

U.S. COMMISSION ON CIVIL RIGHTS

**Briefing on Civil Rights Implications
Of Regulatory Obstacles
Confronting Minority Entrepreneurs**

September 5, 1996

Chairperson Berry: I want to welcome you to this briefing on civil rights implications of regulatory obstacles faced by minority entrepreneurs. The issue here is regulation and its impact on entrepreneurs and its relationship to issues of discrimination in the United States. And so we are very pleased to hear from business people who have had first-hand dealings with government regs and from researchers and organization representatives who can provide broad information and perspectives. I want to thank the panelists for coming and to apologize to you for your having to wait.

Although briefings are not so systematic as our hearings and studies, they do serve to alert the Commissioners and the public about important civil rights situations. The transcript of this briefing will be made available to the public, and information from a briefing may lead to a fuller investigation by the Commission.

I want first to call on Gerald A. Reynolds, who is President of the Center for New Black Leadership, a non-partisan organization dedicated to reviving and encouraging traditional

solutions to the social and economic problems confronting the black community. He serves on the National Advisory Board for Project 21, a program of the National Center for Public Policy Research. Before joining the Center for New Black Leadership, he was a legal analyst for the Center for Economic Opportunity. Mr. Reynolds was also an attorney with a Connecticut-based law firm.

Let me introduce all of the panelists and then we'll start the presentations in order.

The second panelist is Taalib-Din Abdul Uqdah, who is co-owner and CEO of Cornrows and Company, which has a hair care salon specializing in braiding and chemical-free styling, a manufacturing and mail order business in cosmetics and skin care products, and a publishing branch for books relating to the subject. He is also founder and executive director of the American Hairbraiders & Natural Haircare Association. He has worked to change laws, regulations, policies and standards affecting hair salons and styling. His experience as an entrepreneur goes back to the 1970s, when he designed, constructed and operated a 24-hour open air food market in Southeast Washington.

The next panelist is Marina Morales Laverdy, who is the Executive Director of the Latin American Management Association (LAMA), a non-profit national trade association that promotes government contracting opportunities for Hispanic and other minority-owned small business. Before joining LAMA, she was

director of UCLA's alumni advocacy programs. She's also worked on the staff of U.S. Representative Esteban Torres of California and was deputy director of the Congressional Hispanic Caucus Institute, Inc.

Craig Thompson is General Counsel for the Council for Economic and Business Opportunity, Inc. (CEBO), a business development firm located in Baltimore, where his responsibilities include overseeing CEBO's legal operations, counseling clients and brokering mergers. Mr. Thompson has written and spoken extensively on minority business development issues. He earlier was an associate counsel with the Minority Business Legal Defense Fund. He is currently a member of Baltimore City's Minority and Women Business Enterprise Advisory Committee, which advises the Mayor and City Council on issues affecting business enterprise.

Okay. Let us start first with Mr. Reynolds. Please proceed and make an opening statement, and we'll have questions.

MR. REYNOLDS: Okay, I'd like to start off by thanking the Commission for providing an opportunity to share some of my thoughts on these issues, and I'd also like to give the Commission a brief description of the Center's work. The Center was created in 1995, primarily because we perceived a vacuum of leadership in the black community. Traditional civil rights organizations seemed to be obsessed with the maintenance of racial preference policies while ignoring problems in the black community that are having a devastating effect on the community.

Problems such as crime, teenage pregnancy and economic development.

Now we feel that we should take a three-legged stool approach to problem-solving. We need to enforce the anti-discrimination laws, while at the same time we need to promote economic development and spiritual renewal in the black community.

With respect to economic development, black entrepreneurs face many of the same regulatory barriers that large corporations face. However, there is a significant difference. GM can afford economic inefficiencies whereas a young black man starting up a business in the inner city may not be able to afford these inefficiencies.

Now we have a series of laws and attended regulations that have varying degrees of utility. They're helpful, many of these statutes, but we must be mindful of the fact that these statutes and regulations involve tradeoffs. When we enact a minimum wage statute, we are going to ensure a basic level of a wage for those folks who are looking up to get a job. But I think that it's also clear that we are going to ensure that those who lack skills will not get jobs. These folks who lack skills are -- a disproportionate number of them are minorities.

So I guess I'm here to ask the Commissioners to be mindful of the unintended consequences of some of the regulations that we have on the books. We can start off with the Davis-Bacon

Act. We can go from there and we can look at minimum wage statutes. From there we can look at OSHA. And we can also look at the Civil Rights Act, Title VII. Again, all of these statutes have worthy goals in mind, but they also have unintended consequences and we need to look at those consequences, and we need to look at how they're impacting Americans across the country, but especially how regulations are affecting entrepreneurs in the inner city.

Now, we all talk a good game with respect to economic development. We've been trying to revitalize the inner city for well over 30 years. I don't think the government is capable of revitalizing the inner city. It's up to individuals, and I think that the government needs to get out of the way in some cases. The government needs to examine its policies and act like a business. Those policies that are doing good, fine, maintain them. But those policies that are having a negative impact on the business community -- we need to examine them and in some cases we need to maintain them, because again, it involves -- these regulations involve tradeoffs, and sometimes you can make an argument that the economic inefficiencies that are generated by these regulations are worth it. But there are many instances where that is not the case.

I was born and raised in New York City and when I go home now, I look and ride the train there into Jamaica and see these van drivers -- these outlaws, these young black men who

have had to break the law in order to earn a living. They've had to break the law because New York City has regulations that has criminalized driving a van -- a delivery service. The same is true in Houston.

Due to the work of numerous organizations, cities are starting to reexamine these policies, but it's an uphill struggle. We need not hamper economic development in the inner city. I don't think anyone would stand up and say it's a good idea to make young black men and women work harder to get their businesses off the ground.

We can look here in Washington, D.C. and across the country and look at the regulations that require folks to get a license in order to braid hair. Most Americans don't understand that. In many instances, there is no down side. Someone braids your hair. If you don't like it, you don't pay them -- you go home and you take it out. No harm, no file. But we have regulations on the books that force entrepreneurs to expend a significant sum of money in order to get a license to braid hair.

There are many statutes out there that need to be reexamined, and, in some cases, modified. Again, the civil rights revolution, the first leg of it, is over. We have folks who are running for office. We have folks who can register to vote. But we have to examine the other two legs of the revolution, which are economic development and also social and spiritual renewal in the black community.

CHAIRPERSON BERRY: Thank you very much.

Mr. Uqdah.

MR. UQDAH: I too would like to thank this Commission for holding this hearing, or at least this panel. I bring to you first-hand knowledge on this issue, where its problems are, its history as well as a solution. I have been self-employed for 23 years. From three years out of high school. I have been self-employed in the same business for 18 years. We are an African-style braiding salon. I note the African-ness of it, to dispel any rumors in relationship to what you may understand personally about what a braid is. That is a more commonly used term as a French braid or a basket weave. These are not the types of braids that we do.

This is a traditional African art form that can easily trace its history back over 5,000 years. It is the only thing that African Americans can point to and honestly say has survived the middle passage. There are women in this country who have kept that tradition alive. It has been passed down from generation to generation.

For at least 10 of the 18 years that I've been in business, I had to fight the District government, and when I say fight, I am speaking now of fines, cease and desist orders, threats of arrest, threats of prosecution. No fewer than 14 separate hearings over a 10-year period, all of which culminated in the change in District law which I drafted. In 1993 they gave

me everything that I wanted -- which made no sense to me because what it meant was for 10 years I had to spend in a room hollering and pointing fingers at people, trying to convince them what I was doing was the right thing.

What has transpired since then is that we have gotten calls from all over the country wanting to know *how did you do this*, because for at least the last 30 years every state in the United States has attempted to prosecute African Americans in general, women in particular, for operating braiding salons that they claim are in violation of cosmetology licenses.

What is important that you understand is that, historically, within the African American community, licenses were never, ever required. It was only white women in America that violated early American laws that required anyone in this country who wanted to do hair to have a barber's license. And the only person who was allowed to have a barber's license was a man. With the passage of the 19th amendment, which is more popularly known as the Women's Suffrage Act, in 1921, giving white women the right to vote in this country, for some strange reason, these same white women wanted the right to do everything else, including cutting hair. And by 1928 this country had issued its first cosmetology license.

What I will point out to the Commission, however, is that a black woman who is clearly recognized as being this country's first self-made millionaire, Madam C.J. Walker, who

died in 1919 -- may God have mercy on her soul -- and for two years before the first license was issued made all of her money, every dime, from the first 52 cents that she invested, to the millions that she made and spent in purchasing movie theaters, factories, funding the NAACP's anti-lynching program -- she made her money, and she never, ever, had a license. Never. And no sooner than she showed America how money could be made in hair and hair care products, the establishment regulatory license barriers were implemented in this country under the disguise of Franklin Delano Roosevelt's New Deal program. I'm not making this history up, this is documented within the National Cosmetology Association's Diamond Jubilee edition. If it's a lie, they're the ones who told it.

In this country, in all states except three including the District of Columbia, in order for you to braid hair you must go to a cosmetology school for anywhere from 900 to 2,200 hours in order to gain your license. I am here to tell you that cosmetology is the last bastion of chattel slavery in America. And I can prove it. If I'm wrong, I want someone in this Commission to redefine for me what I'm going to describe for you.

When you go to a cosmetology school, you study roughly three to five hundred hours of theory. After that for the balance of your stay, you are required to do what is called floor work. During the course of this floor work you go out and you perform the service on the public, at a reduced cost. That

reduced cost is paid to the school, to the owner of the school. The student gets absolutely nothing. In most states it is a violation of law for the student to even accept a tip. If that's not chattel slavery, I don't know what is. If you have a better phrase for it, I'd appreciate it -- if some greater minds, better than mine, will give me another definition for it. But that's what I call it.

Many states have attempted to try and make us a part of that process, and we have refused. We have been encouraging our membership all across the country to open up braiding salons and schools in open defiance of any state's cosmetology laws. We have had success in the District. We have had success in the state of Michigan and in the state of Maryland. We are suing the state of California as we speak. We are suing the state of New York as we speak. We are contemplating law suits against the states of Florida, Tennessee, Texas, North Carolina, Pennsylvania, Indiana, Illinois, so forth and so on.

The last thing that I want to do is tell you this, and then I'll certainly be willing to answer questions. This issue is about five things and I want to put them in the context for which we need to discuss it. And I think it's always helpful, whenever I've been to panels of hearings like this, we always bring a prop, and I have brought mine with me today. And I'd like to just place it here on the table. It's \$100 bill.

