be happy about that or maybe not.

What that refers to is that I've been engaged with Isaiah and their work with the City of St. Paul finding the compliance -- the City being in noncompliance with HUD dollars. Most recently what has happened is that the City's noncompliance forced HUD to try using St. Paul as being a city to work with. The City has wanted to try working with HUD with some community engagement with the pastors' group. We had some visits trying to find some agreement about how to move forward. The concern was that HUD and the City now have put together a voluntarily compliance agreement, and part of that is that they have offered \$1 million back to the people for what would be Section 3 dollars. The only issue is that over the last four years, there has been at least tens of millions of dollars that have not been matched without -- without going -- having records to go back even farther, may well be that there is hundreds of millions of dollars that were not given to the low-income residents that should have been given those dollars. And so when there is a voluntarily compliance agreement where there is a million dollars that's given, we are not certain if we should really rejoice we got a dollar or if we should be really angry and frustrated, because maybe there should have been five or ten or \$100 million.

The issue of the compliance and the resulting sense of where that leaves the low-income residents in our community with jobs is one of those concerns for us as a community. We are trying to walk hand in hand with the City. We want to be helpful in the midst of dealing with this one particular issue and in finding that -- finding some ways to be compliant with them. Pastor Newell has been one walking far more in this journey and I'll let him give you some more information and details.

There is also -- let me give you a letter that was presented to the mayor about some of the work, some of our hopes, some of our interest and willingness to continue to be a part of it is something that I would like to present to you.

Fredrick Newell

Pastor, Business Owner, ISALAH Representative

I will start out by thanking this commission for conducting this hearing. I understand that there is going to be a lot of people coming before you presenting and probably many varying views on enforcement of local, state and federal laws. I believe that despite all the positive positions that you are going to hear, that the fact that I present will bear out that there is a lot that needs to be done. When we consider that Minneapolis is contemplating eliminating the civil rights investigative unit and reducing staff or that the state and the local human rights department budgets have decreased each year over the past 12 years and that the Minnesota Department of Human Rights have not received an increase in net funding over the past 17 years, we are left to conclude that Minnesota and the Twin Cities have no civil rights issues, but I do beg to differ.

I will be referencing some studies in my testimony here, and I will provide those to the Commission on a later date within that timetable that you mentioned. For the past 15 years I have been a contractor in St. Paul. And there has been a constant struggle taking place between the City of St. Paul and the minority community. When I started my business in 1995, the minority community had prevailed upon the City to perform a disparity study. As a result of those efforts, the City commissioned the Institute on Race and Poverty to conduct a disparity study regarding the City's contracting practices as pertaining to the minority community. The resulting study found that the City had participated in passive discrimination against the minority community contractors.

The City responded to the disparity study by implementing the Targeted Vendor Program which later became known as the Vendor Outreach Program. In 2005 the minority community prevailed upon the City to perform an audit of the City's minority contracting activities as related to the Vendor Outreach Program. According to the audit in -- that was conducted in 2006 known as a Hall Equal Access Audit, the City performed over \$220 million in construction in 2006 and the Minority Business Enterprise received less than 3 percent. Additionally the Contract and Analysis Service Department within the City handled \$94 million, and the Minority Business Enterprise received little more than \$300,000. The audit found a lack of monitoring and enforcement procedures in PED and HRA contracting activities; a shortage of funding and staff and a lack of clarity of operation.

The City of St. Paul also 5commissioned the MGT Disparity Study which was released in 2008. The disparity study revealed underutilization of all minority groups and all of the City's contract procurement activity. This study showed little or no change since the 1996 disparity study. This disparity is directly attributable to the findings of the Hall Equal Access Report.

Our Company in 1995 was started. I started Newell Abatement Services and obtained licensures to perform asbestos abatement and lead abatement services. In 1995 I joined the City's VOP program -- then the VOP program. We have been in that program or were in that program from 1997 through 2007 minus maybe a year or two where we didn't recertify. And during that period we increased the licenses and services that we provided from asbestos and lead, which are two separate services, to residential builder and remodeler lead risk assessment, property demolition, hazardous waste remediation and even -- there was one other.

We also provided much of our services during that time to the City of Minneapolis and very little to the City of St. Paul. As a matter of fact, during a ten-year period, we provided over a million dollars in service to the Minneapolis Public Housing Authority. But during that same

period of time we provided less than 300,000 to the City of St. Paul and most of that was through a general contractor.

In 2006 on behalf of my companies, I filed a lawsuit in federal court alleging that the City of St. Paul had not complied with the federal regulations governing HUD Section 3 program known as 34 CFR, Part 135. This program was designed to direct employment and contracting opportunities to low-income individuals. Please note that the minority community in St. Paul and throughout -- what I gathered throughout this state is also considered the low-income community. Along with the amount of documentation that I provided to them -- along with the amount of documentation that I provided to them, we also had checked with HUD and received FOIA responses that stated that the City had not filed any of their HUD summary reports for the last ten years. Following that -- following that, when we went to court, the courts kicked the issue out based on no private cause of action.

Being there was no private cause of action in 2006, we in 2008 went back and checked again to determine if the City had filed any of their Section 3 summary reports and we found again in 2008 that they had not. At the same time we checked to see if Public Housing, who was also a recipient of Section 3 funds, if they filed their summary report up through 2005 and we found for ten years they had not. In 2008 we filed administrative complaints with HUD based on noncompliance for the City of St. Paul, many of their departments and for the St. Paul Public Housing Authority. According to the St. Paul HUD's response to our complaint on St. Paul Public Housing Authority, St. Paul Public Housing Authority did fail to meet the safe harbor according to what HUD's paper showed, but HUD did not find them in noncompliance. Rather, HUD developed a three-year resolution plan with them, whereby if they met this three-year resolution plan at the end of three years, they would be found in compliance. We've appealed this decision and asked HUD to go back and revisit it because we feel that what will happen is this decision will weaken not only the community's ability to enforce Section 3 but will also prevent us from making Section 3 a program as it should be with the Public Housing Authority.

Also with the St. Paul -- with the City of St. Paul, we also got the City to do the VCA. The City found that the City was -- HUD found that the City was so far in noncompliance that they conducted a three-year study of the City. They found that they had no procedures in place to comply with Section 3. Based on that, we -- this -- HUD instituted a VCA, they excluded us as a complainant out of that process and in so doing developed a VCA that had no community involvement. Basically, they set up a VCA that the community who sought to get involved in had no input into. So in conclusion, what we feel is that the City's VCA through HUD not only lacked legitimacy but also that HUD and the City should come back and bring the lost opportunities to the Section 3 community. As mentioned, those lost opportunities really does count up over the last four years in the hundreds of millions of dollars, or at least a hundred million dollars.

Statements: Second Panel

Kristin Siegesmun

Managing Attorney, Housing Discrimination Law Project of Legal Aid Society of Minneapolis

The housing discrimination law project is a federally funded testing enforcement agency on fair housing issues, and we have been doing that work for over a decade. I worked in that department for about three years a number of years ago. I have been the managing attorney for the last year while James Wilkinson is on sabbatical. We do our own investigation and enforcement and we also refer cases to other enforcement agencies that serve Minnesota. I will say we are partnered with the legal aid office in St. Paul. And so they -- we do work in St. Paul, Minneapolis and we also, through those offices, serve counties through much of the state of Minnesota. And so we have a long history of fair housing enforcement work here in the state.

I was asked to talk about fair housing enforcement here and so I will briefly discuss -- you know, in addition to the work that we do bringing complaints and litigation and negotiating on behalf of clients, we also do refer cases to other agencies. The primary agencies that we use are the Minnesota Department of Human Rights and HUD. It is possible to refer complaints to the Minneapolis Civil Rights Division, but we have not used that resource much, because they are in a state of transition, and they are backlogged, and it's not clear what their enforcement policies are. So we haven't used them particularly. But that is a source that people can go to. We do refer cases to the Minnesota Department of Human Rights for investigation. If they investigate and determine that there is probable cause, the Commissioner has the option to refer the case to the Attorney General's Office for more litigation.

I wanted to make a couple comments about some of the hurdles that we face with the Department of Human Rights. One of them which my staff have talked to me about is it seems that intake workers do some screening where they are essentially making legal decisions about whether they think someone has standing. And they will sometimes simply refuse to refer a case on because they have determined on their own that they think it's not an appropriate case and we question sometimes whether that's a decision that should be made at the intake level.

A second concern that we've had with the Department of Human Rights is that when they decide not to take a case, they have a standard form letter that they use that says we are not taking the case either because we think it lacks merit or because we don't have the resources. We think that that letter should be one or the other, because it really sends a difficult message to a potential complainant about -- we totally understand if they don't have resources, because we are in that situation ourselves frequently. All the agencies are. There is not enough resources to deal with the complaints that are out there. That's a basic, basic point. I'm sure you will hear it many times today. I don't know if I need to reiterate it. I'd be happy to reiterate it, because there isn't. But apart from that, that's a problem.

And we also think that it is a problem that it's optional when the department determines that there is probable cause that it might or not be sent on for further enforcement. The truth is that most of the complainants do not have the resources to bring litigation on their own. And if the department or the Attorney General's Office won't pursue it even when there is probable cause, then there really is no recourse for them. So we think that's a problem.

One of -- I'll give you an example of the kind of concern of this probable cause finding. We had a case involving an African-American woman who was refused housing and she was steered away from it. We did testing. We have a testing program, a very good testing program which confirmed that this particular landlord was refusing to rent. And even though the Department found that there was probable cause, they did not refer it on to the Attorney General's Office because it was just one person. And I would say that that is a problem that we face with all these decision-makings. When it's an individual, one individual, there is reluctance

among agencies to take on that case. They obviously prefer to take cases that would impact more people. I totally understand that they do. But it leaves individuals with no recourse.

We also refer to HUD. And they have a very active enforcement arm, and they have both the MDHR, Minnesota Department of Human Rights, and HUD have done really excellent work for us. So I don't mean to be critical that they don't do good work. It's really that there is gaps in things that we think should be taken that aren't taken. And that's probably because of lack of resources. But it might also be some other decision-making that's going on. I can't really comment on that.

What I would say is that when we've dealt with HUD investigators, we've had some concerns that -- the MDHR and HUD both have powers that an office like ours can never have. They have the power to demand rent rules and pattern and practice material that we cannot get unless we sue. We cannot do that in an investigatory way, but they have the power to do that. That is one of the most powerful powers, in my opinion, that the Department of Justice has. I say this because I worked for the Department of Justice coming out of law school in the antitrust division and I am well aware of the civil investigatory authority and power that the Department can bring. We think they could bring it more often to look for pattern and practice cases, and I'm not sure why they don't.

