

Library

U. S. COMMISSION ON CIVIL RIGHTS

MEETING

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U.S. COMMISSION ON CIVIL RIGHTS

Friday, December 6, 1996

The Commission met in Room 540, YWCA Building, 624 9th Street, N. W., Washington, D. C. 20425, at 9:45 a.m., MARY FRANCES BERRY, Chairperson, presiding.

PRESENT:

MARY FRANCES BERRY, CHAIRPERSON  
CRUZ REYNOSO, VICE CHAIRPERSON (Via Telephone)  
A. LEON HIGGINBOTHAM, JR., COMMISSIONER (Via Telephone)  
YVONNE Y. LEE, COMMISSIONER  
RUSSELL G. REDENBAUGH, COMMISSIONER  
ROBERT P. GEORGE, COMMISSIONER  
CARL A. ANDERSON, COMMISSIONER  
CONSTANCE HORNER, COMMISSIONER

MARY K. MATHEWS, STAFF DIRECTOR

STAFF PRESENT:

BARBARA BROOKS  
JAMES S. CUNNINGHAM  
PAMELA DUNSTON  
BETTY EDMISTON  
EDWARD HAILES, JR.  
GERRI MASON HALL  
GEORGE M. HARBISON  
CAROL-LEE HURLEY  
JACQUELINE L. JOHNSON  
FREDERICK ISLER  
WILLIAM LEE  
STEPHANIE Y. MOORE, GENERAL COUNSEL AND PARLIAMENTARIAN  
EMMA MONROIG  
LILLIAN MOYANO, YOB

## STAFF PRESENT: (Continued)

VERONIQUE PLUVIOSE-FENTON  
PETER REILLY  
CHARLES RIVERA  
MARCIA TYLER  
ANTHONY K. WELLS, SR.  
NADJA ZALOKAR

## COMMISSIONER ASSISTANTS PRESENT:

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

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

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9:45 a.m.

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CHAIRPERSON BERRY: Let me apologize to you for being late, but somehow they decided to create a construction project at the end of my block today which prevented us from getting out, which they finally relented. So, I'm very sorry.

The first item on the agenda is the approval of the agenda. Could I get a motion?

COMMISSIONER HORNER: So move.

CHAIRPERSON BERRY: Can I get a second?

COMMISSIONER GEORGE: Second.

CHAIRPERSON BERRY: All in favor, indicate by saying aye.

(Chorus of ayes.)

Opposed?

(No response.)

No. So ordered.

Approval of the minutes of November 15, 1996.  
Could I get a motion?

COMMISSIONER GEORGE: I'll move.

COMMISSIONER HORNER: Second.

CHAIRPERSON BERRY: Any corrections, or --

COMMISSIONER GEORGE: I have an amplification of the minutes. This would be for the fifth paragraph

1 on page 2, which begins, "Commissioner George  
2 inquired." I propose to add after the last sentence,  
3 the following: "Chairperson Berry proposed that the  
4 Staff Director remind the Commissioners every month of  
5 the current list of briefings. If a briefing was  
6 scheduled for the next meeting, Commissioners would be  
7 reminded --

8 CHAIRPERSON BERRY: Is this another sentence?

9 COMMISSIONER GEORGE: Yes. I'm sorry. I'm  
10 very sorry. Yes.

11 The sentence begins: "If a briefing was  
12 scheduled for the next meeting, Commissioners would be  
13 reminded of their opportunity to submit suggestions  
14 regarding that briefing during the following week.  
15 This proposal was accepted without objection."

16 CHAIRPERSON BERRY: There was no objection to  
17 this proposal, so, yes, okay.

18 Anybody have any changes or corrections or  
19 anything else they'd like to add to the minutes?

20 (No response.)

21 The only thing I'd like to add is that the  
22 list of people who were here, did not include Krishna,  
23 who was here, so we'll just add that.

24 Could we vote to approve the minutes, as  
25 changed? Everybody ready?

1 All in favor, indicate by saying aye.

2 (Chorus of ayes.)

3 Opposed?

4 (No response.)

5 Okay. So ordered.

6 Announcements.

7 I would like to make two announcements. The  
8 first one is that Commissioner Lee and I were in St.  
9 Petersburg, Florida, at a State Advisory Committee  
10 hearing forum, which was held Tuesday and Wednesday.

11 What time did you guys get out of there  
12 Wednesday?

13 COMMISSIONER LEE: 9:30.

14 CHAIRPERSON BERRY: Yes. Some ungodly hour.  
15 The night before we got out about 1:30, I think. And  
16 Commissioner Anderson, as we reported to you the last  
17 time, and I had gone down there before, right after the  
18 first disturbance. And since that time there had been  
19 another altercation which was reported widely in the  
20 media.

21 And the SAC forum was timely. Commissioner  
22 Anderson and I had indicated when we were down there  
23 that the SAC would be holding a forum, and Rabbi Agin,  
24 Solomon Agin, who's from Ft. Myers, Florida, and has  
25 been on the SAC for a number of years, is the Chair.

1           And so the forum was very well attended and  
2 widely publicized and had some very good information  
3 presented for the record, as well as a number of very  
4 heated exchanges, if I might put it that way politely,  
5 among various people.

6           And the day that the forum began, the  
7 President announced the initiative that was in the  
8 works to have some of the departments speed up a little  
9 bit of funding for various projects in St. Petersburg  
10 that the community had been asking for for a long time,  
11 including some rehabilitation of housing projects and  
12 some job training and various things from around  
13 various departments in the government. This was in  
14 response to a request from the Mayor.

15           You may recall, too, that the Mayor of St.  
16 Petersburg asked the Commission, quote/unquote, the  
17 State Advisory Committee or the Regional Office or in  
18 some guise to come to take a look at things in St.  
19 Petersburg.

20           The most interesting exchanges to my mind --  
21 there were a lot of interesting exchanges and I expect  
22 them to have a good transcript. And the SAC plans,  
23 according to the Rabbi, to issue -- to sort of do like  
24 we did with the church fires, which is to issue some  
25 conclusions and maybe release the transcript and then



1 do a report so that they don't take two years to say  
2 what they found out. Although they may do another  
3 report. They're deliberating about that, as soon as  
4 they recover from the two days.

5           One of the most interesting exchanges was  
6 when the -- I can't read and talk at the same time. I  
7 guess I can't chew gum and walk down the stairs at the  
8 same time, either. But one of the most interesting  
9 exchanges, the issue down there is trust. One of the  
10 issues is whether the Police Chief and the Mayor have  
11 the trust of the community.

12           And you, indeed, Commissioner Anderson,  
13 having been there, would have been particularly  
14 informed by an exchange between us and the Mayor,  
15 because the Mayor, under questioning by a SAC member,  
16 told the SAC member that he had no -- did not  
17 participate at all in the decision to demolish Jordan  
18 Park, which is that housing project that the black  
19 community wants kept as their only historic item. And  
20 the decision by HUD now is not to demolish but to  
21 rehabilitate it.

22           Anyway, the Mayor was pressed as to whether  
23 he had anything to do with that; did he approve it; did  
24 he know about it; was he involved. And he said, no,  
25 absolutely not. He was not involved.

1                   Is that correct, Commissioner Lee?

2                   He had no involvement. Right after that, I  
3 had to read into the record a letter that the Housing  
4 Authority sent to the Mayor asking him to approve the  
5 demolition and a certificate signed by the Mayor in  
6 which he gave his approval.

7                   I thought that was one of the moments of high  
8 drama in the thing. We tried not to embarrass the  
9 Mayor too much because I know that in the bureaucracy  
10 you can sign things and not know you signed them, I  
11 guess. But the SAC member wanted to really go after  
12 him.

13                   And so I simply said, well, I thought the  
14 thing spoke for itself and I made the mistake of saying  
15 res ipsa loquitur, which just fell out of my mouth.  
16 And then people thought I said something about race  
17 something.

18                   (Laughter.)

19                   It took me a day to explain that. But that  
20 was clear.

21                   And then the only other part that was really,  
22 really high drama was when we were questioning the  
23 Chief, who I think is trying to do a good job. I still  
24 think that, Commissioner Anderson. I think they're both  
25 trying to do the job. And it turned out that he had

1 not even had a discussion with the police officers who  
2 made the arrest at Uhuru House, which is where the big  
3 altercation took place.

4           And he said on the record that the arrest  
5 went wrong. That they made some mistakes. And so we  
6 asked whether he had talked to them to find out what  
7 those mistakes were and could he make improvements.  
8 Turned out he hadn't talked to them because the  
9 procedure did not permit him to engage.

10           And so, I don't know by the end whether trust  
11 had been reestablished, but I certainly hope it had  
12 been. But the community appreciated us coming down and  
13 holding such a forum in which so many people were  
14 brought forward. And it did work very well to have the  
15 community speak first and then to have the government  
16 officials respond, rather than doing as we've done  
17 elsewhere; have the government talk and then the people  
18 come later. And they're gone, so you can't get any  
19 answers.

20           All right. So, it does show the Commission  
21 is on the case.

22           The only other thing that I would announce is  
23 that I wrote a letter to Governor Beasley of South  
24 Carolina after he announced that he was recommending to  
25 the legislature that they remove the Confederate Flag

1 from the top of the capital. And I wrote a letter to  
2 him acknowledging that he had done that and commending  
3 him for taking that step.

4           And the reason why I did that is because you  
5 may recall that I blasted him rather severely when we  
6 were down there because he had said that this  
7 Commission that he was setting up, which had no budget  
8 and so on, would not consider the issue of the flag at  
9 all, yet everyone who came before us told us the flag  
10 was the most significant issue that was polarizing the  
11 community. So I thought at least they ought to  
12 consider discussing it.

13           And having blasted him on more than one  
14 occasion, I felt that it was the better part of valor  
15 and the right thing to do to commend him for having  
16 made this recommendation.

17           I, of course, got into trouble over that,  
18 too, because by the end of the day, people were asking  
19 whether I had not only commended him but agreed that  
20 the flag should be moved to a monument ground and put  
21 at a high visibility level above everything else so  
22 that it could be seen, which was part of his proposal.  
23 Which, of course, I had not said.

24           So, I said, well, my commendation did not go  
25 to the details of what the Governor wanted to do later.

1 I just thought it was a great idea that he at least  
2 wanted to do something and that he wanted to move it  
3 from the Capitol grounds.

4 Oh, I did forget another announcement.

5 The budget process and the exchanges with OMB  
6 go on. They have not yet settled on exactly what the  
7 Commission will get as a budget request. And those of  
8 you who are familiar with the negotiations or have been  
9 on the Commission long enough know this is not  
10 surprising.

11 And as soon as we know -- I've had a couple  
12 of discussions with the person who is the new Associate  
13 Director of OMB on our side of the house and expect to  
14 have more discussions with other people over there, but  
15 they've not yet settled on a number. There have been  
16 opening numbers and I'll raise you one and close you  
17 two, and that whole process. But I'll let you know.  
18 There's no sense in going through all the blow by  
19 blows, but I'll let you know at the end when we come to  
20 a number.

21 Did I miss anything I should have announced?

22 Commissioner Lee, do you want to say anything  
23 about St. Petersburg?

24 COMMISSIONER LEE: No. You've covered  
25 everything.

1 CHAIRPERSON BERRY: Okay.

2 Do you have any announcements, Staff  
3 Director?

4 STAFF DIRECTOR MATHEWS: I have for  
5 Commissioners today -- or we can mail it to you,  
6 whatever you prefer -- a large compilation of press  
7 clips from the SAC forum in St. Petersburg which the  
8 staff has just prepared. Just returned with the  
9 newspapers from Florida. So it would be of interest.  
10 Would you like to have it today?

11 CHAIRPERSON BERRY: Yes.

12 STAFF DIRECTOR MATHEWS: Okay. Would you  
13 please?

14 Thank you.

15 And the only other thing I wanted to mention  
16 is that following up from the community forums that the  
17 State Advisory Committees have held earlier this Summer  
18 on the church arsons in the South, we've provided  
19 Commissioners with copies of the most recent letters  
20 that were sent to the Governors asking for meetings  
21 with the various State Advisory Committees to discuss  
22 race relations in the state. And a meeting will occur  
23 with the SAC Chair and Regional Director from our  
24 Southern Office this coming Monday, December 9th, with  
25 the Governor of Tennessee.

1 That's all I have, Madam Chairperson.

2 CHAIRPERSON BERRY: Yes?

3 COMMISSIONER HORNER: I have a question for  
4 the Staff Director.

5 You may recall a few months ago, I asked that  
6 -- and you agreed that the OPM oversight report on the  
7 Commission's management effectiveness should be  
8 provided to the Commissioners when it arrives. And it  
9 arrived and some Commissioner Assistants asked for it  
10 and were told it had not arrived. And subsequently,  
11 requests were made directly to OPM, who brought over  
12 seven copies for the remaining Commissioners and I  
13 gather they've been distributed, so we now have it.

14 The report apparently requires a response  
15 from the Commission within 45 days. And I would like  
16 to suggest that you or the Chair request an extension  
17 of time beyond 45 days, since I don't think 45 days  
18 will be enough for the Commissioners to review the  
19 report, draft the response. In other words, not enough  
20 time for the Commission to take action.

21 So, I would like to suggest that we request  
22 an extension of time on that.

23 STAFF DIRECTOR MATHEWS: Commissioner Horner,  
24 the request came into my office I believe from -- a  
25 reminder type request from the Special Assistant to

1 Commissioner Redenbaugh a couple of days earlier this  
2 week. I have not received my copy and that is what was  
3 transmitted back to her. I did not receive a copy  
4 until yesterday, so it was not enough time to provide  
5 copies to Commissioners by today. So, I would like to  
6 clarify that in terms of the record.

7 COMMISSIONER HORNER: Who do you think did  
8 get a copy here because OPM was quite firm.

9 STAFF DIRECTOR MATHEWS: I don't know. I do  
10 not know.

11 CHAIRPERSON BERRY: I will respond. I have  
12 been in St. Petersburg, as I have just announced to  
13 you. Krishna, I think, told Commissioner Redenbaugh's  
14 Assistant that and that a copy of the report came to  
15 the office while I was in St. Petersburg. I am sure he  
16 told her that because I told him to tell her and he  
17 usually does whatever I tell him to do.

18 If he did not do that, then I'd like to know  
19 that.

20 Were you informed?

21 Or, Commissioner Redenbaugh, could you ask  
22 your Assistant if she was informed about this or not?

23 SPECIAL ASSISTANT CHARLOTTEE PONTICELLI: I  
24 was, several hours after OPM brought over the seven  
25 copies of the report.



1                   COMMISSIONER HORNER: Madam Chair, I don't  
2 think we need to wait for your physical presence here  
3 to have a report distributed.

4                   CHAIRPERSON BERRY: That is not my point,  
5 Commissioner Horner. My point is that I am trying to  
6 answer your question as to who had a copy. We had a  
7 copy in my office. I don't know exactly what moment it  
8 came but it came while I was gone.

9                   Now, the second thing is that I also asked my  
10 Assistant to tell Commissioner Redenbaugh's Assistant  
11 that I planned to put this item on the agenda at the  
12 meeting in January.

13                   Now, I'm sure he did that because whenever I  
14 tell him to do something, he does it. Now, if he did  
15 not do that, I would like to know that he didn't. So  
16 that the effort is not to keep the Commissioners from  
17 being involved. That's my point. My point is -- and  
18 we will do whatever is necessary to make sure that  
19 Commissioners are involved.

20                   I am just saying that it came to my office.  
21 So the question of where did it come in the Commission?  
22 A copy came to my office, a copy.

23                   Now, it should not be necessary for  
24 Commissioners to go out to agencies to get materials.  
25 In fact, that's not part of the procedure that the

1 Commission uses, although human beings may do whatever  
2 they please. But I hope that they don't make  
3 representations on behalf of the Commission or members  
4 of the Commission or the staff when they do that,  
5 because no one is authorized to do that under our  
6 regulations.

7 COMMISSIONER HORNER: Madam Chair, I  
8 understood that Commissioner Redenbaugh's Assistant had  
9 asked more than once for the report and had at least  
10 initially been told that it had not arrived, after a  
11 time when we understand it had arrived. And it seems  
12 to me that that gives rise to concern that it's being  
13 withheld rather than made available. And I just want  
14 to make sure that when a Commissioner gets an assurance  
15 from the Staff Director that a report will be made  
16 available upon arrival, that it's made available on  
17 arrival and there's no confusion.

18 It seems to me it would be a rather simple  
19 thing for the Chair's office to call OPM, request  
20 additional copies and disseminate them. That was an  
21 agreed procedure of the entire -- in the presence of  
22 the entire Commission.

23 I don't want to belabor this but it does give  
24 rise to concerns that we're now -- if it's going to be  
25 on the agenda for January, which I think is a fine

1 thing, that brings us past the date, potentially past  
2 the date at which OPM requires that we have taken  
3 action in response to it.

4 CHAIRPERSON BERRY: Commissioner Horner, I  
5 don't quite know how to say this. I wish -- Vice  
6 Chair, I wish you were here because I would turn this  
7 matter over to you, because I'm doing something that I  
8 shouldn't do, which is I'm getting angry, and I've been  
9 told not to do that. So I'm trying not to get angry.  
10 Maybe it's just that I'm exhausted.

11 So, I'll just take a minute to compose myself  
12 rather than getting angry, since you're not here to  
13 nudge me and say shut up.

14 VICE CHAIRPERSON REYNOSO: Can you hear me?

15 CHAIRPERSON BERRY: Yes.

16 VICE CHAIRPERSON REYNOSO: Okay. The  
17 telephone -- there's a characteristic of the telephone  
18 where I missed about half of a word at the beginning of  
19 practically every sentence, so I'm afraid that the  
20 communication is not good enough that I'd be able to  
21 take the Chair. I'm sorry about that.

22 COMMISSIONER GEORGE: Well, Mary was simply  
23 asking you to tell a few jokes, Cruz. Could you --

24 (Laughter.)

25 VICE CHAIRPERSON REYNOSO: To liven things

1 up.

2 CHAIRPERSON BERRY: Well, you did it. You  
3 did what I needed to have you do.

4 Can you hear me now, Cruz?

5 VICE CHAIRPERSON REYNOSO: Yes, I can.

6 CHAIRPERSON BERRY: Okay. I'm okay. I'll  
7 just get a drink of water here. I'm fine. Thank you  
8 very much.

9 I want to say that first of all we're talking  
10 about a matter of days here and we are talking about a  
11 report that was received in my office after I left for  
12 St. Petersburg. I left on Tuesday and today is Friday.  
13 So we're not talking about anybody withholding anything  
14 and we're also talking about Krishna having responded  
15 to Commissioner Redenbaugh's Special Assistant. It's  
16 not as if anybody has stiffed the Commissioner or  
17 didn't respond or tried to hide something.

18 And we've also said that the discussion will  
19 be on the agenda for January. That does not mean that  
20 a response will not be drafted. A response will be  
21 drafted and circulated to Commissioners.

22 The Commission has to have the ability to do  
23 something in between meetings. I am saying that if any  
24 of you want to actually discuss the issues in the  
25 meeting, we can discuss it among ourselves in an open

1 meeting in January if that's what you want to do. But  
2 in the interim, a response will be drafted and will be  
3 sent to you so that you can read it. And then, if you  
4 wish to have something to say about it or object to it  
5 or don't want the response to be sent, let us know  
6 that. Or if you want to have a meeting in between the  
7 meeting to discuss it, we can do that.

8 COMMISSIONER HORNER: Madam Chair, I don't  
9 think there's anyone able to draft this response other  
10 than the Commissioners. It's a report which gets to  
11 the question of top level management, and therefore, it  
12 seems to me that Commission has an obligation and is  
13 the only body in a position to draft a response to it.  
14 And I think we have an obligation, given the  
15 considerations raised and the strength of the critique,  
16 that we have an obligation to respond to this.

17 And so I think we need some mechanism to  
18 involve the Commissioners.

19 CHAIRPERSON BERRY: Well, if the  
20 Commissioners care to respond, it would be my view,  
21 based on the briefing I got concerning it this morning,  
22 that it is not the Commissioners responsibility. It is  
23 entirely concerned with management issues. And under  
24 our regulations, we have delegated the authority for  
25 managing the agency to the Staff Director.

1           There will be a response prepared by the  
2 Staff Director's office to the points. I mean, I don't  
3 know if any of you know exactly what happened in the  
4 Personnel Office in any given day. I don't. I don't  
5 have that information.

6           Now, if you mean that the Commission would  
7 like to review whatever is prepared as a response and  
8 then make whatever judgments you'd like to make about  
9 it, that's fine. But I do not see this as something  
10 that the Commissioners have enough information to draft  
11 an initial response about.

12           Yes, Commissioner Redenbaugh?

13           Here we are discussing something that I said  
14 we would discuss in January.

15           Cruz, have you read this thing? Do you know  
16 what they're talking about?

17           VICE CHAIRPERSON REYNOSO: No, I do not, and  
18 I have not.

19           CHAIRPERSON BERRY: Have you, Commissioner  
20 Lee? And do you know what they're talking about?

21           COMMISSIONER LEE: I just got it yesterday.  
22 I have not reviewed it.

23           CHAIRPERSON BERRY: Commissioner Redenbaugh?

24           COMMISSIONER REDENBAUGH: Well, I think this  
25 is a little bit off point from were you were going but

1 you may not mind that, or we all may not mind.

2           Of course, I, as much as anybody, understand  
3 the miscoordinations that happen with travel and staff  
4 assistants, and I don't think that you or your  
5 assistant have been in any way remiss regarding this  
6 report. I don't have any complaint. I want to make  
7 that very clear.

8           I think the next thing I want to actually ask  
9 about is the question of, as Commissioners, what's our  
10 responsibility. Although we can delegate some of the  
11 actions, what is our responsibility for oversight for  
12 the management of the agency. I think this report goes  
13 to that question indirectly and concerns me, in terms  
14 of how am I fulfilling my oversight responsibility.

15           So, what's your view about that? I don't  
16 know the law or the history here.

17           CHAIRPERSON BERRY: My view about that is  
18 that technically you don't have any responsibility for  
19 the oversight of the day-to-day management of the  
20 agency. None of us do. We have a responsibility under  
21 law and under regulations to make policy for the  
22 agency. That's what we have. And we only have one  
23 employee in the agency, who is the Staff Director. We  
24 don't have any others, and that the Staff Director is  
25 responsible for the management.

1           And that our recourse, if we do not like the  
2 management undertaken by the Staff Director, is to ask  
3 the President to have the Staff Director resign if we  
4 can't get the Staff Director to do whatever it is we  
5 want the Staff Director to do as a Presidential  
6 appointee.

7           Now, if we are asking detailed questions --  
8 this letter, I am told, is directed to me. What I had  
9 intended to say was to tell the staff to draft a  
10 response, since they have the details. I don't have  
11 them. And to write a letter to OPM saying that I am  
12 not responsible for the day-to-day management of the  
13 agency; that I have reviewed whatever report the Staff  
14 Director puts together; send it to you guys if you want  
15 to read it. You've reviewed it, and we're sending it  
16 back.

17           And also to say that any recommendations  
18 anyone has for improvement in this agency, I think the  
19 agency ought to take advice and act on it. This is not  
20 unusual. Federal agencies get reviewed all the time by  
21 OPM or GAO, gosh knows who, and they get  
22 recommendations. I mean, we shouldn't act like the sky  
23 fell or something. And they get recommendations about  
24 improving things.

25           I used to get reviewed when I was at HEW. I mean,



1 everybody I know in the government gets reviewed. And  
2 then what you do is you respond and you appreciate the  
3 recommendations for positive change; you try to correct  
4 any errors. You thank them when they say you've done  
5 something right, and you move on.

6 Now, as far as Commissioners are concerned --  
7 and you don't let it interfere with your work and get  
8 your eye off the prize, which is the substantive work  
9 you're trying to do, by getting bogged down into  
10 discussing these matters.

11 COMMISSIONER REDENBAUGH: Well, except the  
12 heart of the critique goes to our ability to do  
13 substantive work.

14 But I wanted to come back to the point. You  
15 said that our recourse or our remedy if we're  
16 dissatisfied is to complain to the White House. Can we  
17 have a remedy if we don't have the responsibility?

18 CHAIRPERSON BERRY: Well, first of all, you  
19 can complain to the Staff Director, as we've done on  
20 numerous occasions, and ask that something be done  
21 about X, Y, Z, A, B, C, and instruct the Staff Director  
22 to do whatever it is you want the Staff Director to do.  
23 That's the first thing we can do by consensus here, at  
24 a meeting or in between a meeting.

25 If the Staff Director repeatedly refuses to

1 do what we say, then our recourse is to say this Staff  
2 Director won't work and therefore, we need to get  
3 another one. Or, I guess in the alternative what we  
4 would do -- no, you couldn't, because the statute makes  
5 the Staff Director the CEO. I was about to say you  
6 could run the agency yourself, but you can't, not under  
7 this statute. And besides, I don't have time. Maybe  
8 you do. I don't. I don't have time to come here and  
9 run the Civil Rights Commission.

10 So our recourse is to be informed, to give  
11 advice. If we think something's being done wrong, to  
12 give instruction where we think something should be  
13 done. And we should do that diligently. We first have  
14 to be informed.

15 So if the staff prepares a response to this  
16 report and we review it, then we will be informed not  
17 only by what OPM said, but about what the staff had to  
18 say in response. And then we can make our own  
19 judgments about what we think. We agree; disagree; our  
20 perception is different; we think X, Y and Z should be  
21 done; we think OPM should be told A, B, C, D, E and F.

22 That's what I think.

23 Do you have a follow-up, Commissioner  
24 Redenbaugh?

25 COMMISSIONER REDENBAUGH: I'm just not sure.

1 I'm not clear about what our responsibility is.

2 CHAIRPERSON BERRY: Okay.

3 COMMISSIONER REDENBAUGH: Either under  
4 statute or under practice.

5 CHAIRPERSON BERRY: Our responsibility under  
6 statute is to, by a majority, give direction and make  
7 policy for the agency, including what the Staff  
8 Director does. That's our responsibility legally.  
9 Practically, our responsibility is to be informed about  
10 what goes on at the agency and to give directions and  
11 instructions as we review what the Staff Director does.  
12 And where we think we need to have something else done,  
13 to say so.

14 COMMISSIONER ANDERSON: Madam Chair?

15 CHAIRPERSON BERRY: Yes, Commissioner  
16 Anderson.

17 COMMISSIONER ANDERSON: Well, this is a  
18 little bit difficult because some Commissioners have  
19 received a copy of the report; others have not. Some  
20 have had an opportunity to read it; others have not.

21 When I received a copy yesterday, I had an  
22 opportunity to read it last evening. I do not want to  
23 address the substance of the report in terms of whether  
24 or not what's in the report is accurate. But I do want  
25 to say that the report raises some very troubling

1 issues and findings regarding morale, regarding  
2 violation of law, regarding overall management of the  
3 Commission.

4 Now, in a sense, we've had this discussion on  
5 several occasions regarding the responsibility of  
6 Commissioners with management of the agency and you and  
7 I disagree, I think. I mean, I see that Commissioners  
8 have a broader oversight. I have no interest in  
9 running the day-to-day operations of the Commission.  
10 If I did, I would resign from the Commission and throw  
11 my hat in the ring to be Staff Director.

12 But I do think that we have a broader  
13 responsibility than delegating everything simply to the  
14 Staff Director without a close --

15 COMMISSIONER HIGGINBOTHAM: Hello?

16 CHAIRPERSON BERRY: Good morning, Judge  
17 Higginbotham.

18 COMMISSIONER HIGGINBOTHAM: Hi. I'm having  
19 so much trouble hearing you. I'm going to see if I can  
20 go to another phone.

21 CHAIRPERSON BERRY: Okay.

22 COMMISSIONER HIGGINBOTHAM: If I make the  
23 connection -- I'm operating on the assumption that you  
24 have a quorum?