This issue is about money. It is about race. It is

about politics. It is about control. And it is about power. In that order. Any one of those five, I am able to give you a detailed explanation of how I came to conclude this. Thank you.

CHAIRPERSON BERRY: Thank you very much, Mr. Uqdah. There will be questions later.

Ms. Laverdy, please proceed.

MS. LAVERDY: Thank you. It's an honor to be here today, especially to discuss these issues. I'm here representing my member companies, which are minority-owned small businesses. Most of them do business with the Federal Government. The vast majority of them have either been in the 8A Program, or have graduated from the 8A Program, or are now currently in the 8A Program.

For them, government regulations can be a double-edged sword. As was discussed earlier, government regulations can have very worthy goals, and of course our companies believe in those goals, but they can also be extremely burdensome to these companies. As we all know, it's still an enormous problem for minorities and small businesses to gain access to capital, to be bonded, to even be insured, and on top of having those problems and getting started with their businesses, once they are started and established and are trying to break into the government market, then we have to face the vast government regulations, which are very burdensome to them.

As small companies trying to get started in government

contracting, they find that they have to employ very high-priced human relations people to deal with things like the reports that they have to give to the Office of Federal Contract Compliance Program at the Department of Labor. They have to keep high-priced CPAs on retainer in order to deal with the Defense Contracting Audit Administration. And they must always have attorneys on retainer to deal with OSHA issues, EPA issues and a number of other regulatory issues, which are all an extreme burden on a small, minority business that's trying to get started and that's had trouble with capitalization.

To prove to you that it is still an enormous problem, capitalization -- many of our member companies are in the computer and software industry. They have moved away from manufacturing. They were originally called the Latin American Manufacturers Association, but it is so costly for them now to capitalize or to gain the capital to be manufacturers that they are now going into the service industry.

Now the other side of that sword is the side that allows them to play in the government human marketplace, and that's the different government programs, such as the Small Business set-aside program, the 8A Business Development Program, and the agency-wide STB (ph) Program, which is a new program. Now the one program that has especially helped minority businesses enter the \$20 billion dollar government contracting market has been the 8A Program. This was a program established

in the 70's by the Nixon administration, and it was a program that was established to help create a cadre of minority entrepreneurs in this country.

VICE-CHAIR REYNOSO: What is the program called?

MS. LAVERDY: It's the Section 8A Business Development Program. Minority businesses in 1996 received approximately 5 percent of the government contracting pie. Now prior to the 8A program -- the only statistics we've been able to find prior to the beginning of the 8A program indicate that minority-owned businesses received less than 1 percent of government contracting prior to this program. And we have been told that that may not even be true -- it may be less than that 1 percent, because they didn't feel there were enough companies participating to even count them.

So we strongly believe that without this program minority small businesses would really be non-existent in the government contracting arena. So this program has just -- without it we really would not have minority businesses in government contracting. The 8A Program has been widely criticized by many. It's been under attack as have all affirmative action programs. We like to point out that it is not strictly a race-based program -- that's why it's been able to survive much of the scrutiny within the courts and Congress.

And right now -- about three weeks ago -- the Small Business Administration issued a new proposed rule that would

tighten up the regulations on the 8A Program, and this also opens up the program to more groups, especially to women. They have changed -- prior to this new rule which we are in the comment period right now on, women who wanted to get into the program had to show by a clear and convincing evidence that they had been discriminated against and were a discriminated group in order to be a part of this program. Now they have brought down the level of evidence to preponderance of the evidence -- yes, preponderance of the evidence -- and that will make it much easier for women to be a part of the program. So it will be open to everyone who is socially and economically disadvantaged.

And we'd like to, in closing, say that some of the regulations that are burdensome to these minority-owned businesses we feel should be looked at and not be done away with, but see how they can be less burdensome to these businesses. And we'd like to ensure that programs such as the 8A Program are kept in place. Thank you.

CHAIRPERSON BERRY: Thank you very much, Ms. Laverdy.

Mr. Thompson, please.

MR. THOMPSON: Madam Chair and members of the Commission, thank you very much for this opportunity to present at this briefing -- I'm not sure what the procedure or protocol is, but I'm hopeful that this briefing will give enough information, or at least spark some additional interest in the topic, such as this will turn into a full hearing with a bit more

detail.

As was mentioned earlier, I am General Counsel for the Council for Economic and Business Opportunity, or CEBO, which is a business development and consulting firm located in Baltimore city. CEBO was born out of the recommendations that were made by the Kerner Commission in the late 60's after some of the rebellions in various part of the country, and there were some specific recommendations that were made in terms of how to remedy some of the effects of the absolute dismissal of conditions in inner cities, one of which of course, as was mentioned earlier, was the concept of economic development. CEBO's been around for almost 30 years now and has engaged in that in a number of ways, and I do have some information about CEBO I'd like to pass on to you, but I want to get right into the topic.

I think it's important that the issue that most of us know about, and certainly the President has addressed recently, the issue of race and racism, serves as sort of an undercurrent throughout this whole briefing, throughout this whole discussion. Really, because when you're talking about statutes or ordinances or regulations, many times on their face they don't appear to be discriminatory or in any way have any kind of disparate impact. But it's in the implementation phase, or in the actual procedural phase, that many of the regulations or ordinances have their impact, or inordinate impact or disparate impact. And I think that's really the context in which we have to discuss these

issues, because many times it's not on the face of many of these regulations that they are discriminatory, but in fact in the context of their implementation.

Sometimes either consciously or subconsciously because of the issues of race and racism, many people exert more energy toward those that they're more comfortable with and less energy toward those that they're least comfortable with or least knowledgeable of. I think that's really one of the issues that we're addressing today.

I'm going to sort of broaden the definition of regulation to include -- or to be defined as -- government control over any aspect of business, and I want to broaden that because I think that some of the programs Ms. Laverdy had brought up, particularly at the state and local level, should be included as regulations or as controls on businesses. For the most part, state and local affirmative action or remedial or inclusion programs aren't discriminatory on their face but the implementation of many of them have an impact on minority businesses, many times because they are vague in terms of how exactly to implement them.

And that's where some of the problems arise. Sometimes procurement officers don't have the requisite numbers of people to effectively implement some of these programs and, unfortunately, a lot of times minority businesses sort of fall through the cracks in a number of ways, some of which I'd like to

define.

For example, in the certification process itself, in terms of becoming certified as a minority- or woman-owned business, many times the certification process is time consuming, which is a luxury that many minority-owned businesses, many small businesses, don't have. Very time consuming.

As Ms. Laverdy had mentioned, sometimes minority businesses have to hire outside consultants, or outside people, to come in and actually fill out the applications for certifications, because they just don't have the personnel or the time to do so, which is a cost burden. Many certifications are not uniform, so if you're in a particular state, you may have to do one for each jurisdiction that you do business in. Once again, taking a lot of time and a lot of resources that these businesses may, in fact, not have. Sometimes they need to be renewed every couple years, or whatever the regulation or ordinance may state. Once again, taking a good deal of time.

This is all in the context of how these programs are implemented, and how they may have a different or a disparate impact on some of the minority businesses.

Many times with some of these regulations or ordinances and inclusion programs, the contracts are so large and they're not broken down so that some of the minority businesses that are in fact certified can actually work on some of the contracts. The breaking down of contracts is not necessarily a difficult

thing to do, but many administrators and procurement officials say that it is too burdensome on their time to break down contracts so that some of the minority-owned companies that could do some of the smaller jobs can in fact work on some of them. And they simply cannot participate because of the dollar value of some of the contracts. And so that has a direct impact on some of the businesses.

Also there is what I would call the gratuitous granting of "good faith waivers." Many of the programs have included in them what they call good faith waivers, which would allow a general contractor who is subbing work out to in essence say, you know, I've done all that I can and I simply can't find any MBEs or WBES to work with. Will you give me a break and give me a waiver on this particular contract? And once again with regard to the actual administration, there may not be enough personnel, or qualified or knowledgeable personnel, to thoroughly scrutinize these applications for waiver. Therefore, a number of the waivers are gratuitously granted, because there's no real scrutiny or thorough scrutiny of the application. That also locks out a number of minority-owned businesses because they may in fact be ready and willing to do the job and to do the work, but because the general contractor has done whatever could be done to sort of get away from that -- they've done that and it's been accepted.

Also the lack of effective screening processes for what

are known as *front* companies, or companies that are on paper minority owned but in reality not minority owned. This once again goes back to the administrative part where a number of offices don't do an effective job, or an efficient job, of screening the companies that have applied for certification, particularly those that may in fact be owned by women or owned by some minorities that may have been employed by a company and the next day they're the owner of the company. We've been able to see a number of instances where that has happened.

As Chair Berry mentioned, I once practiced law in D.C. with the Minority Business Legal Defense Fund, and had a chance to do some traveling in the compilation of some disparity studies that documented the statistical as well as the anecdotal data that may have been necessary to substantiate a MBE or WBE program. Throughout my conversations with a number of entrepreneurs, it was identified that there were a number of companies that were in the market that were getting a lot of jobs but were not, in fact, true MBE companies.

So those are some of the ways that even in the context of an inclusion program, the lack of a true implementation has a direct impact on minority-owned businesses.

Arthur Anderson Consulting Company did a survey in 1994 of small businesses, and 40 percent of those businesses that were interviewed ranked regulation as one of the most severe challenges to their survival, particularly those companies who

were smaller in nature and had to, as Mr. Uqdah mentioned earlier, deal with licensing regulations, which may in fact once again be cost prohibitive as well as time prohibitive.

And there were identified three major reasons why regulations were disproportionately affecting minority-owned businesses.

The first of which is that there was a lower capacity to take on additional debt. Therefore, many of the regulations which required some cost directly impacted those that simply could not afford to pay for the regulation. I think that Mr. Reynolds brought up earlier that a GM may in fact be able to take on that cost, but a smaller business that can't afford to hire additional personnel wouldn't be able to afford that, and it was identified that these businesses faced a higher per employee cost to comply with these regulations than some of the larger corporations did.

The second issue was the barriers to entry even into an industry. Some industries, or agencies like the FCC, have regulations which may in fact serve as a barrier because of the numbers of qualifications that an owner of stations, and of different companies, has to have just to gain entry into the industry itself, and in some industries where patents are required, there have been some instances where those who simply couldn't afford that process were sort of locked out of the procedure.