Another concern that we have is when -- let's say a landlord or a housing provider is obstructionist with the investigation, they simply refuse to cooperate, they don't provide information. Too often we don't see anything happening to them, the complaint just gets dropped. They say, well, we don't have any probable cause, we couldn't find the information. We have a situation like that right now. I can't remember if it's with the MDHR or with HUD. But there's someone who simply won't respond. And we are concerned that that just means that nothing will happen even though our client has very good information.

Another concern that we have with HUD investigations in particular is that HUD has not provided us with clear direction about what they are looking for from our tests. We say this because we often do tests, we think the tests are good tests, we think the tests prove a violation and we are told: No, the test really wasn't good enough. But they don't tell us what they want or what they expect or what they think a test should show, because if they gave us better direction, we would employ those procedures. Testing is one of the most powerful mechanisms for proving discrimination because the truth is that most discrimination is not overt; it's hidden. Most people are not -- most people don't come right out and say: Oh, I won't rent to a black person, or I won't rent to a disabled person. They don't say that. Instead, they are -- just aren't available or they don't answer the phone call or they -- the rent is higher. So when we do testing, we can prove these things. At least we think we prove it. But many times we are told: Oh, the test wasn't quite enough.

So I think that the bottom line is in our opinion a lot of times the investigatory agencies want to go forward only when there is a smoking gun. And we think -- I think that they could be a little more active in their investigations and allow these cases to go past the probable cause phase to be proven up. And the context that I think of is -- I also was a prosecutor for a time and I'd run grand jury investigations. There is a hurdle that the prosecutors have to cross to prove that they have at least a basis for a claim. And our feeling is that the probable cause standard that both the MDHR and that HUD often employs raise that bar too high.

For example, we had a very, very serious sexual harassment case against a predator that had asked women for sex on more than two-dozen occasions. This guy was a really awful guy, but his operating style was to pick very, very vulnerable women with children. Almost all of

them had had very sketchy backgrounds, many of them had been employed in the sex industry. Many of them were -- had criminal backgrounds, all of them were victimized and the landlord knew that no one would believe them. When we presented this case to HUD in Chicago, I think the investigator here was very much on our side, but we were told that it wouldn't be a good case to bring because our witnesses were not good witnesses because they had bad backgrounds. I will tell you that thankfully the Department of Justice took that and brought the claim and won the claim and got \$400,000 for 12 of these victims. But that was a disappointment to our office.

Pamela Hoopes

Legal Director, Minnesota Disability Law Center

Legal aid is designated under federal statutes as the protection and advocacy system for people with disabilities in Minnesota. As such, we advocate for people with all types of disabilities in the entire state. And we are the only law office in the state that covers advocacy for people of all kinds of disabilities including adults and children. In our work we have experience with a broad range of civil rights issues that affect people with disabilities and they affect individuals with a wide variety of disabilities. Our advocacy brings us in contact with civil rights enforcement agencies at the federal, state and local levels. Today I would just like to mention a couple of areas of concern at each of those levels and make a recommendation for possible improvements that would help our clients get their civil rights vindicated.

Starting at the federal level, one of the big issues in the disability rights area has to do with trying to ensure that people with disabilities get to live and receive services in a community setting that's the most integrated type of setting. In the past people with disabilities lived in isolation in institutions of various sizes. And in Minnesota we for many years have been in the forefront of providing services for people in the community. However, with shrinking state and federal resources to do that, it's really important that when people are trapped in more institutional settings, there are mechanisms for them to get out.

The Office of Civil Rights and the Department of Justice do have some enforcement duties in what are called the Olmstead area. The Olmstead case was a seminal U.S. Supreme Court case that very broadly speaking stands for the proposition that people with disabilities must be allowed to receive services and live in the most integrated setting possible if they want to and if they are clinically able to do so. The State of Minnesota never has had a formal plan to move people out of these kinds of settings and into the community. The OCR and DOJ required all states to have such a plan to effectuate the basic principal that the Supreme Court delineated in the Olmstead case. However, certain states, a few states like Minnesota had a pretty well-developed service array that was unusual compared to most states. So essentially Minnesota was allowed to say in the aggregate, we have so many services of a breadth and depth that we don't need a specific process in state government to come up with a plan that's one document that will talk about how we're moving people in institutions into the community.

However, the problem now is, as we all know, that state budget is in a terrible situation and is only getting worse. Our clients' services that support community-based living have been cut drastically. The most recent example is the personnel care assistant program which provides services to all kinds of people with all kinds of disabilities that enable them to live in their homes or in small group settings. Those services have been slashed and will be further slashed the next couple of years. No one is looking closely at the effect of those cuts and other cuts on the continued viability of the substitute for the Olmstead plan. So our recommendation is that the

State does need to create a plan and that OCR and the DOJ need to be more active in ongoing review of the Olmstead plan or substitute plan and that they should require more interagency discussions and collaboration with their oversight to ensure that Minnesota doesn't end up abdicating its Olmstead responsibilities.

I should note that our office is fortunate to work with the Department of Justice on a number of civil rights issues under the ADA. We would like to increase those collaborations including on enforcement of individual and group Olmstead cases that develop in Minnesota. And we are very happy that on the federal level with the new administration we've recently been informed through our umbrella organization that Department of Justice is actively seeking Olmstead related community integration cases that they would like to work with the protection and advocacy agencies like ours to help enforce community integration where it's lacking. So I just wanted to mention that as a very positive note and that we intend to really pursue those kinds of collaborations even more vigorously, because with our increasingly limited resources I think it's critical that we work in tandem with these federal enforcement agencies whenever possible.

Turning to the state level, we have a number of cases in the Department of Human Rights and we also get many requests for assistance of people who have filed cases on their own in the Department of Human Rights. And there are two areas that I would just briefly like to mention where we have some concerns and some recommendations.

The first area is what we have -- view as inconsistent application of legal standards by the Department of Human Rights on cases where the facts are quite similar. For example, we've seen this come up fairly frequently in communication access cases for deaf clients. So for example, in a case where a client -- a person who is deaf goes to a hospital, they need interpreter services for American Sign Language and they don't get those services. In one instance the Department will find probable cause. In a different case in a different county, very similar facts, even possibly worse facts, the Department does not find probable cause. And I think that this causes both confusion among clients and it makes it very difficult for advocacy agencies to assess the possible strengths and weaknesses of the case if we are either taking the case or recommending to a person with a disability who contacts us a direction that they might take to seek redress themselves.

Our concern is that to have that kind of inconsistency, especially where there is a clear violation of the law, there appears to be some sort of lacking of internal review process within the Department of Human Rights is our speculation, and we would just suggest that there needs to be some kind of internal oversight by a legal officer within the Department to set clear standards for probable cause for certain categories of cases where there is a repeated fact pattern. And I'm sure that that sort of repeated fact pattern is not unique to disability cases. We are not privy to exactly how those decisions are made or reviewed within the DHR, and I am guessing that lack of resources plays a part in -- seems to be a limited ability to review the consistency of the many cases that come in. But it seems to be a critical element of having a well functioning enforcement system from the state level.

A second specific area that -- I'm echoing something Kristen mentioned with the Department of Human Rights, and our experience is that the Department of Human Rights at this point will not go to court and litigate when they have found probable cause. And they have actually told our office that they will not take a case to court when they have found probable cause. Both the Attorney Generals who work with the Department of Human Rights have told us and their in-house attorneys have told us this, even when it falls clearly within the ambit of what they can do and should do, they will not do it.

The result is that the probable cause determination has limited use. It really is only useful if the charging party is able to hire a lawyer or in our case employ us, who, we are a free service with people who have disabilities, to represent them. And then the defendant knows that the attorney with the probable cause finding is likely to take the case to court. In that instance, if the complainant is able to have an attorney, the probable cause finding can be useful for leverage. However, unrepresented plaintiffs have little recourse, even if they get the probable cause hearing.

So our recommendation is that the department should create standards for when they will litigate and also develop a willingness to litigate because without that, as Kristin already mentioned, the process is weakened significantly.

Finally, I would like really briefly to mention the local agencies and to some extent state agencies' role in building code violations. And as you know, many people have many different kinds of mobility impairments and physical disabilities that make physical access to buildings a problem in many cases. We get a lot of complaints about this. And in our experience, there are many buildings in Minneapolis, St. Paul and throughout the state that don't meet basic accessibility requirements. And this is true of new construction as well or of remodeling, remodeled businesses; there is just no disability access.

And there really seems to be no clear path to enforcement or accountability. The city agencies don't appear to have the ability or the resources to enforce and state building and licensing agencies do not seem to be enforcing this either in our experience. The Centers for Independent Living in Minnesota did make an effort to work on this specific issue some years ago but did not have much success. So we really feel, based on our experience with the people who come to our office, that individual enforcement, which often then agencies suggest is the answer, really can't be the answer.

People with disabilities, when they are faced with a physical barrier, if there is any choice to go someplace else, they often will. An example would be there are many restaurants and bars in downtown Minneapolis where if you use a wheelchair you simply can't get in. Or if you get in, the current way to make more money in those establishments is to remove almost all of the tables that have -- where you can sit in a typical chair or wheelchair and replace them with very high tables where people can stand. And those sorts of setups are inaccessible to people who use wheelchairs. Many of the bars in downtown Minneapolis have fairly recently been remodelled to take out the tables and replace them with these sort of standing drink tables. There is no enforcement except for if a person wants to go there, goes to the trouble, tries to file a complaint, most people with disabilities have enough aggravation in their life that they will simply become discouraged and either not go out, which again increases the isolation that is a huge problem with people with all different kinds of disabilities or try and find someplace that's more welcoming to them. And I submit that that is not what building codes and accessibility requirements are for. And without enforcement, they really aren't very meaningful.

So we think that there really needs to be a better systemic enforcement and oversight mechanism in place including in the review of architectural plans and granting of building permits. There should be some step that requires a more thorough disability review and enforcement.

Myron Orfield

Executive Director, Institute on Race and Poverty at the University of Minnesota

I'm going to talk today about school segregation in the Twin Cities metropolitan area and the lack of enforcement with regard to issues of intentional racial segregation as defined by the case of *Keys v. Metropolitan Denver School District*. Minnesota has a -- generally a very positive historical record on the issues of racial segregation. Minneapolis was the first city in the United States to pass a fair housing ordinance. Governor Elmer L. Anderson led to the passage of the Fair Housing Act in the late '50s, one of the first in the country. Senators Humphrey and Mondale were principal authors of the 1964 Civil Rights Act and Senator Mondale, the 1968 Fair Housing Act, some of the most sweeping and important pieces of civil rights legislation that have ever passed the congress.