25 CHAIRPERSON BERRY: Yes. We have a quorum.

1 Okay. Go ahead.

2 COMMISSIONER HIGGINBOTHAM: Okay.

3 VICE CHAIRPERSON REYNOSO: Leon?

4 COMMISSIONER HIGGINBOTHAM: Yes.

5 VICE CHAIRPERSON REYNOSO: This is Cruz.

6 There seems to be some -- I don't know whether your  
7 problem is just that you can't hear, but with me,  
8 sometimes words escape. You just don't hear for a  
9 couple of seconds and then it comes back in. If you  
10 have that same problem, it probably has to do with the  
11 lines.

12 COMMISSIONER HIGGINBOTHAM: Okay. I'll try to  
13 hold on. If it doesn't clear, I'll wish everyone well.

14 CHAIRPERSON BERRY: That's a cop out, Leon.

15 Okay. Go ahead, Commissioner Anderson.

16 COMMISSIONER ANDERSON: Well, maybe we need a  
17 General Counsel opinion whether we have a quorum if the  
18 member is present but can't hear.

19 (Laughter.)

20 In any event, -- so, I think it raises really  
21 serious and troubling questions. I don't -- I mean,  
22 I'm happy to discuss the merits of it but I think it's  
23 better to discuss the merits of the report in January  
24 after everyone's had an opportunity to review it. So I  
25 don't want to get into that other than to say that his

1 is something very serious I think we have to look at.

2 In light of my general philosophy that  
3 Commissioners have a broader responsibility here, I'm  
4 not entirely comfortable with a staff response to a  
5 critique of staff performance as being basically the  
6 primary vehicle by which we see what our response ought  
7 to be here.

8 I think that we ought to have -- well, what I  
9 would like to see is a committee of Commissioners look  
10 at this right from the beginning and work with staff,  
11 maybe work with the Staff Director, but I for one am  
12 not going to be comfortable with getting in January a  
13 five-page or a 10-page response to this as primarily  
14 the Commission response. I probably will vote against  
15 that if that's the process.

16 I think the Commissioners -- and frankly, I  
17 don't care who on the Commission is involved in it. I  
18 think Commissioners need to be more involved from the  
19 beginning to really take a look at what it is that's  
20 going on in the Commission. And we may be entirely  
21 convinced at the end of that process that OPM is way  
22 off the mark. And if that's the case, I'll be happy to  
23 vote for a response that says that. But seems to me  
24 when you have an independent agency come in and report  
25 the level of problems, at least one instance is

1 unprecedented, any response they've seen from any other  
2 agency.

3 I don't think we're being responsible in  
4 simply going back and having a routine process produce  
5 a response to this report. And I say that without  
6 being emotional about it or anything. It just seems to  
7 me that we're not going to comply with our  
8 responsibility, no matter how narrowly or how widely  
9 you define it, if that's the procedures we're going to  
10 follow.

11 CHAIRPERSON BERRY: Commissioner Lee?

12 COMMISSIONER LEE: Madam Chair, I got the  
13 report late last night when I returned to the hotel,  
14 and I just glanced through it really briefly. And from  
15 what I glanced through, it involves just the  
16 operational procedures and questions involving the  
17 Commission.

18 I come from the non-profit sector. In the  
19 non-profit sector, we have boards with thousands of  
20 committees trying to oversee the operation of the  
21 agency. And when I got on this Commission, I was  
22 really glad that we did not have 101 committees to try  
23 to manage what's going on. Because to me, the  
24 Commission should oversee the Commission's operation,  
25 but in a way that we do not cross the line with being

1 micro-managers.

2           With this report, I -- to be honest with you,  
3 I would not be able to sit down and discuss what they  
4 say because I don't know what goes on every day. I  
5 don't know the procedures that go on between the Staff  
6 Director to the department chiefs and what have you.  
7 And I will rely on the staff, through the chief  
8 executive, to give us a very honest assessment of how  
9 this report was done; whether there was anything there  
10 of merit. Not to defend themselves but just to give us  
11 a very frank assessment.

12           And based on that, then the Commissioners  
13 should discuss how we should respond, based on the  
14 staff's draft response. Because I have nothing to go  
15 on. And at the same time, I think that it is true that  
16 we do need to be involved because we are overall the  
17 responsible party for this Commission and for all the  
18 operations. And it is helpful to have this as a  
19 discussion piece, but I certainly don't want -- I would  
20 not feel comfortable having us draft a report because I  
21 have no idea.

22           And it's not like we were lazy or anything  
23 but it's sort of hard to understand the daily  
24 operations. So I would hope that the Staff Director,  
25 the chief executive and her team, by January, they



1 should give us a very frank assessment through a draft  
2 so that we can respond by January.

3 CHAIRPERSON BERRY: Commissioner Redenbaugh?

4 COMMISSIONER REDENBAUGH: I come from a  
5 different perspective and background than Commissioner  
6 Lee. I come from the profit sector where on board you  
7 have not only a fiduciary responsibility but  
8 increasingly a financial liability. And that may be  
9 different, but that's kind of the orientation that I  
10 have.

11 I would say that, of course, we don't want to  
12 manage the agency or micro-manage it, but we have  
13 involved ourselves effectively as a task force of the  
14 Commission or as a whole Commission in specifying  
15 certain process changes. For example, the process by  
16 which the SAC reports are prepared were specified by a  
17 group and then adopted by the whole group of  
18 Commissioners.

19 So, we have a tradition and precedent of  
20 effectively involving ourselves at that higher level  
21 and I think this rises to that same class of thing. I  
22 agree with Commissioner Anderson that Commissioners or  
23 a subset of us should participate in the response to  
24 this.

25 CHAIRPERSON BERRY: Commissioner Anderson?

1                   COMMISSIONER ANDERSON: I would say to my  
2 colleague, Commissioner Lee, respectfully, I cannot  
3 believe that we have read the same report. I'm looking  
4 at a report that says that effective communication is  
5 practically nonexistent between the managerial  
6 personnel of this Commission. I'm looking at a report  
7 that says the agency is badly in need of managerial  
8 attention.

9                   CHAIRPERSON BERRY: Commissioner Anderson, I  
10 thought you said you were not going to discuss the  
11 substantive matters in the report. If you are, then I  
12 think in all fairness we should have a debate on all  
13 the substantive matters in the report. First, have it  
14 read, for those who have not read it.

15                   COMMISSIONER ANDERSON: I would be happy to  
16 do that. But I'm saying that this is not --

17                   CHAIRPERSON BERRY: But you have made  
18 statements -- Carl, you have made statements on the  
19 record which are unrebutted. And those of us who have  
20 been involved with doing -- and you know it, too.  
21 You've been in government -- know that agencies, audit  
22 agencies do reports and that you first must have a  
23 response from the people they're criticizing and then  
24 made a judgment. Just because they said something,  
25 that doesn't mean it absolutely in every case is true.

1           Also, from my briefing, there are statements  
2 in this report, now that you've made some, which say  
3 that some of the things they were asked to look into  
4 were done perfectly. That they found no technical  
5 problems with the way details were done. They found no  
6 problems with contracts or consultants or any of the  
7 paperwork that was executed and that there were  
8 allegations that this was the case. That's what I was  
9 told. And then they found some problems, which does  
10 not surprise me.

11           However, if we are going to discuss the  
12 substantive matters in the report, then I think we need  
13 to do it in a systematic way and have responses to the  
14 extent the staff has some, and have a debate about,  
15 which we can do. I think it's unfair because some  
16 people haven't read it, but if that's what you want to  
17 do, then I'm prepared to have that done.

18           COMMISSIONER ANDERSON: No. I don't want to  
19 debate the substance of this report. The point I want  
20 to make -- and I think now I've made it -- is that I  
21 don't believe that with a report this serious that we  
22 can deal with this as business as usual.

23           CHAIRPERSON BERRY: Okay. So you disagree  
24 about the seriousness of the matters in general.

25           COMMISSIONER ANDERSON: Right. And I can't

1 believe anybody who has read this --

2 CHAIRPERSON BERRY: That's the point you're  
3 making?

4 COMMISSIONER ANDERSON: -- has said --

5 CHAIRPERSON BERRY: And what you can do  
6 without citing things -- in other words, you have a  
7 disagreement with Commissioner Lee and others about the  
8 seriousness of this whole enterprise and what the  
9 Commissioners should be doing. Is that accurate? And  
10 you believe we should be doing more and more involved.  
11 Is that correct?

12 COMMISSIONER ANDERSON: That's correct.

13 CHAIRPERSON BERRY: All right. Well, then -  
14 yes, Commissioner Horner?

15 COMMISSIONER HORNER: Madam Chair, my  
16 assessment is that it's serious and quite serious, and  
17 I agree with Commissioner Redenbaugh that we have a  
18 responsibility here.

19 I would like to reinforce Commissioner  
20 Anderson's suggestion that we have a committee -- and  
21 again, I don't care who's on it -- a committee of the  
22 Commissioners work with the staff for the purpose of  
23 listening to what the staff has to say and having the  
24 opportunity to ask the staff questions and to have a  
25 dialogue with the staff on this. And then allow the

1 committee to bring a recommendation or an assessment  
2 based on more information than the entire Commission  
3 may have, including Commissioner Lee. Obviously, we're  
4 not all experts in this stuff.

5 VICE CHAIRPERSON REYNOSO: Madam Chair?

6 CHAIRPERSON BERRY: Just a moment, Cruz.

7 Just a moment.

8 Did you want to say something about that or  
9 did you know Commissioner Horner was talking?

10 VICE CHAIRPERSON REYNOSO: No. I thought she  
11 had stopped. I'm sorry.

12 CHAIRPERSON BERRY: No, no. I'll recognize  
13 you as soon as Commissioner Horner is finished.

14 COMMISSIONER HORNER: It's always a safe bet  
15 I haven't yet stopped.

16 I would just like to suggest that it's good  
17 common sense for something that is both serious in my  
18 view and delicate and potentially technically intricate  
19 to have a subcommittee devote special attention to it  
20 for a reasonable period of time, and then come with  
21 better information than the whole Commission need to  
22 assemble to the Board and make a presentation. I mean,  
23 to the Commission.

24 CHAIRPERSON BERRY: Vice Chair?

25 VICE CHAIRPERSON REYNOSO: Yes. I just want

1 to express my discomfort at the whole discussion, since  
2 I haven't seen the report or anything. I might go as  
3 far as to suggest that maybe it's even out of order.  
4 Maybe we should have a telephonic meeting when we've  
5 all had a chance to take a look at this to decide what  
6 the proper course is.

7 I just have a sense of discomfort because I  
8 just don't really know what's going on.

9 CHAIRPERSON BERRY: Well, I agree with you.  
10 And I was about to suggest that we do have such a  
11 meeting and I hope that Commissioners can participate.  
12 But the problems we have in trying to find times in  
13 which everybody can have a meeting, I sometimes  
14 despair.

15 But I think the best thing to do is to sort  
16 of take a divided approach to this; and that is, to  
17 have the staff prepare something to answer the factual  
18 matters in the report and the data matters and the  
19 information matters, which people will have no  
20 information about and which people may question the  
21 information, but at least they'll have more than they  
22 had -- at least I will -- sitting here, and some of the  
23 Commissioners who don't feel they are informed about  
24 the matters, so we can hear their side of it.

25 And then to have a telephonic meeting in

1 which -- this would be sent out to you. And then have  
2 a telephonic meeting in which we will discuss it. And  
3 then if after that discussion people still feel the  
4 need of having a committee or subcommittee or another  
5 response or some other way, then we can decide to do  
6 that then.

7           And that way we defer deciding what I hear  
8 some people want, which is to have the staff go ahead  
9 and prepare a response, send it to you, and then  
10 discuss anything you want to about it, and others  
11 having a subcommittee somehow get involved with the --  
12 although, I must say that if we had a subcommittee, I  
13 wonder who has time to spend -- well, I won't ask that  
14 -- to come here every day to work with the staff on  
15 trying to respond.

16           But since there are people who feel that the  
17 need for such involvement, I don't feel comfortable  
18 saying that Commissioners should not be involved;  
19 although it's my view that it's not the Commission's  
20 responsibility to answer this -- to prepare the answer  
21 for this. But since there are people who believe that  
22 we should or believe we should be more involved, then  
23 we have a difference of opinion.

24           So to respond to that difference, let's have  
25 a telephonic meeting. And I would like to ask at this

1 time, because I know how hard it is for the staff to  
2 get people together, are there any days on which any of  
3 you cannot have a telephonic meeting sometime in the  
4 next 10 days or less than that. I mean, are there days  
5 where it's just absolutely impossible for you?

6 COMMISSIONER REDENBAUGH: If I could suggest  
7 that you ask for open days?

8 CHAIRPERSON BERRY: Open days? Well,  
9 somebody said no, somebody said yes.

10 Would it be better for you if we suggest days  
11 or better for you if we ask days what days you can't do  
12 it?

13 COMMISSIONER HORNER: Madam Chair, I'd like  
14 to suggest that we request an extension of time from  
15 OPM in order to reduce the difficulty entailed in  
16 getting a serious Commission response, and that would  
17 reduce the pressure on us to have meeting times  
18 available between now and Christmas.

19 (Whereupon, the Commissioners discussed the  
20 date of the telephonic meeting.)

21 CHAIRPERSON BERRY: Commissioner  
22 Higginbotham, can you hear me? Is he there?

23 (No response.)

24 Okay. The 31st, and in the morning. The  
25 31st in the morning.



1 COMMISSIONER HORNER: Yes.

2 CHAIRPERSON BERRY: I'm just repeating that  
3 for everybody to hear. There will be a telephonic  
4 meeting. Before the telephonic meeting, you will get  
5 some paper which will give you some staff generated  
6 answers to whatever questions and statements are in the  
7 report so that you can read them.

8 Now, they're not for you to read because  
9 you're supposed to either believe them, not believe  
10 them or whatever your judgment is. They are the  
11 staff's proposed answers to whatever matters there are.  
12 And we will discuss it on the 31st and decide whether  
13 we want to proceed by having a response of that kind,  
14 adding something else to the response, or some other  
15 way. Now, that's the agreement.

16 COMMISSIONER HORNER: By what date will we  
17 receive this report?

18 CHAIRPERSON BERRY: You will receive this by  
19 what date? Today is the 6th and the meeting will be on  
20 the 31st. You will receive this -- how about by  
21 Monday, the 16th?

22 STAFF DIRECTOR MATHEWS: How about the 20th,  
23 Friday, the 20th.

24 COMMISSIONER HORNER: If we could make it the  
25 19th, that would be very good for me since I'm leaving

1 on the 20th.

2 STAFF DIRECTOR MATHEWS: Thursday the 19th.

3 CHAIRPERSON BERRY: Thursday, the 19th. By  
4 then, you will receive this paper. Okay.

5 Yes, Commissioner George? You look pensive  
6 or introspective or that you have a query.

7 COMMISSIONER GEORGE: Thank you, Madam  
8 Chairman. My query is I just -- in the hope of  
9 avoiding any unnecessary conflict over this issue in  
10 the future, I just want to be clear. The material  
11 we'll be receiving will be of a confidential nature,  
12 presumably --

13 CHAIRPERSON BERRY: Right.

14 COMMISSIONER GEORGE: -- between the  
15 Commissioners and Assistants. Is that the universe of  
16 people who ought to see this, because this is stuff  
17 that's pertaining to what I take to be still, at some  
18 level, a confidential report or draft, and something  
19 about which people at a certain level have a right to  
20 respond and so forth and so on.

21 I just want to make sure we have an  
22 understanding of who's to see this and so forth.

23 CHAIRPERSON BERRY: Right. Commissioners and  
24 Assistants, please, only. That doesn't mean anything  
25 in Washington, but --

1 (Laughter.)

2 And I know this, having been at HEW when Joe  
3 Califano spent two whole days going around the agency  
4 trying to find out who leaked to the press some  
5 announcement that he was going to make to the press,  
6 which all of us thought was sort of idiotic to spend  
7 two days trying to find out who sent some piece of  
8 paper. And we were all to ask our staff members, "Did  
9 you send that piece of paper?"

10 Anyway, -- yes. We will then do it that way  
11 and keep it confidential, as far as we're concerned,  
12 among ourselves and our Assistants until we have a  
13 chance to discuss it.

14 All right. Anything else? Is that  
15 unsatisfactory or is there anything you'd like to add,  
16 Commissioner Anderson?

17 COMMISSIONER ANDERSON: Well, I think this  
18 procedure runs a risk, and the risk is a staff response  
19 -- let me put it as a hypothetical.

20 If we receive a staff response that in effect  
21 says that the problems enumerated by OPM are  
22 nonexistent, it seems to me the Commissioners are going  
23 to have a very difficult time assessing the accuracy of  
24 that conclusion of the staff problem. Therefore, it  
25 would seem to me better to devise a way in which

1 Commissioners could be involved in reviewing the work  
2 product as it progresses and therefore, you would have  
3 a confidence in it that I don't think we're going to be  
4 able to have on the 19th or the discussion.

5 Now, that in a sense is prejudging it, but I  
6 think if we want to be concerned about the process,  
7 that's a risk we're going to run. Now, maybe it's  
8 overly -- it's an over concern on my part, but I think  
9 the possibility is great that on the 19th we will get a  
10 staff response that we will not be able to judge  
11 between the two analyses with any kind of independence  
12 on our part, because we will have not been able to  
13 verify any of it independently ourselves, through any  
14 process.

15 But if that's the process we're going to use,  
16 that's the problem I think we're going to face on the  
17 19th or the 30th.

18 CHAIRPERSON BERRY: Commissioner George had  
19 his hand up. Did you have your hand up? I think you  
20 had your hand up.

21 COMMISSIONER GEORGE: I did. Again, I  
22 haven't read the report yet. I just got it. So I  
23 don't even know some of the sensitive stuff that is in  
24 it. I do know, though, that we have for a long time  
25 had a difference of opinion among the Commissioners and

1 between yourself, Madam Chairman, and me about the  
2 interpretation of the statute and the relative  
3 authority of the Commissioners, vis-a-vis the staff  
4 director. And I haven't visited the question closely  
5 since the crisis after my lawsuit regarding Stuart  
6 Ishimaru's appointment as Acting Staff Director.

7           But I do know this much without even going  
8 back to it, that it would be good, if possible, to come  
9 up with a strategy that is satisfactory to  
10 Commissioners that doesn't involve us having to act on  
11 the basis of one or the other of those interpretations  
12 of the statute. So if we can avoid that issue, come up  
13 with something that's comfortable and doesn't involve  
14 anybody in giving up their interpretation of the  
15 statute or compromising it, I think that would be  
16 ideal.

17           So what I like about the procedure that has  
18 been proposed is that perhaps it will enable us to do  
19 that. It might just depend on how much time there is  
20 between our receiving the staff material, which is the  
21 19th, and the response date.

22           Now, I don't know what this response date is.

23           CHAIRPERSON BERRY: They said -- somebody  
24 said 45 days from -- I guess 45 days from when we got  
25 it or 45 days from --

1                   STAFF DIRECTOR MATHEWS: I don't have it  
2 here, so I don't know.

3                   CHAIRPERSON BERRY: We're going to assume 45  
4 days from when we got it.

5                   COMMISSIONER GEORGE: Okay.

6                   CHAIRPERSON BERRY: Because how could we know  
7 about it if we didn't get it.

8                   COMMISSIONER GEORGE: Does somebody roughly  
9 know when that would be and how much time we have?

10                  CHAIRPERSON BERRY: The whole month of  
11 December and into January. Probably about -- let's  
12 see. December 2nd was Tuesday, so we're talking here  
13 January 4th, 5th, 6th. Something like that.

14                  COMMISSIONER GEORGE: Okay. Then I see  
15 Carl's problem. If there was going to be on the basis  
16 of the telephonic meeting on the 31st some additional  
17 Commissioner inquiry beyond the review of the paper  
18 that we receive, there really wouldn't be enough time.

19                  CHAIRPERSON BERRY: Unless we ask for an  
20 extension.

21                  COMMISSIONER GEORGE: Unless we ask for an  
22 extension.

23                  CHAIRPERSON BERRY: Which we can decide to  
24 do.

25                  COMMISSIONER GEORGE: Are those granted pro

1 forma?

2 CHAIRPERSON BERRY: No. They take you out  
3 and hang you up by a tree. I once responded a year  
4 after somebody told me to respond.

5 Anyway, I don't recommend that.

6 (Laughter.)

7 No. We try to respond in a timely fashion  
8 and we would ask for an extension if the Commissioners  
9 wanted to still do that.

10 COMMISSIONER GEORGE: Would a month be --

11 CHAIRPERSON BERRY: Yes. I'm sure that  
12 they'd be happy to give us whatever time we need. So I  
13 wouldn't worry about that. But I think we should maybe  
14 decide that later.

15 I was going to make another suggestion but  
16 I'll wait until Commissioner Horner makes her comment.

17 COMMISSIONER HORNER: I just want to say that  
18 I think it would be extremely helpful in terms of our  
19 final product for us not to have the staff lock itself  
20 into a characterization of the situation in writing to  
21 us without hearing some group of Commissioners'  
22 questions, observations and input, because then we will  
23 have on the record what might be, upon further  
24 communication between the Commission and staff, a  
25 gratuitous separation of conclusions.

1           In other words, the staff may reach a  
2 conclusion. The Commissioners, upon questions and  
3 answers, may reach a different conclusion and it's all  
4 on the record. And it seems to me that I still want to  
5 support Commissioner Anderson's suggestion of a  
6 committee of the Commission to work with the staff  
7 before the staff presents this report because  
8 otherwise, we're going to have something that is  
9 unnecessarily conflictual, it seems to me.

10           CHAIRPERSON BERRY: While I have no -- still  
11 am of the belief that the staff really is responsible  
12 for drafting this, in order to respond in a collegial  
13 manner to the complaints that are being made, I would  
14 suggest that if there are Commissioners who would like  
15 to join me in working with the staff to review what  
16 they're doing and to ask whatever questions one has to  
17 ask between now and December 20th, I invite anyone on  
18 the Commission who wants to do that to join me in that  
19 process. And I am willing to devote my time to doing  
20 it.

21           So if there are people who are willing to do  
22 it, want to do it, interested in doing it, please so  
23 indicate. And then we can proceed to do precisely what  
24 you've suggested.

25           COMMISSIONER HORNER: Madam Chair, I'd like



1 to do it but I can't do it between now and the 20th,  
2 and that's why I'm proposing we get an extension of  
3 time, maybe six week, from OPM, to allow Commissioners  
4 who don't have time. Like Commissioner Anderson's  
5 first available date for even a telephone conference is  
6 December 18th. I don't think it can be done  
7 responsibly between now and the 20th. And I would  
8 suggest that we get the extension and then do it in  
9 January.

10 CHAIRPERSON BERRY: Well, I'm not willing to  
11 wait to do this because how things leak in Washington,  
12 by tomorrow it will be in the press that this report  
13 has been issued and the Commission hasn't responded  
14 yet. Or if it's not by tomorrow, by next week.

15 Oh, I see a reporter there, so it will be in  
16 the press tomorrow. So, I want to have a response made  
17 in a timely fashion. I don't think we should hang out  
18 there, especially with comments being made in this  
19 meeting about the seriousness of the things when I've  
20 been told that there are matters in there that say the  
21 Commission has done some thing right.

22 So, I don't want a story to go out to the  
23 press saying that we now are delaying until sometime in  
24 January or February to do something. And gosh knows  
25 when we're going to respond, yet we said there are all

1 these serious problems that need immediate attention.

2 I am willing to take my time between now and  
3 December 20th and to abandon all of my projects in  
4 which I'm engaged in my work to devote my time and  
5 energy to working with any Commissioner who wishes to  
6 with the staff to get a paper written which will come  
7 to you by December 20th for you to act on at the  
8 meeting on December 31st to act on or defer, but you  
9 will be asked to act, so that we have a response.

10 I'm not prepared to have us hanging out here  
11 all during the season with allegations about serious  
12 problems and the Commission has not responded. So, I  
13 am today -- and if no one wants to join me, I will  
14 constitute a committee of one to do so. And that way,  
15 any Commissioner has been asked and given the  
16 opportunity to be involved. And I haven't even  
17 designated people to be on a committee. Any of you may  
18 constitute this ad hoc committee and join me. But from  
19 this day forward, I will devote my time with the staff  
20 until we get a response written.

21 I will recognize any Commissioner who seeks  
22 recognition.

23 Commissioner Lee and then Commissioner  
24 Redenbaugh.

25 COMMISSIONER LEE: First, I don't know if the

1 Staff Director's departure is going to impact the  
2 schedule because she will be leaving January 4th.  
3 That, besides the point I do think now that this report  
4 is out, I would not want to wait. I would like to see  
5 at least a draft from the staff so that we can work on  
6 it. And then if we think that we need more time to  
7 either conduct independent surveys or discussions with  
8 the staff to get more information, then we should at  
9 that time of our teleconference. But right now, I  
10 would just -- if I could, I will join you, but I don't  
11 know what my time schedule is. But I would push for  
12 the 20th date as an initial day to get all the draft,  
13 and then we'll move from there.

14 CHAIRPERSON BERRY: Commissioner Redenbaugh?

15 COMMISSIONER REDENBAUGH: I'll join with you  
16 on staying on the time line that you've outlined. I  
17 think it is very time sensitive. Not only for the  
18 reasons you've suggested, but because of the retirement  
19 of this Staff Director. And I think it's in fairness  
20 to her that this be done while she's here.

21 CHAIRPERSON BERRY: Okay. Appreciate that.

22 COMMISSIONER REDENBAUGH: And I think it  
23 would be unfair to do it after. And so, I'll work with  
24 you to do what we can do in the time available.

25 CHAIRPERSON BERRY: I appreciate that.

1 Any other Commissioner with comments?

2 Yes. Commissioner Anderson.

3 COMMISSIONER ANDERSON: My comment is this.

4 I know that the Commission has done a lot of good  
5 things. Otherwise, I would not stay on the Commission.  
6 The problem is that this report raises some very  
7 serious concerns about the management of this agency  
8 and the morale of this agency.

9 My point has been that we cannot deal with  
10 what's raised in this report in a business as usual  
11 manner, and I think it is our responsibility as  
12 Commissioners to be involved in the review and  
13 consideration of what's going on as alleged in this  
14 report.

15 Now, I realize that this Commission is  
16 criticized from many directions; on the left, on the  
17 right; doing too much; not doing enough.

18 CHAIRPERSON BERRY: You notice these  
19 criticisms.

20 COMMISSIONER ANDERSON: The point is that I  
21 don't see the Office of Personnel Management reviewing  
22 this agency either from the left or from the right and  
23 that's why I'm taking their report in a sense more  
24 serious than I would a report coming from the Brookings  
25 Institution or the Heritage Foundation or the Citizens

1 Commission on Civil Rights. Not that there are not  
2 serious analyses of what we do. They are. But I think  
3 that when OPM does a report or GAO does a report, it's  
4 at a different level, so I think we have to treat the  
5 response differently.

6 I concur with Commissioner Redenbaugh. I  
7 think that the current Staff Director's input is  
8 necessary and only fair. So I don't care what the time  
9 line is in one sense, as long as they're a time line in  
10 which she has adequate time to have whatever input in a  
11 response and an analysis can be done.

12 But in my own case, it is physically  
13 impossible for me to participate until the 18th.

14 I would also say that in my opinion, this is  
15 likely to be a long-standing question that whoever the  
16 new Staff Director is is going to have to deal with.  
17 That's my suspicion. I don't want to prejudge  
18 everything. But I think the possibility is there that  
19 the new Staff Director is going to have to take a look  
20 at all this, reassess the whole situation, if it is as  
21 serious as OPM is suggesting.

22 And therefore, we're going to have this  
23 discussion, or at least we have the possibility of  
24 having this discussion, or at least one Commissioner is  
25 going to have this discussion with whoever is

1 nominated, to be the new Staff Director.

2           So I think we should move ahead on a timely  
3 basis but I don't think we should rule out the  
4 possibility that this is going to extend beyond our  
5 next meeting.