And then, once again, the third was the paperwork burden. Minority-owned businesses are generally smaller in nature and do not have the resources, time or personnel, to handle the paperwork burden in complying with the numerous regulations that -- depending upon what industry they're in -- they have to face.

So I think it's important, particularly with those three subject areas -- lower capacity to take on additional debt, certain barriers to actual entry, as well as the paperwork burden, and, of course, the overall cost burden of complying with a number of these programs and regulations. Those are some of the reasons that minority-owned businesses are directly impacted or affected by some of these regulations -- and the reason I think that a more substantive or detailed hearing on this, as opposed to just a briefing, may in fact come up with some more results, and hopefully we can take some action on that.

CHAIRPERSON BERRY: Okay, thank you very much.

MR. THOMPSON: Thank you.

COMMISSIONER ANDERSON: Madam Chair?

CHAIRPERSON BERRY: Yes, Commissioner Anderson.

COMMISSIONER ANDERSON: Thank you. I have to leave the meeting at this point, but I would like to thank all of those who have been on the panel so far, and I want to let them know that I'm going to read the transcript of those panelists I won't be able to hear personally and just thank them all for being with us

today.

CHAIRPERSON BERRY: Okay. Thank you.

Any questions from any Commissioner? Commissioner Redenbaugh.

COMMISSIONER REDENBAUGH: Yes.

Actually I have one particular question for you, Mr. Reynolds, and then I have some general questions that I'd like any of you to answer. First I should say my own personal view is that regulations have served an important function to diminish competition from new entrants into a field. My own experience and studies run along similar lines to your own, but regulations are much appreciated by already successful companies, and it does work to hold out the newcomers.

Mr. Reynolds, I wanted to ask if you could give some examples from your work of the more egregious or more offensive regulations, or regulations that may have been well-meaning at the time but so much time has passed that now they're perverse.

MR. REYNOLDS: Sure, I think that you can pick any statute and the relating regulations and come up with some horror stories, but if we're going to narrow the discussion to say urban centers, I think we all can agree that the young blacks in urban centers, many of them don't have any skills. To have a minimum wage statute and force a potential employer to pay a premium for labor, the result is -- you could predict with precision -- the result is going to be that many of the low-skilled workers are

not going to be employed. No one, except probably the Federal Government, is going to pay a premium for labor if they don't have to.

We can also look at OSHA regs. In order to comply, you have to have a high level of sophistication, and in many instances that requires you to engage the services of consultants -- not just consultants, but high priced engineers and other folks. Again, large companies can afford this, small companies cannot.

We can also look at things like the Family Medical Leave Act, the -- well -- ADA. Again, all of these statutes and relating regulations, they had a very good purpose and I think that in many cases that the burden may be worth it, but I would just ask that we recognize the fact that these benefits involve a trade-off and that at least in many cases, these statutes and regulations are going to retard economic development in urban centers across the country.

COMMISSIONER REDENBAUGH: With the Family Leave, aren't there size regulations under which you are excluded?

MR. REYNOLDS: Yes, that's true, but they're low. Let me give you -- with OSHA it kicks in at 10; Civil Rights Act, 15; ADA, 15 -- these regulations aren't limited to mega-corporations. Once you get over, say, 20 employees, then you're running a great risk if you're going to operate your business without a CPA and an attorney.

COMMISSIONER REDENBAUGH: Is it your experience then this caps these business sizes at 14, 15 or is there a --

MR. REYNOLDS: I read some reports where businesses have intentionally limited the size in order to avoid dealing with these particular statutes and regulations. But I think that most businesses don't limit their size because of that. I think that the damage is done in inefficiencies, and with respect to small businesses, it either prevents a business from growing, or it prevents entrepreneurs from entering the market. I think those are the two important problems that result from these regulations.

COMMISSIONER REDENBAUGH: I think I'm ready with some more general questions. What are the most specific changes that you think would make a substantial difference in employment opportunities for people starting out?

MR. REYNOLDS: For folks with low or no skills, I think the biggest thing that we can do for that group of people is to have a dual wage system. Again, if you don't have any skills, no one is going to pay a premium for your hire, and for many folks in the inner city, a job is extremely important because in many instances that is the only --

COMMISSIONER REDENBAUGH: Yes, I understand. If I could ask the same question to any of the other panelists?

MR. UQDAH: This is Taalib-Din Uqdah --

VICE-CHAIR REYNOSO: I'm sorry I didn't hear the

question.

COMMISSIONER REDENBAUGH: What are the changes that would make a substantial difference for employment?

CHAIRPERSON BERRY: Okay.

MR. UQDAH: One of the first things that needs to be done, and I don't know whether this would fall within the Commission's purview or not, but it's certainly something that we have proposed around the country as we've gone from state to state, and it is a part of a proposal that we tried to get some support for, and that is essentially an economic civil rights act. We would make it a violation of law of this country for any state to be able to create any law which would impinge on an individual's right to be able to earn a living. We think that we can make such a law more palatable by tying it to the present Welfare Reform Act which was signed by the President roughly a year ago.

The incentive for the states would be to offer some sort of limited licensure within the occupational industry, particularly with service providers. There are disparities which exist amongst every state, and a few I would like to point out in order to make my point. As I indicated to you earlier, there is a cosmetology scheme which requires a hair stylist to go to schools in most states anywhere from 900 hours to as much as 2,200 hours.

In the state of New York, in order to do cosmetology

services you are required to go to school for 1,000 hours. However, to blow up a building in the state of New York, to get a demolition license, you must be trained in 16 hours of training. One, six. To become an emergency medical technician, that is to perform CPR and fibrillation and all the other medical terms, 116 hours of training. But in order for me to pop a curl in your hair, I've got to go to school for 1,000 hours.

In states such as, I believe, Kansas, they have a timekeeper's license, so if you're at a basketball game and you're keeping the time -- or football, or soccer -- you're licensed. In Oklahoma, you must get a post-hole digger's license. Putting a fence up, got to have a license to dig that hole. I'm not sure in what state this is -- and I can check and find out for sure -- but to collect tickets in one of our states, you need to have a license. So if you're at Camden Yards going to a baseball game, that person who's taking your ticket has to have a license.

Somewhere, somehow, someone is going to have to take a look at these entry-level regulatory barriers. Because what is happening in this country is this. We look at our mega-corporations, our international conglomerates -- you look at Marriott, you look at Nordstrom's, you look at Hewlett-Packard, you look at Apple Computer -- I'm talking about four businesses in this country that started with little to nothing. Marriott, selling root beer on the side of the road in Utah. It's against

the law now to sell open container beverages on the side of any road in this country. Hewlett-Packard, and I put Apple in the same category -- Hewlett-Packard in East Palo Alto, California, and Apple Computer in Silver Spring -- these guys started their businesses in their garages. It's a violation of law for you to have a business in your garage. Nordstrom's -- huge department store. Two brothers start selling shoes out of a station wagon in Seattle, Washington. You can't do it now without a license. And of course I mentioned Madam C.J. Walker. She never had a license, but she made millions of dollars.

So when I talk to you about the barriers, the problems, it's not in terms of mega-businesses. I'm talking about, you know, if you can envision a ladder, it has rungs, and I don't know a lot of people that when they step up onto a ladder they step up to the third rung. I don't know a lot of folk -- when I start, I start with the bottom rung, then I move up, et cetera. What I am telling you is that at least those bottom three rungs have been removed, and now when you start a business in this country, see, you've got to be ready to go in leaps and bounds, and hope that --

COMMISSIONER REDENBAUGH: Yes, and your examples are very compelling. Thank you very much. That's all the questions that I have.

CHAIRPERSON BERRY: Okay, Commissioner Horner?

COMMISSIONER HORNER: Yes, Mr. Ugdah?

MR. UQDAH: Yes, ma'am. I answer to anything reasonably close.

COMMISSIONER HORNER: Thank you. Thank you for your forbearance, and thank you for your fairly riveting testimony supporting what others have said more generally on this panel. You talked about your many years of fighting city hall here in Washington among other places. I have always been puzzled by the following question. When there are laws and regulations that affect the application of public and private money -- which is what many laws and regulations are about, I know you know that -- I have been surprised that people who feel outraged at the injury done them by a law or regulation -- the pure and direct money injury done them -- are not able to find and support successfully political champions who will make their political careers in a city council on something like the issue that you identified.

I've lived in the District of Columbia since 1970, and I have not become aware during that long span of time of any champion of the cause that you have espoused. And so my question to you is, why haven't you and like-minded colleagues not been able to force this onto the political agenda and get redress?

MR. UQDAH: We have, but not with the kind of consistency that I would like to see. They deal with these matters on an issue by issue basis.

COMMISSIONER HORNER: That won't work. You need a broad assault upon a mindset, and can't you do that? Can't you

find a candidate for the D.C. city council or the mayoralty --

MR. UQDAH: We can once government understands that its purpose is to serve and not to rule.

COMMISSIONER HORNER: Well, the people can be made to understand that and bring pressure to bear.

MR. UQDAH: And -- let me say this -- it is happening. It is happening around this country with our association in particular, and I'm sure amongst these others, that we are empowering these people to understand what it means for them to openly defy any law.

COMMISSIONER HORNER: Well, I'm not even talking about defiance; I'm talking about educating your city council member that he or she won't be elected the next time unless this particular licensure regulation is raised in the council vigorously.

MR. UQDAH: You know where the problem comes in with that?

COMMISSIONER HORNER: Well, that's what --

MR. UQDAH: I'll tell you exactly where it comes in -- and I understand your question now. As a business person, my job is to do this. I don't have time to be running down to city hall trying to lobby a city council person, and trying to lobby the governor, trying to lobby a senator. In fact, one of the things that I tell my membership is that the reason that we founded this association is that that becomes the job of the association.

COMMISSIONER HORNER: Exactly.

MR. UQDAH: So that my membership can continue to do what it does best, and that is make money. That's the whole purpose of being in business. Now, once you've made that money, if you decide that you want to do philanthropy-type operations, that's your business, because that's your money. But I don't advise my membership to get involved in the political process. That's what we do as an association, and we purposely formed a C-6.

COMMISSIONER HORNER: What's that?

MR. UQDAH: That is an association that is allowed to lobby.

COMMISSIONER HORNER: Oh, okay.