It's very depressing and sad to realize that in the last ten years, the Twin Cities metropolitan area, the second whitest metropolitan area in the United States, has moved from nine racially segregated elementary schools to 109 in the last decade. This has come at a time of growing racial diversity. And it's come at a time when the state has abandoned any sort of enforcement of civil rights rules as defined by *Keys v. Metropolitan Denver School District*, and of course the cases that stem from *Brown*.

I have a number of reports that I would like to put into the record that are studies in the Twin Cities metropolitan area of boundary drawing that have occurred in the City of Minneapolis, in the school district of the Osseo School District, in the Bloomington School District, in the Eden Prairie School District and Hopkins District and Apple Valley District; boundary drawing that makes the schools more segregated than the neighborhoods of the cities, boundary drawing that is -- often the School Districts place multiple alternatives before the school district board, administration of the school district or puts multiple options before the board. Most frequently the school district picks the most segregated option. School districts ask the State for advice about how to administer the desegregation rule and the State has not given school districts advice about how to administrate the rule other than that they should make sure that whatever they do does not violate the rights of white children in those school districts. That is the principal guidance that they have gotten.

Bloomington in 2001 drew middle school boundaries. They placed the alternatives before the public, three alternatives for middle school boundaries, one quite segregated, one relatively integrated, one halfway in between. Residents on the west side of Bloomington testified for the option that would have been most segregated, many did, many on the east side, particularly black and Latino residents testified for the more integrated option. The school district picked the most segregated option and in addition drew an extra white neighborhood into that plan.

Rule 35.35 under the Minnesota Rules, there is a fine article I'd like to introduce into the record by my colleague, Meg Hobday, principal author at Hamline Law School talks about the enforcement of the rule, the redrafting of the rule in Minnesota to make the rule without consequence and without penalty and the patterns of enforcement. I'd also like to introduce into the record a report by the Institute of Race and Poverty called *The Choice is Ours*. And it is an issue of demographic report about the growing segregation in the metropolitan area, the boundary drawings in Bloomington and Osseo and in Minneapolis.

I also would like to talk about charter schools which are a growing piece of the educational framework in the Twin Cities. Charter schools, the public schools are more segregated than they have ever been in the history of Minnesota. Charter schools are almost twice as segregated as the public schools. Charter schools often advertise or promote themselves as ethnic specific. There are Afrocentric charter schools that are entirely black. There are Latino-

centric schools that are entirely Latino. There are Hmong-centric schools that are entirely Hmong. There are a number of charter schools, often classical academies, charter schools that classify themselves as classical academies that are almost entirely white in racially diverse neighborhoods. The Nova Classical Academy in St. Paul in a racially diverse neighborhood is almost 90 percent white. In east Bloomington, there is a classical academy that is almost entirely white in a racially diverse neighborhood. Eden Prairie has an almost entirely white classical academy in a racially diverse neighborhood.

Charter schools under Minnesota law are exempted from all civil rights regulations and all civil rights protection under Minnesota Rule 35.35. The legislature has attempted to discuss placing charter schools under civil rights rules, it has never -- it has been very strongly resisted by the charter schools. Charter schools are not only more segregated than the public schools, there are very few integrated spaces in the charter schools, much less often than in public schools. And charter schools often incent public schools to become more segregated than they would otherwise become. Charter schools often locate in very racially poor neighborhoods, neighborhoods where the public schools have been racially segregated for a generation. They promise that they will do a better job and actively recruit kids often into single race environments. Twenty years of data show they systematically underperform the public schools at all levels of race and poverty. And they are growing without any civil rights regulation.

I would like to introduce into the record another report that the Institute did, Failed Promises Assessing Charter Schools in the Twin Cities. These reports are also on the Institute on Race and Poverty's website. So I would call upon this commission to investigate the rapidly growing segregation in the public schools moving from nine to 109 segregated schools in a decade. Segregated schools are doing very badly in terms of test scores. Segregated charter schools are enhancing the segregation in the public schools. They are doing worse than the public schools. They are operating without civil rights regulation.

In terms of mortgage lending, there are strong duties under the Federal Fair Housing Act and Title 8 to make sure that individuals are not discriminated on the basis of race in applying for mortgage lending and that neighborhoods are not discriminated against on the basis of race in terms of credit. I'd like to introduce into the record Communities and Crisis Race and Mortgage Lending in the Twin Cities that shows a strong disparate pattern, both for individuals and neighborhoods in the Twin Cities. Our studies found that black families in the Twin Cities that make \$157,000 a year are less likely to have prime loans than white families that make \$40,000 a year and that neighborhoods, particularly racially segregated and racially integrated neighborhoods are far less likely than the income and educational backgrounds would indicate in those neighborhoods to achieve prime credit, that these neighborhoods, that for as long as we have recorded data have not gotten prime credit, were disproportionately likely to be subject to sub prime loans, that many companies that were operating in the private market and not providing private credit into these neighborhoods were also working with or in conjunction with companies that were marketing and targeting neighborhoods for sub prime loans.

If you look at north Minneapolis, there are many graphics in these reports. There is lots of data, and it shows both the substantial long-term denial of credit to segregated and integrated neighborhoods, great disparate impact that black and Latino families at all levels of income experience in prime credit. And I think this also bears investigation to see what the enforcement agencies, what their responsibility is to do proactive testing and to respond to the decades of data about the lack of credit that have gone into these neighborhoods.

A third issue that I would like to talk about is the citing of low income public housing subsidized by the government. In the Fair Federal Fair Housing Act, Title 842, Section U.S.C. 3608, the Congress has ordered all federal public housing agencies to affirmatively further fair housing. And this is an obligation that extends beyond Title 6 and beyond President Kennedy's Executive Order to integrate public housing. If you look at the legislative testimony, it says that this is a specific order for HUD and all public agencies receiving federal funds to use their, quote/unquote, massive leverage to encourage an integrated society.

One of the most important cases that illustrates what Title 8 means is Shannon v. HUD, Third Circuit case in 1972. And this was a case that was brought by residents in racially integrated neighborhoods saying to HUD building low-income housing in poor segregated neighborhoods is violative, prima facie violative of Title 8. And the court said yes. And the rules that implemented Shannon v. HUD are 24 CFR 941.202 that create a presumption of not locating public subsidized housing in racially segregated neighborhoods or in racially mixed neighborhoods which are defined as neighborhoods that unstably integrated.

In the Twin Cities from 1970 to '82 we did one of the best jobs in the country at following 941.202, and the Metropolitan Council using project-based Section 8 built almost 70 percent of low-income family units in neighborhoods that were consistent with the citing rules in Shannon versus HUD. Today almost all of the federally subsidized housing in terms of the low-income housing tax credit is built in both of the categories, presumptively prohibited by 941.202, racially segregated or unstably integrated neighborhoods. And particularly in a state that did so well for so long in observing the letter of the law of Title 8, it's particularly tragic to see almost all of the subsidized public housing being built within a school attendance areas of racially segregated or unstably integrated neighborhoods.

I think that the -- I probably -- you have a law professor that used to be in politics that talks too long. But I'd be happy to answer questions. I put these issues into the record. I'd be happy to participate and be of assistance to the committee in any way that they would like.

Statement: Third Panel

The Honorable Donovan W. Frank

U.S. District Judge, District of Minnesota

I'd like to make a few observations about discrimination, some issues of stereotyping as they relate to equal protection under the law and equal access to justice issues, much like the mission of the Commission and this Committee. And while I'm going to focus on disability issues in large part and developmental disabilities, in part, one, because I think although in these difficult times most minority groups are kind of the forgotten citizens of the United States. And they are disproportionately affected across the board, especially our communities of color, our immigrant communities and the developmental disability community and really all parts of disability community. The budget cuts strike there first.

I won't be talking about charter schools, because the major case in Minnesota is in front of me. I won't be discussing the issue of disability issues in the state hospital system, because the class action is in front of me. And I won't be discussing a number of other issues, of course,

because I can't talk about pending cases. But what I will say before I venture off here and try to focus primarily on the disability issue is it's really quite extraordinary to me that I met our now Chief Judge of our Federal Court, Mike Davis. He and I were two of the only four judges on the Minnesota Supreme Court's Racial Bias Task Force back in the '80s when we were both young and quite ignorant state court judges in those days. And we both came via -- well, when I came on, it was Paul Wellstone who selected me. But Rod Grahams supported that and appointed by President Clinton. And Mike Davis, it was Paul Wellstone and a couple people from Legal Rights Center who recommended him as well to President Clinton. It's quite extraordinary to me, and not in a positive way, that that was the '80s. And that I picked up the Minneapolis Tribune yesterday and read that 6.1 percent of African-American children in Minnesota passed the science test last year and 61.4 percent of Caucasians passed it. And I only make that observation because when a group of judges and social workers -- and this takes us back to the '80s, but I'll leave it to the committee on how much has improved since then when you look at our jail and prison populations, segregation of schools. You just heard about the graduation rates.

When I think back, a group of us got together with the state legislature, and there was one thing we could agree on. Please put your money into the public school systems, because there is where we give hope to our youth, there's where we obtain the hope. If I can hire a teacher and a teacher's aide rather than pay for another prison bed next year, I will keep the public safe, that's my oath. But there is where we will serve the interests of society and do what's right by the citizens of this country. And we are still struggling with that when I read the statistics.

Judge Davis and I sat on a table with the Plymouth Youth Center, not to single out or endorse one group, from North Minneapolis at the Dr. Martin Luther King breakfast a few weeks ago. And he and I are going up there in a few weeks, because I was quite disturbed that most of these kids weren't talking about going to college. And I said -- as I'll talk about my background in just a moment, I said: Follow your dreams. Don't let anybody discourage you. If your high school counselor is telling you what mine told me, I shouldn't go to college. Have us come to your community and talk. So Mike Davis and I are going up there at the end of this month to meet with a group of students to discuss why just because you don't have a lot of money and know people in important places, why you can't follow your dreams.

Let me say this: Who is in front of you? I'm just on my 26th year as a judge, the last 11-plus as a federal judge. And I am very privileged to hold that position, especially in these difficult times. I grew up in a small farming community 25 miles southeast of Rochester. My dad was a very smart man, insightful man but was forced to quit school in eighth grade and work the family farm with his seven brothers and sisters. And even though he was the youngest son and the second youngest of all, he had to quit school and work. And from the time, though, that I was a little boy growing up in this little farm town, I started to observe something. My father insisted on having his developmentally disabled older cousin, Dutch was his nickname, go to church with us on Sundays, help around my dad's small TV and appliance store where he had one employee when we moved off the farm. And Dutch lived on a farm outside.