6           CHAIRPERSON BERRY: Okay. Well, Commissioner  
7 Redenbaugh and I then will work with the staff in  
8 generating this information in this paper and a draft  
9 response and get it to you by December 20th.

10           I will begin meeting with the staff on this  
11 starting Monday but I'll talk to him about meetings  
12 that we can set up where we both can be present. And  
13 as I said, we'll get you this by the 20th and hope we  
14 can make a decision at least on this report and a  
15 response to it by December 31st, when we meet on  
16 December 31st on the phone, even if the whole subject  
17 is a matter is a continuing discussion with later Staff  
18 Directors and all that.

19           So, I'm very pleased at how this has come  
20 out, even though I was a little worried at the  
21 beginning how it would come out. So I think this  
22 probably meets everybody's concerns.

23           Can we then move on or are there other  
24 matters that you wish to discuss concerning this?

25           (No response.)

1 Okay. Let's move on.

2 The next item is the Staff Director's Report.

3 Does anyone have any -- I guess this could  
4 have been under the Staff Director's Report.

5 Does anyone have anything else under the  
6 Staff Director's Report?

7 (No response.)

8 Okay.

9 Does anyone have any future agenda items?

10 On the briefings, let me just say that I  
11 reviewed with -- oh, are you seeking recognition?

12 COMMISSIONER HORNER: Future agenda items.

13 Yes.

14 Madam Chair, we have a whole series of equal  
15 educational opportunity reports coming up over the  
16 course of the next year. I think it would be very  
17 helpful to the Commissioners to have the staff who are  
18 working on this come to our next meeting or a meeting  
19 soon within the next few months and tell us their  
20 direction, their overall direction, so that we don't  
21 have the kind of last minute arguments that we had  
22 after everything was in the text but can thrash out a  
23 few things, broad conceptual questions and issues, in  
24 advance.

25 I'm not talking about a vote. I'm talking

1 about airing Commissioner perspectives on these issues.  
2 I just think it would be extremely helpful and make it  
3 all work much more smoothly.

4 CHAIRPERSON BERRY: In order for that to be  
5 done, then the staff would give us in advance just some  
6 sort of outline, sketchy, as it were, of what they're  
7 doing on this set of reports.

8 COMMISSIONER HORNER: Yes. I'd like to have  
9 them present an outline orally to us and present their  
10 at least tentative conclusions so that we can make an  
11 input.

12 CHAIRPERSON BERRY: Well, the most important  
13 thing on the briefing -- I mean, the equal educational  
14 opportunities and all of the monitoring reports -- and  
15 I'm saying this for Fred Isler's benefit, who's not  
16 paying any attention.

17 (Laughter.)

18 The most important thing about the monitoring  
19 reports that will save us a whole lot of time is if the  
20 staff recognizes that these are supposed to be process  
21 reports.

22 Do you like that word, Russell?

23 COMMISSIONER REDENBAUGH: Yes, I do.

24 CHAIRPERSON BERRY: And that these are not  
25 supposed to be reports, by definition, that go beyond



1 the bounds of looking at the enforcement effort in the  
2 agencies. But we can talk about that more at a meeting  
3 in which we discuss what you guys are doing, which is  
4 what I think Commissioner Horner is suggesting.

5 Let me just say that the Staff Director  
6 discussed with me the list of briefings that were on  
7 the books in conformity with the discussion we had last  
8 time about the briefings. And the only one left over -  
9 - you don't have to write a lot, Commissioner George.  
10 You can write a little bit.

11 The only one left over is the bilingual  
12 education one that Commissioner Lee proposed, because  
13 the whole list, as we went through it, most of them  
14 have either been done or they've been turned into  
15 projects, like the one on African-American males in the  
16 inner city, and so on.

17 So that what we had left was the one she  
18 suggested and also one that a staff member suggested,  
19 which you can write down. Bilingual education was the  
20 one she suggested. One on analyzing what happened in  
21 the elections under the Voting Rights redistricting and  
22 the meaning of these results that came out in the  
23 recent election and looking at that as an overall  
24 issue. So that was the only one that was left.

25 The other thing I would inform you, and then

1 we'll take a break. We'll adjourn and take a break so  
2 we can -- well, we'll recess and take a break so we can  
3 have the briefing -- is that the Miami report which we  
4 had told you would go to the Staff Director on  
5 Thanksgiving, will now go to the Staff Director as a  
6 result of someone not returning from leave when they  
7 were supposed to on December 16th.

8           So we expect it to go to the Staff Director  
9 on December 16th, which means sometime in January we  
10 should have the Miami report to come before us.

11           Are there other items? And if not, I'd  
12 entertain a motion -- well, let's just recess.

13           Do we adjourn? We adjourn.

14           A motion that we adjourn?

15           COMMISSIONER GEORGE: So move.

16           CHAIRPERSON BERRY: And then in five minutes,  
17 let's start the briefing.

18           Thank you very much.

19           (Whereupon, the proceedings were adjourned at  
20 11:00 a.m., to reconvene at 11:12 a.m.)

21           CHAIRPERSON BERRY: Back on the record.

22           Let me just welcome everyone to this briefing  
23 on civil rights, immigrant rights and related issues  
24 presented by Welfare Reform. And let me thank everyone  
25 who agreed to come, the panelists, for arranging your

1 schedules to appear on such short notice to give us  
2 some badly needed information and much desired  
3 insights.

4           Before the new Welfare Reform law was passed  
5 by Congress and signed into law by the President, there  
6 was a general agreement in the country that we required  
7 reform, welfare reform. There was a consensus. But  
8 the disagreement, as we all know, is over what kind and  
9 now we continue to hear a variety of concerns about the  
10 law itself, how it will be implemented, what will be  
11 the results.

12           And issues raised around the new law that  
13 have been much in the media recently include the  
14 possible effect of the reforms on the children of  
15 welfare mothers. Things like whether there's enough  
16 job training and job placements and matters like what  
17 will happen to minorities and women in this process  
18 when they're no longer eligible for welfare.

19           Then we have the constitutionality and  
20 fairness of the denial of assistance to legal  
21 immigrants and new residents of a state and any harm  
22 that might be inflicted on immigrants by denials of  
23 services, such as prenatal care.

24           The immediacy of many of these issues depend  
25 on the plans that are being filed by the states with

1 the U.S. Department of Health and Human Services.

2           The Commission on Civil Rights has been very  
3 concerned with this. As you know -- and if you don't  
4 know, the statute that was passed explicitly states  
5 what we know to be true; which is that the federal  
6 government, however much devolution takes place, is  
7 responsible for the enforcement of civil rights in this  
8 area. That is reiterated directly in the statute,  
9 which came immediately to the attention of this  
10 Commission.

11           And the Commission sent a letter to President  
12 Clinton on September 26th, asking him to assure that  
13 all civil rights are protected in implementing welfare  
14 reform. And we talked about our reports that we'd  
15 done, some of which show that state enforcement of  
16 civil rights has many difficulties and in some states  
17 is problematic.

18           We told him that we were worried that illegal  
19 discrimination might take place with the implementation  
20 of this reform and wanted to make sure that this was  
21 avoided. We also talked about our interest in the  
22 Administration's plan to ensure the enforcement of  
23 civil rights when states channel block grant funds to  
24 religious groups, charities or other private  
25 organizations and that religious organizations may not

1 be discriminated against because of their religious  
2 character, nor welfare recipients because of a  
3 religious belief or refusal to participate in religious  
4 practices.

5           The President recently responded to our  
6 letter that the inter-agency group, of which HHS is a  
7 part, and the Department of Justice, is considering the  
8 issues we raised, as well as all the issues related to  
9 civil rights. And that the Department of HHS and  
10 Justice are primarily responsible for seeing to it that  
11 this is done and that he expects us to monitor the  
12 implementation of the Welfare Reform Act.

13           This briefing will better educate all of us  
14 so that the Commissioners can exercise their  
15 responsibility to determine how we go forward  
16 implementing this reform.

17           Now, the two panelists that we have before  
18 us, the first one, are both from HHS, and Dennis  
19 Hayashi has been Director of the Office of Civil Rights  
20 at HHS since June 1993. He's also been on the White  
21 House inter-agency group on immigration policy. And  
22 before he came to Washington, he was a very widely  
23 known and respected attorney in the Asian Law Caucus  
24 and he litigated a number of precedent setting civil  
25 rights cases, and at one point was National Director of

1 JCL, the Japanese American Citizens League.

2 I want to welcome you, Mr. Hayashi. And  
3 could you then proceed with the first presentation?

4 MR. HAYASHI: Thank you, Madam Chairman.

5 Members of the Commission, thank you very  
6 much for extending us the invitation to appear today to  
7 discuss with you this vitally important issue of civil  
8 rights and immigrant rights as it relates to  
9 implementation of the Personal Responsibility and Work  
10 Opportunity and Reconciliation Act of 1996.

11 On behalf of the Department of Health and  
12 Human Services, I am accompanied by Susan Greenblatt,  
13 who will speak more specifically about issues related  
14 to temporary assistance to needy families and the block  
15 grants and some of the other issues raised by the  
16 Chair.

17 I have no prepared statement today, but I  
18 would appreciate the opportunity to present a formal  
19 statement for the record at a later date.

20 CHAIRPERSON BERRY: All right. Please do  
21 that.

22 MR. HAYASHI: Thank you very much.

23 Let me begin by stating again that I  
24 appreciate the Commission's willingness to put these  
25 issues on its busy calendar. As the Administration

1 works with the states to put welfare reform into place,  
2 we welcome the views and concerns that the Commission  
3 may have. Moving people from welfare to work is  
4 important, but it is equally important -- indeed, it is  
5 imperative that implementation be carried out in a fair  
6 and nondiscriminatory manner.

7           It is important to emphasize that the  
8 Administration will make every effort to educate and  
9 ensure that legal protections against discrimination  
10 are both understood and carried out. States and  
11 providers continue to have the responsibility of  
12 complying with, among other statutes, Title VI of the  
13 Civil Rights Act of 1964, the Americans with  
14 Disabilities Act of 1990 and the Age Discrimination Act  
15 of 1975. Quite simply, when operating a federally  
16 assisted program, a benefits provider cannot, on the  
17 basis of race, national origin, disability or age,  
18 distinguish among individuals in the types, quantity,  
19 quality or timeliness of program services, benefits  
20 that it provides or the manner in which it provides  
21 them.

22           This policy also applies to practices that  
23 are neutral in design but have a disparate impact based  
24 on race, color or national origin. Violations of Title  
25 VI, for example, may be obvious or subtle. A benefit

1 provider violates Title VI if it concludes that  
2 applicants with ethnic surnames or origins outside the  
3 United States or who look or sound foreign are  
4 ineligible for benefits. It also violates Title VI if  
5 it acts upon the assumption that applicants with these  
6 characteristics are all undocumented or if it requires  
7 that ethnic or racial minorities overcome additional  
8 barriers to the receipt of public benefits because of  
9 their ethnicity or race.

10           Demanding that an immigrant present one  
11 specific type of document to verify eligibility to the  
12 exclusion of all other legally valid documents  
13 establishing immigration status or demanding more or  
14 different documentation based on assumptions about the  
15 applicant's citizenship or national origin rather than  
16 knowledge of such status, may constitute a violation of  
17 Title VI.

18           Asking a specific applicant to present three  
19 documents to establish her identity merely because she  
20 speaks Spanish or looks Asian, while allowing English-  
21 speaking persons and non-Asians to present only one  
22 identity document would be illegal.

23           Issues such as these highlight the fact that  
24 there must be careful attention paid not just to the  
25 nuts and bolts of making welfare reform work, but to



1 the legal protections against intentional or  
2 unintentional discrimination.

3           As I said earlier, the Administration takes  
4 this responsibility very, very seriously. We have met  
5 and will continue to meet with government and non-  
6 government organizations about their concerns. We  
7 remain committed to being responsible to both  
8 complaints and requests for technical assistance. Most  
9 importantly, I look forward to working with this  
10 Commission to address these fundamental issues in a  
11 comprehensive manner.

12           Thank you.

13           CHAIRPERSON BERRY: Okay. Thank you very  
14 much.

15           Our next presenter is -- we'll have questions  
16 after both presentation -- Susan Greenblatt, who is the  
17 Technical Assistance Branch Chief of the Division of  
18 Self-Sufficiency -- Self-Sufficiency -- Office of  
19 Family Assistance, the Administration for Children and  
20 Families. She has over 12 years experience with welfare  
21 to work programs.

22           Ms. Greenblatt will focus her remarks on  
23 employment and training programs for welfare  
24 recipients.

25           Thank you, Ms. Greenblatt.

1 MS. GREENBLATT: Thank you, Madam Chairman  
2 and members of the Commission. It's a pleasure to be  
3 here today.

4 I wanted to talk -- as you know, welfare  
5 reform covers several titles, several programs. I  
6 wanted to focus my remarks on the temporary assistance  
7 program for needy families.

8 I wanted to also mention, besides  
9 highlighting some program changes, the change in the  
10 role of federal government versus states.

11 VICE CHAIRPERSON REYNOSO: I'm sorry. This  
12 is Cruz. I can't hear.

13 CHAIRPERSON BERRY: You can't hear?

14 VICE CHAIRPERSON REYNOSO: I could hear the  
15 previous speaker.

16 CHAIRPERSON BERRY: Push that little flat  
17 microphone next to Ms. Greenblatt.

18 MS. GREENBLATT: Can you hear now?

19 VICE CHAIRPERSON REYNOSO: Yes, I can. Thank  
20 you very much.

21 MS. GREENBLATT: Sorry. I was speaking in  
22 the wrong microphone.

23 I'm going to -- I was saying I was going to  
24 focus my remarks on the Temporary Assistance for Needy  
25 Families Program, not just to highlight a few program

1 changes but to highlight the changes between the  
2 federal role and the state role that TANF has brought  
3 about.

4 First of all, the federal role has changed  
5 from --

6 CHAIRPERSON BERRY: Which section of the  
7 statute are you --

8 MS. GREENBLATT: Title 1.

9 CHAIRPERSON BERRY: Title 1. Okay. Go  
10 ahead.

11 MS. GREENBLATT: Okay. The federal role has  
12 changed with welfare reform from more of a consultant  
13 role versus a regulatory role. In fact, we only can  
14 regulate as authorized by the law in certain areas.

15 We will not be approving TANF state plans.  
16 We will be certifying them as complete. So even if we  
17 don't agree with policies made in the states but that  
18 they follow the principles of the law, we will certify  
19 them as complete.

20 We will, however, ensure accountability and  
21 we have mechanisms to do that. There are certain  
22 provisions in the law that states will be penalized if  
23 they do not carry out and we will have data collection  
24 and performance requirements and states cannot misuse  
25 any funds. And they will be penalized if they do so.

1           The law certainly protects, even with state  
2 flexibility, the law. Besides the civil rights, making  
3 sure that the civil rights, through the Civil Rights  
4 Act, are protected. And the TANF provisions explicitly  
5 has protections to require the states, in their state  
6 plans, to lay out objective criteria of how they're  
7 going to deliver benefits and for fair and equitable  
8 treatment of recipients.

9           They have to provide opportunities for  
10 recipients who have been adversely affected by  
11 provisions to have hearings through either state  
12 administrative process or appeals process. And as I  
13 said, the new law penalizes states that fail to meet  
14 TANF requirements or misuse federal money.

15           Now, I mentioned that we will certify state  
16 plans as complete rather than approve. And we have  
17 already received about .36 state plans. We have  
18 certified as complete about 15. However, I wanted to  
19 emphasize that this is like the first step in an  
20 evolving process.

21           States, as you may know, most states or many  
22 states will have advantageous funding under TANF and we  
23 wanted to make sure that they got all the money they  
24 could to serve welfare recipients. But recognizing  
25 that they may need to go back to their state

1 legislatures to get state law enactments in order to  
2 refine and design their programs, we are going to  
3 permit states to come in with amendments after they do  
4 so, so there will also be opportunities throughout the  
5 next year for the Commission -- I believe you have  
6 advisory councils -- to be involved at that process.

7           States will make important decisions, as you  
8 know, about time limits. Some of the states have  
9 already narrowed those time limits. The law says that  
10 welfare recipients cannot receive TANF benefits more  
11 than 60 months, and some states have come in with three  
12 and four year lifelong term limits.

13           Some states have done variations on that,  
14 saying that they will provide benefit for two within  
15 the five years, within five years of benefits. So  
16 there's variations out there.

17           I wanted to respond to one of your concerns  
18 about job placements and the need for more job creation  
19 or the concern that we won't be able to place -- cities  
20 and localities will not be able to place as many jobs -  
21 - not jobs, recipients, welfare recipients. And the  
22 President is also very concerned about that and the  
23 Administration is looking at proposals to further job  
24 creation, and those are under discussion.

25           Of course, welfare agencies can provide the

1 welfare benefit as a paycheck and as an incentive  
2 subsidy to employers. And so I think it's going to be  
3 a lot -- a lot of this will matter how the job  
4 situation in certain localities are and how well the  
5 welfare agencies coordinate with the community. I  
6 think that will be crucial in getting education,  
7 training and job services to welfare recipients.

8           So with that, I think I'll close and open it  
9 up to your concerns or questions.

10           CHAIRPERSON BERRY: Commissioner Redenbaugh?

11           COMMISSIONER REDENBAUGH: Just for  
12 clarification. You mentioned the 60 month limitation  
13 in the federal statute. Some states -- could you  
14 explain a little more on what the state limitations --  
15 are these continuous or cumulative?

16           MS. GREENBLATT: It's cumulative. And then  
17 the states can decide. The statute says 60 months or  
18 less. So some states have come in with a three or four  
19 year time limit.

20           COMMISSIONER REDENBAUGH: Are any of them  
21 being implemented as a cumulative lifetime or are  
22 these --

23           MS. GREENBLATT: Yes. There are lifetime  
24 limits. Like the state of -- I believe it's Utah --  
25 has a three-year lifetime limit. And Florida, four

1 years.

2 COMMISSIONER REDENBAUGH: And is it -- four  
3 years.

4 MS. GREENBLATT: Yes. And then there's other  
5 variations. Maybe, what you got confused, some states  
6 like North Carolina and Arizona have two years within  
7 five years but that five years is not life. That five  
8 years is not for the life. That's just for a phase.

9 Does that explain it?

10 COMMISSIONER REDENBAUGH: Yes, it does.

11 Thanks very much.

12 CHAIRPERSON BERRY: Others?

13 COMMISSIONER HORNER: I have one question for  
14 each.

15 Ms. Greenblatt, can you describe to us the  
16 situation with the states which had waivers of the  
17 previous welfare law in effect when the new law was  
18 passed? In other words, I'm a little confused as to  
19 whether a state with a waiver of some aspect of the old  
20 welfare law is totally exempt from the new welfare law  
21 for a period of time or whether it is only exempt from  
22 a provision in the new welfare law related to the  
23 provision in the old law which was waived.

24 MS. GREENBLATT: Yes. Also, we have not --  
25 the answer is the latter. That it's only waived to the

1 provision that is inconsistent with the new law.  
2 However, we haven't worked out all the details. It  
3 raises a lot of complications and we haven't worked out  
4 all the details of how we're going to treat those  
5 certain provisions.

6 COMMISSIONER HORNER: What is the time period  
7 within which the waiver in the old law remains in  
8 effect? Is it five years, 10 years, or some --

9 MS. GREENBLATT: I really don't know that.

10 COMMISSIONER HORNER: Okay.

11 Mr. Hayashi, you said that it would be  
12 illegal for state policies which are neutral in design  
13 but have disparate impact to be put into place. Could  
14 you give us a couple of examples of policies that might  
15 be neutral in design, neutral in intention but  
16 disparate in impact and therefore illegal?

17 MR. HAYASHI: Well, I think that one of the  
18 things -- and this, I should say at the outset, is an  
19 issue that's extremely complex and that we've talked  
20 about at length over the last couple of months. The  
21 fact that current law states that disparate impact may  
22 render policies questionable in terms of  
23 constitutionality is one that I think that we've been  
24 trying to see what the states are going to do with  
25 respect to implementation of welfare. And primarily, I



1 think we've been talking about in the context of  
2 verification. There have been a lot of concerns about  
3 how states are going to be verifying.

4 As you know, the statute provides that the  
5 Department of Justice, in consultation with HHS, issue  
6 a set of recommendations on verification 18 months from  
7 August 22nd and that states will have two years  
8 thereafter to implement some type of a system.

9 In the interim, however, we are working with  
10 states or in consultation with states about how they do  
11 intend at this point to try and verify new recipients'  
12 status for benefits.

13 And, for example, if there is a requirement  
14 that a birth certificate be presented in order to  
15 verify citizenship, there have been questions raised as  
16 to whether or not the birth certificate should be  
17 accepted on its face or that you would have to have  
18 some type certification to the birth certificate from  
19 city hall or to methods of certification of whether the  
20 valid or not. And I think that in that context,  
21 questions were raised as to whether or not that type of  
22 policy may affect certain groups more than others.

23 The intent, I think, is really to ensure that  
24 we do not see a raft of complaints coming from  
25 applicants related to verification procedures. And as

1 much as possible, we want to work with the states to  
2 develop procedures which are fair at the outset as  
3 opposed to raising questions.

4 COMMISSIONER HORNER: How important is it to  
5 you that verification documentation required actually  
6 do the job of verifying?

7 MR. HAYASHI: Right.

8 COMMISSIONER HORNER: The reason I'm asking  
9 is obviously there are two desiderata in conflict here.  
10 One, not to be irrationally burdensome and the other to  
11 make sure that the verification is legitimate. I know  
12 when I went to teach a course at Princeton University,  
13 I had to provide evidence of my American citizenship  
14 and it was an irritant but not an insuperable burden.

15 So, -- and when you get a driver's license in  
16 the District of Columbia, if you don't have certain  
17 documentation, it can be extremely burdensome. I know  
18 from experience, family members, to get your license.  
19 But it's intended to prevent people from gaining --  
20 it's always on the part of the general public, that  
21 people don't care enough about the intent of the law  
22 and use disparate impact as a way of subverting the  
23 intent of the law.

24 How can you offer an assurance that the  
25 Office of Civil Rights at HHS will support the intent

1 of the law?

2 MR. HAYASHI: Well, let me just say this.  
3 That all of us in the Administration are very concerned  
4 about the issue of fraud and document fraud, et cetera,  
5 that you raise. And of course, within the  
6 Administration, the policy has been consistent that  
7 fraudulent documents are an issue that needs to be  
8 addressed. And I will leave that to my colleague at  
9 the Immigration and Naturalization Service to address  
10 that more specifically than I.

11 However, I think we do intend to ensure that  
12 as documents are checked, that there is at least a  
13 level of knowledge by those doing the knowledge about  
14 what constitutes a fraudulent document or a non-  
15 fraudulent document, and that the issue of verifying  
16 whether a document is fraudulent or not is not  
17 connected solely to the race or ethnicity of the  
18 individual presenting the document.

19 And I know that there are discussions going  
20 on right now about how best to provide verification of  
21 documents and their authenticity to government entities  
22 which may ask for authentication. Rest assured that we  
23 are taking that issue very seriously and are moving  
24 expeditiously to put something in place that will help  
25 states to verify documents.

1           But again, I think we are also cautioning  
2 states that they have to remember that there are  
3 certain procedures that have to be followed when you're  
4 checking documents, and when you're looking at a  
5 document, that the face of the document and whether or  
6 not there are characteristics which present themselves  
7 which may lead to suspicion is one thing, but because  
8 the individual happens to be, for example, Asian or  
9 Hispanic, that does not automatically lead to a  
10 presumption that the document must be checked more  
11 thoroughly or that the document in and of itself is  
12 fraudulent.

13           CHAIRPERSON BERRY: Yes, Commissioner  
14 Redenbaugh?

15           COMMISSIONER REDENBAUGH: Just -- Connie,  
16 were you finished?

17           COMMISSIONER HORNER: Yes.

18           COMMISSIONER REDENBAUGH: Just a follow-up  
19 question on that is what kind of documentation do the  
20 states now require or do you anticipate they will  
21 require for proof of state residency?

22           Well, I have to say that I'm not prepared to  
23 address in any comprehensive manner what the states are  
24 requiring for the state residency. I know, for  
25 example, that the driver's license is one that is

1 commonly used to authenticate state residency. Certain  
2 states may use rent receipts, bills, et cetera, to help  
3 verify state residency.

4 COMMISSIONER REDENBAUGH: So there's a fairly  
5 low standard?

6 MR. HAYASHI: At this point, I would say that  
7 I am not sure whether you can characterize the standard  
8 as low, but I think there are probably a disparate  
9 number of documents that state may --

10 COMMISSIONER REDENBAUGH: But I mean a rent  
11 receipt would be a much lower standard than a driver's  
12 license?

13 MR. HAYASHI: Right. Exactly. Right.

14 COMMISSIONER REDENBAUGH: Thank you.

15 CHAIRPERSON BERRY: I had a number of  
16 questions if other Commissioners don't have any yet.  
17 Maybe this will stimulate, or not, some more.

18 Under the first review on the question of the  
19 -- Ms. Greenblatt -- Title 1, Part A, 402, the state  
20 plans, how many of the state plans that have been  
21 approved so far do have a provision that they will  
22 provide assistance to individuals who are not citizens  
23 of the United States?

24 MS. GREENBLATT: We have not had the  
25 opportunity to go through all of them and find out a

1 count, but on the ones I have looked at, most of them  
2 are providing services to immigrants. But I wanted to  
3 make -- we don't have a form. We cannot give -- states  
4 do not have to follow any format and we are trying to  
5 track those things that they state in their state plan,  
6 but there's no format. We have given states guidance,  
7 but they're not required. Some states have sent in  
8 plans like this. Other states have sent in very small  
9 plans.

10 So we are working through that and we will  
11 get that information, but most of the ones I've seen  
12 will be serving.

13 CHAIRPERSON BERRY: I have a general question  
14 about your response as soon as I ask you these detailed  
15 questions. I'll have to remember it.

16 MS. GREENBLATT: Okay.

17 CHAIRPERSON BERRY: Under the plans that you  
18 have seen so far, how many of them do have a provision  
19 with objective criteria under Section 3 of the same  
20 402, the delivery of benefits and the determination of  
21 eligibility, fair and equitable treatment. How many of  
22 them have described what they intend to do to implement  
23 that provision?

24 MS. GREENBLATT: Well, what the states have  
25 been doing, most of the states plans are referring back

1 to their current AFDC programs and that they will be  
2 following those provisions.

3 As I said, most of the states need state  
4 legislation and so they were just using their current  
5 programs at this point to continue the programs.

6 CHAIRPERSON BERRY: How many of the plans  
7 that you have looked at or received have a provision  
8 for sanctioning welfare recipients for failing to  
9 ensure that minor dependent children attend school

10 MS. GREENBLATT: I don't have a count on  
11 that.

12 CHAIRPERSON BERRY: How many of them have a  
13 provision under the requirement for high school diploma  
14 or equivalent provision which has a sanction for people  
15 who are not participating in that part of the program?  
16 That's under Section --

17 MS. GREENBLATT: Well, as I indicated, I  
18 don't have a count of what states are doing in certain  
19 provisions. I haven't brought that with me.

20 CHAIRPERSON BERRY: Do you know them or does  
21 somebody know?

22 MS. GREENBLATT: Somebody is putting that  
23 into process. I don't know exactly when we will have  
24 it, but I can check back and give it to you.

25 CHAIRPERSON BERRY: How many of the ones that

1 have been approved have such provisions?

2 MS. GREENBLATT: They all have them in there.  
3 I just can't give you the -- I mean, whether they are -  
4 - what they're going to do. They say what they're  
5 going to do and what they're not going to do. I just  
6 don't have the --

7 CHAIRPERSON BERRY: But of the 15 that you  
8 said have been approved, do they all sanction -- they  
9 have a discretion to sanction welfare recipients for  
10 failure to ensure that minor -- it's called Wed Fare in  
11 some states, or Learn Fare.