MR. UQDAH: It is a tax-exempt -- we don't have to concern ourselves with C-3 parameters and making sure that we separate ourselves from the political -- no, we are heavily into the political process. I have learned a great deal of lessons in this as I go from state to state. One of the things that I have discovered is that this beast, even though we have 50 different states, they all have the same head. I am dealing with different state legislatures, and I can substitute a representative or a senator who would object to the -- in Michigan -- to the same one who objected in another state, and the same thing applies to the (inaudible); the same thing applies to any of these Commissions, and what our job has become is to empower our associates --

membership -- that you do have control. You do have the power. We provide them with what they need -- the telephone numbers, the fax numbers. If I have to, I draft the letters and send them to them, have you sign it and we send it on to whoever it needs to be sent to -- and that puts them on notice. And we've gotten sympathy from certain state legislators -- one in Tennessee for example, who is so disturbed by the passage of the law in Tennessee that she has indicated to me she is willing -- as a legislator -- to open up a natural hair care salon in the state of Tennessee in open defiance of a law that was passed within the Tennessee General Assembly. That's how ridiculous this matter has become.

COMMISSIONER HORNER: Thank you.

CHAIRPERSON BERRY: Any other questions? Commissioner George.

COMMISSIONER GEORGE: Yes, I have a couple of more specific questions for Mr. Ugdah and Mr. Reynolds, but first I'd like to open with a general question for everyone on the panel who has some expertise on black American history, and it's this: There is a -- I'm not a historian -- our chairman is a distinguished historian -- but I know enough to know that it's a myth to say that the black community in America never had a spirit of economic initiative and entrepreneurship because of the history of slavery and then servitude and so forth. I am told that, in fact, the opposite is true, and Mr. Ugdah's pointed to

one very notable example in our history.

There at least was a very strong tradition in this community of economic initiative and entrepreneurship, so it's not so much, I am told, a matter of trying to create something that never existed in a subcultural circumstance. It's rather to recover and promote what is already a tradition that is there to be recovered and promoted. Now, do you all agree with that?

MR. UQDAH: Absolutely. I do.

MR. REYNOLDS: Yes, once upon a time there were numerous insurance companies owned by blacks, banks, catering services --

MR. UQDAH: Funeral homes.

MR. REYNOLDS: Yes -- yes, indeed -- that's gone by the wayside for various reasons. One of those reasons, I believe, is regulations. I mean -- to imagine what is required to open up a bank in 1997 versus, say, 1897! We live in a different world now. You have to jump through many hoops and you have to have a lot of money. As Mr. Uqdah has pointed out, the rungs have been removed -- the bottom rungs have been removed -- so if you want to become an entrepreneur now, depending on your particular field, it requires lots of capital.

COMMISSIONER GEORGE: Now -- to play the devil's advocate here -- what would you say to the argument which I've heard advanced that the problem is not regulation, the problem is actually a bad side effect of the very great good of the

elimination of de jure segregation. That what happened was minority businesses -- you know this argument, I can see Mr. Uqdah's head -- minority businesses flourished when there was a segregated society and so there was a segregated market. But once the thing opened up, then we had the collapse of black enterprise. Now, Mr. Uqdah, you get to answer.

MR. UQDAH: I have to say this, and I'm glad you said it, because oftentimes when I bring this argument up, it's very delicate, you know, for some folks, but the problem for economic development in the African American community started with integration. You would think that prior to integration the blacks didn't have restaurants, dry cleaners -- you know, we didn't have stores to go to. We didn't have people that provided services to us -- that is, electricity and plumbing and masonry and everything that is required in order to be able to have what was, at that time, a good standard or a good quality of life.

Once this society pushed integration, or rammed integration down the throats of the American citizen, it became all right now to go to all of the department stores, and into the hotels, regardless of the problems that still exist now in various avenues. But the closure or the rape of the mom and pop stores -- they don't exist any more -- and that's where I started. I started on a corner of Martin Luther King and Good Hope Road, and I lived in the back of my business, and I served the community -- fruits and vegetables and groceries and health

food. You're not going to find young people doing that any more. They'll go in and they'll consume it. Because they're not in a position where they have to --

COMMISSIONER GEORGE: Explain. Explain.

MR. UQDAH: In other words, if you are in a segregated community and you are not allowed to go into a particular store or to visit a particular place of business, that doesn't mean that you're not going to have that business or that store within your own community. It will have to be created -- someone in the community is going to create it for you, because you have to eat, because you need services, whatever they might be -- whether it's cleaning or electrical or plumbing -- whatever those services might be.

But once you broaden the scope and you allow people to go outside of their community and contract for these services, the community suffers, and that's what's happening now.

COMMISSIONER GEORGE: Mr. Thompson, you agree with that?

MR. THOMPSON: To a degree. Historically, I think you're correct, the spirit has always been there, but there still have been, even in the earlier part of the century, structural barriers that have locked out minority businesses. Even as early as in the 1920's, there was an estimated 70,000 black-owned businesses in the United States, but then when you looked at the era around the Great Depression, a number of the businesses

crumbled, because they remained solely on the loyalty of African Americans in certain communities. But as late as 1944, Gunnar Myrdal, who had written a book called "The American Dilemma," had indicated that "the Negro businessman encounters greater difficulties than whites in securing something like credit," and this is a historical problem: "This is partially due to the marginal position of Negro business. It's also partly due to the prejudicial opinions among whites concerning business ability and personal reliability of Negroes. In either case, a vicious circle is in operation, keeping Negro business down."

I agree with Mr. Ugdah in terms of having to rely solely on a particular market to increase your profits and once your profits are increased, then to increase the number of employees -- and I think that's a very telling point. But at the same time there are still historical structural barriers that have been there that really do in fact need to be addressed -- in 1944 and in 1997.

COMMISSIONER GEORGE: To what extent is the problem today -- does it continue to be a problem of what you have called white prejudicial attitudes towards doing business with black businesses?

MR. THOMPSON: Yes.

COMMISSIONER GEORGE: To a large extent? You can't break out into a larger market because whites won't do business, essentially?

MR. UQDAH: You can find isolated cases.

COMMISSIONER GEORGE: No, I don't mean that. I want to know to what extent -- I mean this Commission needs to know to what extent that is the problem. Not isolated cases, there are always isolated cases of everything. But if that is really a major part of the problem and regulation is going to be another major part of the problem or a smaller part of the problem, we need to know.

MR. THOMPSON: I think that raises another area of concern -- well, not necessarily concern, another issue -- and that is where most minority businesses are located. And many minority businesses are located in minority communities, communities where others outside the minority community may not come to do business. Another unfortunate reality is that because of the lack of larger chains, or larger organizations or companies locating in minority communities -- like a Wal-Mart or a major, major supermarket, or major chain, a Macy's or a Hecht's, in the inner city -- many of the consumers in minority communities have to be migratory consumers and go outside, and of course enrich the companies that are in the more suburban areas.

So another issue that has to be addressed is where these businesses are located and are they offering the things that are able to be supported to a large extent by the community in which they are located.

COMMISSIONER GEORGE: Mr. Reynolds, did you want to say

something?

MR. REYNOLDS: Yes, I think it's true as an empirical fact that, once the walls of segregation came down, I believe that blacks were able to exercise their rights, so if they chose to shop outside their communities, they did so. If they chose to deal with whites, they did so. And I think that an individual makes his or her decision. Now after saying that, I think it would have been better had blacks been able to maintain that core of business sector that existed during segregation. It's unfortunate that that did not take place.

Now, I'm not nostalgic -- I'm not saying that we should go back to segregation in order to force blacks to do business with each other. I don't think we have to do that. I think that there are a number of steps that we can take that will enable black entrepreneurs in the inner city to open up businesses in the inner city. Yes, we see it all the time. We see it with the green grocer -- green grocers in the inner cities run by Koreans and other -- other minorities. It can be done, and it has been done. I think we can make it easier by looking at some of the regulations that we have in place, but again -- oh, and just to respond to one item that was mentioned -- there are no guarantees in business. Racial prejudice has always existed, and it will always exist. There is no Nirvana. Human beings have managed to kill each other over small distinctions, whether it be the Oskanasi (ph) and the Safardum (ph) -- or look in Bosnia, the

Muslims versus the Christians -- we will manage to kill each other if we don't have the rule of law in place.

But we have reached a point in this country at least where your race and your sex are not an insurmountable barrier to success. I think that certain groups have to work harder, and they have to work harder for no other reason than their race, their sex, or their ethnic background. But despite these obstacles, I think that in 1997 you can make progress, and in some case you can become wildly successful.

What we need to do, though, is help people become wildly successful, and one way to do that is to look at the economic regulations on the books and to look at some of the statutes like the Davis-Bacon Act -- and we need to modify these laws and regulations. In some cases, we need to just repeal them because the reason for their existence -- in some cases it was purely to stifle competition.

With the Davis-Bacon Act, northern employers did not want to compete against the boys in the south. The guys in the south had lower labor costs, so we pass an Act that forces anyone doing business with the Federal Government on public works projects, they had to pay the prevailing wage, and in most instances, the prevailing wage is a union wage. Now, if you're a black entrepreneur who is trying to bid for a government contract, in many cases this is prohibitive. Having to pay union scale is prohibitive. But again, it's a very complex problem and

I hope that we deal with it.

CHAIRPERSON BERRY: Vice-Chair.

VICE-CHAIR REYNOSO: Yes, well, first I'm glad to hear that we aren't advocating a return to segregation. I began to wonder from the --

CHAIRPERSON BERRY: I heard that we were.

(Laughter)

VICE-CHAIR REYNOSO: Secondly, I understand the difficulty in dealing with regulation because in the news just the other day there was a report that some bounty hunters -- and that industry is related to bail bonds very often -- had killed some people -- I think in Arizona, I forget -- and the newscast went on to explain in great detail how there was no regulation on bail bondsmen, that they don't have to take any training, that they didn't know what the laws were -- and then they had the relatives of the victims on television say how they felt about the fact that there was no regulation over bail bondsmen. You might guess what they said. *Terrible*. You know anybody can be a bail bondsman. And so probably in that jurisdiction there's now going to be an effort to have regulation on bail bondsmen.

So each industry and each item seem to come up by itself and it's very difficult to attack that, as you indicated, in terms of an economic civil rights act that tries to look at it too globally, and I think that's probably one of the political difficulties you might have.

Just one more comment before I ask my general question. I think history shows that very often minority groups have been, percentage-wise, even more active in economic development or entrepreneurship efforts than majority populations. It certainly seems to be true of the Latino population. But very often as indicated by the panel, it's at the lower economic levels. Big battles in Los Angeles with reference to the Venderores Espudantes (ph) or the Ambulatory Sellers because these are folk that try to sell items on the streets, and Los Angeles had very restrictive regulations.