And I'm telling you this because as a little boy, it was my mother and father, and without any fancy degrees behind their name in this little town, who taught me about the insidious nature of stereotypes and perpetuating those things especially with people with special needs and disabilities and that they have the same opportunity and should have in our society as everyone else. So I tell you this, because I grew up and it shaped me, as I'll tell you in a moment, I grew up watching my mother and father treat people like this.

And actually with – I don't think I'll get a tear in my eye, but it kind of culminated -- when I got sworn in February 1st, 1985 as a state court judge, my father was still alive then, he wasn't when I would take the federal bench in 1998, he turned to me and he said: "Have I raised you right, son, in the United States of America?" And I said: "I think I know what you mean, Dad, but what is it?" Well, he said, "Does that oath that I have tried to read about that you are going to take this afternoon mean that you treat all human beings the same? You give them the same dignity and respect whether they are the little fellow across the street, the little lady across the street or the fat cat and the rich people?" And I said: "Dad, you understand the oath that I am going to take and promise to follow as a judge."

My point is that I think in these difficult times, and just consistent with the mission of this committee and much of my oath is if we measure what is I think the true measure of a civilized and democratic society how we take care of those most in need, how we take care of the minority groups and the poor which are disproportionately persons of color and the disabled in our society, I don't know that we are living up to the traditions of the founding fathers when I look to my left and look to my right and see what's going on.

And so I would like to bring you to St. Paul, though, now and take you to 1998 when I arrived here in the federal courthouse. There were 22 full-time maintenance janitorial employees, all required to be disabled in some way, most were developmentally disabled, because, and I'll quote, and I apologize for quoting a statute or a law, but the General Services Administration is required to contract with nonprofit 501C-3 organizations and to hire and employ people with disabilities and so all 22 we insist work in our building.

And I'll just site another law since I'm with a federal group here, the Wagner-O'Day Act was expanded in '71 to include people who had severe disabilities and then renamed the Javits-Wagner-O'Day Act as some of you know. And the jobs that were required to be provided by the federal government could include janitorial, performance services, production of goods. And so those are the individuals that work -- this is before we moved out of the building for remodeling for three and a half years.

But let me talk about the human side of that as it relates to your group and to us being citizens here in this country. All 20 of these I can honestly look at each of you and say they are part of the federal family. I've observed first-hand though what the temporary loss of employment, the inability to find public transportation, the inability to get medication when medication programs are cut. I can -- I have observed first-hand they not only lose their income but they lose their dignity and the quality of life that's associated with that because of their disabilities.

And it's difficult for me to understand why they haven't forgotten in so many segments in the public and private sector, because who could doubt that the strength of this country is the diversity of its workforce? Who could doubt we are a better federal court if we represent the community within which we work and hopefully do some justice from time to time. They take care of the courthouse. They take care of my chambers as good as anyone could. And they react the same way to dignity and respect as people without disabilities.

I think one of the reasons frankly I was asked to come in here and speak today is -- I don't think I was controversial with what I did, but we moved out of the building, and I learned unfortunately then that we had taken those steps to protect the employment while we were out for remodeling, at least 22 individuals. And so I became kind of the bad guy in GSA's mind to say we need to save these jobs. And I learned something that I would like to pass on to the community if I may. Most landlords want to contract with government agencies, especially the

federal government, especially in areas of the country where many of these buildings are empty. And yet we don't make it a condition of a collective bargaining agreement. We don't make it a condition of a governmental contract that you have a certain number of your workforce, we won't sign this contract as your tenant unless we retain our disability workforce or unless you retain a certain number of people in the disability workforce. And so I was taught to be more vigilant about that and maybe left for another day is whether more employers and more unions should have that as part of every collective bargaining agreement and every landlord tenant contract.

And to illustrate this and the stereotyping I began my remarks with, then I'll move on from the GSA piece, in our building, one day when some of these developmentally disabled people thought they were going to lose their jobs, one of them -- well, one of them did not come to me. They knew where to find me. A supervisor for the federal government who I'll -- I'd rather choose not to mention, came to me and closed the door in my chambers. And I have the quote right here and said to me: "Why do you care so much about these people, Your Honor? When you move, Judge Frank, to these new temporary quarters, you are going to have real, normal cleaners." And that's a direct quote. And I said to them -- and I was more civil than I probably should have been. I said: "Excuse me? This was never about the work these individuals do." And I guess if you are correct, my mother and father have raised me the wrong way, because I thought that we all should share in the responsibility to care for one another. And this isn't just about lending a caring hand, it's about a productive quality way of life for citizens who are so often forgotten in our country.

And so I learned something that way, because when we, our workforces reflect the diversity of the people within it, I think that we provide on that sign, as many of you know, on the Supreme Court, we have an equal justice under the law, I think we can be then -- say: Well, those guys actually kind of practice a little bit what they preach.

Let me touch on just a couple of other things before I close about how I think the complicated times we live in and the economy is disproportionately affecting people of color, minority groups and individuals with disabilities, and it's consistent with a new project that we have not using taxpayer money and the federal court. And that is legal counsel for the disabled, legal counsel for the poor, legal counsel for the discriminated against regardless of what race, ethnic group, protected class you're from. They are not out there. And we haven't been very creative in creating a loan forgiveness program for law students. They are much more aggressive in medicine, even though there's a dire shortage of doctors, but that's for another reason, have the lowest acceptance rate for any graduate school in the country unlike law. But we haven't been very creative.

So even though we could make the argument the most active private lawyers in the federal bar in America, and we are the second largest group in America right here in Minnesota, are doing more pro bono work than so many, many of these same individuals are experiencing discrimination of all courts, because they have no lawyer to go to. They don't know where to go. They don't know who to talk to. We have, because of that, Chief Justice Davis and the president of the FBA get the credit, we have a new federal bar program to try to reach out to all minority groups because we need more individuals. And you can read about the explosion of pro se litigation, but it so affects poor individuals, communities of color, the disability community. They have nowhere to turn, whether it's nursing home discrimination or I called and begged a lawyer to take a developmentally disabled senior citizen who did not want to represent a payee had [ph.], or the young black man who was there in the disability setting who had no lawyer and the guardian was invading what little money that he received or the veteran who got bigger

checks and had a guardian but no lawyer. So we got those changed or the special education students, so when I had to rule on a case because the federal government mandates these good programs but doesn't pay for them, so I had to find the young man, the disabled autistic man in a janitor's closet taking his classes in the public school in the state here that shall go on undisclosed... the list is long. And it's all for one reason, the no access to counsel, the legal aid groups are worked right into the ground.

I'll leave you with one example. It's a published case that's over, and there was no appeal so this gentleman finally has a disability income. I recently was critical in an opinion of the backlog of Social Security Disability appeals. It takes a minimum of four years to get to the Social Security Administration, and don't take my word for it. The General Accounting Office has recently asked the United States House of Representatives Subcommittee on Social Security to examine the backlog and the delay associated with. This proof of that, amazingly, the American Recovery Investment Act, otherwise known as the stimulus package, gave \$500 million to the Social Security Administration and said: Please hire some judges and referees and other people so that the developmentally disabled and those other people with serious disabilities can get their due under the laws and Constitution of the United States. In the last group of cases I've had, I call up and beg lawyers to take the case, private lawyers in this -- the Twin Cities, and I am very proud to say that with few exceptions, they always take a case. And so in the case I just ruled on where I reversed the administration, awarded full benefits, this young man sought -- this young person of color strived for four years to find a lawyer to take his case. And so I finally asked somebody, begged somebody would be a better word, to do that.

And so whether it's a pro bono, it's pro se, it's bolstering the legal aide, because you can only -- I respectfully challenge the notion that we should expect the private sector to shoulder the private bar to shoulder and be a substitute for a full-time legal aide advocate, a full-time attorney, those budgets have all been cut nationwide. And it affects the same people disproportionately, that is part of your mission statement.

I will end with this. I apologize for, I think, slipping over my allotted time. I don't think anybody in the room could argue with the phrase that justice delayed is a justice denied no matter what we each do for a living, what our backgrounds are, where we come from. Sadly I think that's what's happening in many portions of our society. And disproportionately, communities of color, the disability community, it's more sadly happening in those and really across the board for minority groups. I'm hoping that with the help of this committee -- and I don't want to single out people in the courtroom -- in the hearing room here, but the Colleen Wicks of the world and other people like that, I think they look at people like that as well: He might -- his mind might be open a little bit and he's kind of trainable, so we are going to try to educate some of these people and see if they get it. And I hope I'm starting to get it. But really, I would hope that we keep this in mind as we look for available lawyers, available pro se, pro bono programs so that the citizens, you know better than I, get the justice that we have promised them in our constitution. It seems that -- I think that general principals of decency and justice require no less I know of me in the oath that I have taken and I thank you for the opportunity to come before you.

Statements: Fourth Panel

Taneeza Islam

Complaint Investigator, Minneapolis Department of Civil Rights

As you know, the rich history of civil rights enforcement in Minnesota started in Minneapolis. And as the department in Minneapolis, we take great pride in what the founders of the Equal Employment Fair Practices Agency started out as and how it came into being to create the Civil Rights Department that we have today.

Interestingly enough, I've been here since the morning, and I heard a couple times people talk about they weren't really sure what the Minneapolis department does. Though we are similar in nature to the State Department of Human Rights, I'm going to briefly go over what it is that we do and what units are involved in our entire department.

We have the contract compliance unit as most of all you know that monitors the affirmative action plans, small and under-utilized business programs and prevailing wage and labor participation. In 2003, the Civilian Review Authority was moved into the Department of Civil Rights. And they investigate charges of police misconduct. There is also -- there was up until 2009 the Multicultural Services Unit which primarily acted as interpreters and translators for limited English proficiency citizens of Minneapolis in rendering services from the City. I would venture to say that our unit specifically probably uses their services 90 percent of the time where it created access to the Hmong, Latino, Hispanic and Somali communities of Minneapolis. In 2009, the Multicultural Services Unit has dismantled and we no longer had access to interpreters which it then in turn limits our access of what we do in the city.

Then of course there is us, the Complaint Investigations Unit. The city ordinance allows us to investigate all charges of discrimination in various areas such as employment, public service which includes allegations of discrimination against the Minneapolis Police Department, public accommodations, education housing, credit and lending and business partnerships to name a few of the areas.

Since 1996 when this report was created, we have hit two major cuts since -- I would say since 2000 to 2010. First was in 2003 where 40 percent of our budget was cut. In 2009 the mayor proposed to eliminate the entire Complaint Investigations Unit which did not occur. And then in 2010 our budget has been cut by another 20 percent leaving the Complaint Investigations Unit with three full-time investigators and one manager. And I believe a handout has been passed to you regarding the CIU specifically on one side and some of the department information on the other side akin to the numbers that were given in the '96 report.