12 MS. GREENBLATT: They don't have to.

13 CHAIRPERSON BERRY: I know. But I'm just  
14 trying to find out --

15 MS. GREENBLATT: I don't know. I haven't  
16 tracked those.

17 CHAIRPERSON BERRY: You don't know. Okay.  
18 How about definitions of work requirements  
19 and what work will include? Do they include training?  
20 How much training? And how have they resolved that  
21 issue?

22 MS. GREENBLATT: This is the state  
23 definitions?

24 CHAIRPERSON BERRY: Yes, yes. State option -  
25 - let's see for limitation for special rules; number of



1 weeks for which job search counts as work and then the  
2 limitation that is there. How have they handled that  
3 generally?

4 Do you know what I'm talking about?

5 MS. GREENBLATT: I'm not clear. They have a  
6 limitation of four weeks on job search.

7 CHAIRPERSON BERRY: Have most of them  
8 included training?

9 MS. GREENBLATT: They don't have to define  
10 those things in the state plan.

11 CHAIRPERSON BERRY: Okay. So the answer to  
12 that is we don't really know?

13 MS. GREENBLATT: Right.

14 CHAIRPERSON BERRY: Is the answer to most of  
15 these things we don't really know?

16 MS. GREENBLATT: Well, we're putting in  
17 process to get a detailed chart on how many states are  
18 doing what but also, the state plans are very hard to  
19 go through and we're trying to get through them. But  
20 as I say, they're not filing like AFDC plans or jobs  
21 plans. They are not following a format. So it is very  
22 difficult right now to respond to your answer.  
23 However, we are collecting that data and I just -- I'm  
24 not prepared to answer it. I haven't personally seen  
25 it.

1 CHAIRPERSON BERRY: Does that same answer  
2 apply to the section on individual responsibility  
3 plans?

4 MS. GREENBLATT: Yes.

5 CHAIRPERSON BERRY: So the same answer?

6 MS. GREENBLATT: Right.

7 CHAIRPERSON BERRY: I'm just trying to find  
8 out in the areas where we have some concerns about how  
9 they're applying these and whether the civil rights  
10 laws are being attended to, whether you know that at  
11 least in what people say they're doing or planning that  
12 they're doing, that there are no problems here or  
13 likely to be problems. And the only way I can know  
14 that is if I know what they propose to do.

15 MS. GREENBLATT: I understand that and I  
16 apologize. I didn't know that that would be a  
17 question. However, the states will only say if they're  
18 going to -- they will not describe. They do not have to  
19 describe the option or what they're going to do. All  
20 they have to do is say whether they're going to have it  
21 or not.

22 CHAIRPERSON BERRY: In other words, am I to  
23 understand that the states under this statute are not  
24 required to detail -- one, there's no format for  
25 reporting to you?

1 MS. GREENBLATT: Yes. All we have is the  
2 authority to say it's complete, and that is that  
3 they've checked off all the certifications. They say  
4 they're going to do such and such. And then we have in  
5 our letters back to states where there's areas of  
6 concern or confusion, we have clarified them and talked  
7 to them about those. But they will just say whether  
8 they have an option or not in most cases.

9 CHAIRPERSON BERRY: So, in other words, you  
10 don't have really any authority to require more  
11 specificity or to --

12 MS. GREENBLATT: But we have had  
13 conversations with states to say -- what we're trying  
14 to do is in a consultant mode find out more information  
15 with states about what their intent is and what there -  
16 - you know, a description. But they're not required.

17 CHAIRPERSON BERRY: Okay. So where will you,  
18 Mr. Hayashi, you or your successor, should you decide  
19 to go away -- let's hope you don't, but I've heard  
20 rumors. How will you gather the information that will  
21 tell you whether there are any civil rights violations  
22 if the plans do not require any specificity.

23 It's beginning to sound to me like what Pat  
24 Harris, who used to be HHS Secretary, who's now dead,  
25 used to call stump money. Put it on -- the federal

1 government puts it on a stump and runs.

2 (Laughter.)

3 And that's what everybody wants is stump  
4 money, is what she used to say all the time.

5 MR. HAYASHI: Right. Well, I do not  
6 anticipate that we're just going to cut and run, as it  
7 were, but I do think -- I mean, we do share -- my  
8 office and the Secretary, in particular, of HHS, shares  
9 the view that how the state plans actually play out  
10 over the next two to three years is very important to  
11 monitor. And in particular, it's important to be  
12 cognizant of whether or not civil rights statutes are  
13 in some way being violated.

14 I think that as Ms. Greenblatt has said,  
15 discussions with the states have included a reminder  
16 that there are civil rights statutes with which they  
17 must comply.

18 As you know, in the process of granting  
19 waivers as part of the terms and conditions, there was  
20 always a section which required them to comply with all  
21 applicable civil rights statutes. So my anticipation,  
22 Madam Chair, is that that attitude and that posture  
23 will continue as the states plans are implemented.

24 CHAIRPERSON BERRY: Let me ask you a  
25 question. If a state should, under the policy

1 implemented by the state, if for example you could  
2 discover or did discover that a state was letting some  
3 people be funded while they went to college, which you  
4 can do discretionarily under the statute, and not  
5 others, and it was based either on race or age or some  
6 other -- religion or some other requirement that would  
7 violate the Civil Rights Act -- or would that violate  
8 the Civil Rights Act? Let me ask that.

9 MR. HAYASHI: Well, I think all the  
10 applicable civil rights statutes continue to apply in  
11 this situation. So, yes. I mean, it might given the  
12 fact situation.

13 CHAIRPERSON BERRY: How do the people out  
14 there know that there are these provisions and what  
15 kinds of things would violate the law and what they  
16 should be paying attention to? How much outreach or  
17 information has been put out there?

18 Because I've been asking people when I travel  
19 around and they are under the impression that somehow  
20 this law voids every other kind of protection anybody  
21 has and that states can do whatever they want to.

22 MR. HAYASHI: You ask a very, very pertinent  
23 question. And in fact, that is something that my  
24 office has begun actually trying to address in terms of  
25 getting the word, so to speak, to people that federal

1 civil rights statutes still apply to all the programs  
2 that are receiving money.

3           The fact is that we in the Department are at  
4 this time trying to devise, over the next couple of  
5 months, an outreach -- call it a campaign for lack of a  
6 better term, but some type of method of conveying to  
7 the states that federal civil rights still is alive and  
8 well.

9           And to that end, I might say we have had  
10 regional conferences, both in Region 1, which is  
11 Boston, and in Region 3, Philadelphia, which have  
12 brought together many representatives of the states  
13 affected by the different regions or under the  
14 jurisdiction of the particular regions, to discuss  
15 exactly that issue; how are we going to convey not just  
16 to state providers but also to people in the  
17 communities that civil rights statutes continue to  
18 protect them.

19           CHAIRPERSON BERRY: The other point is that  
20 every report of this Commission that I'm aware of in  
21 the last 20 years, more than that, I guess, going all  
22 the way back to 1970, has reported that HHS -- it used  
23 to be HEW -- Civil Rights Office on the side which now  
24 is HHS, your programs, has been underfunded,  
25 understaffed, unable to keep up with the hospitals and

1 all these big institutions and everything that you guys  
2 are supposed to monitor. And your budget is much  
3 smaller than the one in Education, for example.

4 MR. HAYASHI: Right. It always has been  
5 since the split.

6 CHAIRPERSON BERRY: Now that we have this  
7 dispersal, is that going to make things worse, better,  
8 or what the heck is going to happen with this?

9 MR. HAYASHI: Well, funding is always an  
10 issue for our agency, as you have said. And I want to  
11 make it clear, however, that again, the Secretary of  
12 HHS has been very supportive of increases for my  
13 office. And the fact that perhaps over the past couple  
14 of years we have not been able to obtain the increases  
15 we've sought should not be a reflection on the  
16 commitment of the Secretary, nor the President, to my  
17 office's activities.

18 As to your question of whether it makes it  
19 more difficult, I would say that resources -- we've  
20 been hard pressed to keep up with the demand for our  
21 services, given the resources, but we continue to try  
22 to do the best possible job we can with the resources  
23 we do have. And I want to reiterate that issues of  
24 technical assistance or complaints which reach my  
25 office with respect to the implementation of welfare

1 will not be buried. They'll be dealt with in an  
2 expeditious manner. We are moving to make this a  
3 priority in terms of our work activity over the next  
4 couple of years.

5 CHAIRPERSON BERRY: Thank you.

6 Commissioner Anderson?

7 COMMISSIONER ANDERSON: Thank you.

8 I have maybe two or three questions for you.

9 The first question is this. In terms of  
10 looking at the verification procedures, it is a problem  
11 if a state agency or employees of a state agency, on  
12 the assumption that say Hispanics have a higher use of  
13 fraudulent documents than other segments of the  
14 population, take a closer look at every Hispanic's  
15 document. But that's a different kind of a problem  
16 than a view among a state agency or state employees  
17 that there are too many Hispanics on welfare and we  
18 have to do whatever we can to cut the numbers, not by  
19 work fare but by just not giving them benefits.

20 Now, from your perspective, do you see that  
21 kind of a problem, the second kind of a problem in  
22 states now?

23 MR. HAYASHI: Well, I have to be honest.  
24 That type of discussion would not have reached my  
25 office. That would probably come through consultation



1 with other parts of the Department, whether that's the  
2 Administration on Children and Families or HCFA that  
3 has to do with Medicaid. So, I think we have focused  
4 our attention on the first problem that you've talked  
5 about, but we have had -- to my knowledge, we've had no  
6 discussions about the second issue.

7           COMMISSIONER ANDERSON: I'm trying to get at  
8 the motivation for maybe the document verification  
9 procedure.

10           MR. HAYASHI: Uh-huh.

11           COMMISSIONER ANDERSON: Whether there's any  
12 evidence that you have that there's a more deeper,  
13 underlying problem, than just --

14           MR. HAYASHI: I think -- let me say that our  
15 approach up to this point has not been to presume  
16 motivation on the part of states or the field workers  
17 or anything like that. We have raised general issues  
18 as to how certain procedures may be discriminatory but  
19 have not really delved into the second issue that  
20 you've talked about. But it is something, I think,  
21 since you've raised it here, that probably should be  
22 part of our discussions as we go on over the next few  
23 months.

24           COMMISSIONER ANDERSON: Let me ask you, too,  
25 are you far enough along that you know what works in

1 terms of document verification? Can you, for example,  
2 not just say don't do this or don't do that, but can  
3 you say, look, this is what we think you ought to do,  
4 use these kind of documents, these kind of verification  
5 procedures? There may be others, but at least for what  
6 we know now, this works and we recommend that you do  
7 this?

8 MR. HAYASHI: The answer is that I don't know  
9 how to describe how far along we are. We have been  
10 discussing this issue and of course the Immigration and  
11 Naturalization Service is the primary department which  
12 has expertise with respect to the issue of documents,  
13 as well as the Social Security Administration with  
14 respect to the authenticity of the documents that they  
15 issue. So there have been ongoing discussions.

16 Whether or not we have anything that we can  
17 say works and doesn't work, I don't believe at this  
18 point that we are quite to that stage. I think the  
19 stage we're at is figuring out what are potential  
20 problems and what are the methods of certification that  
21 the different federal agencies can provide in terms of  
22 assistance to states or providers if they ask whether  
23 documents are genuine or not.

24 COMMISSIONER ANDERSON: I just have one final  
25 question, and maybe with the indulgence of the other

1 members of the Commission, since you're here, could you  
2 talk to us for a minute or two just on how civil rights  
3 is going from your perspective. Your perspective, I  
4 understand, would be broader than welfare reform. It  
5 would be health care and how hospitals are dealing with  
6 different questions. I mean, give us one or two  
7 minutes of just an overview; things getting better,  
8 things getting worse, on the same track, more  
9 complaints, fewer complaints.

10 MR. HAYASHI: Well, I think our office has  
11 seen actually an increase in complaints over the past  
12 couple of years, but I'm not sure that that's tied to  
13 an increase, per se, in civil rights violations or  
14 whether that's tied more to an effort on the part of my  
15 office to try to do more outreach to affected  
16 communities to know what their rights are and how to  
17 file a complaint.

18 I think one of the things that's raised by  
19 the Chair is a matter of where you put your resources.  
20 And I have decided over the past couple of years to put  
21 my resources into two areas primarily. One is into  
22 complaint processing, so that we're able to move  
23 complaints faster. And by doing that, I mean we've  
24 been able to team people together so that they can move  
25 complaints out as opposed to go through layers up and

1 down the chain to move complaints out the way they used  
2 to.

3           Secondly, I've also put more of my resources  
4 into outreach and education. And that's why I've  
5 encouraged my regions to conduct these various  
6 conferences involving representatives from all the  
7 states and providers within the states that are in that  
8 region to tell them exactly what it is our office is  
9 equipped to do; how we can help them ensure that they  
10 are complying with all the applicable federal laws, et  
11 cetera.

12           But again, as you know, a little education  
13 can be a dangerous thing sometimes and that leads to an  
14 exponential increase in the number of complaints we've  
15 received. And we're not complaining about that because  
16 we think it's important to address these issues. But  
17 we have been busy.

18           COMMISSIONER ANDERSON: Thank you.

19           CHAIRPERSON BERRY: Commissioner George?

20           COMMISSIONER GEORGE: Mr. Hayashi, the Act.  
21 authorizes the states to funnel block grant money to  
22 private organizations, including religious  
23 organizations. Of course, subject to a  
24 nondiscrimination provision and respect for religious  
25 freedom and so forth.

1 MR. HAYASHI: Right.

2 COMMISSIONER GEORGE: But I know, because of  
3 my professional interest in the subject that the  
4 problem of nondiscrimination and religious freedom is  
5 vexed one, in part because the Supreme Court seems to  
6 be so unclear. Some people, and I'm among them, claim  
7 that it's probably the most incoherent area of the  
8 Court's general jurisprudence, the religion area.

9 But obviously, it's a very important issue if  
10 the states are going to be funneling money to such  
11 organizations.

12 Given the problem that the states might very  
13 well have in figuring out what they are and aren't  
14 entitled to do, what they're required to do, what they  
15 mustn't do in this area, is your office in any position  
16 to give any guidance to states?

17 I know -- the only really analogous situation  
18 I know is in the public schools where very often school  
19 principals just don't know what they're supposed to not  
20 do and what they're required to do. Often, things that  
21 they're entitled to do they think they're not entitled  
22 to do and sometimes things that they're actually  
23 required to do they think they're required not to do.  
24 And I suspect that we'll get something of the same, at  
25 least on some areas with welfare reform.

1           MR. HAYASHI: Commissioner, I think you raise  
2 a very important question and I'm not prepared to say  
3 that we would issue guidance one way or the other, but  
4 I do think that it is an issue that we need to address  
5 along with our colleagues from the Justice Department.

6           Now, I understand that some issues have been  
7 raised in discussions about religious institutions, et  
8 cetera. I do not know if the specific questions you're  
9 asking have been addressed. I'd be more than happy to  
10 look into that and get back to you about that.

11           COMMISSIONER GEORGE: Let me just say in the  
12 public schools area there is some documentation that  
13 has been put out I think by the Justice Department with  
14 the cooperation of a number of groups representing very  
15 diverse viewpoints, which I think is starting to be  
16 helpful to the public schools. And I wonder if  
17 something like that might not be useful here, too.

18           MR. HAYASHI: I would say that if there has  
19 been guidance that we can build upon and individuals or  
20 this Commission feels it would be useful, I think we  
21 would definitely consider that.

22           COMMISSIONER GEORGE: Thank you.

23           CHAIRPERSON BERRY: Commissioner Redenbaugh?

24           COMMISSIONER REDENBAUGH: Do you have any  
25 knowledge or could provide a comment on the provision

1 of the law with respect to payments to disabled  
2 children? I think it's far enough away from what  
3 you're doing that it's not --

4 MR. HAYASHI: Right. That's really addressed  
5 by others in the Department.

6 CHAIRPERSON BERRY: Would you address it if  
7 it became a discrimination issue?

8 MR. HAYASHI: Yes. We would definitely take  
9 that up.

10 COMMISSIONER REDENBAUGH: I'm thinking of an  
11 ADA discrimination.

12 MR. HAYASHI: Right.

13 COMMISSIONER REDENBAUGH: So do you have any  
14 comment on that?

15 MR. HAYASHI: Well, I don't have any comment  
16 on it, only because the discussions about the disabled  
17 children really have been more with other parts of our  
18 Department and with the Social Security Administration.  
19 I have not been privy to those conversations.

20 Again, I would be more than happy to find out  
21 what the status of those conversations are and to have  
22 somebody from the Department get in touch with you,  
23 Commissioner Redenbaugh.

24 COMMISSIONER REDENBAUGH: If you would, that  
25 would -- I would appreciate that.

1           Does the Social Security Administration also  
2 have their own civil rights department? I'm just  
3 ignorant about how that works.

4           MR. HAYASHI: I believe they have a division  
5 but I cannot tell you exactly what the division does,  
6 whether or not they look solely at EEO complaints, for  
7 example, which may come up at the Social Security  
8 Administration or whether their responsibilities are  
9 also external. I couldn't tell you.

10           COMMISSIONER REDENBAUGH: Uh-huh. This would  
11 be an external. If you can point someone so me, that's  
12 fine. Thanks very much.

13           CHAIRPERSON BERRY: Mr. Hayashi, isn't it the  
14 case that your office is responsible for civil rights  
15 enforcement for all the programs and activities in HHS?

16           MR. HAYASHI: Yes.

17           CHAIRPERSON BERRY: Isn't Social Security --  
18 so what about the Social Security Administration? Did  
19 I miss it? Did they go somewhere else?

20           MR. HAYASHI: Yes. They have been an  
21 independent agency now for a couple of years.

22           CHAIRPERSON BERRY: Oh, that's right. So,  
23 that means that we have to get their -- I missed that  
24 somehow.

25           MR. HAYASHI: Right.



1 CHAIRPERSON BERRY: That means we have to  
2 get --

3 MR. HAYASHI: We remain collegial, however.

4 CHAIRPERSON BERRY: Yes. We'll have to get  
5 somebody from the Social Security Administration to  
6 tell us about SSI.

7 MR. HAYASHI: Right.

8 CHAIRPERSON BERRY: All right. Well, then,  
9 that explains why you don't know.

10 (Laughter.)

11 MR. HAYASHI: Or can't say.

12 CHAIRPERSON BERRY: The last question I have  
13 is about -- I read a newspaper article that somebody  
14 called the private businesses that are getting  
15 contracts to do work under TANF and the other programs,  
16 "new style poverty pimps." That's not my phrase. It  
17 was in the paper. And they made some argument about  
18 how people were going to make money off welfare and so  
19 on.

20 Are there many opportunities in this statute  
21 for the states to farm out the work that they're  
22 supposed to do to private businesses?

23 MS. GREENBLATT: They can contract with  
24 private or religious groups.

25 CHAIRPERSON BERRY: For almost anything or

1 just --

2 COMMISSIONER GEORGE: I take it the question  
3 is not just private and non-profit?

4 MS. GREENBLATT: Right.

5 CHAIRPERSON BERRY: Private for profit  
6 businesses. So that is correct under the statute?

7 MS. GREENBLATT: Yes.

8 CHAIRPERSON BERRY: And how difficult would  
9 that make civil rights enforcement, Mr. Hayashi, if not  
10 only do you have this problem with devolution -- not a  
11 problem, but this issue of devolution, but you have  
12 this issue of then making further -- the states making  
13 contracts with private for profit businesses to  
14 actually implement the programs which makes it twice  
15 removed from your civil rights enforcement  
16 responsibilities.

17 MR. HAYASHI: That's right. Well, I think  
18 your description is accurate. It extends the level of  
19 investigation we would have to do to respond to any  
20 complaint that may arise out of how welfare is being  
21 implemented by that particular contractor. And I can't  
22 tell you specifically in matters of time how much time  
23 it would add, but obviously it would extend the  
24 resources of our office to conduct those types of  
25 investigations.

1           CHAIRPERSON BERRY: Do you think that the new  
2 welfare reform law considering the amounts of money  
3 involved and the futures of people involved and this  
4 provision about farming out to contractors means that  
5 you ought to do more compliance reviews in the future?

6           MR. HAYASHI: I think that's probably  
7 something we should consider. I think the issue of how  
8 we do compliance reviews is probably a major one  
9 because it could not be done the same way that we've  
10 been doing them in the past.

11           I have to say that compliance reviews have  
12 decreased somewhat over the past couple of years as  
13 I've shifted my resources to handling direct  
14 complaints. But again, I think the issue you raise is  
15 a good one and I will be sure to take that up with my  
16 staff over the next week to determine whether or not we  
17 should, again, look at compliance reviews as the way to  
18 get to the problem that you're addressing.

19           CHAIRPERSON BERRY: Because we don't want  
20 three years from now -- I don't think anybody in the  
21 public wants to have a situation develop where we  
22 implement all this and then we get -- we find out that  
23 there are all these complaints about abuses and that no  
24 one paid any attention to and the agencies are behind  
25 the curve on what happened and then it becomes some

1 kind of scandal as to what has happened.

2           So it seems to me that it's important for  
3 people to stay on top of these things as they are  
4 implemented, despite the fact that you may feel that  
5 your authority is limited or your resources are  
6 limited.

7           I'll leave it at that, unless somebody else  
8 has a comment or question, and thank both of you for  
9 being willing to be with us today.

10           MR. HAYASHI: Thank you.

11           CHAIRPERSON BERRY: Thank you.

12           Could the next presenters please come  
13 forward? Ms. Phillips and Mr. Anderson and Mr. Rector.

14           Thank you for being willing to come. We need  
15 all the help we can get with everything.

16           Our first presenter on this panel -- and I'll  
17 introduce each one right before they speak -- is  
18 Deborah A. Phillips, who is currently Director of the  
19 Board on Children, Youth and Families of the National  
20 Research Council's Commission on Social and Behavioral  
21 Science and the Institute of Medicine.

22           She is a developmental psychologist from Yale  
23 and -- that is, she was educated there, and she has had  
24 a wide variety of posts in CBO, on the Hill, been a  
25 Congressional Science Fellow and is well known in this

1 field of child development and child and family issues.  
2 And we appreciate your being with us today.

3 Please proceed.

4 MR. PHILLIPS: Thank you, Ms. Chairman. I  
5 want to thank you for inviting us to this very, very  
6 important hearing on issues at the intersection of  
7 welfare reform and immigration. And I especially want  
8 to applaud you for including a voice looking  
9 specifically at issues affecting children in  
10 particular. That's not always the case here. It's  
11 often not the case. So that's particularly gratifying  
12 to us.

13 The Board on Children, Youth and Families was  
14 created in 1993 to provide a national focal point for  
15 science based nonpartisan analysis of policy issues  
16 affecting children, youth and families. The National  
17 Academy of Sciences was created by President Lincoln,  
18 actually, so it's a very long-standing institution.

19 It's fundamental role is not a government  
20 agency, however. It's a nonprofit organization  
21 independent of the federal government, and our primary  
22 role institution wide is to bridge the worlds of  
23 research and science on the one hand, and public policy  
24 on the other hand. So we're often called on for  
25 technical and scientific advice about issues. We don't

1 issue policy statements, absent having done background  
2 science based research on the issue.

3           The Board on Children, Youth and Families is  
4 somewhat unique institutionally because it does operate  
5 under a joint custody arrangement between the Institute  
6 of Medicine, the medical and mental health, public  
7 health arm of the Academy and the Commission on  
8 Behavioral and Social Sciences and Education, which you  
9 can tell what is. So we approach issues in particular  
10 that lend themselves to interdisciplinary examination,  
11 which is certainly true of the issues you're thinking  
12 about here vis-a-vis kids, since both children's health  
13 and well being are fundamentally at stake here.

14           The Board also, as with most groups at the  
15 Academy, are particularly interested in taking on  
16 issues that are at their heart contentious and where  
17 political neutrality and research and scientific  
18 credibility can shed light where there often is a great  
19 deal of heat and not a lot of light.

20           We also, as a Board on children, like to  
21 focus, of course, on significant national debates that  
22 often are not being discussed from the vantage point of  
23 children but that bear critically on their lives. And  
24 that is true of immigration, for sure, fortunately, due  
25 to the work of a large number of people. A little less

1 true of welfare reform at this point.

2           With these objectives in mind, I really want  
3 to inform you today about an ongoing project that we  
4 have looking at immigrant children. My understanding  
5 of this hearing was that it really was focusing on the  
6 intersection of welfare reform and immigration,  
7 although I do want to let you know that each year the  
8 Board does sponsor, in collaboration with the National  
9 Institute of Child Health and Human Development, a  
10 research briefing on a specific issue related to  
11 children and welfare.

12           Our next meeting will be held this coming  
13 April and we'll focus on health issues at that locus  
14 and we'll certainly let you know about that meeting. We  
15 publish reports on each of these meetings and I'll make  
16 sure you get those reports, as well.

17           The Board is also keenly directly supportive  
18 of the growing number of efforts to look at the effects  
19 of welfare reform directly on children and on adults as  
20 parents, not just adults as workers. And, as I was  
21 saying, we do have a new project on immigrant children.  
22 So let me say a little bit about that.

23           First and second generation immigrant  
24 children are the fastest growing segment of the under  
25 15 age group in the United States. In 1993 alone,

1 276,000 children immigrated to the United States  
2 legally. The number of illegal immigrants who are  
3 under 18 is unknown, of course. But it is important to  
4 note that for some immigrant groups, including those  
5 from El Salvador, Honduras, Mexico, children  
6 constitute close to half of the newcomers who are  
7 coming across our borders legally, yet children remain  
8 largely invisible in contemporary debates about  
9 immigration and in debates about the intersection of  
10 immigration and welfare reform because, as you well  
11 know, they are riveted instead on issues of budgetary  
12 concerns and labor market competition.

13           It is, however, precisely those programs at  
14 the schools, health care institutions, income support  
15 programs, that serve children that are the focus of  
16 contention about the costs of immigration and the  
17 effects of welfare reform.

18           Further, if you think about these children as  
19 pre-citizens of sorts, then learning about who they  
20 are, what their circumstances are and how they are  
21 doing also provides a glance at the nation in preview,  
22 a nation that will inevitably look quite different in  
23 the near future than it does today, particularly with  
24 respect to our younger citizens and our families with  
25 children.



1           Finally, as you surely know, and more to the  
2 point for today, legal immigrants, including many  
3 children, have been targeted in the welfare reform  
4 legislation and will account for a disproportionate  
5 share of the savings that have been estimated to accrue  
6 from this legislation. Some estimate that as much as  
7 half of the savings will come from legal immigrants.  
8 That includes termination of food stamp benefits and  
9 SSI benefits, as well as a number of programs that are  
10 likely to be affected at the level of state discretion.

11           States without experience in the area of  
12 immigration policy are going to be making far-reaching  
13 decisions regarding TANF and Title 20 and non-emergency  
14 Medicaid that are likely to have profound effects one  
15 way or another on children.

16           I think it's also critical, just one fact to  
17 point out, and we will be thinking about its  
18 implications, of course, is the fact that over half of  
19 immigrant households where the head of the household is  
20 an immigrant, a legal resident immigrant, includes  
21 citizen children because they are children who were  
22 born in the United States, and therefore, automatically  
23 receive citizenship status. And there's a big question  
24 about how these citizen children will be affected by  
25 denials of benefits to their family members.

1           That's an issue I'd like this group to think  
2 about carefully.

3           To direct attention to the well being of  
4 immigrant children, not just in the context of welfare  
5 reform, though, the Board has constituted a committee  
6 to conduct a 24-month study looking very generally at  
7 who these children are, how is their well being, what  
8 health service are they getting. The focus of our  
9 investigation is on health and mental health, not as  
10 much on education, except insofar as it is an important  
11 outcome, of course, of children's health and mental  
12 health status.