I just spent some time in southern Florida and was interested that, for example, Coral Gables prohibits any selling on street corners and so on. Miami, on the other hand, permits it. So it goes community by community. So this is a tough issue.

But we had hearings in Mississippi a while back, and perhaps they served to refortify my own notion that economic rights are directly related to civil rights. I mean we heard about so many civil rights issues in Mississippi, many of which would have disappeared if every black family had a million dollars.

And we had a couple of panels talking, as you are today, about their solution. Their solution, I'm going to say, was approached differently. They weren't talking so much about regulation, and quite frankly I have qualms about the notion that

the minimum wage, Federal Family Medical Leave Act, ADA, OSHA, Davis-Bacon and so on are as influential as Mr. Reynolds has indicated they are in this area. They emphasized what they called asset building -- that government policy, to the extent that it deals with these matters, ought to help families and human beings in this country build assets. For example, they pointed out that welfare very often will pay for rent. Would we be better off, they said, if we had a couple of programs where if somebody was on welfare, rather than getting rent, they'd have payments on houses they had bought, and help build assets, so after a while people would have \$40-\$50,000 worth of equity in their homes and maybe they could borrow on their homes to go into business and so on.

So their notion of how to help the minority communities was to build assets, and I know that the purpose of this discussion is a little bit different, but frankly I was struck by their testimony. It seemed to me to make a lot of sense. You've approached it a little bit differently but I just wonder what your reaction is to that set of thoughts that we got out of the Mississippi hearings.

MR. UQDAH: My first reaction would be that entrepreneurship is not a role that the government should be involved in. I would tell you that if you were looking at the proverbial which came first the chicken or the egg, I would tell you that entrepreneurship was here first.

VICE-CHAIR REYNOSO: Of course, but their suggestion was that we'd have a greater shot at entrepreneurship if you had assets, just as you have a better shot at contracting with government if there's a policy that gives you a shot at it.

MR. UQDAH: Well, let me just give you this from my perspective.

VICE-CHAIR REYNOSO: Sure.

MR. UQDAH: Of the two businesses that I've owned, the first one I started with \$200. Five years later, at its peak, I was grossing a quarter million dollars a year. That was in 1979.

VICE-CHAIR REYNOSO: And netting how much?

MR. UQDAH: In 1980 I started the present business that I have now with \$500 and a four-year lease on somebody else's building. In 1984 I purchased my own building. It has a net worth of over \$400,000 in a bad real estate market. And I have consistently grossed at least a half a million dollars a year for the last 10 years. What I did was what little I had, I worked with it -- that's what an entrepreneur is. And the idea is that the joy and the beauty about it is starting with nothing. You take your chances. You take your risks.

And you want to talk about assets? I'd rather talk about asset management, because one of the things that I testified to on Capital Hill against minimum wage was that you could pay an employee \$10,000 an hour -- that's not going to make them a better employee. That's not going to make them come to

work on time. That's not going to make them treat your customers the way that they should.

VICE-CHAIR REYNOSO: It'd be a little bit of an incentive. Even if I were the most impolite person in the world, I would be tempted to be polite for those dollars.

MR. REYNOLDS: I'd like to add to that. The notion of asset building in the abstract, it's fine. But the devil's in the details. If you're talking about governmental transfers of wealth -- taking from Peter to pay Paul -- I think that's the wrong approach. You build assets by making money, no matter how much it is, and saving some of it.

VICE-CHAIR REYNOSO: Sure.

MR. REYNOLDS: That's the way to go. I would like to talk about a capital gains -- a real one, not the one we just passed. Let's let people keep more of their money.

MR. UQDAH: It was a good example that you raised earlier. One of the things that just came to my mind as you all spoke about this -- under the welfare system, it's a violation of law for a recipient to save more than \$1,000.

VICE-CHAIR REYNOSO: Yeah.

MR. UQDAH: Now, how are we dealing with this -- and let me go back to what it is that I do. The average school in this country ranges anywhere from five to twelve thousand dollars. You're going to be there anywhere from nine months to a year and a half. If it's a violation of law while you're on

welfare to save more than \$1,000, where's the money going to come from for you to try to even better yourself? You want to, but it's a violation of law for you to do so. And they've caught a couple of people who had the nerve to save some of their money towards their education and they made them pay it back.

COMMISSIONER REDENBAUGH: And promise to never save again.

MR. UQDAH: Yes.

(Laughter)

COMMISSIONER REDENBAUGH: No, that's actually in the decree.

I'm thinking of maybe the same case you are, the Wisconsin case.

MR. UQDAH: Yes.

COMMISSIONER REDENBAUGH: Yes.

MR. UQDAH: I mean, you know, where it's like ludicrous and ridiculous to come to mind.

CHAIRPERSON BERRY: We do have another panel -- I just want to point that out. I saw people looking at their watches.

Yes, Commissioner Lee?

COMMISSIONER LEE: I have a question. The California Circuit Court recently ruled that minorities set-aside programs were unconstitutional, so my question is to Ms. Laverdy and Mr. Thompson, because you represent small business owners. I'd like to know how have the minority set-aside programs affected your

members, and if the programs were to be ruled unconstitutional, how would that affect them?

MS. LAVERDY: My companies have been greatly affected in the positive by the set-aside programs. And if they go away, if they're judged illegal, it will have a horrible adverse effect on them.

MR. THOMPSON: I'm in agreement with that. I think that there is -- it has been documented that there's a direct correlation between existence of many of these programs and the increase in the numbers of minority-owned businesses. In 1989 when *Richmond versus Croson* was decided -- prior to that time Richmond, Virginia, had remained fairly consistent in terms of having approximately 35 percent and above minority participation on contracts. After the *Croson* decision was laid down, the numbers of minority businesses dropped to lower than 5 percent immediately. And so I think that that demonstrates in a very demonstrative way, that there's a correlation between the existence of these programs and but for many of these programs many minority businesses wouldn't survive.

I think, in the education context, Prop 209 has shown that the numbers of minority applicants to be accepted to many schools have decreased tremendously because of the elimination of some of these programs. The same logic applies with the minority businesses and women-owned businesses.

CHAIRPERSON BERRY: Is that your last question,

Commissioner Lee?

COMMISSIONER LEE: Yes.

CHAIRPERSON BERRY: Let me just say that I have no quarrel with the positions that the briefers have espoused, except that I do wonder in terms of the staff putting it together why there is no one on the panel who takes an opposite view from the views that have been expressed. It is what my colleagues call balance. But that means that I am left to either sit here and condone the presentation of what is false as history -- as a matter of fact it is undocumentable in part of the discussion -- and which was unnecessary to your policy positions which we were liking to hear, or I have to take up time trying to correct statements that people have made about history. And I guess I've been sitting here too long.

For example, Mr. Uqdah, it is not the case that hair weaving or the cornrows are the only thing that black culture has transmitted to this nation which goes back to Africa 1,000 years. Sweet grass baskets, all sorts of language -- which is documented by historians. So that wasn't necessary to your argument. It's just not true.

It's not true that only white women were given the right to vote in the 19th amendment. Many black women voted, other women. Of course, there was discrimination, but these -- it's just that when people come before us -- and I'm not just picking on you -- I'm going to say something about somebody else.

If it's not necessary to your argument, why say things that are not true. The experiences of Madam C.J. Walker could not have led directly to the cosmetology licensing that you described if your dates are correct, because she died in 1919, and the first licensing was in 1928 -- that's what you said. And if the National Association of Cosmetologists put that out, then they're just wrong. And that wasn't necessary to your argument either.

The other thing is that when you folks were talking about regulation, it occurred to me that none of the issues you raised were race-specific or gender-specific, or even civil rights issues. They would apply as much to poor white folk who were trying to get into a business as they would apply to anybody else, so I don't see why --

MR. UQDAH: Well, except --

CHAIRPERSON BERRY: -- I don't see why -- it's one of those issues of focusing it on minorities as a stalking horse to get some policy change that one wants, by making out that one is trying to help black folk.

And finally -- if I may finish, and I'll recognize you -- somebody said that black people were dragged into or that integration was rammed down our throats. In fact, people marched and died and went to jail, some of whom I knew died, black folk, arguing for what we call desegregation -- and they called integration -- and nobody rammed it down their throats.

Statements like that aren't necessary to the argument either, and since there's nobody on the panel who was willing to take up the other side of the argument, I must simply sit here and tolerate these statements that are being made before this Civil Rights Commission, or I must take up time saying something.

And also, I lived under segregation, and it was not all it was cracked up to be either for businessmen, some of whom got killed and were lynched because they were successful black businessmen who were trying to get ahead. There are also reports of this Commission from documented and sworn testimony -- the kinds of abuses and other things that happened to blacks who were successful businessmen, who were trying to get a little credit or get a bond, or get something to get ahead. And then finally, of course, if you have an economic civil rights act which permits people to do whatever they want to to advance themselves individually, without the state interfering with this, I suppose if it is that broad as you described it, it would apply to physicians and pharmacists and anybody who wanted to do anything.

And I would also say to you folks sitting on this side of the table that there are certainly very different arguments that can be made for businessmen who are getting money from government contracts and who have to meet certain requirements so that they can be held accountable, than for somebody who's operating a business who is not getting money from the government. And it seems to me, to sort of complain about

regulations and complain about having to have certification and complain about turning in things when one is feeding at the public trough, if I may use that expression, may be in a little different category.

And as for welfare reform -- which I was opposed to and remain opposed to -- it is indeed the case that people on it aren't supposed to save money from welfare. I understand the principle, that if you want to go to school, get a job, work, save your money to go to school. I can understand why some people would think that and that therefore the government should not be supporting people so that they can save enough money to go to school. I mean I understand the argument. Not that I support it.

And finally, Mr. Reynolds, there is a great deal of evidence about the minimum wage and about its impact on employment in poor, minority areas and everywhere else, and the evidence, as I read it, is that employers didn't stop hiring people because of the increase in the minimum wage. There's been some evidence since then. And there also is in the existing law, if I understand it correctly, provisions for trainees and students and all kinds of exceptions to it. My only point is that I understand your policy perspectives, and I'm very interested in them, and some of them I support. But I just don't think that we need a context that fabricates or puts things in.