I also heard someone earlier this morning say with these limited resources, that state agencies and city agencies need to be more creative in how they are going to streamline their processes. That's something I'm proud to say that we've done in the last two years since I've been a part of the unit. We have created a mediation program where we now have volunteer neutral similar to what the state department does and they mediate our cases for us.

But the main thing I want to emphasize is that I think everyone has heard about the backlog. And yes, there is a backlog that exists. And how we define -- us here on the panel define backlog is cases that are not complete within the year that it came in. And the year starting in January and ending in December. And so every year those cases that are not completed trickle into the next year. And that's why today our backlog is so large, because procedures were not put in place to take care of those backlog on a yearly basis.

In terms of our process, we conduct in-person intakes. We do not mail out questionnaires. We do not -- we -- our first initial contact might be through the mail or through the phone, but we stay true to meeting with the person to understand what acts of discrimination have taken place. We take all allegations of discrimination. We do not turn people away or screen intakes and tell them their case could not be filed with us. That's important because of what I heard earlier this morning on how other agencies conduct that.

After intake we have a triage process where we then decided if we will dismiss a case because it lacks merit or is frivolous or if we will continue investigation or put it into immediate mediation. Even if we decide to dismiss a case because it doesn't meet the prima facie elements of the discrimination we are looking at, we allow the complainants an opportunity to appeal these decisions. So whether we find a no probable cause or a dismissal based on merit or frivolousness, our complainants always have the right to appeal that decision that we make. And the commission that works with the Civil Rights Department, they really act as an administrative law judge would or appellate body would. So all appeals go directly to a commission which is a panel of three people that listen to why they are appealing such a case.

In our probable cause findings, there is a mandatory period of 60 days for conciliation. This is a time where we ask our neutrals to come in and to work out an agreement with the parties. If the parties do not come to an agreement, then that probable cause decision automatically goes to our commission. And then the commission will hear the case and decide what the remedies will be. So there is always an avenue after we find a probable cause decision for an enforcement to take place based on what our unit has found.

I would also tell you that the commission process is not complainant friendly. We know that over 90 percent of our complainants that use our services do not have the means or access to attorneys. And so that is something that we struggle with in our unit, and we were trying to think of ways to make it more accessible for complainants. But they always have the opportunity to go in front of the commission to have their case heard.

Along with the intake, the triage and mediation processes, we have cut down what our actual final products look like, our determinations. We have abbreviated NPCs, no probable causes whereas we were in the past writing full-blown -- it could -- our average probable cause determination is probably about 20 pages of legal analysis. So that for us has streamlined as investigators how much time were putting into the writing piece of it.

We've also partnered with all of the local law schools in creating an internship program so that people who are interested in working in the civil rights arena can get that legal experiences. And since 2008 we have had 36 interns, and it's become a really great program for the community and for us to help us with our backlog. Because our budget has been cut severely, we have not been able to be as proactive as we'd like to be to go into the community and do -- conduct trainings and help people understand what our process is. But what we have done is we have created some public service announcements. We've posted them on U-Tube. They are in -- they are in Hmong, Somali and Spanish. So if people have access to the internet, that they could be able to understand what it is that our department can do for them.

Toni Newborn

Complaint Investigator, Minneapolis Department of Civil Rights

I will be speaking about the productivity of the department. And as Ms. Islam stated earlier, we have a handout here for the commissioners to refer to as I speak. As Ms. Islam stated earlier, within the last two years our unit has streamlined our processes to increase our productivity. Over the last two years our unit's productivity has dramatically increased in spite of the constant yearly cuts of our department's budget at the direction of the City's leadership. We have provided you with this handout to outline our productivity. Our productivity is due in part to the streamlined processes and also due in part to the management and the staff that are comprised in our office.

It's important to note that our staff is comprised of three attorney investigators. And this has assisted us in our streamlining our processes and also conducting efficient and thorough investigations.

The primary goal and directive for our city council was to rid the department of the backlog. As Ms. Islam stated, the backlog has been a big issue. And as she stated earlier, the definition of the backlog is it's a shifting number. And so it shifts on a yearly, sometimes monthly basis. And so our goal -- and starting in 2008 when I started at the department, this is a daunting task, in part because the backlog was not my responsibility. It started out, as you can see on this chart, in 1995. And so but it was our responsibility at the direction of the City's leadership to rid the department of the backlog. And so we've developed these processes in order to do that in order to rid the department of the backlog.

As you can see from the chart, there has been a trend in cutting the investigator staff. And so as you note, we started keeping up with the investigators' numbers in 2004. In 2004 we had three investigators. From 2004 to 2008 we've gone kind of up and down. We've moved from three investigators to five and now currently in 2010 we are down to three due to those budget cuts. Meanwhile despite -- in spite of the fact that the investigator staff has been cut, there has been an increase in the intakes and number of complaints that we received in the department.

According to the chart, in 1995 we received 193 cases into the department -- I'm sorry, 193 cases were closed. However, the department received 257 new complaints. Therefore 64 cases were carried over into next year and entered into what's called and has been defined as the backlog. Let's fast-forward to 2008. According to the chart, our unit has had five full-time attorney investigators or FTEs plus two to three attorney contractors. And in 2008 we closed out -- we received 294 new complaints which were processed in our office. We closed 269 in 2008. This was a 100 percent increase in comparison to 2007 which the investigators closed 133 cases that year. Therefore 25 cases were carried over into the backlog.

Let's move forward to 2009. This was our unit's best year in spite of the numerous obstacles that took place in 2009. As we started before, we underwent budget cuts, an increase and at times decrease of staff and there was -- and at the same time there was a strong push for management to increase and to hire on attorney contractors. So we experienced a lot of transition in our office. During the early part of 2009 we were under -- as I stated before, we were undergoing budget cuts initiated by the mayor and the city council beginning in February of 2009. And by December 2009 we lost quite a few contractors, we received additional cuts from our budget and there was a proposal to transfer our cases to the State Department of Human Rights. We started the year with five full-time employees and ended the year with three attorney investigators. In spite of these changes we were still able to close out 374 cases which was a 30 percent increase in productivity as you can see on the chart. That same year in 2009 we received 254 new complaints, therefore we actually ate into the backlog this year instead of increased the backlog

.Our future productivity goals include -- as we know, 2009 was a great year. Our unit will look forward for 2010 to be a great year as well. We don't want to repeat - have a repeat of 2009 as far as productivity, but we want to exceed those goals. Our goal and thought is that with five full-time investigators we can close out close to 300 cases in a year with five being the goal per month. Ideally it would be great for us to have eight full-time investigators which would allow our units to have a balanced case roster, allow us to complete as many cases as possible and most importantly reduce the backlog. We feel that it's time for us to end this trend -- for the City to end this trend of cutting the investigative staff. Our unit now has the appropriate staff in place to decrease the backlog and we hope that we can decrease the -- continue to decrease the backlog within the upcoming year. Thank you.

Ronald Brandon

Manager, Complaint Investigations Unit, Minneapolis Department of Civil Rights

In addition to all of the things that have been mentioned prior by Investigator Islam and Investigator Newborn, I think another issue that's tantamount to put on the table here is to mention that the -- to mention the political appointment process for the directorship of the Minneapolis Department of Civil Rights. Currently the director of the Minneapolis Department of Civil Rights is appointed to a two-year term by the mayor. Within the City of Minneapolis structure we have a strong council/weak mayor system. And so the mayor appoints two individuals, the chief of police for a five-year term and the director of the civil rights department for a two-year term. Since 2003 there have been six different directors for the Minneapolis Department of Civil Rights. And so with that amount of turnover, it's hard to maintain consistent leadership within the department. And so that is a structural problem that I'm at a loss to figure out how we should move forward to try to fix.

Currently the current director, his directorship expired and the mayor is soon to appoint a new director April 1st of this year. And the appointment process will probably end up towards the end of April. So he'll finally be approved closer to May 1st after being fully vetted and going before the city council.

One of the other factors that I would like to mention is the growing numbers of the immigrant populations within the City of Minneapolis and some of the outgrowth of the growing numbers of the immigrant population. We have growing numbers of complaints within our department within the Somali, Latino and Hmong communities. And it has been a struggle to deal with some of the LEP issues without having a solid translator program in place for the City.

In addition to that, it's also very interesting to note that the EEOC has work sharing agreements with several administrative agencies. So complaints may be filed with the federal EEOC office and then sometimes those complaints are farmed out to the local administrative agencies. So once a complaint is filed with the federal office of the EEOC, then some of those complaints are farmed to the City of Minneapolis, the City of St. Paul and to the State Department of Human Rights. That's all I have to add at this point.

Luz Maria Frias

Director, Department of Human Rights and Equal Economic Opportunity, City of St. Paul

Historically the Department of Human Rights stood on its own up until just over a year and a half ago that Mayor Chris Coleman concluded as a result of an independent study that it should be part of a larger initiative within the City of St. Paul. That study was conducted by an independent firm out of state and the purpose by which was to determine how the business opportunities for minority-owned businesses, women-owned businesses and small owned businesses within the City of St. Paul were being awarded and whether or not there were disparities. Within that study it was found that the disparities were an issue and that a goal needed to be set and that business needed to be done differently within the City of St. Paul.

It was within that discussion then that the mayor appointed the city attorney, John Troy Choi who currently sits as an appointee of the mayor to study the area and look at it from a human rights point of view as a holistic type of issue and to determine whether that function should be better placed with a number of other functions to really look at delivering services differently in an approved manner in the City of St. Paul.

A decision then was made to create a new department. And within the department then we have several divisions. And the divisions are as follows: It is the Department of Human Rights that typically stood on its own, is now a division and has served in that role since the restructuring of the department, our contract and compliance and business development unit as well. And within that scope we have our business development and retention for minority-owned businesses, our vendor outreach with the goals that are set for minority-owned businesses and women-owned businesses and small businesses. Our affirmative action compliance roles as well, the federal labor standards, the section 3, the Limited English Proficiency, which is LEP acronym that you heard our colleague speak about earlier, as well as a certification which is a central certification process by which we as a city work in a collaborative with Minneapolis, Ramsey County and Hennepin County to certified the minority-owned and women-owned businesses.

Another division within our department is our procurement. And all of the buying that is done for the City as well as the County as one of our clients is done within the department as well. And then the last division which would include the River Print which is all of our printing capacity and our copying capacity within the City and the County is part of the department that I manage as well. Now, we have special projects such as the census, the 2010 census is a special project that we are undertaking on behalf of the mayor.