13           The committee is going to synthesize and draw  
14 implications from research and policy from what is  
15 known about risk and protective factors associated with  
16 different health and developmental trajectories of  
17 these children and about what we know now about  
18 effective delivery of health and mental health services  
19 to these populations through health care institutions,  
20 through the schools and through community based  
21 settings.

22           We'll look at the full developmental cycle,  
23 starting with prenatal care, continuing on through the  
24 adolescent years, so we'll be looking at, needless to  
25 say, a wide range of health and mental health issues.

1           It is funded by the Department of Health and  
2 Human Services; specifically, the Assistant Secretary  
3 for Planning and Evaluation, which is approaching this  
4 study as a baseline of sorts to look at the status of  
5 these children pre-implementation of welfare reform.

6           I don't think of it as a welfare reform  
7 analysis, per se, but it will paint a portrait of these  
8 children as of today. And if we did it again five  
9 years from now, it might make for an interesting  
10 comparison of some of the larger effects of welfare  
11 reform on this population.

12           It is also funded by the Rockefeller  
13 Foundation, by the W. T. Grant Foundation and Carnegie,  
14 so it has a broad base of support.

15           Among the issues that we're likely to address  
16 is: what is known about the health status of immigrant  
17 children from differing ethnic and national origins and  
18 about patterns of improving or deteriorating health and  
19 adjustment across generations and by duration of U.S.  
20 residence; what is known about rates and consequences  
21 of health promoting and health compromising behavior  
22 among various immigrant populations, with a special  
23 focus on pregnant women and adolescence; what factors  
24 affect the utilization and provision of appropriate and  
25 effective health care services to immigrant families

1 and their children. And there we will look at the  
2 provisions of the welfare reform legislation and their  
3 implications for this population. Are some delivery  
4 systems more effective than others as sources of  
5 appropriate health and mental health services for these  
6 members of our society and to what extent and through  
7 what mechanisms, to the extent that we can answer that,  
8 does variation in health status affect these children's  
9 educational attainments and successful entry into the  
10 labor force as adult citizens.

11 Academy committees are deliberately designed  
12 to bring a very balanced interdisciplinary group of  
13 experts together to look through the literature and  
14 come to a consensus about what the literature says and  
15 what it implies. In this case, we have the following  
16 kinds of expertise represented: public health,  
17 epidemiology, developmental psychology, education,  
18 sociology, child psychiatry, pediatric medicine,  
19 nursing, immigration law, social work, economics,  
20 history and public policy and program evaluation. It's  
21 a fairly large group of people but we felt it warranted  
22 that diversity of vantage points given the complexity  
23 of the issues.

24 The committee met for the first time in July.  
25 It met again earlier this week and it will meet three

1 more times to complete its analytic work and develop  
2 its recommendations. The full report of the committee  
3 will be made available in March of 1998. It's a slow  
4 process but I think it warrants that kind of careful  
5 analysis.

6 I should also mention that as part of this  
7 work, it's somewhat unusual for the Academy to do this,  
8 but we will be looking at about 12 national and multi-  
9 state data sets doing secondary data analytic work,  
10 pulling out statistics on immigrant children. As part  
11 of that work, we will also be looking at a couple of  
12 data sets which tell us about receipt of benefits by  
13 these families and children. And that work will be  
14 published sooner than the final report. So I, again,  
15 am happy to keep you informed about that.

16 Thank you very much.

17 CHAIRPERSON BERRY: Thank you very much, Ms.  
18 Phillips.

19 The next presenter is Mr. Stuart Anderson,  
20 who is Director of Trade and Immigration Studies of the  
21 Cato Institute. His work on trade, immigration and  
22 other issues has been widely published. He was editor-  
23 in-chief of Bloc Magazine, a business journal on Russia  
24 and Eastern Europe before his present post and he has  
25 appeared on all the normal TV shows and radio and so on

1 that folks like this appear on all the time.

2 Welcome, and thank you very much for being  
3 willing to join us.

4 MR. ANDERSON: Thank you very much for the  
5 opportunity.

6 I'm going to come at this from a little  
7 different perspective maybe than others. I'm going to  
8 be focusing particularly on immigration policy. And  
9 the three basic points that I'm going to be making here  
10 is that immigrant welfare use is not that large when  
11 you look at the statistics. The welfare reform bill,  
12 though, however, was not as radical as people think if  
13 one looked at what the current policy was prior to the  
14 bill. And the third, that inevitably immigration and  
15 welfare, though, intermixed, was an unsustainable  
16 policy for this country. And I'm saying that as  
17 someone who believes that legal immigration is a very  
18 good thing for the country and that the current levels  
19 are not a problem and that the complaints about  
20 immigration are often very exaggerated. So, let me go  
21 to the first point.

22 I had passed out -- this is something from  
23 Michael Tanner, who's a welfare expert at the Cato  
24 Institute, from his book. It's a chart. And you can  
25 just see by the numbers that for the most part

1 immigrant welfare use is not really a problem in terms  
2 of the proportion, compared to the native born.

3           You can see that -- at the top of the chart,  
4 you can say of 15 and younger native born welfare use  
5 about 4.2 percent; immigrants about 4.7 percent. And  
6 this is one of the broader points that a lot of the  
7 welfare use is concentrated among refugees. Age 15 to  
8 64, you're looking at native born 3.7 percent;  
9 immigrants 3.3 percent; and then refugees 13.4. And  
10 over 65, the numbers increase. Native born,  
11 approximately 7 percent; immigrants, 13 percent; and  
12 refugees, almost 50 percent.

13           Then the big issue on over 65 is that  
14 immigrants and refugees especially getting SSI instead  
15 of Social Security. I mean, Americans don't consider  
16 Social Security benefits welfare payments. I won't  
17 touch that issue. But SSI is included in welfare. And  
18 so you see where the concentration is. It is in  
19 refugees and it is in the elderly.

20           So overall, the welfare use is not amount the  
21 sort of typical legal immigrant who comes in through  
22 the family immigration system. It has been basically  
23 overstated.

24           However, the other thing to think about and  
25 the second point is that the welfare reform bill was

1 not as radical as people think. And the reason I say  
2 that is that prior to the bill, you had -- we've always  
3 had a public charge aspect of immigration policy saying  
4 that immigrants are not supposed to be a public charge  
5 if they're going to come into the country. And we did  
6 have deemed income for AFDC and food stamps for the  
7 first three years and SSI for the first five years.  
8 That basically acted almost as a bar with the way  
9 deeming of the sponsor's income was.

10 So, I view the policy that was enacted in the  
11 welfare reform bill as basically an extension of what  
12 was already in effect. I don't consider it a  
13 completely new idea that immigrants would be treated  
14 differently in the public benefits area. I consider it  
15 an extension, obviously a very large extension, but  
16 still view it as an extension.

17 This brings us to the third point. That even  
18 if the welfare reform bill did not contain these  
19 provisions this year, the immigration bill had almost  
20 the same provisions and in some ways harsher provisions  
21 that would have gotten put into effect and would have  
22 passed. Even if that didn't happen, next year or the  
23 year after, eight years or 10 years from now, you would  
24 have seen some sort of policy like this in the United  
25 States because it just is not sustainable to have



1 moderately large levels of immigration while people  
2 also feel that immigrants are able to come in here and  
3 partake of welfare benefits.

4 I mean, if you've ever been on a radio talk  
5 show, believe me, it is the one thing that people  
6 always say. Immigrants come in here; they get on  
7 welfare. The New York Times poll back in the '80s  
8 showed wildly disproportionate views of Americans,  
9 people thinking that about half of immigrants are on  
10 welfare. And clearly, you can see from the statistics,  
11 that's not the case.

12 But the point is, I think you saw a lot of  
13 very pro-legal immigration members of Congress --  
14 people like Jack Kemp and Wayne Bennett, who are  
15 respected in both parties, basically saying that the  
16 sustainable policy for this country was or is, yes, to  
17 legal immigration, but essentially, no, to welfare.  
18 And I think that's something to keep in mind even when  
19 we look at these issues.

20 And I think personally -- I think the issue  
21 is that we're better off having more immigrants and  
22 less welfare than the other way around. And I think  
23 that's something we have to think about. That if you  
24 did have a significant -- if welfare policy had stayed  
25 the way it was, I think it would have just continued to

1 add fuel to the fire to cut back on legal immigration.

2 And I think actually -- and the people  
3 pushing the welfare cuts for immigrants, a lot of them  
4 were opponents of immigration. And whether they  
5 realized it or not, they actually strengthened the case  
6 for immigration quite significantly. I'm sure they  
7 don't like hearing me say that, but that's basically  
8 the case.

9 Also, the provision saying that immigrant  
10 sponsors have to have a legally binding Court enforced  
11 affidavit of support is another reform that strengthens  
12 the case for legal immigration. If people know that  
13 someone's coming in here, they aren't going to be able  
14 to go on welfare, that their sponsor is going to be  
15 financially responsible for them, people say, oh,  
16 that's different. As long as people aren't coming in  
17 here and partaking of public services, such as what  
18 we've defined as welfare.

19 So, the final point, final three issues I  
20 wanted to raise were: one, on the verification issue.  
21 I think it's an important issue because one of the  
22 things that's been discussed on the illegal immigration  
23 front and there was a big battle in Congress this year  
24 on this computer system that would be used to track --  
25 actually, every time someone would go for a job, you

1 would, as an American citizen or not, you would have to  
2 say my name is Stuart Anderson; here's my Social  
3 Security number; check it in the computer.

4           Employer sanctions -- and this is related to  
5 this. Employer sanctions is another area that you  
6 might want to revisit because it's connected to all  
7 this, is that employer sanctions already has shown -- a  
8 GAO study has shown widespread discrimination,  
9 Hispanics and others. And any sort of computer system  
10 that you're going to have, the mistakes are going to be  
11 disproportionate among people with foreign names. Just  
12 the efforts that are going to be made -- it's not going  
13 to work, first of all, is the main problem. But I  
14 think the discrimination aspects of employer sanctions  
15 relate very closely to the verification questions that  
16 you were all asking about how you're going to check  
17 verification for welfare reform.

18           The final point is on labor market impacts  
19 and immigration. There's sort of a new -- someone had  
20 told me when I said that, well, if you take welfare off  
21 the table, that's going to strengthen the case for  
22 immigration. They said, oh, they'll come up with new  
23 arguments. Don't worry. And one of the new arguments  
24 was, oh, well, immigrants are actually going to make  
25 welfare reform harder to implement because they're

1 going to come in and take jobs. And that's sort of a  
2 new argument I've seen, so they're either all on  
3 welfare or they're all working. I don't know. But  
4 that argument basically is not a valid argument.

5 I mean, when you look at -- we have a labor  
6 force of 127 million people. People have talked about  
7 eliminating the brothers and sisters category, for  
8 example. You're talking about 60,000 people coming in.  
9 Probably about a fifth of them are under 18 and 127  
10 million person labor force, this 40,000 (sic) people,  
11 maybe if they all applied for the same job in the same  
12 factor you would see a labor market impact, but you  
13 would not see it when you're talking about -- you know,  
14 in a country the size that we have.

15 And certainly the argument was that, besides,  
16 immigrants create as many jobs as they would fill  
17 because immigrants spend money in the economy, just the  
18 way a high school graduate doesn't cause unemployment  
19 by entering the labor force because they spend money  
20 and that helps trickle through the economy and create  
21 other jobs. Also, there's entrepreneurship.

22 So, that's why otherwise you would see  
23 countries with larger populations which literally have  
24 more unemployment. And that's obviously something you  
25 don't see.

1           So, in conclusion, the main point is that I  
2 just don't see that, regardless of any concerns that  
3 anyone would have here, that a sustainable policy in  
4 this country would be to have welfare, large-scale  
5 welfare eligibility and large-scale immigration. And  
6 so my preference is, and I think the correct policy  
7 choice, is more immigrants but less welfare rather than  
8 the other way around.

9           CHAIRPERSON BERRY: Interesting. Thank you  
10 very much, Mr. Anderson.

11           Now we have Mr. Robert Rector, who is Senior  
12 Welfare and Family Issues Policy Analyst at the  
13 Heritage Foundation. Mr. Rector is responsible for the  
14 entire welfare reform legislation.

15           I'm only kidding.

16           He is in some part responsible for the  
17 legislation and he recently authored American's Failed  
18 \$5.4 Trillion War on Poverty. He's been in all the  
19 media, television, radio, testifying before Congress  
20 and all the things that we expect people in this field  
21 to do.

22           And we want to welcome you and we very much  
23 appreciate your coming.

24           Thank you.

25           MR. RECTOR: Well, thank you for giving me

1 this opportunity to testify.

2 We are now at a point where Congress has  
3 ended welfare. I've been in this field for about 15  
4 years. I've lived through three ends of welfare and --

5 VICE CHAIRPERSON REYNOSO: Mary, this is  
6 Cruz. I can't hear the testimony.

7 CHAIRPERSON BERRY: Okay. Do you have that  
8 little microphone right in front of you? That little  
9 flat one?

10 MR. RECTOR: Ah, this mike. Okay.

11 CHAIRPERSON BERRY: Try that.

12 MR. RECTOR: Is this better?

13 VICE CHAIRPERSON REYNOSO: Yes. Thank you.

14 MR. RECTOR: Okay. Sorry about that.

15 I've been in the field of welfare for about  
16 15 years. I've already lived through three ends of  
17 welfare. I anticipate living through six or seven more  
18 during the rest of my career. However, I do think that  
19 this reform, in contrast to those in the past, does at  
20 least have the seeds of realistic change within it.

21 I would say that basically we have reformed  
22 the welfare system based on Congress' assessment that  
23 the current system promotes dependency and illegitimacy  
24 and that dependency and illegitimacy are harmful to  
25 children, they're harmful to adult recipients, they're

1 harmful and costly to the taxpayer, and they're harmful  
2 to society. And that we need to begin to build a new  
3 welfare system that promotes self-sufficiency, self-  
4 reliance and above all, intact marriage.

5 In 1992, Bill Clinton, then-Governor of  
6 Arkansas, ran for President on a promise that he would  
7 end welfare as we know it. In the last four years  
8 since Governor Clinton became President, the United  
9 States has spent over \$1 trillion on means tested  
10 assistance to low-income and poor Americans. That  
11 includes cash, food, housing, medical care, social  
12 services to the poor.

13 Welfare spending has reached -- has increased  
14 to record levels and, has increased at nearly record  
15 rates in almost all categories. In 1992 when President  
16 Clinton took office, total means tested welfare  
17 spending in the United States amounted to \$305 billion  
18 in that year. In 1996, it had risen to \$430 billion.

19 Now, I believe that the reform bill that we  
20 just passed essentially has about a half a dozen key  
21 points. The first point is that it eliminates, at  
22 least within the AFDC system, the irrational, financial  
23 incentives that previously had existed for the states.

24 What do I mean by that? I mean that under an  
25 entitlement funding system, any state which increased

1 welfare, its welfare caseloads, increased welfare  
2 dependence, got an increase in money. On the other  
3 hand, those states which were effective in reducing  
4 dependence got an automatic debit in money.

5           As Governor Thompson of Wisconsin has  
6 repeatedly pointed out, that since he took office in  
7 1987, he has cut his caseload by nearly 50 percent.  
8 What was the federal response to that? They cut his  
9 AFDC grant by nearly 50 percent.

10           In contrast, a state like New York during the  
11 same period increased its caseload by almost 40  
12 percent, and under the old system, got a corresponding  
13 increase in federal funding.

14           What the new system does is essentially gives  
15 each state a flat amount, increases it by a few  
16 percentage points each year, and says if you are  
17 effective in reducing dependence, we're not going to  
18 take your money away. We're going to let you keep that  
19 surplus and use it for additional services for the  
20 poor. On the other hand, if you're ineffective in  
21 controlling dependence, if your caseload continues to  
22 skyrocket, then you at the state level must be  
23 responsible for those additional costs.

24           The second thing that the bill does is that  
25 it does not cut welfare spending but it slows down the



1 automatic rate of growth in welfare spending. Welfare  
2 spending will no longer grow without limit. But if you  
3 look at the seven programs which were affected by the  
4 legislation which President Clinton signed, the average  
5 annual future rate of growth will be 3.5 percent per  
6 annual. That is, above the expected rate of inflation.

7           The third and perhaps most important thing  
8 that this legislation does is for the first time in  
9 American history it establishes serious work  
10 requirements for welfare recipients. In particular, it  
11 requires states to either reduce caseload, which is a  
12 major effect of a serious work requirement, or to  
13 establish what is called pay after performance  
14 community service.

15           Under a pay after performance community  
16 service system, the welfare recipient, when they go  
17 into that, does not get the welfare check until they  
18 have performed the community service satisfactorily.  
19 And if they fail to perform the required number of  
20 hours of work, the check is reduced pro rata.

21           I have provided to you a chart that I hope  
22 you have, showing the potential effect of this policy.  
23 The policies which were put into the law were largely  
24 modeled after the policies which have gone into effect  
25 in the state of Wisconsin in the last eight years. In

1 the last eight years in Wisconsin, as I said, Tommie  
2 Thompson has reduced his welfare caseload by 50 percent  
3 at this time. During this same period, across the  
4 nation, the average AFDC caseload in almost every other  
5 state was going up by 25 percent.

6 So, relative to where his caseload would have  
7 been, Governor Thompson has already cut his caseload by  
8 nearly two-thirds. As we speak today, the caseload in  
9 the city of Milwaukee is declining due to this type of  
10 work requirement, serious work requirement, by 2  
11 percentage points per month. Two percentage points per  
12 month. Most of the work requirements which are in the  
13 federal law, although they allow a great deal of  
14 latitude at the state level, were in fact modeled with  
15 the Wisconsin system in mind.

16 We know that this system works. The similar  
17 system where it has been tried in other states is also  
18 extremely effective in moving people off of welfare or,  
19 even more important, of taking those individuals who  
20 don't need to be on welfare in the first place and  
21 dissuading them from ever entering the system.

22 Welfare dependence is not good for the  
23 recipient. It's not good for children. It's not good  
24 for the taxpayer. And I do believe that this Act does  
25 provide the potential for the first time to break a 25-

1 year pattern in the growth of dependence.

2           The fourth element that this bill provides is  
3 it provides very significant -- for the first time it  
4 states as legislation that the growth in out of wedlock  
5 births in the United States is harmful to our society.  
6 It requires each state to set a goal for the future  
7 number of out of wedlock births. It provides  
8 additional money to any state which can reduce the out  
9 of wedlock births without increasing abortions and it  
10 provides a new funding for an abstinence education  
11 program to be operated in each state.

12           A fifth element of this bill is to restrict  
13 funding through -- particularly through the Medicaid  
14 and SSI system to non-citizens. And we simply say on  
15 this that the elderly non-citizens on SSI were the  
16 fastest growing welfare population in the United  
17 States. This population had grown by several hundred  
18 percentage points within the last four or five years.  
19 and if you simply took the linear projection, assuming  
20 that that growth would continue in the future, it was  
21 evident that non-citizens on SSI would cost the  
22 American taxpayer over \$324 billion in the next 10  
23 years. This was a system that was totally out of  
24 control. And what this legislation says is that we  
25 would like the individuals to come to the United States

1 to work and be self-sufficient. However, we do not  
2 wish the U.S. welfare system to become a retirement  
3 home for elderly from other countries.

4 The sixth element that I believe is very  
5 important in this bill is what is called the Ashcroft  
6 Provision concerning nondiscrimination of religious  
7 service providers. Under this provision, service  
8 providers contracting under the various programs  
9 affected by the Act, cannot be discriminated against  
10 because they are religious in nature. This is in  
11 accord with various Supreme Court precedents,  
12 particularly Bowen v. Kendrick, which was very much in  
13 the mind of staff when they were drafting this.

14 But even more, the Act goes further than  
15 that. And it says that when services are voucherized,  
16 when services are voucherized under the programs  
17 affected under this Act, then the voucherized funds can  
18 be used for activities which are religious in nature.  
19 This is in accord with the current child care and child  
20 development block grant program, which is in operation  
21 in all 50 states across the United States, and is in  
22 accord with Supreme Court precedence in the cases of  
23 Mueller v. Allen, Whitters v. Washington State, and  
24 Zofers v. Catalina.

25 We have always had a precedent that when

1 funds move from the public sector into the hands of the  
2 individual, then that individual may use those funds  
3 even though they are derived from the states, for  
4 activities which are religious in content without  
5 violating the Establishment Clause of the First  
6 Amendment.

7           In conclusion, let me say that I think when  
8 the dust settles on this bill, we will find that its  
9 impact is far more modest than either end of the  
10 political spectrum would currently like to claim. It  
11 does not transform the system nearly as much as either  
12 the proponents or the opponents of the bill would  
13 indicate. However, I do think that it does constitute  
14 for the first time in about 25 years a really  
15 significant change in welfare and does give us an  
16 opportunity to begin the building of a new welfare  
17 system that is truly beneficial to the recipient, to  
18 the taxpayer and to society at large.

19           Thank you.

20           CHAIRPERSON BERRY: Thank you very much, Mr.  
21 Rector.

22           Do Commissioners have any questions for any  
23 members of the panel?

24           COMMISSIONER HORNER: I'm not sure. I'm  
25 reviewing my notes, Madam Chair.

1           CHAIRPERSON BERRY: I could ask some while  
2 you're doing that, if you want me to.

3           COMMISSIONER HORNER: Yes. Do that.

4           CHAIRPERSON BERRY: All right. I'd be happy  
5 to.

6           First of all, let me say to Ms. Phillips,  
7 with the previous panel I made a comment that in three  
8 years from now we may discover that here are some  
9 problems. After listening to your testimony, I think  
10 that we're talking more like 60 years because isn't  
11 this going to be one of the problems, one of the issues  
12 in terms of policy and how policy is determined and  
13 implemented that even if there are some issues related  
14 to children, the study you're talking about is going to  
15 take at least two years.     you said it might look  
16 at what happens under the     at law but it won't talk  
17 about impacts. Which means that if there is then yet  
18 another study, that will take another two to five  
19 years.

20           So in other words, no matter what happens and  
21 that ASPC is funding these studies as part of its  
22 evaluation process which is included in this bill and  
23 its normal evaluation process, this means that we won't  
24 really know from scientific research on it and a review  
25 of the literature what's going on until at least 10

1 years. And the kids now of that generation will be  
2 either -- benefitted, not benefitted or whatever. And  
3 we won't really know and be able to make any new policy  
4 judgments until long after the time has passed.

5 Is that correct?

6 MS. PHILLIPS: That's not correct. I mean,  
7 our study -- you're right. It's a two-year long study.  
8 It's not, as I said, really designed to look at the  
9 effects of welfare reform on immigrant children.  
10 That's a very complicated question to answer.

11 But there is a lot of ongoing research that  
12 is attempting to answer that question. For example,  
13 the Administration on Children and Families in the  
14 Department of Health and Human Services has given  
15 special grants to 12 states that have expressed an  
16 interest in beefing up their evaluations of welfare  
17 reform to include direct assessments of child outcomes.  
18 And again, it's going to take time. It does take time  
19 to gather good data that's credible, that you're going  
20 to want to look at anyway. But at least there's a  
21 concerted effort to set that motion in process as an  
22 ongoing part of what we look at in not just caseload  
23 reductions, but looking at what do we look at when we  
24 assess the effects of welfare reform.

25 There are also a series of smaller state

1 focused studies that are looking at children. I'd be  
2 happy to provide you with information along those  
3 lines. Some very high quality evaluation studies going  
4 on, including one in Wisconsin actually.

5 And thirdly, there is a large study being  
6 conducted by the Urban Institute that's looking very  
7 comprehensively at the effects of devolution. And it  
8 also is including a child component to that study. So,  
9 we are really not the kid on the block on this project.

10 CHAIRPERSON BERRY: Cruz, you're making too  
11 much noise.

12 VICE CHAIRPERSON REYNOSO: Sorry.

13 MS. PHILLIPS: But all that is to say people,  
14 ourselves included, are very eager to get some early  
15 detection systems in place to look at the effects of  
16 this on kids. But equally important, to set in motion  
17 some long-term processes for generating credible,  
18 highly credible valid data to help us understand how  
19 this will affect children.

20 CHAIRPERSON BERRY: Well, I noted in the  
21 press that even a proponent of the legislation  
22 indicated that unfortunately some children may be hurt  
23 in the short-run, but in the long-run, it was better --

24 MS. PHILLIPS: I think the question is going  
25 to be who are going to be the winners and who are going



1 to be the losers. And to think of the effects of  
2 welfare reform in any global summary sense, I think, is  
3 a misguided way to think about this legislation.

4 It may have some benefits. It may have some  
5 costs for different people at different stages of  
6 development in different family configurations with  
7 different immigration status. And that's more the  
8 portrait that we have to begin to pull into focus.

9 CHAIRPERSON BERRY: And you raised a question  
10 about citizen children who are born in the United  
11 States and whether, if their families were denied  
12 benefits, would they be denied. What about the  
13 argument that they ought to be denied benefits. That  
14 if you have instances where people are illegals and  
15 they have children in the United States, why should the  
16 taxpayers pay.

17 I'm asking a question. For somebody to come  
18 here to have a --

19 MS. PHILLIPS: This isn't referring to  
20 illegals. It's legal citizens that are being denied.

21 CHAIRPERSON BERRY: Well, what about even  
22 legal citizens, if there's a policy determination  
23 consistent with what Mr. Anderson said about denying  
24 services to people as an argument to reinforce -- to  
25 let immigrants come, if I understood him correctly.

1 MS. PHILLIPS: That's really a political  
2 decision that at this point -- you know, I'm not --  
3 speaking for the Academy, not in any position to make a  
4 statement about.

5 CHAIRPERSON BERRY: So you don't know whether  
6 that's a valid concern or not.

7 MS. PHILLIPS: I think you should -- these  
8 two over here are probably in a better position.

9 CHAIRPERSON BERRY: Ask them that question?

10 MS. PHILLIPS: It's really -- it's a  
11 political question. To the extent that we get data  
12 that can inform it, we will think about that.

13 CHAIRPERSON BERRY: Well, let me try to  
14 recharacterize it so it's not a political question.  
15 Suppose in your studies that you're doing, are you  
16 going to determine whether or not these children that  
17 you have cited or defined are in fact better off, worse  
18 off or how they're faring?

19 MS. PHILLIPS: We won't be able to do that in  
20 the study that we're doing. We don't have those data.

21 CHAIRPERSON BERRY: Will any of the studies  
22 you know about do that?

23 MS. PHILLIPS: There is some work being done  
24 at UCLA by David Hays-Botista, that is looking  
25 specifically at these families with legal resident

1 parents and U.S. born children to see what is going on  
2 with them. If we think that that research is useful,  
3 we will incorporate it into our report, but you can get  
4 it faster by going to him directly.

5 CHAIRPERSON BERRY: Okay. Let me see if  
6 Commissioner Horner or anyone else is ready so that I  
7 don't hog the panel.

8 Are you ready now?

9 COMMISSIONER HORNER: I have a few questions.  
10 Mr. Anderson, you said that there are 127  
11 million people in the labor force and I forget what you  
12 said the numbers of working immigrants are, but they  
13 were small, relative to the magnitude of that labor  
14 force. Am I correct?

15 MR. ANDERSON: Well, what I was talking about  
16 is there's an argument made that somehow if you lowered  
17 the number of immigrants entering the U.S. each year,  
18 that that would raise wages and then that would somehow  
19 -- people who are on welfare now who need to find a job  
20 because of welfare reform, would then be able to find a  
21 higher paying job and one would be -- you know, we'd  
22 all live happily ever after.

23 But that's not the way it could possibly work  
24 because when you look at, for example -- the example I  
25 gave was a brother and sister category which is the one

1 that seems to always be targeted by people who are  
2 opposed to immigration. There's about 65,000 people.  
3 There's a limit of 65,000 and that includes the small  
4 children.