And, finally, I'm reminded of a guy who I debated on

television the second year of the Reagan administration who was from a think tank here in town, who said to me after the show was over in which he had presented a lot of things that were not factually correct -- that we should go have a drink and I shouldn't take it so seriously because this was about public relations, it wasn't about truth. And so I went and had a drink with him because it was about midnight and I didn't have nowhere else to go.

If any of you want to say anything back to me, you can say it as we call the next panel.

MR. UQDAH: I need to -- I feel compelled to respond to some of your statements, and I realize that perhaps you made them in the interest of what I heard earlier was described as this Commission needing to have balance. And I can certainly support that. However, I need to remind you, for example, when I made the comment about the braiding being the only thing that we can look at to survive the middle passage, that if I was to give anyone on this Commission an association test and I showed you a plate of sushi, you would think Japanese, if I showed you some spaghetti, you would think Italian, albeit you would be wrong because it's Chinese. That's all right. I'm trying to make a point.

My point is that if I showed you a silhouette of a braided hair style and asked you to associate it with a country and it had no face, you would think African or African American.

If I showed you a basket or some of these other items that you mentioned to me, you wouldn't necessarily associate that with the country of Africa.

CHAIRPERSON BERRY: Now I would.

MR. UQDAH: So -- that's because you come from a perspective. I'm now talking to the majority of the people in this country who are not historians. And I'm giving you a common perspective. The other thing that I would mention to you in relationship to my example of Madam C.J. Walker and the 10-year span between her existence and that of the license, what I mentioned to this Commission early on in my opening statement is that this issue was about money, about race, about the last three things being politics, control and power. And I submit to this Commission, most specifically to its Chair, that the reason that these things exist in this country is because of race.

That Madam C.J. Walker was a black woman, that she showed white America how to make money off of hair and hair care products, and in order for them to maintain the status quo, to maintain their power, to maintain their control, to maintain their political status that they created a licensing process. And once they did, from that point on, every person needed to have a license.

The last thing that I would comment on is this. That, yes, it is true that when they raised the minimum wage that it didn't have any effect on hiring, and the reason that it didn't

is because an entrepreneur is going to find a way to survive. That's our job. That's our business. And it was worse for me in the District of Columbia because the District has a law that requires me to pay \$1.00 above whatever the Federal minimum wage is. That's law. So while everybody else is screaming about \$5.25, I've got \$6.25. I've got to bring someone in and train an unskilled, untrained person at \$6.25 an hour because the government doesn't trust me to do the right thing.

CHAIRPERSON BERRY: Mr. Reynolds.

MR. REYNOLDS: Two comments. I think that there a fair consensus amongst labor economists -- you raise the minimum wage and the number of jobs are reduced. There are a handful of studies that go the other way, but as I said before, there is a consensus among labor economists on this issue.

Now the fact that we're discussing issues that you don't believe are directed primarily at the black community, well, I would say that you're right. These issues affect all Americans. I'm concerned that in my capacity as president for this Center for New Black Leadership -- I'm concerned about the black communities. I think that blacks, like other Americans -- well, blacks share many of the same concerns that other Americans have and many of these concerns revolve around impersonal market forces that are impacted by economic regulations issued by the government. Just because I'm not sitting here discussing an issue that only affects blacks -- and actually I think that that

would be quite difficult to do -- but just because I'm not -- just because I'm not able to do that -- doesn't mean that that these policies aren't affecting the black community in a negative way.

CHAIRPERSON BERRY: Mr. Reynolds, I didn't -- well, I don't need to take time to respond to that -- but I didn't say affecting blacks. I said civil rights issues. I was just jurisdictionally talking about something. Yes, go ahead.

MR. THOMPSON: Certainly, Madam Chair, I want to respond to two things, and certainly it's very similar to what you were just saying to Mr. Reynolds. I want to revisit something that I said earlier in terms of your saying that it was not addressed as a civil rights issue. One of the things that I had addressed during the beginning of my presentation was that many times when you're dealing with regulations and statutes, on their face they may in fact not be discriminatory, but that they may have a disparate or an inordinate impact on minority-owned businesses. It was in that context that I was attempting to make it a civil rights issue. If I did not substantiate it as such, you know, I'd like to now. But that was the language that I attempted to use to make it a civil rights issue -- even though many of these regulations may in fact affect all small businesses, if they in fact have a disparate or an inordinate impact on minority-owned businesses, that is the point at which I think it becomes a civil rights issue -- and one that I was

talking about earlier, that hopefully this would expand into more of a detailed hearing as opposed to just a briefing. So I do in fact think that it was put in the context of a civil rights issue.

The second response was to your saying that you feel that there should be some accountability for those who are involved in government programs. I agree with you and I think that Ms. Laverdy would as well. My concern is that in the implementation of some of these programs there have been some actions in the implementation that have affected the existence of the minority-owned businesses. And my understanding of the structure of the briefing is how local, state, or Federal Government regulations may impede minority businesses enterprise at the start-up or expansion phase. That is in fact the context in which many of the comments were made, because some of the issues -- like certification, or the refusal to break down contracts, or the gratuitous granting of waivers, or the lack of effective screening for front companies -- may impede minority businesses at the start-up or expansion phase. And it was in that context that I wanted that to be addressed.

CHAIRPERSON BERRY: Thank you.

Commissioner Horner?

COMMISSIONER HORNER: Yes, Madam Chair, just a couple of small points that I think crucial for the record. You indicated in your remarks a couple of things that I think need

some attention. One is you indicated that you thought we didn't have a balanced panel. As I listen to this panel, I heard some people who were for the current level of government intervention -- economic action through protection of set-asides if not their expansion -- and the other half of the panel who were for greater deregulation, less government expansion. So I think indeed we did have on that issue some balance.

Also you made the comment that since no one on the panel cares to rebut the witnesses or correct the witnesses -- and of course over the years of my service on this panel I have many times disagreed with many things factual that I've heard, perhaps even today -- but I think our job is not to rebut or correct errors we perceive among the witnesses so much as to listen respectfully, and I think therefore there should be no presumption -- I just want to say for the record -- that we agree if we have not rebutted. That's all.

CHAIRPERSON BERRY: Well, I happen to disagree with you, and I think that if we have a panel and there's no one on the panel who can make the argument on each side -- we had no one here to argue that the level of regulation right now of business is just fine, and there are people who would argue that in this world. I'm not contending with the panelists. I'm contending with my colleague and telling her what I meant by balance. My balance question was not about the set-asides -- my question was about the overall tone of the panel -- and that's an issue for us

to discuss at a later time because the witnesses are not responsible for that. And I also think that the Commissioners may ask witnesses any questions they please and make any comments that they please with the use of their time when it becomes available to them.

But I want to thank the panel very much. I appreciate it. I learned a lot and I appreciate your remarks and I thank you very much for coming.

VICE-CHAIR REYNOSO: Thank you.

MR. UQDAH: Thank you.

CHAIRPERSON BERRY: Could the next panel come forward. I understand that there's someone who has to leave almost right away, so maybe we'll start with you first. Who is it? Oh, that's the first person on the panel.

The panelists who are coming forward include Nicole Garnett, a Staff Attorney for the Institute for Justice who has litigated cases in New York City and elsewhere opposing restrictions on entrepreneurs. Ms. Garnett will also discuss the Institute's study of regulatory barriers in a number of U.S. cities. A 1995 graduate of Yale Law School, she was a clerk for 8th Circuit Court of Appeals' Judge Morris Arnold before joining the Institute.

William J. Dennis, Jr., is a Senior Research Fellow at the Education Foundation of the National Federation of Independent Business. He has researched small business and

public policy, and he has published widely on the subject and frequently addresses organizations. He is founder and Director of the National Small Business Poll and was President of the International Council for Small Business in 1996-97.

Margaret C. Simms is Vice President for Research at the Joint Center for Political and Economic Studies and has conducted research on minority business development issues. Dr. Simms earlier was a program director at the Urban Institute and a college professor. She has been Editor of the Review of Black Political Economy and has edited a number of books on the economic well-being of African Americans.

We will first begin with Ms. Garnett. Thank you. If you will make an opening statement, and as you notice there are questions after.

MS. GARNETT: Okay. Thank you very much. I apologize that I won't be able to stay around; I have to be at a wedding in Philadelphia this evening. I really appreciate the opportunity to come here and talk to you all about economic liberty, a topic that is near and dear to the hearts of everybody at the Institute for Justice, because the Institute for Justice was founded upon, and it remains dedicated to, the principle that economic liberty -- which we call the right to earn an honest living, free from government interference that is arbitrary and unnecessary for legitimate public health and safety concerns -- is a fundamental civil right of every American, no matter what their race or sex.

Today we remain dedicated to that principle and we fight in the courts and in the courts of public opinion for every American's right to earn an honest living.

It seems like every morning, or at least once a week, I pick up the paper and read about welfare reform. Some people champion reduced welfare roles and say, look, this experiment is working. Others note that the worse cases remain behind and predict dire results if the economy should take a turn for the worse. But everybody agrees that the success of this reform depends on the ability of former recipients to find and keep work.

Sadly, the very governments that are now encouraging people to work on the one hand, often erect arbitrary barriers that make it difficult or impossible for people who want to work to pursue their chosen profession. These barriers take many forms and many of these were discussed in the earlier panel. A few examples are: Arbitrary training requirements that require people who want to engage in the art of African hair braiding spend up to 2,000 hours and thousands of dollars of their money to learn techniques that they will never use in their profession. The zoning restrictions that keep moms from working at home so that they can be with their children. The strict numerical limits on permits that keep would-be cab and jitney drivers, freight haulers, garbage collectors and street vendors from serving customers who want and need their services. To outright

prohibitions that all too often have no relationship to legitimate government concerns about health and safety. To complicated and confusing applications and procedures that vest unfettered and under-reviewable discretion in government bureaucrats.

These restrictions have three things in common, at least. First, they hurt people at the bottom of the economic ladder, both by restricting employment opportunities and by depriving customers of energetic, high-quality, new service providers. Second, they protect existing companies by shielding them from competition. And third, they are all too often completely unrelated to legitimate health and safety concerns.

To illustrate the real world impact of these regulations, I'd like to tell the story of my client and my friend, Vincent Cummings. Vincent Cummings emigrated to the U.S. from Barbados about 25 years ago. He's a machinist by trade who spent most of his adult life working in a shipyard in Brooklyn. Seven years ago Vincent's daughter told him something that changed his life forever. She told him she wanted to be a doctor. Well, Vincent decided he was going to help her achieve that goal and he wants more than anything to do that. He was going to need some extra money.