So the intent is to really look at it from a holistic point of view and understand that these are all areas that tie together and as we work together as a team, with the purpose of really integrating our work and the scope of our practices then, in fact, we can be much more strategic and much more impactful [sic]. So that's kind of the historical background that I wanted you to understand.

I came on as a -- the first director of the department in February of 2009 and I have served in that role -- it's a three-year term which is appointed by the mayor in conjunction with the community group as well. We have an oversight of an expanded commission, the commission is 20 members in size, 21 members in size, and they then recommend to the mayor as to whether or not the director should be reappointed at the conclusion of the three-year period.

We have -- in the course of developing the department and the task that I was charged, to determine how we can do our businesses different and organize the work internally so that we can be much more strategic and much more efficient as well. And within that we separated the compliance function from the human rights work that was typically done and set it apart and created what's called a compliance unit. So the human rights specialist that typically worked on both half human rights cases and then half of the affirmative action type of compliance work, we bifurcated that role and our human rights investigators' work solely and exclusively on human rights cases, they are able to deliver that service on a much more expedited fashion, much more concentrated and it's worked out to be a really efficient move for us to undertake. Similarly speaking, affirmative action compliance aspect has had an improved service delivery as well.

In terms of backlog, we don't have any backlogs to speak of. We have -- I can think of one or two cases that are at about the one-year mark. That's not attributed to the overabundance of cases that come through the door. We are able to screen those quite well and perform the investigations that are worth pursuing. It's more so we've had a change of staff in the last six months, and some of that has been a carryover as a result of that.

We have -- in terms of keeping the type of investment in the department, Mayor Chris Coleman has been certainly very committed to not only preserving the size of the investigatory unit but also increase in the amount of type of oversight that has been awarded to the department. The creation of the compliance unit necessitated a supervisor. We were able for the first time to hire someone, and that was a new position, new FTE that was awarded to that. And then a couple other department investments as well. We hired a Section 3 administrator, a person as well who is doing the Limited English Proficiency LEP work and have developed an extensive LEP plan for the entire city. So we have had quite a bit of investment.

That said, we are also now facing quite a challenged circumstances. As many of you know, other jurisdictions are with the state deficit and the cut in LGA. We anticipate that it will have a substantial impact on our department as well as the other 16 departments in the City of St. Paul, anywhere from a 10 percent to a 19 percent increased -- rather decrease in funding, but cuts, increasing cuts for our department in the next two years.

So we anticipate that that will have an impact. We are trying to manage that as best we can by staving off some openings that we have. But we do realize that the cuts are inevitable. Where they will be, we are not sure yet. But certainly we know that that's something that we need to contend with.

As far as jurisdiction, and I was trying to kind of mirror some of our comments so that you had within the context and ability to compare the cities and similarities and differences. One other difference that I would point out is that our department does not handle any type of police misconduct investigations. The City of St. Paul has its own internal affairs department that is separate from our department. So we don't have any jurisdiction over those types of cases.

The majority of our cases that we do see within our human rights investigations are race related, about 35 percent. The next highest levels would be within age or disability and sex or gender. Those are all about 14 percent. And then the next highest one would be those that are based on national origin.

The majority of the cases are regarding employment type of investigations and those are about 85 percent of our work and then followed by then public accommodation at 7 percent and real property at 6 percent. That's kind of a synopsis of the work that we do, try to keep it condensed for you so that you can understand the merits of our work and certainly are here for any questions.

Gessner Rivas

Human Rights Specialist, Department of Human Rights and Equal Economic Opportunity, City of St. Paul

What I am going to talk to you guys about is just some of the similarities and differences as well between our office and the Minneapolis office starting off with the intake process, the staffing levels, the case load and as we mentioned, the outreach.

Our intake process, we do do screening when people call in or they email us or they stop in, we do ask a handful of questions to determine whether or not our office would be the most appropriate office to handle their case, whether or not we have jurisdictions, for example, is it the act of discrimination -- the alleged act of discrimination something that took place within the City of St. Paul. If it's not, obviously we will refer them either to the State Department of Human Rights or if it took place within the City of Minneapolis, we will refer them to the Minneapolis Civil Rights Department. We also ask how long ago the alleged act took place, because if it's over a year we would not have jurisdiction over that alleged act. We also ask who the alleged discriminating party is, because there are certain parties that we don't have jurisdiction over such as Luz mentioned, the police department and any state entities. So if it's a state entity -- for example, just recently we had a complaint against the Metro Transit, Metro Council, so that is something that has to be forwarded on to the State Department of Human Rights. We do do a little bit of screening, and that helps us be a little bit more productive getting cases moving forward along. Let's see, so that is, in a nutshell, our intake process.

We are making efforts -- we are currently -- there are currently efforts underway to provide more information to residents or anybody that has an issue of discrimination. For example, since I've joined the department, we have -- we are in the process of revamping our website, providing a lot more information so people that do come to our website have a clear understanding of what areas of discrimination we look into people they can contact and we also have a guideline of how we handle complaints that's available online for people to read in an effort to answer any questions that they may have. That's our intake process in a nutshell.

Next thing I wanted to discuss is the staffing levels. Within the past five years our staffing has gone down. For example, in 2005 we did have five full-time investigators. But I want to point out that from 2005 to about mid 2009 the investigators had dual roles. Human rights and contract compliance -- compliance-related work, affirmative action, things of that nature. That was until mid 2009. As Luz pointed out there was a reorganization of the department. Then those roles were bifurcated, so now human rights specialists investigators deals mainly and only with acts of -- complaints of discrimination.

So currently we have three full-time investigators and one part-time investigator. Three of us are attorneys. We all do have law degrees, though, but one of our investigators is in individual from Africa who immigrated here. He does have a law degree from Africa but is not licensed to practice here in the United States. So that is our staff. We have three full-time, one part-time.

As far as our caseload, it's, as you can imagine, Minneapolis is a much larger city than the city of St. Paul, so we do have a slightly smaller case load. For example, as of today, we have 22 cases that have been open this year. And as Luz mentioned earlier, only about a handful of them are actually cases that have carried over. I'm sorry, just to be clear, that's -- 22 is just the

number that have been open this year, but we have certainly other cases that are open from -- that are carried over from last year. We try to get them resolved within a year, so only a handful of them are approximately a year older, and that is mainly because of the reorganization that went on within the department. So those are still ongoing. So we try to resolve these cases within a year, and we are pretty good about achieving that goal.

Another thing that I wanted to mention, that is -- we are different from the City of Minneapolis is as our counterparts from Minneapolis mentioned, they have mediation, but their mediators are outside of their department. When there is a probable cause finding in any of our cases, the investigator acts as a mediator. And we are able to do that, because when there has been a probable cause finding, any issue that was argued between the complainant and the respondent is at that point, for those -- I'm sorry, we call it conciliation. We don't call it mediation. But those issues that were of contention are not up for debate during these conciliations.

What we mainly do is try to facilitate terms under which the complaining party, the complainant and the respondent can come to an agreement on to resolve the case in lieu of the complainant taking their probable cause letter and finding an attorney who will most likely handle the case on a contingency basis. And since we've done the bulk of the legwork for them, it's quite possible that the respondent would have a -- pay a higher price, for lack of a, you know, better description. So those issues that were of contention during the investigation process during our conciliation are not discussed. We mainly facilitate a resolution between the -- what the complaining party is looking for and what the respondent is willing to provide in order to resolve that. And it could be either in terms of backpay or change in policy. As Luz mentioned earlier, the bulk of our cases are employment-related, so backpay is one of the big issues that does come up in wrongful termination cases. So we do our own conciliation which would, you know, in other -- the State Department or the City of Minneapolis would call it mediation.

So the next thing I want to touch on is outreach. My colleague, my coworker, Alyssa who was scheduled to be here couldn't make it. And she was going to discuss the outreach. But prior to -- we both -- I just want to say that we both started about the same time, mid November. Prior to that there wasn't much outreach. But Alyssa and I have been working very actively in coming up with ideas to reach the various communities within the City of St. Paul, whether the Asian community, African-American community or Hispanic community. I myself am bilingual, and so is Alyssa. We have an Asian-American investigator, he's our part-time investigator. And as I mentioned earlier, we have another investigator who is from Africa. He speaks Amharic. So we do have a very diverse staff, and it works to our advantage that we can reach out to the diverse communities of the City of St. Paul. So we are actively right now brainstorming how we can increase our outreach efforts to get to those communities and inform them about what our division, the human rights division, does and how we can inform them about what the rights that they are -- the rights that the City of St. Paul's human rights ordinance protects and prohibits discrimination in the various areas, whether it be employment, housing, public accommodations, public services and credit and business opportunities.

Statements: Fifth Panel

James Kirkpatrick, III

Deputy Commissioner, Minnesota Department of Human Rights

I would like to start off with discussing the resources so we can put everything kind of in a framework. Since the biennium beginning 2002 our department has realized a decrease in the biennium budget of \$1.6 million. We started off the biennium with about 8.2 in 2002 we started off with a budget of 8.2 appropriation, and we are currently at a \$6.4 million budget. We started off -- when I got there we had 56.4 FTEs. We currently have 39.5 FTEs which is going to drop on Tuesday by an additional one, and we do not anticipate increasing those FTEs in the foreseeable future. As a matter of fact, we are projecting that we will probably lose about three or four more FTEs once the next biennium budget cycle goes through.

We have seen a maximum number of charges filed of about 1,500 and our last year of 2009 we had 974 charges filed. We attributed some of that to the fact that 60 percent of our charges historically have been in employment. And with the high level of unemployment, it's very difficult to file an employment discrimination charge if you are not employed. We don't anticipate that being increased in the near future, and we are somewhat concerned about that. Our investigator load has been pretty steady at 26.

We currently have -- it's kind of interesting, because we use all of our investigators. We currently have 11 investigators in our case processing unit which is the ones that actually investigate the case. And we have five investigators that we assign to our intake group which is where the cases are intaked [sic]. We have additional three investigators in our compliance group and we have one EO in our legal affairs group.

Now, what I would like to do is discuss how our process works. We do have an intake group. The first thing, they do some screening if you would want to call it, we don't necessarily call it screening, but they determine whether a charge or an inquiry is jurisdictional and whether it meets the statute of limitations. Should those hurdles be reached, they actually will draft the charge of discrimination for the charging party. Then we send that draft to the charging party should the charging party chose to sign, and I would say 60 percent of them they do sign, the other 40 percent become lost in never-never-land. Once we get that charge of discrimination back, we send it to the respondent who has a chance to respond to that charge. We then send that response to the charging party. Charging party also has a chance to respond to it. And then we actually -- the respondent gets it again and the charging party gets the final say.