5 COMMISSIONER HORNER: Is this the family  
6 reunification policy?

7 MR. ANDERSON: Yes. It's primarily family,  
8 right, as far a family unification. So you're looking  
9 at maybe 40,000 people who would be coming in of  
10 working age in that category. And my point was that in  
11 a labor force of 127 million, 40,000 -- I mean, the  
12 U.S. economy creates about 200,000 new jobs a month. So  
13 the idea that 40,000, that cutting off 40,000 people  
14 here or there is somehow going to have any impact  
15 whatsoever on the wage rates in this country makes  
16 absolutely no sense.

17 COMMISSIONER HORNER: Is it the case that  
18 you're not setting up a strawman here. This is -- the  
19 family reunification is the major buttress for the idea  
20 that immigration costs low wage jobs in the United  
21 States for citizens?

22 MR. ANDERSON: Yes. Basically. That's  
23 basically the argument that if you cut out -- now, the  
24 interesting thing is that two-thirds, and what people  
25 often don't point out is that two-thirds of family

1 immigration is spouses and minor children, represent  
2 the spouses and minor children of either a U.S. citizen  
3 or a lawful permanent resident.

4           Basically no one in the debate last year was  
5 talking about cutting them out. So that's why I don't  
6 feel like I'm setting up a strawman because who are you  
7 going to cut out then. You're going to be cutting out  
8 basically three other categories. You have two  
9 different adult children categories that come out to  
10 about 40,000 or so each and a brothers and sisters  
11 category of 60,000. So, those are the people who are  
12 targeted to be eliminated, and my point is that you  
13 couldn't possibly see any of the labor impacts that  
14 people are talking about by eliminating them.

15           In addition to what economists know, which is  
16 that when an immigrant comes into the labor force they  
17 will eventually fill a job, but they'll also create  
18 another job through their consumer spending or through  
19 entrepreneurship. And they point out that a dissimilar  
20 aspect to think of why, if your son or daughter  
21 graduates high school, why doesn't unemployment  
22 increase every June. You know, it doesn't, because of  
23 the labor market.

24           COMMISSIONER HORNER: I know the larger  
25 argument has been raging for at least two decades.

1 MR. ANDERSON: Right. Hundreds of years.

2 COMMISSIONER HORNER: But I guess one of the  
3 observations I would make and invite you to respond to  
4 is that immigration, although it may have positive  
5 national impacts on the economy -- I don't know, but  
6 let's posit that it does -- and let's posit that the  
7 numbers are not such as to dislocate the workforce  
8 seriously. Is it not still the case that immigrants  
9 are disproportionately concentrated in the same places  
10 where low income citizens are concentrated and that  
11 there might be localized job displacement.

12 MR. ANDERSON: There certainly can be  
13 localized displacement but it's not of the nature that  
14 it would somehow derail efforts of other people to go  
15 work.

16 COMMISSIONER HORNER: Because it's  
17 entrepreneurial?

18 MR. ANDERSON: Yes. Because you have  
19 entrepreneurs. I mean, one of the ways to look at it  
20 is if you look at major cities in America, you find  
21 almost no Mayors that go on record saying, oh, if we  
22 didn't have immigration, boy, the poor in our cities  
23 would be so much better off because they see that  
24 immigrants also come in and revitalize cities. And in  
25 some cities, you would have large declines in

1 population if immigrants weren't coming in and very few  
2 people want to be mayors of cities where people are --  
3 you know, where the overall numbers of people are  
4 declining.

5 COMMISSIONER HORNER: Thank you.

6 Mr. Rector, also known to me as Bob, hello.  
7 You said the Milwaukee caseload is declining by 2  
8 percent a month. Do we know to what extent that  
9 decline represents people moving to other places where  
10 welfare is available more easily or in larger amounts?

11 MR. RECTOR: What we do know is that  
12 Wisconsin always used to be a welfare magnet.

13 COMMISSIONER HORNER: From Chicago.

14 MR. RECTOR: From Chicago. And they were  
15 moving up really. And you go to places like Kenosha on  
16 the border -- I mean, they just had a steady flow. And  
17 what we know now is that, no, there are very few people  
18 coming to Wisconsin.

19 The other thing that we do know that's very  
20 interesting is that the case workers in Wisconsin tell  
21 us that when people come in from another state, those  
22 that still do, they don't believe it. They don't  
23 believe it. And they'll say to them --

24 COMMISSIONER HORNER: They don't believe  
25 what?

1           MR. RECTOR: What is actually going on in  
2 Wisconsin. They are coming from a different welfare  
3 culture and so when the Wisconsin case workers say to  
4 them -- come migrating still from another state, that  
5 you are really going to have to work for your benefits,  
6 and if you fail to do so, you're not getting a check.  
7 They'll go, yeah, sure. Because they've been told this  
8 for about 10-15 years. But in Wisconsin today, it's  
9 actually true.

10           I suspect that there is probably some out-  
11 migration now occurring but I suspect much more that  
12 what's actually happening is that what we're doing is  
13 drawing upon the capacity of these individuals to  
14 support themselves.

15           I spent several -- quite a bit of time in  
16 Wisconsin a few years ago watching these programs in  
17 operation and what they seem to be able to do is very  
18 quickly motivate people to call upon the resources that  
19 they actually have. I think you're probably seeing a  
20 lot of effects. You're seeing employment effects.  
21 You're also seeing one other good thing.

22           We all know in this field that large numbers  
23 of women on AFDC already have jobs that for peculiar  
24 reasons they're not reporting to the welfare office.  
25 Once you put a work requirement in place, you're



1 picking up all those people. They can no longer go to  
2 the community service site and hold the other job that  
3 they were holding off the books. We're picking up a  
4 lot of that.

5           You're picking up a lot of people that really  
6 did have other options but would take a free income if  
7 you were willing to offer one to them. This income is  
8 no longer free. They are now beginning to pick up all  
9 the other options they have; employment options,  
10 options maybe to move in with an in-law and share  
11 expenses, different things like that.

12           We don't have very much evidence that there  
13 is out-migration, but I wouldn't be surprised to see  
14 some if the other states don't begin to also implement  
15 reform.

16           COMMISSIONER HORNER: One of the great  
17 mysteries of social policy in this area is the question  
18 of -- assuming that all people who are able to work --  
19 work, and assuming that young people seeing this fact  
20 begin to prepare themselves to work rather than to  
21 prepare themselves not to work, that is, they get some  
22 additional education and perhaps defer childbearing.  
23 Assuming those positive outcomes, the big question  
24 people always have is how many people -- well, and let  
25 me add to that. Assuming that people who are drug or

1 alcohol addicted but capable of getting off the  
2 addiction do so, how many people are left who have IQ's  
3 too low to do any remunerable work who are seeming  
4 irredeemably addicted?

5           Is anyone tracking the end game of welfare as  
6 we know it, if indeed we are in that such a thing, to  
7 answer this question for us so that we know as a humane  
8 society what it is we have an obligation to deal with  
9 as dependents, rather than -- in other words, we all  
10 want to or many want to get rid of gratuitous  
11 dependence but take care of people who are unredeemably  
12 dependent. Are we trying to find that out as this  
13 process goes forward so we won't be left in five years  
14 saying, well, either welfare reform failed or everybody  
15 needed it after all or --

16           MR. RECTOR: Coincidentally, I was just  
17 talking about that exact topic with the Director of  
18 Work Programs in Wisconsin yesterday afternoon. And  
19 I'm very pleased to tell you that the system in  
20 Wisconsin just works much better than anyone, even an  
21 optimist about work program, such as myself, could ever  
22 have possibly imagined.

23           If you move outside of Milwaukee into the  
24 rural and suburban counties in Michigan, many of those  
25 counties --

1 COMMISSIONER HORNER: In Michigan?

2 MR. RECTOR: I'm sorry. In Wisconsin. --  
3 have cut their caseload by 80 percent, 80 percent.  
4 There are some counties that are now down to the point  
5 of needing to mothball their files because they have  
6 less than 20 people on their caseload. They have  
7 basically ended welfare dependence or will be ending  
8 it.

9 COMMISSIONER HORNER: But is anybody tracking  
10 this in a way that will allow us several years from now  
11 to speak with authority on the subject of the dependent  
12 residue that is legitimately dependent?

13 MR. RECTOR: What I'm saying is that the  
14 question was also as you brought the caseload down,  
15 where is that barrier. And at least in Wisconsin, and  
16 even in Milwaukee, it seems to be at a much lower  
17 level.

18 In other words, the problem with this is --  
19 the question was where is always the bottom of the  
20 barrel. Well, when you weren't doing anything, the  
21 bottom of the barrel was -- 70 percentage points down  
22 there, you're not even close to talking about it. In  
23 Wisconsin we are now beginning to talk. The caseload  
24 is down by over half and we're nowhere near any of this  
25 population.

1           Now, they do have some supported work systems  
2 in Milwaukee. For example, they assemble Montessori  
3 toys and things like that. But even those people seem  
4 to be making a much better effort at self-sufficiency  
5 than we would have imagined.

6           I don't think that -- the caseload is going  
7 to have to come down even farther for the next couple  
8 of years in Wisconsin before we begin to hit those.  
9 They are starting to look at them.

10           One place where this group shows up are what  
11 are called child only cases where the mother,  
12 basically, can no longer parent and so she's given the  
13 child over to a relative or something. Those  
14 constitute I believe about 20 percent of the remaining  
15 caseload in Milwaukee. Those are people that are very  
16 likely to have serious drug problems and so forth and  
17 so on.

18           But even in Milwaukee it was lower than one  
19 would have imagined. And the caseload is already  
20 coming down very rapidly and I think can continue to go  
21 down quite a bit more before you begin to hit --

22           COMMISSIONER HORNER: Wouldn't it be nice if  
23 it turned out to be like inflation. It's not as bad as  
24 we thought it was for years.

25           MR. RECTOR: I am continually favorably

1 surprised by what they have been able to do in  
2 Wisconsin and I would simply point out that in the  
3 overwhelming scientific or liberal literature in this  
4 field, even three or four years ago an organization  
5 like Manpower Demonstration Research Corporation would  
6 have told us that imposing a work requirement over say  
7 a five-year period, a quote, "saturation work  
8 requirement," could reduce the caseload, total  
9 caseload, by maybe 5 percent.

10 I emphasize in Milwaukee today, 2 percent per  
11 month, not 5 percent over five years. Two percent per  
12 month.

13 CHAIRPERSON BERRY: Commissioner Lee?

14 COMMISSIONER LEE: Ms. Phillips, would the  
15 new law narrowing the eligibility for disabled children  
16 to receive benefits, have you done any -- or are you  
17 planning to do any studies on how the health status  
18 would be impacted because of this and how many children  
19 will be impacted?

20 MS. PHILLIPS: SSI changed?

21 COMMISSIONER LEE: Yes.

22 MS. PHILLIPS: I am looking into the  
23 possibility. I think that's a very critical issue to  
24 look at. We're not currently doing that but it's on my  
25 list.

1                   COMMISSIONER LEE: And please announce the  
2 results.

3                   MS. PHILLIPS: There are people who are. You  
4 might look at the National Academy of Social Insurance  
5 has done a very nice piece of work on children and  
6 disability. There are a lot of very complicated issues  
7 around even the rationale around that program vis-a-vis  
8 kids; determining functional station for children. So  
9 there are very important issues to explore.

10                   But I will refer you to NASI.

11                   COMMISSIONER LEE: And one more question for  
12 Mr. Anderson.

13                   People and talk shows and all over the place  
14 who talk about immigrants being on public assistance  
15 have used the elderly as the reason why we need to curb  
16 public benefits for immigrants. And your statistics  
17 seem to justify why they are saying that immigrants are  
18 taking a lot of benefits away:

19                   Do you have any reasoning on why people aged  
20 65 and over supposedly, or according to this, are  
21 receiving more public benefits than the native borns?  
22 What are the causes?

23                   MR. ANDERSON: Well, I think the main cause  
24 is that it's just very practical in that someone comes  
25 in -- if they're coming in very late in life, they did

1 not work to be eligible for Social Security payments,  
2 but they do become, depending on the income level,  
3 become eligible for SSI. So literally, you have that  
4 very mechanistic formula that takes effect where  
5 someone is in the country, they're not getting Social  
6 Security payments. They do become eligible for the  
7 SSI. I mean, that's about the simplest answer you can  
8 give.

9           Now, I think I was alluding to somewhat  
10 tongue in cheek that Americans get Social Security  
11 payments well in excess of what they put in, hardly  
12 relatives of mine, as far as I know, don't consider  
13 that extra portion beyond sort of a reasonable return  
14 as any sort of welfare. And it would be sort of the  
15 very -- politician who would go on and argue that, that  
16 it is. But clearly the SSI gets counted as welfare.

17           And I think the main point that gets lost in  
18 some of this when you look at just the welfare portion  
19 is that overall immigrants pay more in taxes than they  
20 receive in services. I mean, Julian Simon has done  
21 work on that and the Urban Institute has done work on  
22 that.

23           So, I think clearly that's not the issue but  
24 the welfare issue itself gets people very emotional.  
25 And I think it's just very -- I've had people who I

1 would consider on the left on this issue and they  
2 basically have said -- some of them have said to me  
3 privately, like, you know, I really see your point.  
4 That you can't have public perception policy wise,  
5 politically, a policy of sustainable welfare and  
6 immigration being mixed.

7 I mean, Robert's point on the numbers going  
8 up -- and he was using a non-linear way. Right?

9 I mean, you were talking about if it stayed  
10 at the same pace, how high would it go up?

11 MR. RECTOR: It would be a projection.

12 MR. ANDERSON: Right. And that was starting  
13 from a very -- almost from a very low number.

14 MR. RECTOR: Just a simple projection.

15 MR. ANDERSON: Right. And whether that  
16 projection would have stayed the same or not, we can't  
17 tell. But the point is that the numbers zooming out  
18 there, even if they were half of what Robert is talking  
19 about, it just does not seem sustainable politically  
20 that you would have that.

21 And I think on Social Security, by the way,  
22 immigrants actually benefit quite a bit in the Social  
23 Security program.

24 COMMISSIONER LEE: So actually, the 13.1  
25 percent of immigrants over age 65 who are receiving



1 welfare, a good number of those immigrants have  
2 actually worked in this country?

3 MR. ANDERSON: They may have. But they're  
4 getting -- but the welfare is almost definitely going  
5 to be SSI. Also, as we point out with the refugees  
6 being 50 percent, a lot of people when they see their  
7 neighbor next door and they speak with an accent, they  
8 don't -- which category of the immigration system did  
9 you come in? Did you come in as a refugee or -- you  
10 know.

11 So people are counting them as immigrants  
12 altogether, even though someone came in for different  
13 reasons. And one of the things that we were talking  
14 about, the skill portion of the immigration system,  
15 refugees often skew the welfare numbers. They also end  
16 up skewing the skill portion.

17 And until we can find a way to get a higher  
18 educated class of dispossessed people, I think you're  
19 always going to see that when you put refugees in any  
20 statistics we have on immigration, you're always going  
21 to end up with sort of -- you know, you're ending up  
22 where some people who might make policy recommendations  
23 on the family immigration system that would actually  
24 get skewed because of the refugee numbers getting into  
25 the mix of the number of the data.

1 MR. RECTOR: Could I speak to this?

2 CHAIRPERSON BERRY: Yes.

3 MR. RECTOR: The very simple reason that  
4 large numbers of non-citizens end up on SSI is because  
5 they immigrate here specifically to get them. We had  
6 very extensive testimony with both the Ways and Means  
7 and Finance Committee showing that in Taiwan and South  
8 Korean and Southern China and in Hong Kong, there are  
9 actually publications in foreign language about how to  
10 come to the United States and get SSI.

11 And anyone who works in this field is really  
12 amazed to find out that non-citizens coming to the  
13 United States, elderly non-citizens, know vastly more  
14 about SSI than most Americans do. And they may not  
15 know a single word of English but they do know the  
16 letters SSI.

17 In California, over half of the elderly non-  
18 citizens in that state now receive SSI. It's very  
19 clear that large numbers of these individuals, most of  
20 whom are coming not from politically oppressive  
21 countries -- they're coming from the Philippines or  
22 coming from Mexico in large numbers -- know perfectly  
23 well that they are coming here in order to make a  
24 windfall off of the U.S. welfare system. And I don't  
25 fault them for this.

1           If I were an elderly person in a Third World  
2 country and I had an opportunity to come and receive  
3 the most comprehensive most generous free medical care  
4 for the rest of my life at the expense of the taxpayers  
5 of this nation I was going to, as well as \$6,000 or  
6 \$7,000 a year in cash benefits, it's a great deal. But  
7 it's also a deal that the American taxpayer cannot  
8 indefinitely afford.

9           I would say that basically any society which  
10 has a large and generous welfare system, which this  
11 society does and will continue to do for the rest of  
12 our lifetimes, has to be very, very careful about  
13 immigration policy with regard to two groups of  
14 individuals; elderly people and people with very low  
15 skills. Because those two groups are very likely to  
16 come into society and represent a very large net burden  
17 to the society that they're immigrating into. It's not  
18 necessarily their fault. But that is the natural  
19 consequence of that policy.

20           I would also categorically disagree with Mr.  
21 Anderson's statement that immigrants contribute more in  
22 taxes than they take back in terms of benefits. Under  
23 the way that that calculation was set up, everyone  
24 contributes more in taxes than they take back in  
25 benefits, which is a rather paradoxical situation. All

1 the groups do that. And it's because they're not  
2 counting most of the purposes to which tax dollars go.

3 In fact, immigrants do in fact receive  
4 significantly more welfare benefits. And these  
5 particular categories of immigrants are receiving  
6 vastly more benefits than they could ever possibly  
7 contribute in taxes. Not their fault. But as  
8 representatives of the citizens of this nation, this is  
9 a kind of hole in the bottom of the boat that can't go  
10 on forever.

11 COMMISSIONER LEE: I guess I was under the  
12 impression that elderly people come here legally  
13 through family reunification. So they just can't come  
14 and say I want to be a welfare recipient. And I'm sure  
15 we'll get more information from the next panel but I do  
16 want to ask one more question about the elderly because  
17 I am really quite puzzled about the stereotype that's  
18 being said out there about them coming in to accept  
19 welfare.

20 My understanding is the senior come here,  
21 many of them reluctantly, leaving their homeland purely  
22 for family reunification. And I am trying to get those  
23 books that Mr. Rector mentioned about teaching people  
24 to apply for SSI, but many of the service agencies from  
25 Hong Kong, Taiwan and China, the information that they

1 gave me was they were trying to prepare older people  
2 when they immigrate here so they can get adjusted to  
3 the new country. And none of them knew that they were  
4 providing any information about how to cheat the  
5 government or whatever. But we'll get more information  
6 from the next panel.

7 MR. RECTOR: I could provide you with the  
8 source of that information. It's Professor Norman  
9 Matlock at the University of California-Davis who's  
10 testified repeatedly before Congress about that. He  
11 can provide you with the documents.

12 The fact of the matter is that what's going  
13 on here is that when the sponsor brings the elderly  
14 non-citizens into the United States, there's an  
15 implicit promise through the deeming system that this  
16 individual is not going to become a burden on the  
17 taxpayer. And it's quite clear from those of us that  
18 have examined this that that implicit promise is being  
19 very deliberately violated and that there is an  
20 intention to put these individuals onto the welfare  
21 system from the moment they're brought in.

22 And that is, I think, exploitation of the  
23 American taxpayer and it's very regrettable. And it's  
24 something that simply should come to an end.

25 MR. ANDERSON: Well, I think I should say

1 that it has come to an end basically, Robert, because  
2 the policy has been changed. So we're actually talking  
3 about an old -- I mean, it's an academic debate.

4 On the issue of taxes, the data does show  
5 that immigrants pay more in taxes than receiving  
6 benefits because you can't just look at the welfare  
7 portion, and especially now. If they're not going to  
8 be eligible for welfare, it's hard to see how they're  
9 going to be not paying more.

10 CHAIRPERSON BERRY: I'm sure this will be a  
11 continuing policy debate.

12 Let me just say that I am most curious about  
13 the relationship between policy and academic research  
14 because very often there seems to be no relationship.  
15 And I'm wondering what the nation is going to do when  
16 we find out that many of the arguments that were made  
17 to do what we want to do, which is to reform welfare,  
18 but all the great benefits that were supposed to come  
19 from it, when we find out that some of the  
20 relationships that were explained to us did not exist  
21 in the first place. And therefore, we're going to find  
22 that out.

23 To cite just one example, I had a group of  
24 students go to check all the footnotes and all the data  
25 cited in the Congressional testimony on the welfare

1 reform in order to justify the bill. And in most  
2 cases, they found that the research that was cited did  
3 not say what the people who gave the testimony said it  
4 said.

5 My students were appalled. They're just  
6 naive. They were undergraduate seniors. They didn't  
7 know the policy process.

8 And many of the studies routinely had a  
9 caveat at the beginning or the end saying my  
10 conclusions are theoretical only and it should not be  
11 used for policy purposes. And no one of the people who  
12 gave the testimony told the Congress that that was  
13 listed in the study and that it should not have been  
14 taken, and they were given this information as a  
15 pronouncement of fact that was in fact, based on some  
16 scholarly research.

17 And in fact, the only scholar my students  
18 found who testified -- he was a scholar who testified,  
19 and he was very careful in his testimony in citing  
20 studies and saying what they said and so on. He was  
21 routinely ignored by the questioners and by everybody  
22 else when he finished. And he went away with his head  
23 down and couldn't figure out whether he was in the  
24 wrong place or not.

25 The only importance of this is that the

1 history of policy is that when the American people turn  
2 out to find out that things that they've been promised  
3 don't come to pass, you get even more distrust of the  
4 system. And I think there were many arguments for  
5 welfare reform, but some of these arguments about  
6 marriage and family and how everything is going to be  
7 fine and dandy if we could just rid of welfare, are not  
8 likely to come to pass, at least based on what these  
9 researchers say they didn't say.

10           And so, I will just leave it at that without  
11 getting into this argument. I have a lot to say about  
12 cities and dislocation and what happens to people in  
13 jobs, but that's much debated, too.

14           But since there are other panelists, we  
15 appreciate your coming and you came voluntarily and you  
16 were so helpful to us. Thank you very much for coming.

17           Could the other panelists come forward  
18 quickly because I know some of you have real time  
19 problems.

20           Thank you so much for coming to be with us.

21           While everybody is sitting down, let's get to  
22 it because I understand you and Ms. Aviv have problems.  
23 Let's get you here. And you need that little flat  
24 microphone in addition to the other one.

25           Mr. Weill is the General Counsel of the



1 Children's Defense Fund which is, of course, a public  
2 education and advocacy organization for children. It's  
3 President is Marian Wright Edelman. And he's been at  
4 CDF since 1982 and has been a great contributor there.

5 I want to apologize for the delay and could  
6 you please proceed.

7 MR. WEILL: Certainly. Thank you, Madam  
8 Chairman. We appreciate the opportunity to testify  
9 here this morning.

10 Before I talk about the issues that I came to  
11 talk about, I'd like to talk briefly for one minute  
12 about some things that were said on the prior panel.

13 First of all, I think some of the questions  
14 you had mentioned the Urban Institute as attempting to  
15 answer some of those over the next couple of years. I  
16 wanted to respond to a couple of points Mr. Rector  
17 made. I think if your students looked at the studies  
18 that Mr. Rector was citing, they'd have, at the risk of  
19 increasing their cynicism, they'd find that the data  
20 don't support some of the broad generalizations he was  
21 making.

22 But the other point I want to make is that  
23 the flip side of the abstractions and the numbers  
24 thrown around as Mr. Rector does, is human suffering.  
25 The child who as a result of this bill won't have

1 enough to eat; the immigrant senior in a nursing home  
2 who will lose Medicaid coverage and be faced with being  
3 thrown out of the nursing home; and all the other forms  
4 of suffering we're going to see from this bill.

5           We all believe in helping parents work,  
6 getting parents to work. We all believe in reducing  
7 out of wedlock births or, as Mr. Rector calls them,  
8 illegitimate births. But this bill is not going to get  
9 us there. The evidence is that people don't move from  
10 state to state for welfare.

11           It's certainly true that you can create and  
12 we're on the way to creating state systems of welfare  
13 that are sufficiently coercive in their work and other  
14 requirements that they will reduce the rolls  
15 substantially by 50 percent, 70 percent or more, moving  
16 some families into work and moving some families simply  
17 out of the system. And the question is how you balance  
18 what you want out of a system to support families, to  
19 feed children, and also get parents into work.

20           The new law will leave more parents in the  
21 workforce but will also increase child poverty. It  
22 will increase the number of children in foster care.  
23 It will increase the number of families that are  
24 homeless. It will increase the number of people that  
25 simply disappear from the system. And those

1 circumstances will all get worse during the next  
2 recession.

3           So I could go on, but the point is that  
4 simply saying that caseloads will go down 50 percent or  
5 more doesn't answer the question of what's happening to  
6 the people in the system, what's happening to the  
7 children, how we eliminate poverty in this country, how  
8 we get parents the skills they need for better paid  
9 jobs and into decent jobs, and how we solve these  
10 fundamental social problems this country has. And this  
11 bill doesn't do it.

12           Let me turn to the civil rights aspects of  
13 the bill. We agree emphatically with the Commission's  
14 September 26th letter to the President that says that  
15 implementation of the new law must include close  
16 protection, close attention to the protection of civil  
17 rights. And that's important on a couple of fronts.

18           One is looking at the civil rights laws that  
19 prohibit discrimination in federally assisted programs.  
20 As you know and as the Commission has pointed out,  
21 particularly in the context of Title VI, enforcement of  
22 these laws too often has been very lax. And  
23 particularly here in the case of welfare, which  
24 involves the poorest and often most voiceless  
25 Americans, aggressive enforcement is particularly

1 important.

2 We also need to ensure the enforcement of the  
3 handful, the full remaining protections that appear in  
4 the welfare law. The specific provisions, for example,  
5 that require fair and equitable treatment of recipients  
6 and objective criteria for determining eligibility.

7 Because the new welfare law itself may  
8 restrict the ability of both HHS and the individuals  
9 affected to enforce these provisions, it's more than  
10 usually essential that the civil rights agencies of  
11 HHS, Labor and the other agencies involved in this  
12 enforce the civil rights protections. And it's more  
13 important than usual that this Commission look at how  
14 that enforcement is going and what's happening in these  
15 programs.

16 I want to try and be very brief, but I want  
17 to recall that the origin of the federal role in  
18 programs for poor families was in part discriminatory  
19 action, and egregiously discriminatory action by states  
20 and localities. Before AFDC, most of the families that  
21 were deemed fit by the states to receive aid were  
22 white. North Carolina and Florida each had one black  
23 family receiving benefits in 1931. Houston, Texas had  
24 none, although blacks were 21 percent of the  
25 population. And white ethnic recipients, while they

1 were more likely than blacks to get benefits, got lower  
2 benefits often than Anglo-Saxons did.

3           In one-fourth of the agencies studied at one  
4 point, Mexican, Italian and Czechoslovakian families  
5 received smaller amounts than Anglo-Saxons.

6           Now, we all know that this country has  
7 changed a lot since the 1920's and 1930's and that  
8 indisputable. But we also know that this country has  
9 not changed enough. And as the members of this  
10 Commission know better than anyone, discrimination,  
11 including discrimination at all levels of government  
12 and discrimination in the private workforce remains a  
13 terrible scourge.

14           Discrimination on the basis of race, gender,  
15 national origin and disability and, I would point out,  
16 also age, will occur throughout the new welfare system  
17 unless it's stopped. Indeed, stereotypes and  
18 discrimination on the basis of race, national origin,  
19 age and disability are imbedded in the very changes  
20 Congress wrote into this law. And let me give you two  
21 quick examples.

22           One. The law eliminates a food stamp rule  
23 that would have given families with children the same  
24 protection that food stamp households with elderly and  
25 disabled people have to recognize their real shelter

1 costs in computing how much food stamps they get.  
2 Congress eliminated this equality, building into  
3 federal statutes a perpetuation of hunger for children  
4 that is not visited on identically situated seniors and  
5 others.