Well, he went to Kennedy Airport and applied to be a baggage carrier but he realized he wouldn't be able to keep his day job and still get all the way to Kennedy. So he thought,

well, maybe I'll go into business for myself. And Vincent had always believed that his neighborhood in Flatbush -- Brooklyn -- lacked adequate transportation services, so he decided that maybe he would start a commuter van service. He recruited a few of his friends and pretty soon there were 15 members of Brooklyn Van Lines, each one of them provided inexpensive commuter van service, driving people door to door for \$1.00.

Well, because Mr. Cummings is a law-abiding citizen, he immediately applied for a permit for his company. Response: application denied. He applied again. And again, and again, and again. Each time he submitted his application, he included over 1,000 support statements from his customers and his community -- churches, nurses, teachers -- saying they desperately needed this service because their community was underserved by the public bus system. But for seven long years Vincent Cummings was forced to operate in the underground economy. His American dream was denied right in the shadow of the Statue of Liberty.

Finally this summer, the New York City Council agreed to give Vincent Cummings a permit for 20 vans. But that was only after Mayor Guiliani vetoed a law that had denied his application for the fourth time. Why this intransigence? Well, Vincent Cummings committed an unspeakable crime. He provided a service that was competitive and better than public transportation. Even today Vincent's fight is not over, because even with his permit he cannot provide the service that his customers want and need.

He can't operate on public bus routes -- that's every major street in the city -- and he can't pick up people who hail him from the street. He can only pick them up if they call him in advance. And sadly, his victory may be all for naught, because yesterday the City Council Transportation Committee voted to adopt legislation that would have the effect of banning all commuter van services, eliminating all 500 legal commuter vans in the city of New York, perhaps forever.

The situation in New York is outrageous in an era of welfare reform because after all, commuter van services not only put people to work, they take people to work. They take about 60,000 people to work every day. Most of these people that depend on their services live in poor minority or immigrant communities. But the simple fact is, as we heard earlier, as Mr. Ugdah and the other panelists showed us, these kind of stories are not unique.

There's no simple solution to this problem and I consider it a very serious civil rights problem. Government at every level -- from the Federal Government to the smallest hamlet -- should take the time to recognize and respect the right to earn an honest living, and a good place to start would be to go through and to eliminate occupational restrictions that really have no connection to health and safety concerns. Thank you very much.

CHAIRPERSON BERRY: Are you saying you're going to have

to leave?

MS. GARNETT: I am, unfortunately. But I'll be glad to take questions if anyone has any questions right now.

CHAIRPERSON BERRY: Does anybody have any questions they'd like to ask?

Commissioner Lee.

COMMISSIONER LEE: Ms. Garnett, can you explain a little bit about what you mean by legitimate concerns? Who defines that? In particular, your example of the gentleman who wants to operate the community vans -- do you think it is a legitimate concern of the riders to expect the van that he or she gets on is regulated so that he or she is going to get to a place safely.

MS. GARNETT: When I say legitimate health and safety concerns -- the Institute for Justice and our clients in the commuter van case, or any other of our cases, do not oppose narrowly tailored government regulations that address these concerns. In the van situation, we would certainly support requiring them to obey traffic laws, to make sure that their drivers are safe and have good driving records, that their vans are adequately maintained and that they have adequate insurance.

CHAIRPERSON BERRY: Go ahead.

VICE-CHAIR REYNOSO: Yes, I just have a question, again with respect to your example. I assume that there are competing arguments here -- the one that comes to my mind was that,

probably, the city may have concerns in terms of the diminution of the use of public transportation and will it be able to continue to provide it. How, in your mind, should those balances be worked out, because I assume this is the sort of policy considerations that you run into all the time?

MS. GARNETT: Well, in the city of New York, and in the Federal Government and the state of New York, they have made a commitment to public transportation and they heavily subsidize public transportation. I think the argument would be that if that's the policy judgement of the people of New York, that they should continue to do that, but that should not be connected to the question of whether people who want to use these competing private transportation systems that have demonstrated that in certain situations they perform better than public transportation, that people need those services to get to work on time, I don't think that our concern about public transportation should stop those people from having an additional service.

VICE-CHAIR REYNOSO: So some communities, for example, seem to permit the van services that go down certain streets and actually pick people up on the street corners. I don't know if it's still permitted or not in San Francisco, but I know some years ago it was, and it was a very cheap way of having transportation, so there are many different configurations that one could come up with.

MS. GARNETT: Yes, and I think that actually more and

more governments are looking at this. Ironically, this case has gotten a lot of press coverage and our clients have been contacted by four or five different cities that think that this is kind of a neat thing and wanted to know if they could come out and show them how to set something like this up in their cities. So it is an inexpensive system of transportation and it is very limited in the United States, but very popular in other countries.

COMMISSIONER LEE: I'm operating five seconds behind everything today, so my apology. I just have one follow question on legitimate concerns. Do you think --

VICE-CHAIR REYNOSO: That's what a transportation system that carries you all night does for you.

(Laughter)

COMMISSIONER LEE: What do you think about accountability to service recipients? Do you think service recipients deserve to have regulations to make sure that whatever services they receive are safe? Not in the narrowly tailored way that you defined, but the way the government defines it?

MS. GARNETT: Well, I don't think I understand completely your question. Certainly, service recipients of vendors, of taxi cabs, of every service you can think of -- the government has a legitimate role in insuring that they receive safe service, that they don't get sick from eating a taco off the street, and that they don't get in a wreck on the way to work

because that wheel falls off a van. But I think that narrowly tailoring them, and at least making an effort to make sure that we're not excluding providers that are capable from providing good service, is an important task for government.

CHAIRPERSON BERRY: Did you have a question?

COMMISSIONER GEORGE: Whenever it's my turn. You go ahead.

CHAIRPERSON BERRY: Go ahead.

COMMISSIONER GEORGE: I actually have two questions. One of the things that this Commission would like to be able to contribute to policy in the future -- if we can devise good, valid conceptual methods and tools and have the money -- is a way of measuring discrimination, and beyond that, I should think, measuring the impact of discrimination.

What that would help enable us to do is to figure out to what extent, for example, economic underdevelopment in predominantly minority communities is the result of discrimination and to what extent it is the result of other factors, perhaps in a significant way, overregulation or irrational regulation, or regulation that's not sufficiently narrowly tailored, which has a negative impact on economic development. Until we discover that somebody else has figured out a way of measuring discrimination, or until we figure out a way ourselves, can you provide any impressionistic evidence, or anything that would contribute to us resolving in our own minds

in a tentative way, as to what extent economic underdevelopment in predominantly minority communities is in fact the product of continuing discrimination and to what extent regulation or overregulation or irrational regulation bears the burden of responsibility for this underdevelopment? Or to what extent those factors interact?

MS. GARNETT: Well, I must preface anything that I say by saying that my area of expertise, or the Institute for Justice's area of expertise, is very narrowly focused on entrepreneurial activities for low income individuals who have little skills. It's not particularly any minority community development -- I mean that's not something that we expand on.

COMMISSIONER GEORGE: So your focus is economic status rather than race?

MS. GARNETT: Right. And of course I would say the over-arching sort of theme over all of the things that we've learned about entrepreneurialship is that regulations protect existing providers, and these providers have often been around forever. In Denver, we helped to deregulate the taxi cab market and opened it up for a minority company there. They had not granted a new permit to a new company in 50 years.

Now, there are lots of factors that played into who got the initial permits -- some of those may have been racial discrimination. But what we've found for these entrepreneurs -- it's the protecting of existing competition that's really the

problem. But, again, I can't make a global statement about inner city economic development.

COMMISSIONER GEORGE: And my second question is would you care to comment at all on the question of whether there are any Federal , state, or local laws within your knowledge which are designed to prevent or protect against illegal discrimination which have the effect of being counter-productive by damaging the interests of people whom they're supposed to protect -- by for example, impeding exchange, enterprise and so forth.

MS. GARNETT: Well, are you talking about race?

COMMISSIONER GEORGE: No, I'm not talking about race specifically. Beyond race -- sex, disability, age, national origin?

MS. GARNETT: Well, one of the main things -- that I think was mentioned earlier -- that comes immediately to mind is this: Certain aspects of the American with Disabilities Act. You hurt small businesses -- for instance, the van has to have a \$15,000 wheel chair lift -- and, literally, your whole company is one van you saved up \$20,000 to buy. It makes it very difficult to operate.

I would feel uncomfortable making any global statements about discrimination laws.

COMMISSIONER GEORGE: Has your Institute done any studies of these particular areas of government regulation? These are ones we're particularly interested in.

MS. GARNETT: We have not. We have done studies of seven cities and how regulations affect would-be entrepreneurs in these entry-level occupations, and we would be glad to make those available to you.

COMMISSIONER GEORGE: Just generally or with respect to anti-discrimination?

MS. GARNETT: Just generally.

COMMISSIONER GEORGE: Has anybody done anything on the subject of anti-discrimination law? Would it be your view that there's nothing to do?

MS. GARNETT: Well, certainly I think that there would be lots to -- it would be an interesting topic that someone could take up. It's not what the Institute for Justice has done, or one of our core areas, but somebody -- it would be a very interesting study.

CHAIRPERSON BERRY: Any other questions from Commissioners? I have one myself -- or two. Mr. Guiliani, the mayor of New York is a rather astute politician, I think, and I find it hard to believe that his only argument for being against the vans was that they were competing --

MS. GARNETT: Mr. Guiliani is for the vans.

CHAIRPERSON BERRY: Oh, I thought you said --

MS. GARNETT: City Council is against. He vetoed a law that denied the license, and he --

CHAIRPERSON BERRY: Oh, all right. That's what I had

thought, so I didn't know why you were -- But what is the City Council's reason for being against -- their stated reason? I'm sure they didn't say we don't like anybody to compete with people so therefore out the door you go.

MS. GARNETT: Well, actually, that's what they do say.

But --

CHAIRPERSON BERRY: Oh, come on.

COMMISSIONER HORNER: They say we've been bought, and we stay bought.

(Laughter)

COMMISSIONER GEORGE: Would the argument be -- it seems to me it wouldn't be --

MS. GARNETT: It's to protect public transportation and -- I could bring you reports that say we have to get rid of these vans because they're better than the public buses. This is a problem of existing competitors being protected from new entrants -- in this case, immigrants who are operating van services.

CHAIRPERSON BERRY: Were you shocked at the Institute for Justice to find out that regulations protects those businesses that are already in markets?