We then take that and it goes to our screening group. That's our most senior investigators. They look at those documents and determine if we are actually going to investigate the case or whether we are going to end the case then. If it meets that hurdle and we actually go to investigations, we actually do investigate the cases, we come up with either a probable cause or non-probable cause. If it's a probable cause -- well, either case, both sides get a chance to appeal the findings. And if it still holds up as a probable cause, then we then send it to the AG office where they do a conciliation. Should the conciliation fail, we then can make a decision whether we are going to litigate it or not.

We have in the past four years -- or two years actually taken four cases for litigation. Litigation is fairly expensive. We have had an incident before my time where the department actually took a case to litigation and it got so costly that we had to release investigators to pay for it. So that's always in the back of our minds.

We do offer mediation to all of our cases and that comes in early before we start investigating. If both parties decide that they would like to mediate, we actually mediate wherever they are in the state. We have quite an extensive group of litigators -- mediators, I'm sorry, throughout the state who volunteer their services. And we pay their travel expenses. If during the investigation there is a hint that the individuals may want to -- to mediate. We then take that case, we send it to our most senior investigators and they, not the person that is necessarily investigating their case, it goes to a different investigator and they try to see if we can get an agreement between the parties. And if we can, we then do the settlement and it's done.

If that should fail, we of course go through to the situation where we -- where we find a finding of probable cause, if that's true. Both sides can appeal the probable cause. If the probable cause stands, we then transfer it to the AG's office where they do the conciliation. If the conciliation should fail, at that time the commissioner and the AG staff make a determination whether we are going to go litigate.

I do want to address one of the issues. We do have a form letter that does say lack of merit. But the letter does not -- but -- or and it says not lack of resources, but it does say -- does not lack -- warrant additional resources. And then we have an additional memo that explains what the situation is to the individual. That's it for the department subject to questions.

Jaime Pedraza

Director, Fair Housing Division, Minneapolis Office, U.S. Housing and Urban Development

I'll give you a little bit of background about our office. First when I talked back in 1996, I think, it was me and a secretary. Since then we've had our ups and downs. We've had up to six people in the division. Now we are down to three. I've got two investigators. So it's twice -- almost twice as many as I had last time.

Our office is responsible for fair housing related issues in the state of Minnesota, and I've got -- as I said, I've got two experienced investigators and myself. We are also lucky enough to have volunteer legal interns who work with us -- usually it's two half days a week for the fall seminar and the spring seminar. And even though it's just maybe ten hours a week, eight hours a week, it's a huge amount of work that they are able to do it and it kind of keeps us steady.

We have three key responsibilities in our division. The largest one of course as you can imagine is complaint investigation. We do program reviews. Because we are a HUD office we get involved with public housing authorities in some of our largest cities and our urban counties. And we do outreach and education. Generally it's on the Fair Housing Act and issues with regard to reasonable accommodation for people with disabilities.

So in the first responsibility which is complaint investigation, we don't do our intake. We report to the Chicago region. They have an intake staff. And an individual can either call them on an 800 number and actually tell the complaint to someone, they can send a letter. We've got forms that you can fill out to send to the Chicago office. You can go on our website and click housing discrimination complaint and fill out a complaint online. Or we have plenty of people who work, perhaps a legal aide who help them fill out a complaint. There is many ways that you can get your complaint to Chicago.

They have a staff which do two things with intake. One is did the incident happen within the past year? And two, if this is true, is it a violation of the Fair Housing Act? And that just means if they are complaining -- if their complaint is because they are receiving some Section 8

voucher and the landlord wouldn't accept it, even if that's true, that's not a violation of the Fair Housing Act. So they do some preliminary screening. And the complaints that are regarding properties in Minnesota our staff investigates.

One of the first things we do is we do talk about conciliation, because the goal is to try to conciliate these complaints. And for us, that means if they agree to conciliate, then we stop the investigation. And our conciliation agreements don't say we found cause or no cause, they just say the parties have agreed to conciliate and here is how we are going to do it. It's a legal document, and it's legally enforceable, which wasn't back when I was talking to you 15 years ago. So that's -- we are working conciliation all the time.

We do -- we review the file. We talk to the person who filed the complaint. We talk to their witnesses. We talk to the respondent. When we have gathered enough information -- and we are really lucky at our level, because as you know, HUD has public housing authorities. We have subsidized housing, and we work with cities. So oftentimes, if it's regarding a housing authority, we have contacts within our office of people who are like the HUD liaison with that housing authority. So we can ask them: "What do you think of that owner or that property manager? Are they having some problems, because we are seeing some issues here." Or they all manage by a set of regulations, so we can go into the regs and see are they gathering the right information? Are they making the correct interpretations? So we are really lucky in that way. So we can work with our other divisions to get information to understand how their business works.

When we have gathered all the information that we think we need in order to make a determination, we write up our report. And then our reports go to my management in Chicago. And there is also a legal -- an office of general counsel, again, in Chicago who has about six attorneys dedicated to housing discrimination complaints, because I think it's a six- or seven-state region. So those attorneys are pretty well versed in the Fair Housing Act. And they are looking to make sure that we've gathered the information, we've drawn conclusions from the information we've gathered, not from what we've thought. And if there is gaps missing, if we are not consistent, if we have done a poor investigation, they will tell us and tell us what we need to gather. So generally somebody above us is making sure that we are consistently reviewing these. And if we have a complaint that's just like one in Detroit, we are coming up with the same answer. We're gathering the same kinds of information so we can come up with the same answer. It's more consistent.

When we find probable cause or reasonable cause to believe discrimination has occurred, the parties get a letter and it will say: This has been the decision. If you want a copy of the written report, please contact us. And then they can decide do they want to have this reviewed by an administrative law judge, a HUD employee out of Washington who would usually come on site to look at the information, or would you like to go to U.S. District Court. And if the person -- if they decided to go to court, then the U.S. Attorneys Office represents HUD and the complainant in court. And then whatever happens there happens.

So that's how we handle our complaints. All -- the entire time we are trying to conciliate. We'll conciliate up until the court proceedings begin, up until the administrative law judge proceedings begin. And many times we are lucky enough to be able to work those conciliations especially when one party gets a reasonable cause letter. They may be a little more open to conciliating. And of course the complainant is a little more demanding because now they have got this letter. So that's what we do.

Now another kind of complaint that we look at, not fair housing, but we also investigate Section 504 complaints. That's Section 504 of the Rehabilitation Act of 1973. And Title 6 which

is -- Title 6 of the Civil Rights Act of 1964. Both of those only come into play when a program or housing development gets HUD funds or federal funds.

So for example, if a complaint is filed against a housing authority and it's somebody who says I'm disabled and the housing authority is not making accommodations for me, that is not only a Fair Housing Act complaint, because disability is covered under the Fair Housing Act, but that housing authority gets federal financial assistance. So we also look into it as a Section 504 complaint. The complaint process investigations is a little bit different. What we are really looking at is is this entity who certified when they got the HUD money that they will comply with Section 504, are they complying with Section 504 in a broad -- in the broadest manner possible.

The same thing with Title 6. Title 6 is the law that says if you receive federal financial assistance, you can't discriminate on the basis of race, national origin or color. Again, tied to federal financial assistance, so there needs to be HUD money in the project, the program, the development where the person has filed their complaint about. So when we have those situations, we might be dealing with a fair housing complaint. And then on top of that we might be doing a compliance or a mini-compliance review based on 504 or based on Title 6. And we could come up with different answers. We could find that there may be a violation of the Fair Housing Act but they are complying with 504 or they are complying with Title 6. And that's because there are slightly different requirements in both of those. But the staff -- the same staff person will generally do both of those kinds of reviews.

Earlier you heard somebody talking about LEP which is Limited English Proficiency. That is -- for us, it's under Title 6, race, national origin or color. We deal with it as national origin. And for our housing authorities which are recipients of federal dollars and our cities, recipients of federal dollars, they have to have a Limited English Proficiency plan or program in writing explaining how they meet the needs of their non-English speaking citizens or residents or applicants. Right now we are investigating a couple of housing discrimination complaints, and we are also looking into them as Title 6 complaints because the person who filed the complaint in this instance is Somali, and she's saying that I'm being evicted from the program for these reasons, but I'm Somali, they never offered to translate the documents for me. So I didn't know that what I was doing was illegal and I didn't realize that that letter that I got was an eviction letter. So one of the things we are going to be looking at are their LEP documents and what's their LEP plan and do they follow it.

So those are the kinds of investigations we get involved in. I would say in housing discrimination the tide has changed. I believe the top two kinds of complaints we are dealing with now are mental illness and race, kind of running neck and neck. Depends on what month it is. One month might be higher than the other. And a third, and it's not quite as neck and neck with the first two is familial status; in other words, children in the family. Are these families being treated differently because there are children in the family. So for many, many years it was always race. That was the runaway top. And it's slowly been creeping up to be not just disability but specifically mental illness related disabilities.

The other thing that -- the other resource that we have now that we didn't have when I talked to you earlier is you may not know that the Fair Housing Act covers newly constructed, all newly constructed multifamily buildings, whether it's a condo, whether it's townhouses, whether it's apartment complexes, whether it's FHA insured, subsidize or you just won a million dollars and you just felt like building an 18-condo unit somewhere and there's no mortgage on it. The Fair Housing Act covers that. And part of it covers -- includes designing construction, because

all of these developments should be built with a certain amount of wheelchair accessibility built into the complex.

And up until about five years ago, I and my counterparts across the country were also giving design guidance to architects, contractors and developers on how to interpret those regulations, because we do have some very strict standards that are available to anybody. And what headquarters wasn't crazy about, and I'm so glad they relieved us of this task is we were sometimes giving different information, you talked to Wyoming and you might get an answer, you talked to me, you might get a slightly different answer. So about five or six years ago, HUD contracted with a design firm, Bearing Point, and there is an 800 number for accessibility first. So now any architect, developer, contractor can call this 800 number and get one consistent answer for the question in interpreting the design and construction guidelines. This is important because so many units, so many developments are building built not in compliance with design and construction.

We do pretty well in Minnesota, because with our FHA insured developments with our subsidized developments, our agencies' architects knows the regs, and they will -- when they do their routine inspections for other things, they will kind of look for this. Other offices aren't quite so lucky. And if there is a lot of building going on that doesn't involve FHA insurance, then really nobody is looking at it because the state laws across the country don't always include HUD's design and construction guidelines. So we are very fortunate in that area.