6           Secondly, the Supreme Court decision in 1990  
7 in the Zebly case, made the SSI program disability  
8 standards roughly comparable for children and adults  
9 after many years of lack of comparability. The new law  
10 rolls this back, limiting SSI only to children who meet  
11 certain medical listings of disability. That new law  
12 could end help to as many as 300,000 disabled children  
13 and will make the program considerably more restrictive  
14 to some disabled Americans compared to others on the  
15 basis of age. It will make it more restrictive for  
16 children.

17           So in these provisions and many others that  
18 are embodied in the law, including, as you are probably  
19 most aware, the appalling limitations on the ability of  
20 legal aliens to get benefits, legal immigrants, the new  
21 law embodies what this Commission said had to stop.  
22 What happens to voiceless, powerless Americans when  
23 their interests are ignored and when there's awareness  
24 of this importance of civil rights is also ignored.

25           And as a result of that, as you no doubt have

1 heard, the Urban Institute has estimated that one  
2 million additional American children will be pushed  
3 into poverty and many more who will already be poor who  
4 will be pushed deeper into poverty.

5 Let me talk briefly about a couple of aspects  
6 of what will happen at the state level that we need to  
7 stop from happening in the implementation of this law.

8 One. The work provisions of the bill are  
9 going to force a disproportionate number of blacks,  
10 Hispanics and women because AFDC had a disproportionate  
11 number of blacks, Hispanics and women as parents, into  
12 a job market that is already riddled with  
13 discrimination against them.

14 The risks are not only that these new  
15 entrants will suffer substantial discrimination but  
16 that discrimination against African-Americans,  
17 Hispanics and women who are not on welfare but are  
18 already in the work force will increase. And  
19 particularly in those states that apply unrealistic  
20 work rules without the supports that parents need to  
21 succeed, these dangers will be greatest and we'll see  
22 wages for low wage workers eroding, benefits eroding  
23 and generally an increase in discrimination against  
24 protected categories of people.

25 Secondly, although the new law requires, as I

1 said, states to ensure fair and equitable treatment of  
2 families, it's unclear the extent to which these  
3 provisions will be followed. And states' discretion to  
4 let counties run the program, to let lower levels of  
5 government run the program and to turn over much of the  
6 program to private entities increases the risk that  
7 these provisions will be ignored and creates huge new  
8 opportunities for arbitrary and discriminatory  
9 practices by the states.

10 And third, again, I want to call attention to  
11 the importance of keeping an eye out for age  
12 discrimination, because, as you know, it's probably the  
13 least enforced of all the major civil rights laws. And  
14 our experience is that it's generally ignored by the  
15 enforcement authorities.

16 One such state has told HHS in its plan for  
17 the new welfare program that if a parent fails to  
18 follow the work rules on two occasions, they will end  
19 cash and food stamp help to the family but it will  
20 continue aid to the children as long as they are age 11  
21 or under. The state has not explained to HHS why it  
22 thinks 12 year olds and others can avoid hunger and  
23 starvation while those aged 11 and under can. But it's  
24 just one of many examples that we're going to see of  
25 wholly arbitrary discrimination that states will take



1 based on age, as well as race and gender, in this  
2 program.

3 I want to say more but let me stop there  
4 because we're running late.

5 Thank you, again.

6 CHAIRPERSON BERRY: Okay. I appreciate that  
7 very much.

8 Ms. Aviv also has a time problem. Ms. Diana  
9 Aviv is the Director of the Washington Action Office of  
10 the Council of Jewish Federations. And we thank you  
11 very much for being willing to come to us today and  
12 we're sorry about the delay.

13 MS. AVIV: Thank you very much for the  
14 opportunity to talk to you today.

15 When I was contacted, I was asked if I would  
16 also talk a little bit about my colleagues in the  
17 Latino Community and what their experiences have. It's  
18 very presumptuous of me to do that but I will maybe  
19 make some remarks that will reflect some issues that I  
20 think cut across all population groups.

21 I come to the subject as part of an  
22 organization whose responsibility it is to raise money  
23 from the Jewish community. In fact, all of the funds  
24 or most of the funds raised from the Jewish community  
25 are raised through our federation system and support

1 all of the health and human services, cradle to grave  
2 services, that we provide in the United States and some  
3 funds to support programs in countries around the  
4 world, including Israel.

5 But the bulk of the funds that are raised by  
6 our community are to support programs here. Many of  
7 those programs are partnered by public dollars in order  
8 to make sure that the nursing homes, hospitals and  
9 social services can provide the scope of services that  
10 are necessary.

11 One of the most important programs that we  
12 have provided through the decades has been assistance  
13 to immigrants and refugees. Indeed, in the last number  
14 of years, maybe 10 or 15 years, but particularly the  
15 last five or six years, we have resettled or been  
16 responsible for the resettlement of some 40,000  
17 refugees coming to the United States each year.

18 And one point I did want to make about  
19 refugees, since I know that they have been talked about  
20 briefly during the course of this morning, is that at  
21 the moment there are -- in this fiscal year, there are  
22 90,000 refugees who will be admitted to the United  
23 States or this past fiscal year; 78,000 this fiscal  
24 year coming; and before that, it hovered for a number  
25 of years at about 120,000.

1           So of the totality of about a million  
2 newcomers, legal newcomers coming to the United States  
3 each year, refugees constitute a relatively small  
4 percentage.

5           We have a lot of experience with that  
6 population group. And one of the points that I would  
7 like to make about immigrants and tracking them is that  
8 what makes legal immigrants more difficult to track  
9 than refugees -- and I know this also from my own  
10 personal experience since my accent is not American-  
11 originated, is that one can come into the United States  
12 as a legal immigrant and continue in one's life, in all  
13 aspects of one's life, and never have contact with any  
14 institutional facilities.

15           And therefore, the tracking of what happens  
16 to legal immigrants is different than what happens to  
17 refugees and asylees by virtue of the fact that the  
18 United States has a whole range of commitments to those  
19 groups of people and services. And so we can track who  
20 they are, what happens to them, and the outcome.

21           Having said that, I want to confine my  
22 remarks to what I think would be relevant to talking to  
23 you today and start by saying that one of the biggest  
24 problems that I see for legal immigrants and refugees  
25 as it relates to this welfare law is that it does fall

1 in a substantial way, differentiate between different  
2 category of newcomers, legal newcomers. All of my  
3 comments will refer to legal immigrants and refugees.

4 We know that if refugees are here in the  
5 first five years, they will be entitled to be treated  
6 the same as U.S. citizens with respect to access to  
7 services such that they need. And then after five  
8 years, they will be deprived or they will be barred  
9 from SSI and food stamps. Which means that any social  
10 service agency engaged in providing services to any  
11 group of people who are legally authorized to be here  
12 will, each and every year, have to assess whether  
13 they're in year one or year two or year six, and  
14 accordingly, will have to adjust the services and so  
15 on.

16 Same is true for certain categories of legal  
17 immigrants. Legal immigrants, for example, who are  
18 veterans or who are the spouses or minor children of  
19 veterans or active duty service people are exempt. And  
20 so that assessment will have to be made.

21 We know that legal immigrants who have worked  
22 for 40 quarters and paid into the Social Security  
23 system will be exempt and their spouses and minor  
24 children, but only under some conditions and not  
25 others. Which means that the body of knowledge that

1 each and every social service agency and providers of  
2 service will need to know in order to qualify to be  
3 able to provide a range of services to this group of  
4 people means that for these agencies, they will be a  
5 substantial burden.

6           Now, even though those social service  
7 agencies are not required to do the verification and  
8 it's not yet clear exactly how that verification is  
9 going to happen in order to provide these services --  
10 this is something we're discussing with the Department  
11 of Health and Human Services and others -- at the same  
12 time, these agencies, and since we are the wards, we  
13 are responsible for many of those services provided --  
14 still may not be permitted to provide. Or, on the  
15 other hand, they may be permitted to provide.

16           And I think it was a comment that,  
17 Commissioner Horner, I heard you say earlier. Or I  
18 think it was you. Perhaps it was someone else,  
19 Commissioner George. -- said that one of the problems  
20 here is that agencies don't know what they can provide  
21 and what they can't provide. And many times then the  
22 arc that they draw around in order to ensure that  
23 they're not violating the law is much larger than what  
24 it necessarily needs to be and so people then will not  
25 be receiving services that they will be entitled to.

1           This would be a matter not of ill intent. I  
2 don't think that the intentions would be to hurt the  
3 people providing services, but a matter of lack of  
4 education. And so one of our concerns -- I think I can  
5 say with great certainty that we all feel this way, is  
6 that it's extremely important to provide education as  
7 to what is permitted and also what is not permitted so  
8 as not to discriminate.

9           The second point I want to make is that this  
10 is a class of people, notwithstanding the comments that  
11 Mr. Rector made, that for the majority, and we have  
12 substantial experience working with many of these in  
13 this population group who are unfamiliar with the  
14 United States laws, unfamiliar with U.S. government  
15 practices and are fearful of them, and simply don't  
16 know what they're allowed to do and not allowed to do.  
17 And that our efforts to reach to them, even through  
18 ethnic newspapers and our religious newspapers doesn't  
19 even begin to scratch the surface of folks knowing what  
20 they're entitled to do.

21           So, for example, even though there is no bar  
22 on Medicaid, since many legal immigrants receive  
23 Medicaid or the eligibility for Medicaid through  
24 eligibility for SSI, it becomes automatic, they would  
25 then have to go in and be requalified. When they get

1 the notice that they're no longer -- or they simply no  
2 longer receive SSI, they may not know that they must go  
3 in and make application for Medicaid and that they have  
4 to then be requalified in states in different ways.

5           Some of our groups will spend as much time  
6 and resources as we can educating communities but it's  
7 a very difficult prospect since legal immigrants don't  
8 have to be connected with our social service agencies,  
9 as I said in the beginning. And so, it makes it  
10 difficult to know where to find folks other than  
11 advertising blind. And then, one faces the question of  
12 raising expectations of providing services to people  
13 that our human service dollars, as substantial as they  
14 are, will be no way able to meet those kinds of needs.

15           And I don't believe that there have been  
16 massive funds that have been allocated for the  
17 education of what the scope of services are that are  
18 provided.

19           Our experience is that legal immigrants don't  
20 necessarily take advantage of what they're entitled to  
21 access simply because their knowledge base of what the  
22 scope of the law is is much more limited and they're  
23 fearful.

24           I would say here that in terms of the  
25 particular concerns that we have as a community, and I

1 think this is true also for the Latino community and  
2 for other communities as well, is our biggest concern  
3 is what is going to happen to elderly and disabled  
4 legal immigrants. These are people, many of whom have  
5 been in the United States for 40 and 50 years. We have  
6 people, and I will share anectodally, in the Jewish  
7 community, who came here after World War II, refugees  
8 from the concentration camps, who simply never  
9 naturalized.

10           And we may engage in a long discussion as to  
11 why\_those folks didn't naturalize. There are many  
12 important reasons. But one of them was that if people  
13 weren't involved in political life, they weren't  
14 substantially material differences between their  
15 ability to participate in society as legal immigrants  
16 versus citizens, and it enabled them to maintain  
17 contact with their countries of origin and family  
18 members and so on, and avoid any kind of limits in  
19 being able to return to countries of origin.

20           There were many reasons why they didn't  
21 naturalize. Some of these people are now age 85 or  
22 over, well octogenarians, who are in nursing homes and  
23 are not in the position to be able to naturalize. They  
24 can't remember what they had for breakfast, let alone  
25 the names of the first 10 Presidents of the United



1 States. I suspect that many people will not pass that  
2 civic exam, but certainly not people who are  
3 octogenarians, and younger, I might say. But I'll  
4 safely say octogenarians. Although when I get there,  
5 I'm sure I'll change my mind.

6           And our concern is that for those folks who  
7 have been here for a long period of time where it is  
8 inaccurate to say that they came here in order to go on  
9 benefits, this law has applied a sledgehammer approach  
10 and that it's those people, as well, who will be barred  
11 from SSI. And if they're not in nursing homes, they  
12 may be in assisted living facilities or living in the  
13 community independently because of the help of  
14 Medicaid, SSI, food stamps and a small pension and will  
15 now not get food stamps and SSI and simply won't be  
16 able to survive.

17           And so say that these people should  
18 naturalize -- and indeed, we are engaging in vigorous  
19 naturalization efforts, also with the help of George  
20 Soros and others to make sure that happens, and state  
21 funds and our own dollars, as well, the fact is that  
22 many of these people won't and they will fall between  
23 the cracks. And this is our greatest area of concern.

24           I'll limit my comments to that at this point.

25           CHAIRPERSON BERRY: Okay. Thank you.

1           We're going to -- if you have to go, Mr.  
2 Weill, we're going to excuse you.

3           MR. WEILL: I apologize. I do.

4           CHAIRPERSON BERRY: And we understand that  
5 because we're going to go on to Ms. Narasaki.

6           Everybody's got a time problem.

7           Ms. Narasaki, Karen Narasaki, is the  
8 Executive Director of the National Asian Pacific  
9 American Legal Consortium. And before that, she was  
10 the Washington representative of the Japanese American  
11 Citizens League and she's well known to everybody in  
12 the field of civil rights for her contributions.

13           Before she became a major civil rights  
14 lawyer, she was in the corporate world, where I'm sure  
15 she got more money and everything else. And she is a  
16 Yale and a UCLA School of Law person.

17           MS. Narasaki, thank you very much for coming,  
18 and please proceed.

19           MS. NARASAKI: Thank you, Chair.

20           I am very honored to be invited to brief you  
21 today and I want to commend the Commission for bringing  
22 up this issue because I know it's not necessarily  
23 squarely within the jurisdiction. However, I think  
24 it's more within your jurisdiction than you might  
25 think.

1           According to the Congressional Budget Office,  
2 \$23.7 billion of the \$54 billion that's being cut out  
3 of welfare is coming out of the cuts on immigration.  
4 And that number will double if the states exercise  
5 their options to further cut assistance with TANF and  
6 also with Medicaid. So, since right now immigrants are  
7 only about 5 percent of the welfare population, you can  
8 see the enormous impact this bill has, much more than  
9 on any other population.

10           And just to underscore that, the Urban  
11 Institute estimated that it will push 1.2 million legal  
12 immigrants into poverty. Half of those are kids. And  
13 many of these families, as was pointed out in earlier  
14 panels, are mixed families. At least over half of the  
15 immigrant families have citizen kids. Two-thirds of  
16 them have citizens in the household.

17           So if you talk about cutting food stamps  
18 because of one person in the household, you're actually  
19 affecting the entire family. So, those who think that  
20 they're just targeting those pesky immigrants are going  
21 to be sadly mistaken.

22           Also, as you know, the new law bars people  
23 from receiving SSI for the blind, elderly and disabled,  
24 even those who are currently here and receiving those  
25 benefits. There's no grandfather clause. These are

1 people who, by definition, are not going to be, say,  
2 your first pick in the workforce. And so the rationale  
3 behind welfare reform, which was originally to try to  
4 push people who can work into work, doesn't hold.

5           There was a lot of talk here about people  
6 sort of cheating the system and families not taking  
7 care of the people that they're bringing in, but almost  
8 45 percent of the immigrants who are here never had  
9 sponsors because they came in either as refugees or  
10 asylees or they came in as employment based, but they  
11 were not sponsored immigrants.

12           So even if you're saying your goal was to  
13 force sponsors to take up their responsibility, as  
14 Diana pointed out, this bill goes far beyond that.

15           The refugee population who are brought here  
16 under very different circumstances from most other  
17 immigrants because they're fleeing persecution, they  
18 often aren't able to bring assets with them. They  
19 often have to leave whatever they have behind, which  
20 means they have to start over in this country.

21           For Asian immigrants, they also have the  
22 barrier of language difficulties. And for some of the  
23 communities, like the Hmong community, they're  
24 illiterate in their own language. So the barriers for  
25 them to be able to become self-sufficient within five

1 years is really pretty unrealistic.

2           And I just want to tell you some of the  
3 stories, for example, that I've come across as I've  
4 traveled around and tried to explain to my community  
5 what's happening.

6           There is one man who is in Northern  
7 California who came here about six years ago. He was  
8 in a re-education camp in Vietnam where he was tortured  
9 to the extent where he only has partial hearing in one  
10 ear and only partial sight in one eye. His wife tries  
11 to take care of him during the day, and at night she  
12 delivers newspapers to try to make money to keep the  
13 family going.

14           He came in with the government knowing  
15 because of his situation, obviously. Because of the  
16 generosity and our traditions towards refugees, he came  
17 in with the government knowing that he was disabled.  
18 Yet they're telling him that you are not going to be  
19 eligible any more. He has no children. He has no one  
20 to take care of him. And unlike what many Congressmen  
21 said to me while this bill is going, he doesn't have  
22 the option of going back to his country unless he wants  
23 to be killed.

24           So a lot of the premises behind the cuts on  
25 immigration, cuts of benefits to immigrants, are just

1 simply based on false premises. Like many things, they  
2 are partially true and partially false. But the people  
3 will be people with real lives who are paying for the  
4 misassumptions.

5           And I also want to add -- Diana said a lot of  
6 the people just say, well, these people can just become  
7 citizens. And as she pointed out, that's not as easy  
8 as people think. And for the Asian community, it's  
9 particularly ironic, because it wasn't until 1952 that  
10 Japanese immigrants were allowed to become citizens,  
11 just solely because of their race. Chinese, Japanese  
12 and other people from Asian countries were barred from  
13 becoming naturalized citizens. The Chinese got the  
14 right in the 1940's when China became an ally and the  
15 Japanese finally got the right in '52.

16           Also, one of the reasons why you see so much  
17 family reunification going on with Asians -- Asians are  
18 40 percent of the immigrant streams right now -- is  
19 because of the historic bar on immigration from Asia.  
20 As you know, there were many years, because of the  
21 Chinese Exclusion Act, which was expanded to cover  
22 other Asian countries, where families were separated,  
23 where there were bachelor communities who were  
24 stranded, who had spouses back in China and other  
25 places who simply couldn't bring them in.

1           By the time they were allowed to come in,  
2 they were too old to work. And so you see, that is one  
3 of the reasons that you see the slightly higher rate of  
4 usage among foreign born.

5           And one of the things I want to add, another  
6 irony was actually one of the reasons why you saw the  
7 rise in usage among particularly Asian immigrants,  
8 elderly, is because in the late '80s, in fact, the  
9 Department of HHS saw that there was underutilization  
10 by the Latino and Asian communities of SSI. They felt  
11 there were many more qualified than who were receiving  
12 it. And for the reasons Diana said, because people  
13 don't know what's available to them. They actually  
14 mounted an education campaign to tell the community  
15 that they had this option because it is legally  
16 available to them.

17           So, for all of those reasons, it's just  
18 particularly strange to us that now we're under attack  
19 for in fact using the services and benefits that were  
20 legally available that we were told that we could have.

21           Now, the Asian community, among many of the  
22 other immigrant communities, fully supported making  
23 sponsors more responsible, making the affidavits of  
24 support enforceable to ensure that the promises to the  
25 extent that the sponsors could continue to keep the

1 promises, were kept. That has happened. And we submit  
2 that that could have been done, rather than to kick  
3 everybody off of SSI and food stamps who don't have  
4 sponsors who can take care of them. That could have  
5 been done in a different way to take care of that  
6 problem. And unfortunately, Congress went a different  
7 route.

8           One of the things that I want to add since I  
9 notice that I was supposed to talk about civil rights -  
10 - I thought we were talking about immigrant civil  
11 rights. I didn't realize it was --

12           CHAIRPERSON BERRY: Talk about whatever you  
13 want.

14           MS. NARASAKI: -- broader. But I feel as a  
15 representative for the Leadership Conference of Civil  
16 Rights, I should sort of echo some of the comments that  
17 Jim made. And that is, there is a lot of concern about  
18 civil rights in the implementation of this welfare  
19 bill: work fare implementation; we have Title VII  
20 concerns; discriminatory placement; violations of the  
21 Americans with Disabilities Act. We're already hearing  
22 from New York, for example, that women are being  
23 tracked to clerical; that white males are getting  
24 preference; that African-Americans are getting the  
25 lesser desirable jobs. Clearly, that is a problem



1 that's going to require a lot of monitoring.

2 Also, we're concerned about the enforcement  
3 of Title VI. As you know, these monies that are going  
4 to states have very few strings attached to them, and  
5 so the concern is to make sure that the states in fact  
6 are living up to their obligations under Title VI.

7 HHS has not been able to tell us yet how they  
8 plan to make that happen, and I think it's something  
9 very important for the Commission to monitor and ask  
10 questions about.

11 Finally, there's some just basic  
12 constitutional issues. The interesting thing about the  
13 welfare bill is that HHS, in its looking at plans, has  
14 no ability to stop a plan. And so they've actually  
15 sent out letters saying we note that we in paragraph  
16 so-and-so this proposal seems to raise constitutional  
17 issues. Bye. Because they can't say we can't let you  
18 implement this until you sort out the constitutional  
19 issues involved. And we're very concerned about those  
20 kinds of things.

21 Finally, as Diana pointed out, the  
22 discrimination that we think will happen as people in  
23 their minds simplify the very complex rules, it will  
24 be, well, immigrants can't get anything and who are the  
25 immigrants. Well, obviously, a lot of people will

1 assume it's someone with an accent or someone who looks  
2 like me or someone who looks Latino. And that has  
3 already been shown to be the case when IRCA was  
4 enforced in several GAO studies. So it's not something  
5 that we are just making up in our heads.

6           We have already heard, for example, when  
7 there was confusion about accepting SSI applications  
8 after August when the bill passed, that some agencies  
9 when they got an application from a Latino, would  
10 simply just throw it away, assuming that it wasn't  
11 worth spending any time on because that person couldn't  
12 possibly be qualified. So you have those problems.

13           Also, all the states are now going to be  
14 required to put into place verification systems using  
15 computers and some kind of phone system to try to sort  
16 out who's qualified for what.

17           Well, as we've seen again with IRCA, one of  
18 the biggest problems with those systems is government  
19 data and the inaccuracy that is inherent in any data  
20 system, even credit systems. And the biggest problem  
21 with a lot of that data is names.

22           I don't know if you saw the Post a couple of  
23 weeks ago. It talked about this guy who had the same  
24 exact name as somebody who had died. And the dead  
25 person's credit record showed up on his thing. And

1 he's been trying for a year to get it off his record.

2 I have a hairdresser from Hong Kong who told  
3 me that he had been trying for a year to get the Social  
4 Security Administration to fix his name because, as  
5 often happens, they get the names switched around for  
6 Asian names. He'd been trying for a year. Couldn't  
7 get them to do it. He finally changed his name. That  
8 was easier.

9 And so, --

10 COMMISSIONER HORNER: Oh, that's horrible.

11 MS. NARASAKI: -- if you look at Asian names  
12 or a lot of other ethnic names with lots of syllables,  
13 with not a lot of vowels that are difficult for a lot  
14 of Americans to spell -- I myself have received mail  
15 addressed to many variations of my name that I can't  
16 even count -- you can see some of the problems that  
17 will be inherent that will particularly impact on  
18 ethnic Americans who don't have easy names like Smith.  
19 Although I would submit to you that there are enough  
20 James Smiths and Bob Smiths in the world that I think  
21 that they will come up against this problem, as well.

22 COMMISSIONER HORNER: I hope your friend has  
23 kept evidence of his original name, since that may pop  
24 up 15 years from now and then he won't have that name  
25 any more.

1 MS. NARASAKI: I know. It's quite -- well, I  
2 think immigrants are very innovative in trying to  
3 figure out and deal with the strains of the government.

4 And so those are a lot of the concerns we  
5 have. I mean, government is government and people are  
6 people and mistakes are going to be made. And  
7 unfortunately, the impact of that will be felt  
8 primarily, we believe, on the Asian, Latino and other  
9 ethnic communities.

10 Finally, I want to note one concern that I  
11 have, and that is we have been hearing a lot of the  
12 volunteer agencies, like soup kitchens and shelters  
13 saying, well, gee, if the government isn't going to  
14 help legal immigrants and we're going to be inundated  
15 with this new bigger population of welfare people who,  
16 once they lose their benefits, their last resort is  
17 going to be to us, then we are going to stop serving  
18 legal immigrants as well. So it's not simply the case  
19 that the public community will take over.

20 And again, I would submit to you, now you  
21 have civilians out in the world who aren't necessarily  
22 immigrant experts who are going to be trying to sort  
23 through, as people come through the line, and who are  
24 they going to kick out and not serve. I think the  
25 answer is pretty clear.

1           Now, finally, obviously a lot of us are  
2 concerned about the finances and budget and those are  
3 real questions. But the United States has always had a  
4 very strong tradition of caring about their fellow  
5 people, about human rights. And some of these  
6 restrictions on immigrants I think really rise to the  
7 level of becoming a violation of human rights. If you  
8 are saying to someone you will get nothing, whether you  
9 have someone to take care of you or not, and you may or  
10 may not be able to leave this country, what exactly is  
11 that person going to do.

12           We believe that many of the provisions in the  
13 immigrant welfare provisions in the bill are in fact  
14 unconstitutional. The bar on SSI, we don't believe  
15 even meets the rational basis test. Certainly there is  
16 a Supreme Court case saying states don't have the right  
17 to violate the 14th Amendment and discriminate against  
18 people on the basis of alienage. And we believe that  
19 will be upheld in this situation.

20           But there are many other instances where  
21 there are going to be problems that we have not even  
22 yet thought of. And we urge the Commission to continue  
23 to monitor the situation and to call on Congress and  
24 the Administration to do the right thing and to correct  
25 the excesses of this bill.

1 Thank you.

2 CHAIRPERSON BERRY: Okay. Thank you very  
3 much, Ms. Narasaki. I forgot to mention that you're a  
4 Chairperson of the Compliance Enforcement Committee of  
5 the Leadership Conference on Civil Rights and that you  
6 are here representing also the Leadership Conference.

7 Our last presenter is a Penn graduate. You  
8 wonder why I say that. It's because I went to Penn --  
9 I mean, I teach at Penn.

10 COMMISSIONER HORNER: And I went to Penn.

11 CHAIRPERSON BERRY: So I have to say that.  
12 Not that it makes any difference but --

13 MS. HONG: It's a alumni party.

14 COMMISSIONER HORNER: Should we have a  
15 rendition of Drink a Highball at Nightfall?

16 (Laughter.)

17 CHAIRPERSON BERRY: That would be great.

18 On this very serious subject, Ms. Chung-What  
19 Hong. She is now the National Korean American Service  
20 and Education Consortium Executive Director.

21 And we want to thank you very much for your  
22 patience and we very much appreciate your being willing  
23 to come to talk to us today.

24 Please proceed.

25 MS. HONG: Thank you.

1 I thank members of the Commission for giving  
2 me the chance to address you on this important issue.

3 I'm very impressed that my name is spelled  
4 completely correctly, so with that, --

5 (Laughter.)

6 My presentation is kind of informal. I'm  
7 going to give you like the nine big reasons why welfare  
8 reform is anti-civil rights.

9 CHAIRPERSON BERRY: Okay.

10 MS. HONG: Not just anti-immigrant but why  
11 it's anti-civil rights. And for the points that other  
12 speakers have covered, I'll just pass on and not  
13 elaborate. I know it's been a long day for all of you.

14 My organization, just a word about my  
15 organization, is the National Korean American  
16 Organization working to educate the Korean American  
17 community, and we have programs in social service,  
18 culture and advocacy to organize and empower Korean  
19 Americans to get more involved and fully participate in  
20 the political and social process.

21 First big reason is that big one; equal  
22 protection. People talked about the whole block grant  
23 concept. And what would happen to immigrants is that  
24 states have vast new powers to allocate, whether to  
25 allocate funds for Medicaid or TANF for immigrants or

1 not. So that in effect provides profound inequities  
2 across the different states across the nation.

3 In addition, there is a Supreme Court  
4 decision in 1971, Graham v. Richardson, that ruled that  
5 state funded welfare benefits could not be denied to  
6 certain categories of immigrants. So the welfare  
7 reform is in contradiction to that.

8 There's also a state supreme court ruling,  
9 Michigan State Supreme Court ruling from 1987. Alsori  
10 v. Department of Social Service said that the state of  
11 Michigan cannot impose deeming requirements on legal  
12 immigrants because it would infringe upon a suspect  
13 classification which is that of lawful alienage.

14 So we're talking about equal protection of  
15 immigrants, different categories of immigrants. And  
16 Congress taking certain categories and saying that  
17 they're qualified and certain other lawful categories  
18 and saying they're not qualified.

19 The second big reason is the obligation  
20 versus rights of legal permanent residents. There is  
21 no statutory enumeration about what legal immigrants  
22 are entitled to in terms of benefits and that's why we  
23 ended up with this kind of welfare reform. But  
24 traditionally certain obligations have come with  
25 certain rights; namely, permanent residents are



1 required to pay local, state and federal taxes, and  
2 also serve in the military, which are the main  
3 obligations of a citizen also.

4 And accompanying those responsibilities are  
5 the right to have access to some of the benefit  
6 services. And this is after certain amount of deeming  
7 and other requirements.

8 So the currently recently enacted welfare  
9 reform bill fundamentally redefines the obligations and  
10 rights of legal permanent residents in the United  
11 States and I think it's just heading in a very  
12 dangerous direction for immigrants and permanent  
13 residents for the future.

14 A third big reason is that welfare reform law  
15 hurts U.S. citizens. And the statistic was brought up  
16 about U.S. citizen children, but if you look at mixed  
17 family households that contain a native born citizen,  
18 it's even higher. Sixty-seven percent have citizen  
19 members where they have other family members who are  
20 legal immigrants who will be cut off from benefits.

21 Fourth big reason is that there will be so  
22 many spill over effects of this welfare reform bill  
23 because it's so complex. People are going to think  
24 that they're enforcing the bill, but in fact, they will  
25 be doing something else.

1           There's a lot of vigilante efforts that are  
2 very scary. There is a group called U.S. Citizen  
3 Patrol in San Diego Airport checking everyone's ID to  
4 see if people are legal or illegal. There are bus  
5 drivers, school teachers and drug store cashiers who  
6 are asking people for ID's and citizenship papers.

7           I myself when I went to vote last month, was  
8 asked by several poll workers if I were a citizen.  
9 They didn't do that to anybody else who was at the poll  
10 site. But I know that that's nothing compared to  
11 having SSI or basic subsistence assistance pulled out  
12 from under them.

13           Fifth big reason is economic survival,  
14 obviously. The most recent figures that we have for  
15 legal immigrants receiving SSI is 817,000, over 817,000  
16 people from 1996. And the Congressional Budget Office  
17 estimates that over half a million of them will lose  
18 SSI benefits.

19           In the Korean American community, what this  
20 means is a tragic case such as Mr. Choy, who is 87  
21 years old. He immigrated to the United States with  
22 high hopes of being reunified with his children. He  
23 sold his land, he was a farmer, and brought \$50,000,  
24 which he lent to his daughter to start a small  
25 business. And they worked really hard at it, 12-15

1 hours a day. But after several years, it failed and so  
2 he was left with no money. And he's been attending ESL  
3 classes to try to become a citizen for almost a year,  
4 but he's just too old, since he's almost 90, to be able  
5 to learn English. And it's a very similar case as  
6 Diana mentioned.

7           There is absolutely no alternative. One of  
8 the characteristics about the welfare reform bill is  
9 that it leaves two categories of people with absolutely  
10 nothing. The other benefits are reduced for children  
11 or for women or whatever, and that's still tragic. But  
12 for legal immigrants who will be losing SSI and other  
13 able-bodied adults between 18 and 50 who are legal  
14 immigrants. But just to let you know that they will  
15 have nothing.

16           And even if they do qualify for general  
17 assistance programs on the state level, it's unclear  
18 what will happen in each state. And also, the benefit  
19 levels are much lower and it's not enough to cover even  
20 the rent. Forget the utility bills and other costs,  
21 food costs and things like that.

22           The sixth big reason is the question of  
23 states rights. That's the one that Mayor Guiliani is  
24 suing the federal government for. But the ironic thing  
25 is that the welfare reform gives unprecedented power to

1 the states to do whatever they want. But it's very  
2 weird, but on immigrants, it really restricts and  
3 requires that states enact new laws if they want to  
4 give benefits. Everything before is nullified and they  
5 must take affirmative action and pass a law in the  
6 state legislature in order to give benefits to certain  
7 legal immigrants.

8           Seventh big reason is the rights of disabled  
9 permanent residents. Just bear with me. Three more  
10 reasons now.

11           Disabled immigrants is a big problem. There  
12 are existing exemptions for citizenship test  
13 requirements which are English test and civics test.  
14 But the exemptions are so narrow and so rigid that only  
15 very few people will be able to meet those  
16 requirements. As a result, many, many disabled legal  
17 immigrants will not be qualified.

18           One compelling example is one where Congress  
19 exempts certain disabled people from those tests, but  
20 the second step is that you have to have the mental  
21 capacity to take a meaningful oath. And so the very  
22 people who are exempted from the first requirements  
23 cannot become citizens because they don't have the  
24 capacity to take the mental oath.

25           And so we have this woman who is a client who

1 has been suffering from domestic violence from her  
2 husband, who is a drug addict, for over 10 years. And  
3 so she has gotten this very severe psychological and  
4 physical disorder. So she's exempted from the testing  
5 requirements but she's so severely damaged  
6 psychologically that she is designated as incapable of  
7 taking a meaningful oath.

8           And the way that she was able to make a  
9 living was at a halfway house where her assistance was  
10 funded by her SSI. But now with the new law, she is  
11 left out, kind of caught in this Catch 22 situation.

12           So basically what we have is legal immigrants  
13 can't get benefits and then there's talk of higher  
14 barriers and difficulties in becoming citizens. And so  
15 there's a lot of people caught in the middle with  
16 nowhere to go. So that's where we are, which really  
17 needs to be addressed and remedied before next Summer.

18           My next big reason is the reporting and  
19 verification requirement. I think enough has been said  
20 about that. But I have this example of a Korean  
21 American woman who was really severely burned. She  
22 herself is a legal immigrant but after Proposition 187  
23 was passed, she thought her family -- it might be  
24 discovered that if she went to a hospital, they'll ask  
25 her information about her family and that her family

1 will be deported. So she didn't go and she died as a  
2 result. This was an 87-year old woman who did not know  
3 that Proposition 187 was under court injunction and  
4 that it wasn't law. And besides, she would be eligible  
5 for those benefits.

6 But all this talk about reporting  
7 requirements is going to lead to those kinds of  
8 incidents.

9 Last big reason is naturalization. This may  
10 not sound like a civil rights issue but it's quickly  
11 becoming a civil rights issue because people are  
12 talking about raising the barriers to naturalization.  
13 It's an issue that has become highly politicized also  
14 in the Presidential campaigns as well, as if all these  
15 criminals are becoming citizens and there was no  
16 control system of naturalization.

17 Because legal permanent residents are not  
18 guaranteed equal protection of benefits, naturalization  
19 has emerged as a really important issue and the way  
20 that these kind of two ends are kind of locked, it's  
21 really reminiscent of the times when, as Karen  
22 mentioned, when Asian Americans could not become  
23 citizens. And based on their ineligibility to become  
24 citizens, they couldn't own land and testify in court  
25 and all these other things.

1           They didn't say Asians can own land but they  
2 said those who are not eligible for citizenship can't  
3 do -- whatever, whatever. I mean, it may sound  
4 archaic -- I mean, that was in the 1880's, but that's  
5 what we see happening right now.

6           So that is a major question that needs to --  
7 naturalization is something that needs to be looked at  
8 with a civil rights lens.

9           So I want to conclude by saying that these  
10 problems are obviously not easy to remedy and the  
11 welfare reform that has been passed has actually  
12 emboldened the anti-immigrant advocates. And so they  
13 are further fueling public sentiment to increase  
14 hostility toward immigrants, and that's going to have  
15 spill over effects to increase discrimination, anti-  
16 Asian violence, and other areas.

17           And so it is very essential that we reframe  
18 the immigration debate and make it a civil rights  
19 debate and apply strict civil rights standards in terms  
20 of treatment of immigrants.

21           And in my testimony, I have a list of  
22 recommendations, which I won't read off. It's  
23 submitted in a written format.

24           CHAIRPERSON BERRY: Will you leave that for  
25 the record?

1 MS. HONG: Yes. I hope that my comments are  
2 helpful in the Commission taking on a bigger role both  
3 with other government agencies and with the public and  
4 the non-profit sector in promoting civil rights for  
5 immigrants.

6 Thank you.

7 CHAIRPERSON BERRY: Thank you very much.

8 And I hope you all have a little more time  
9 because I need to ask some questions, and maybe others  
10 do. I don't know.

11 Does any Commissioner have any question  
12 before I ask?

13 COMMISSIONER HORNER: I have just one. I  
14 could have a lot, but in the interest of time.

15 Ms. Narasaki, you used a figure that startled  
16 me and I think I may have misheard you. Did you say  
17 that 45 percent of legal immigrants are not sponsored  
18 because they are either refugees or have been admitted  
19 under skill shortage occupations?

20 MS. NARASAKI: I said 45 percent of the  
21 immigrants in this country were not sponsored.

22 COMMISSIONER HORNER: Because they've been  
23 admitted either as refugees or skill shortage?

24 MS. NARASAKI: I mean, there are different  
25 reasons for it, but the main reasons are because they



1 came in as employment based or they came in as refugees  
2 or asylees or there's some family unity people.

3 COMMISSIONER HORNER: It startles me because  
4 Ms. Aviv said there were only 90,000 this year and  
5 historically only about 125,000 a year, which I know  
6 from my personal experience at HHS were admitted under  
7 refugee status. Does that add up?

8 MS. NARASAKI: Well, I think part of it is  
9 also -- again, you have the employment based and then  
10 you have a lot of the legalization program where those  
11 people didn't come in sponsored.

12 COMMISSIONER HORNER: Oh, the illegals who  
13 under IRCA became legalized?

14 MS. NARASAKI: Yes.

15 COMMISSIONER HORNER: Oh, I see.

16 MS. NARASAKI: Right. In fact, a lot of those  
17 numbers are what makes it look like --

18 COMMISSIONER HORNER: Okay. That must be a  
19 big part of it.

20 MS. NARASAKI: Yes. A lot of those numbers  
21 are what makes it look like legal immigration is  
22 ballooning when in fact a lot of it is just those  
23 people who under the law now have the right to legalize  
24 and are now bringing in their spouses and other family  
25 members.

1                   COMMISSIONER HORNER: Just one other quick  
2 question.

3                   You indicated that you thought that the  
4 legislative denial of benefits previously permissible  
5 may rise to the level of a violation of human rights.  
6 Are you suggesting that if a state does not grant  
7 benefits of some sort to some immigrants that  
8 previously were granted, that if the immigrant were  
9 back in his or her country of origin and that country  
10 of origin did not provide those benefits simply because  
11 they had never decided to provide them, that that would  
12 constitute a violation of human rights?

13                   For instance, in Korea or Japan or China?

14                   MS. NARASAKI: I'm not referring actually to  
15 the states' responsibility. Actually, I'm referring to  
16 the federal government's responsibility. And my  
17 feeling is there are different conventions, some of  
18 which the U.S. hasn't signed, that have to do with the  
19 treatment of migrants. In Peking, in fact, in the U.N.  
20 convention, there were some provisions talking about  
21 migrant women and girls and that treatment that they  
22 should receive.

23                   And my point is that if you get to the point  
24 where you are letting someone who cannot go back to  
25 where they came from lay in the United States starving

1 --

2 COMMISSIONER HORNER: You mean a refugee now,  
3 not an immigrant?

4 MS. NARASAKI: No. I'm talking about -- there  
5 are a lot of immigrant -- you know, there's a lot of  
6 mixing. To me, these statuses are very difficult  
7 because there's a lot of mixing. Because in the  
8 Southeast Asian community, first you had the wave of  
9 refugees; then they brought their family members over.  
10 Some of those family members suffered and could not go  
11 back to Vietnam or Laos or Cambodia for I think reasons  
12 that are apparent to this Commission. But they came  
13 in as family people.

14 I'm just saying the statuses, their ability  
15 to return to their country for whatever reason, isn't  
16 there. And so, what do you do with this person? Are  
17 we as a nation going to say, well, it's okay. Well,  
18 let me put it another way.

19 If England was doing this and said we're  
20 going to take this class of people and we're just going  
21 to let them die in the streets, would the United States  
22 be saying, oh, well, that's fine. I mean, I think  
23 there would be an international outcry about how these  
24 things are happening. That's my point.

25 COMMISSIONER HORNER: But you are setting up

1 potentially two classes of human rights; those for  
2 people who've come to the United States and can't go  
3 back from countries that won't let them back and that  
4 either do or don't provide such benefits; and then  
5 those who simply live here.

6 MS. NARASAKI: No. I'm actually not. I'm  
7 just trying to use that to illustrate the point. I  
8 think even if you could go back to your country, if  
9 you're here legally and the United States has basically  
10 changed the rules -- one of the things we argued for  
11 is, look, maybe you should at least grandfather the  
12 people who are already here who came in with a certain  
13 set of understandings. Their family members made  
14 certain judgments to bring them in in the first place.  
15 That is a different circumstance from the new people  
16 who are coming in who know the rules.

17 COMMISSIONER HORNER: I think of a human  
18 right as a right that is inalienable from all people in  
19 all conditions. I think we may be using this term  
20 differently.

21 MS. NARASAKI: No. But what I'm saying -- I  
22 agree with you. And what I'm saying is I think there's  
23 a human right not to starve, wherever that may be. And  
24 I'm saying that if that person -- whether that person  
25 be starving in the United States or be sent home to

1 starve in China, it's still the same problem. I think  
2 we agree there.

3 I did want to add, though, on something that  
4 Chung-Wha said. And that is, we are very concerned  
5 about how these kinds of dialogues, because some of it  
6 has been a little bit irresponsible, are playing out in  
7 terms of affecting anti-Asian violence. And many of  
8 you may be familiar. We do an annual audit and we did  
9 one for '95. And one of the findings we had was that -  
10 - and I'll leave this for you.

11 CHAIRPERSON BERRY: Thank you.

12 MS. NARASAKI: It had become -- from '95 to  
13 '94, the severity of the kinds of incidents, in other  
14 words, going from name-calling to assaults, had  
15 markedly increased, and that a lot of it was driven by  
16 anti-immigrant sentiment. So that is an additional  
17 concern.

18 CHAIRPERSON BERRY: I just had two points  
19 that I really feel I need to make, or questions I need  
20 to ask.

21 Ms. Aviv, many of the things you described in  
22 your testimony, except for the octogenarian in the  
23 nursing home example, were things that I think people  
24 who are proponents of the measures against legal  
25 immigrants would say were simply more burdensome

1 administratively for organizations like yours, and  
2 people who deal with these issues having to do more  
3 checking, a lot of things you described. But that  
4 these were just more administrative burdensome; that  
5 they were not reasons not to have the reform take  
6 place. Although clearly, the example you gave of the  
7 woman who can't become a citizen because she doesn't  
8 know how to do this, she's 80-something, well then I  
9 think most people would say that if that happens  
10 because of this reform, they didn't intend to have this  
11 happen to some woman -- I would hope that that's what  
12 people would say. There must be some solution for this  
13 woman who's in her '80s, because I don't think most  
14 Americans are that cold-blooded and heartless that they  
15 would say, you know, the hell with the woman who's in  
16 her '80s. Let her go starve.

17 Yes, Ms. Aviv.

18 MS. AVIV: Just in short informal remarks or  
19 not formal record, there are so many things one doesn't  
20 say and just illustrates it maybe with some vivid  
21 examples to make a point. The fact of the matter is  
22 that we're not just talking about administrative  
23 issues.

24 Let me illustrate with an example. And I  
25 know it's been corrected because we screamed a lot

1 about it, and so maybe it would have been corrected  
2 without screaming. But immediately after the enactment  
3 of the law, immediately, when refugees who ought to be  
4 treated for the first five years of coming to the  
5 United States exactly the same as United States  
6 citizens, they are affected after the first five years  
7 in the United States, when a number of refugees in  
8 about eight different states that I know of since it  
9 was reported to me, and I have that information, went  
10 to the SSI office to qualify for SSI, their  
11 applications were put on hold and there were told that  
12 they are not eligible at this point in time.

13 Now, in some cases they were told that they  
14 couldn't even apply, and in other cases they were told  
15 that their applications were put on hold.

16 Now, since then we have met with the Social  
17 Security Administration and some of those problems have  
18 been corrected. And since the budget agreement between  
19 the Congress and the Administration agreed that notices  
20 would only go out beginning next February, all those  
21 people have been put back.

22 Let me illustrate with a different example.  
23 I serve as a member of the Board of the Emergency Food  
24 and Shelter Program. I'm a member with colleagues from  
25 the Salvation Army, Catholic Charities, Red Cross and

1 so forth, the seven national institutions that are  
2 members of this Board.

3 I mentioned to Karen, who mentioned it here,  
4 but let me be specific. Sitting at an Emergency Food  
5 and Shelter Board meeting last month the question came  
6 up from a local food and shelter group, private not-  
7 for-profit group in Texas, that had decided that they  
8 would no longer provide any kind of emergency meals to  
9 immigrants, legal or otherwise. And the question was  
10 what was our position, did we have any legal authority.

11 And I made the point at the time that I hope  
12 we have legal authority but I certainly want to talk on  
13 the moral authority. This is the last place that  
14 people go to get a bowl of soup. And if we are now  
15 going to support institutions being allowed to turn  
16 away people on the basis of their immigrant status when  
17 that is not what the law says but that that's what  
18 their electing to do and we're supporting that, that's  
19 a problem.

20 My concern -- and I can't document it yet  
21 because the implementation of SSI and food stamps is  
22 only beginning next year, beginning April 1 for food  
23 stamps. And the notices for SSI will only begin to go  
24 out in February, and then move from there. Plus,  
25 states' actions are only going to begin January 1



1 affirmatively to what they do and what they don't do.  
2 So we can't document it yet other than initial  
3 reactions.

4           And in the initial reactions, we see agencies  
5 not only having burdensome administrative requirements  
6 but also simply not serving people and engaging in a  
7 variety of practices that may in fact be legal and that  
8 they can provide.

9           And I think this relates to just the last  
10 point that I want to underscore. And I say this in a  
11 way that may sound unreasonable. I have an accent and  
12 I've never found my accent to be an impediment because  
13 most people think that my accent is Anglo-Saxon of some  
14 kind. If not British, a derivative of that. I know  
15 that for other people who have accents, their treatment  
16 is different. So that while mine is seen as an asset  
17 perhaps at some times, it's not true for other people.  
18 And so the services that they're provided if they look  
19 or sound foreign in some kind of a way is different.

20           And when we have laws that differentiate --  
21 not discriminate but differentiate between classes of  
22 people, the effect could be discriminatory. And that's  
23 the concern that I bring to you that we would want to  
24 see monitored so that that doesn't happen.

25           CHAIRPERSON BERRY: Let me -- so what you're

1 really saying is that what may seem to me to have just  
2 been a description of administrative burdens, in fact  
3 taken together, all this does is discourages people  
4 from providing services.

5 MS. AVIV: And more than that. Just to give  
6 you one example where I have a community Florida that  
7 is deciding about not -- you know, we're facing a  
8 serious issue right now of how one plans services for  
9 the baby boom generation, because if one doesn't build  
10 the services now for 2010 and '20, by the time we get  
11 there, it will be too late. And then our children and  
12 grandchildren will be saying to us, what the heck were  
13 we doing in the 1990's in regard to that. So as a  
14 community that's interested in cradle to grave services  
15 and demographics and so on, that's one that we're  
16 looking at.

17 We have communities saying now -- our own  
18 community -- that maybe we shouldn't have immigrants  
19 come in because there is no way that we can provide  
20 services for them. That the Jewish community that  
21 funds and creates for our own community and for many  
22 others a lot of these services, cannot afford it. So  
23 if we simply don't provide them, we don't create them,  
24 then it's not our responsibility.

25 There are people in my communities saying

1 that. I've worked as hard as I can to argue against  
2 that because we have a responsibility to do that. And  
3 that's for people living in the United States already,  
4 not only future immigrants who will come in in the  
5 future.

6 CHAIRPERSON BERRY: In the reform debate,  
7 there were arguments made that private charities like  
8 your organization and Catholic Charities will take up  
9 the slack and that all of these sad cases that we hear  
10 about will be taken care of by your organizations.  
11 Catholic Charities, I noted, responded by saying, as  
12 you have, that they have partnerships with federal  
13 programs and the like and that they didn't have the  
14 resources and no one should expect them to take care of  
15 this problem.

16 I guess what you're saying is the same thing.  
17 That it's a difficult problem.

18 MS. AVIV: I can document -- unfortunately, I  
19 can document because immediately once the changes  
20 happened, not so much in the welfare law but when there  
21 were questions about reductions in projected spending  
22 on various programs, the question was what would our  
23 position be. And we have many members of our community  
24 who supported Republican initiatives as we do  
25 Democratic initiatives, and we're a nonpartisan

1 organization. So I didn't want to scream and shout  
2 about things until I was sure that there was evidence  
3 that it was important for us to do.

4           We sent out a questionnaire last year,  
5 beginning of last year, to all of our community  
6 affiliates and asked them to find out from the social  
7 service agencies that they fund, which there are  
8 thousands and thousands, many thousands of social  
9 services agencies, what percentage of their budgets  
10 came from government funding and what percentage came  
11 from the private sector. And since most social service  
12 agency budgets are funded by three main streams of  
13 funding, one is fees for service, which constitutes  
14 about 40 percent of funding, and then the others is  
15 government and private. And so I was interested  
16 whether it was corporate, individual giving or  
17 institutional giving like ours to those social service  
18 agencies.

19           We were sure that from our community, since  
20 we raised close to a billion dollars a year to support  
21 these programs from our own community, that we would  
22 find that the match, the public/private match would be  
23 much higher in our community than in other communities  
24 and would constitute the lion's share of the funding  
25 outside of fees for service.

1           What we found is that on average in the large  
2 city communities, the 20 largest communities we heard  
3 from, but we also heard from about 55 major  
4 communities, that 55 percent of the funds came from  
5 federal and state government funding and the rest came  
6 from fees for service and charitable giving. That if  
7 individuals had to make up the difference in the  
8 projected cuts just for 2002 as reflected in the budget  
9 agreement or the budget that was sent to President  
10 Clinton that he vetoed, that individual donors would  
11 have to increase their gifts by 127 percent.

12           In fact, if all government funding was  
13 missing, then they would have to increase it by 236  
14 percent.

15           What we also know from the independent sector  
16 is that the average increase in donors,  
17 philanthropists, even with all the tax breaks and so on  
18 which we're working to increase for those donors, that  
19 the average increase has been in the last five years at  
20 the rate of 1.2 percent.

21           And so the reason that Catholic Charities and  
22 the Jewish communities and the Asian communities and  
23 others say that they can't make up the difference is if  
24 the average is 1.2 percent and it would require 127  
25 percent increase, the facts speak for themselves.

1                   CHAIRPERSON BERRY: Okay. And my last  
2 question is -- and boy, I could stay here all day but I  
3 guess nobody else can, so let me ask the last question.

4                   It is a great puzzle to me why in the Asian  
5 American community in particular this problem has  
6 occurred. Because isn't that the target of the --  
7 insofar as immigration is concerned was the Latino  
8 community or the Hispanic community, and somehow Asians  
9 got caught up in the downdraft. Because we know from  
10 all of our studies and from the media and so on that  
11 the public generally has a view of Asians that they  
12 are, quote, "model minority." I know folks hate to  
13 hear that.

14                   And our studies have shown at the Commission  
15 that there are a lot of things about the Asian American  
16 community that there are many communities in the Asian  
17 American community that are not model minority status.  
18 There's discrimination. There's violence. There are  
19 all the things that we find with other communities.  
20 But the general overall public perception is that the  
21 Asians come, they work hard, they make contributions.

22                   Is it that Asians got caught up in this?  
23 Because the examples you gave me, I mean, I was  
24 particularly impressed with the connection you made  
25 between the exclusion of Asian Americans from the whole

1 immigration policy and adding up years. And I can see  
2 where since '52 or '48 you might have people who are  
3 now in their 80's and so on who were caught up in that  
4 inability to put families together and who are here  
5 now.

6           How did this happen and where did all this  
7 anti-immigrant -- if it is anti-immigrant -- attitudes  
8 motivating and guiding all this -- to what do you folks  
9 attribute this? And is there anything we can do about  
10 it?

11           MS. NARASAKI: I long for the days when the  
12 only thing I complained about was the model minorities  
13 stereotype.

14           (Laughter.)

15           You know, I think that there is in this  
16 country a very just concern about economic dislocation.  
17 Obviously the globalization of the economy, the  
18 changing nature of jobs, the movement to service  
19 sector. For the first time, you have middle managers  
20 being laid off and not just the line people. It has  
21 created a real and justifiable concern.

22           The problem is that people are looking for  
23 things to blame that don't require any complicated  
24 explanation. In the '80s it was Japanese investment  
25 and in the '90s it's immigrants.

1           One of the things that I had a hard time  
2 explaining to my community, because they'd say, well,  
3 if we just explain to them how hard working we are and  
4 we've invented these inventions and we've created these  
5 companies. But the problem was that at the same time  
6 that people were saying oh, well, these Asians are  
7 dropping off their elderly parents out of their BMW's  
8 to the senior center, they're also saying -- and by the  
9 way, those Asians are taking your jobs.

10           And so any time we found when we looked at  
11 public research, any time when you talked about how  
12 immigrants were doing, people felt threatened by that  
13 because they perceived it as a one-for-one. Well, if  
14 they're doing well, then what's happening to me.

15           So my bottom line is I really feel that  
16 unfortunately a lot of our public leaders have been  
17 less than responsible in trying to deal with the very  
18 real concerns that Americans have in trying to  
19 basically look for easy answers.

20           As you know, for Asians in particular,  
21 there's always a struggle because somehow we're never  
22 seen as legitimately American. I'm fourth generation.  
23 And on the cab ride coming back here, they asked me  
24 where I was from. And I said, well, I'm from Seattle.  
25 And he said, well, where are you really from. I mean,



1 I get that all the time.

2 And so there's this perception. When they  
3 see you, no matter what, they think you're foreign.

4 COMMISSIONER HORNER: I hope that was a  
5 foreign cab driver.

6 MS. NARASAKI: I couldn't tell.

7 Sixty percent of our community is foreign  
8 born and so it's not like it's a wildly misplaced  
9 assumption, but there is a lot of that.

10 You'll see in our report, for example, last  
11 year one of radio talk show hosts in L.A., Bill Handle,  
12 on air said, you know, I'm just really sick of seeing  
13 these Christie Yamaguchi's and Michelle Kwan's. I want  
14 a real American to win that championship. I don't want  
15 to see those Orientals on our Wheaties boxes. And  
16 they're both native born citizens.

17 So, I think that that is unfortunately the  
18 inherent truth about Asian existence here in this  
19 country. We're still not accepted as real Americans,  
20 as real players.

21 And so when the immigrant things come up, we  
22 immediately get caught up in it.

23 CHAIRPERSON BERRY: Okay. Well, I want to  
24 thank you for coming and tell you that our State  
25 Advisory Committees will be monitoring in their states

1 the process of this. And we as a Commission will be  
2 monitoring it. And the information you've provided to  
3 us will be very, very helpful to us in this regard.

4 Thank you again for coming.

5 MS. NARASAKI: Thank you.

6 CHAIRPERSON BERRY: Thank you very much.

7 (Whereupon, the proceedings were concluded at

8 2:23 p.m

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In the Matter of: MEETING

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BRILANE BOWMAN  
Official Reporter.

Dated: DECEMBER 6, 1996

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