Another area that I feel we are really fortunate is right now we have one substantial equivalent agency in the state. And that is the City of Duluth. And for us that means that -- their human rights law and processes are so similar to HUD's that you can get your compliant investigated at either place and you should come with the same result and the same options. Twenty years ago we had this agreement with Minneapolis and St. Paul and the State, we just weren't able to do it again with those agencies. But Duluth decided that they wanted to be substantially prevalent. They get paid to do this. They get paid to investigate the housing complaints. So we -- any housing complaints out of the City of Duluth are sent to the Duluth Human Rights Office to be investigated.

Julie Schmid

Director, Minneapolis Area Office, U.S. Equal Employment Opportunity Commission

I am going to describe very briefly what we do enforce. We were created with the historic Civil Rights Act of 1964 and we enforce a number of federal laws that prohibit discrimination and employment against a job applicant, an employee or a former employee based on a person's race, color, religion, sex, including pregnancy, national origin, age for those 40 or older, disability and genetic information. We also enforce the anti-retaliation clauses in these laws which make it illegal to discriminate against an individual on the account of a complaint of discrimination, a filing of a charge of discrimination or participation in an employment discrimination investigation or lawsuit.

Our enforcement authority is by in large triggered by individuals filing a charge of discrimination with one of our field offices. Our staff then investigates the charge by securing evidence from both the charging party and the employer. The investigation culminates with the

EEOC issuing a finding. If we find that discrimination has occurred, we try to conciliate the charge.

Let me say that in our definitions, a conciliation -- a conciliation is the word that we use once a cause finding has occurred. Conciliation is not the same as mediation. Mediation in our office occurs prior to the investigation where neither side -- where no finding has occurred. If we aren't successful in conciliation, we have the authority to file a lawsuit to protect the rights of individuals and the interests of the public.

Increasingly we are targeting our limited resources to litigate systemic discrimination cases, cases with class of policy considerations that have the potential to yield a broader impact on our mission which is to eradicate discrimination. We expect to continue to file more lawsuits that are broad in scope and have more impact on the workplace.

When we do not file a lawsuit, we provide individuals with a notice of right to sue which grants them the right to pursue that charge in federal court. Individuals who have filed a charge with the EEOC have the right to go to court on their own.

I want to add that the staff of the Minneapolis area office and the Chicago district's leadership are highly dedicated to our mission. We work hard every day to fight against employment discrimination, and we appreciate very much the opportunity to share this information about our important work with you here today.

Let me tell you briefly about some of the changes and additions that have occurred since the last time the advisory committee issued a report. Most recently in November 2009 Congress gave the EEOC the authority to enforce Title 2 of the Genetic Information Nondiscrimination Act. We call it GINA. It prohibits employers from seeking information about an individual's genetic information which also includes family medical history.

The Lilly Ledbetter Act which passed Congress in January 2009 overturned a recent Supreme Court ruling that had limited recovery from discrimination relating to pay decisions to a very narrow period of time. The new act expanded that time period and the law is now that every time an employer issues a new discriminatory paycheck, that is a new violation of the law and the statute of limitations period begins to run again.

In September '08 Congress made changes in the definition of disability with the passage of the Americans with Disabilities Amendments Act of 2008. This act emphasizes that the definition of disability should be construed broadly and generally should not require extensive analysis. It rejects the holdings in several Supreme Court decisions and it now makes it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA. With these changes, our investigations will no longer focus on the coverage issue but rather on whether the respondent's conduct was unlawful.

We have also undergone a nationwide field reorganization since the last committee report. We have 53 field offices nationwide of which the Minneapolis area office is one. Field reorganization initiated by a former chair of the EEOC reduced our district offices which are our largest offices in the field by almost a third from 23 to 15 in 2005. The EEOC placed the Minneapolis area office under the Chicago district's aegis which now incorporates three offices. The Chicago office, another office in Milwaukee which was downgraded from a district office to an area office and our Minneapolis area office. In addition, the Minneapolis area office acquired jurisdiction over two new geographical areas in addition to the State of Minnesota. We now take charges from North Dakota and South Dakota.

In 1999 we also established a nationwide mediation program. This is an alternative to the traditional investigation and litigation process. We offer mediation to the parties in most of our

charges. The decision to mediate is completely voluntary for both parties and is strictly confidential. We have one full-time mediator and we use a few contract mediators as the need arises. In FY 2009 our office resolved 91 charges through mediation.

I want to conclude with some good news regarding our ability to fulfill our mission. As you know, the job of the investigator is a critical position in the enforcement work of a field office in this arena. While investigators are crucial to the EEOC's ability to achieve its mandates, the commission's field staff here and elsewhere labored with the paucity of investigators for much of the last decade. The number of investigators nationwide declined 33 percent during the period FY 2000 to FY 2008. Thanks to a recent redirection of funds to the field for hiring, we in Minneapolis have gone from an average of five available investigators in fiscal year 2007 to ten investigators as of this month. We are very -- so we've got a doubling of investigators. We are very excited about this vital boost to our capacity and plan now to reduce the backbreaking and unsustainable backlog each investigator has had to carry for the past few years.

For the last two fiscal years we have received approximately 1,200 charges of discrimination each year in our office. In FY 2008 the average case load was 225 per investigator. In FY '09 it was 214. After our newly hired investigators finish their training, we hope to be able to cut that number significantly. I am providing you with charts that provide the specific number of staff, number of charges received and our district's enforcement budget for the past three fiscal years for your reference.

Let me just point out one other notable change that's in those charts, and that is in FY 2008 the Chicago district received \$648,000 and -- \$648,408 and in FY 2009 we received \$906,114. So we are seeing a great improvement.

I do have a correction to a previous -- Mr. O'Meara or Mr. Battle who pointed out that -- you can file charges in more than one office. When charges are filed in our office, we automatically cross-file with the other what we call Fair Employment Practice Agencies, the other FEPAs who have jurisdiction. So if the respondent is in St. Paul, we cross-file with the Minnesota Department of Human Rights and the City of St. Paul, and that protects the individual's state rights. We have work-sharing agreements with each of these entities where they receive money from us for every charge that they receive from us and investigate. Those agreements are worked out between the FEPAs and our headquarters. So whenever -- our general practice now in our office is if we get a charge that the jurisdiction does fall under one of our state or local FEPAs, we transfer it to them for investigation.

Carmen Navarro

Director, Minneapolis District Office, Office of Federal Contract Compliance, U.S. Department of Labor

I'll start off by telling you a little bit about what we do. Our office is responsible for administering and enforcing three legal authorities that require equal employment opportunity. It would be Executive Order 11246 as amended, Section 503 of the Rehabilitation Act of 1973 as amended and the Vietnam Veterans Readjustment Assistance Act of 1974 as amended. These laws ban discrimination and require federal contractors and subcontractors to take affirmative actions that ensures that all individuals have an equal opportunity in their employment processes without regard to race, color, religion, sex, national origin, disability or status as a special disabled veteran, veteran of the Vietnam era, recently separated veteran or other protected veteran.

Under the Executive Order, any federal contractor with a workforce of 50 or more employees, any contract exceeding \$50,000 is required to have a written affirmative action program ("AAP") in place. The AAP is a management tool designed to ensure equal employment opportunity. It is designed to evaluate the composition of the workforce of the contractor and compare it to the composition of the relevant labor pools. The contractor's affirmative action program should include specific practical steps designed to address identified underutilization based on race, gender or other protected covered category.

The OFCCP itself, Office of Federal Contractor Compliance Programs, we conduct audits of federal contractors' affirmative action plans and their personnel practices. If our review finds that a contractor is in noncompliance with either the affirmative action rules or regulations, or with the terms of the contract, the OFCCP will request that the contractor enter into a conciliation agreement to remedy the deficiencies identified. This would include anything from requesting make-whole relief from the contractor. Make-whole relief consists of, at a minimum, securing backpay and jobs for the identified class of victims. If the contractor refuses to remedy the deficiencies, the contractor can be referred by our agency for enforcement by filing an administrative complaint and this could ultimately result in the contractor being debarred from present and future contract work with the government. That's our ultimate tool.

In the course of these audits, the OFCCP also monitors federal contractors' compliance with their obligations under Section 503 of the Rehabilitation Act and Section 4212 of the Vietnam Era Veterans Readjustment Assistance Act. Contractors will be audited for their affirmative action efforts with regard to individuals with disabilities and the covered veterans groups I mentioned earlier. Currently the new administration is very devoted to increasing significantly more resources to the civil rights. They believe that our agency in the past has been allowed to get too small. The administration is now trying to restore the agency to previous levels.

As an example, our Midwest region was at a low in 2009 with 104 compliance officers on staff. We are now, as of this date, maintaining a staff of 157 compliance officers. Specifically in our Minneapolis district office, since this last report, we had three to four compliance officers at any given time from then until September of 2009. Since September of 2009, however, we have increased our staff of compliance officers from three to ten. That's more than a threefold increase in our resources here locally. This will hopefully enable us and the office to reach out to more contractors and stakeholders across the Minneapolis area.

Looking back at the past three fiscal years, the Minneapolis district office has maintained still with those numbers a strong presence in the federal contracting community. Our efforts are reflected in the following numbers. For fiscal year 2007 we were still able to schedule 283 audits of supply and service contractors. We were able to then also conduct audits of two construction contractors. In 2008 we scheduled 50 audits of supply and service contractors and conducted one audit of construction contractors.

In 2009 we scheduled 138 audits of supply and service contractors. There were no construction audits for the past fiscal year at the time. However, we do want to inform that we are currently very active in the monitoring of the Central Corridor Light Rail Transit Project. It's still for us in the pre-construction phase but we are very active in attending all meetings with the joint committee, joint committee members and offering our guidance and assistance on procedures and to ensure that nondiscrimination in the awarding of and administration of contracts takes place. When the project starts, which it's expected to start this year hopefully later

on this spring, we'll be able to start our audits of the actual construction companies themselves and be able to report numbers then.

The administration is also very dedicated to broadening our focus. In the past years we have also gone to focusing more so on systemic discrimination. We are going back to expanding our focus to contractors' compliance with their obligations to individuals with disabilities and our covered veterans. To do this we are increasing our presence at more on sites. By having a bigger staff we are going to be able to do that. We are also planning on strengthening our partnerships with a lot of the agencies we have met here today with the local and government agencies, workers' protection organizations and any relevant community business organizations. So that's our plan for our future.

In closing let me assure that the new administration as well as the Minneapolis district office for the Office of Federal Compliance Contract Programs is fully committed to the Secretary of Labor's vision of good jobs for everyone by rebuilding our resources dedicated to civil rights and refocusing our attention to address all dimensions of our mandate.