MS. GARNETT: I wasn't shocked, no.

CHAIRPERSON BERRY: I mean that's just generally one of the things that happens when you have regulation. In your response to a question of Commissioner George, you said that your

program and activity at the Institute had an economic agenda concern that wasn't necessarily race, if I understood you correctly --

MS. GARNETT: That's right.

CHAIRPERSON BERRY: Well, if that's the case, why do you have this emphasis on minority business people who are trying to compete, in your cases and in the other kinds of things? What is the emphasis there? Why don't you have any cases about poor whites who want to become entrepreneurs?

MS. GARNETT: We don't have any litmus test. We often take cases that come to us, and we focus on people at the bottom of the economic ladder, and for lots of reasons, they tend to be minorities.

CHAIRPERSON BERRY: Do you actually ever seek out cases -- good test cases as other non-profit law firms do?

MS. GARNETT: Well, I mean when we come across a case like the van case that we think illustrates the outrageous effect of economic regulations and where real-world people are really being hurt -- you know, we would take that case. We have limited resources and we have only so many cases to take, but we don't have any litmus test. We don't pick people just because they happen to be minority. We pick them because we think that they deserve our help.

CHAIRPERSON BERRY: I only asked you that because Polly Williams, who is from Wisconsin and was in the State Legislature

and was very closely associated with the issue of school choice which that state has been involved in, told the press that after she had been sort of lionized as the person who was doing this for poor black children, that the leaders of the organization then created another organization called Parents for School Choice and lobbied for expanding the program to religious schools and then elbowed her aside, and that she resented it -- *We have got our black agenda and they've got their own agenda. I didn't see whether resources were really being used to empower us as much as it was to co-opt us.* That's why I asked you the question.

MS. GARNETT: Well, I mean as far as I am aware, Representative Williams was very much in support of expanding the program and I think she may have sponsored the legislation, so --

CHAIRPERSON BERRY: Well, she said that to the press.

My last question then, for you, is: Is the Institute a membership organization, or what is it?

MS. GARNETT: No, we're not a membership organization. We are non-profit, 501(c)(3) organization -- a non-profit public interest law firm.

CHAIRPERSON BERRY: Okay, fine. Thank you very much.

COMMISSIONER HORNER: Madam Chair, just a one sentence comment. I have seen the studies that Ms. Garnett referred to -- they're city by city and occupation -- different occupations in different cities. They're really outstanding studies and I would

commend them to anyone with an interest in this.

MS. GARNETT: We'll send them over.

CHAIRPERSON BERRY: And my really last question: Have you heard anything bad about vans and their service to people in the City of New York? And I ask you that because I have a graduate student who's from New York City and she was telling me about her experiences on the vans and about crime that takes place, about people getting ripped off, about what the absence of regulation does. And I just wonder in order to counterbalance your overall glowing view, has anyone made any complaints about vans?

MS. GARNETT: There are certainly vans -- there are bad eggs, and I think that the situation where they don't allow vans to enter into the regulated market has created a giant black market which allows these sort of bad eggs to continue to compete. And the answer would be to bring everyone into the above-ground economy and to regulate them for safety, for crime, for things like this and everyone would be a lot better off.

CHAIRPERSON BERRY: Thank you very much.

MS. GARNETT: Thank you very much for having me.

CHAIRPERSON BERRY: And I hope you enjoy the wedding.
Mr. Dennis, please.

MR. DENNIS: Thank you very much.

CHAIRPERSON BERRY: Thank you for your patience.

MR. DENNIS: Thank you very much. Let me preface my

remarks by saying I am aware of no literature that really addresses minority business concerns and regulations directly. Most of the literature that I have seen revolves around small businesses, and to the extent that minority businesses tend to be smaller than white-owned businesses as a whole, a focus on the smallest tend to get to minority, but I am not aware of a body of literature that directly addresses the minority issue.

I would like to focus my remarks about the regulatory impact on smaller firms. Then I would like to go a little bit to home-based business, because I think so many minority businesses are involved in that type of activity. And then I would just like to make a few concluding observations, if I might.

Regulation impacts small businesses in a number of very specific ways.

The first one obviously is that it prohibits certain type of activity. For example, we saw in Los Angeles just recently, actually in the spring, the repeal of the prohibition on home-based businesses. Prior to the spring, you weren't allowed, essentially, to have a home-based business in the city of Los Angeles. That's still true in some of our cities. Unfortunately, I've never seen any documentation as to how many cities this affects and the prevalence of the problem, although I've heard again that some of the major cities are involved, such as Detroit. Another example of absolute prohibition would be carriers of first class mail.

I think, however, a more important thing is the corollary itself which really limits the number of competitors that was discussed earlier. Of course you know there's limitation on the number of competitors, and of course you know who gets the licenses, the permits, and whatever. It certainly isn't the new people on the block. An example from the Federal Government is the Federal peanut allotment program, which you've probably heard in several instances before. In the state level, you can look at licensing for -- you might have recalled a segment that Mike Wallace did on *60 Minutes* about a year or two ago on doing wills -- that it was this exclusive purview of lawyers and other people couldn't provide that service. There is in fact a book put out by Gale Publishing. I wanted to bring it today but I forgot it. It's about that thick, which has the basic licensure requirements of various occupations in all 50 states. It's absolutely voluminous. And then finally on the limitation side on the local level might be the New York city taxi medallion example, which has been used ad infinitum.

The second thing besides limiting competition is that regulation raises the cost. For example, large bonds on small contractors raise the cost to those people and make it more difficult for them to enter in, and it makes it more difficult for them to operate. And of course this tends to affect the resource constraint, whoever they are in that particular jurisdiction. But it has another really insidious effect which

most of us don't think about. And that is it gives the big guys a big advantage, quite frankly, because it reduces the competitive capacity of smaller firms.

There are really two elements to regulatory compliance. The first one is a variable cost, which is actually a per unit cost. And the second one is a fixed cost. When you have a fixed cost, of course in a large firm it can be spread out over more units than a small one. I want to give an example at the small end. It might be someone with five employees who needs to buy several types of personnel manuals to keep up with all the rules and regulations, and attend certain classes to do that. If you spread it out over five employees, that's one cost. If you spread it out over 100, it's a very different cost.

The examples that the Small Business Administration frequently uses and which they have several studies to support have to do with pollution and clean air regs, where there's clearly a disproportionate impact. Now, the Federal Government has attempted to do something about it. About 15 to 20 years ago they passed something called the Regulatory Flexibility Act. The purpose of that Act in fact was to have the various Federal agencies do economic assessments, how various proposed regulations impact small business, and if they found disproportionate impact, and if it was within their means -- still would achieve the intent of the regulation -- to change the regulations and make them for smaller firms. Quite frankly, this

has been roundly ignored by almost all Federal agencies.

So what happened was, just recently we passed something called the Small Business Regulatory Enforcement Fairness Act, which in effect gives private parties the right to take Federal agencies to court. As of yet, I am aware of no example that's been used. I know that many in the small business community are waiting for a, you know, silver bullet case to come along before they go ahead and prosecute.

And the third thing that regulation does is that it creates uncertainty and really increases the hassle factor, for lack of better terminology. Let me just give you an example. Assume you're someone out on the street in Keokuk, Iowa, for lack of better terminology. And they read you the following. *This is the EEOC's enforcement guidance for the Americans with Disabilities Act and psychiatric disabilities. It says, "An employer may refuse to hire someone based on his or her history of violence or threats of violence if it can show that the individual poses a direct threat. A determination of direct threat must be based on an individualized assessment of the individual's present ability to safely perform the functions of the job, considering the most current technical knowledge in or based on the best available objective evidence."* If the town tough comes into your business and applies for a job and someone reads you that, how do you handle it? So that's part of uncertainty, clearly, and it's also very much a part of the

hassle factor.

Let me suggest this is really important. For example, again, another study produced by the Small Business Administration. They asked sample small business owners about tax rules and regulations. (And by the way, the IRS is the number one problem -- I'm not talking about taxes per se, we're talking about administration, rules and regulations that go along with it.) They asked them about them, and the thing that was really striking about the results of that survey was it wasn't so much the cost of complying with these rules and regulations that bothered these small business owners, it was the unknown of what to do. It was the frequent changes that occur in them and they couldn't get their questions answered. Those were their major concerns.

People go into business, obviously, not to be hassled. In fact, one of the reasons they go into business is that they feel hassled where they are. People who are in psychological studies -- it's one of the great emancipators. They're on their own. Then we have studies which show that the most unanticipated event for new business owners is dealing with rules and regulations of the Federal Government -- or all government for that matter.

The simple licensing, for example, the simple ability to go down to city hall and have something processed efficiently is one important factor in this regard. For example, I was told

recently -- I didn't personally see it, but I was told by someone who is very knowledgeable and very reliable -- that downtown here in Washington at the bureau where you get variance licenses for construction, that they now had a new industry called the place holder industry. What happens is you go down and big long line, you know you're going to stand there, so there are people there who for an hourly fee will hold your place. Or something as simple as getting an inspector out when you need them to do that.

Now, NFIB estimates in 1995 that six million people were involved in creating four and half million businesses in that year. Three and a half million of those were *de novo* starts, the other million were kind of sales and asset sales and that sort of back and forth. Thirty-five percent were female, 11 percent black, six Hispanic, and seven were other minorities. But the critical thing I think for this current discussion is that two out of three of those began in the home. And we're not talking necessarily about very marginal, inconsequential operations. One in 10 hired someone other than the owners, and 25 percent were full-time operations, defined as working more than 40 hours. This mean that zoning becomes a critical issue, and when you start out by saying that home-based businesses simply are not legal, we've got some problems.

Now, the fact of the matter is that people roundly ignore this. But what happens in those cases is it limits growth, it creates all types of uncertainties. And this is

really bad because starting in your home saves money, and that's really important for the capital constraints. It's a nice way to save money to get going. And when they say no, then effectively you have a choice -- and the choice is not a good one.

As of last count there were -- I mentioned Los Angeles had changed the rules -- there were 5,000 as of yesterday that had officially registered. Today is the last date to register and folks out there told me they expected the last minute flood which they normally receive, and it may go as high as 20,000 of these businesses.

A second thing along this zoning type thing, quite frankly are the high fees involved with registering some of these businesses. For example, Pasco County, Florida, which is just north and west of the Tampa Bay area -- they charge \$500 if you want a home-based business license. They charge it on the ostensible ground that they need an inspector to come out and look at your place of business. Most businesses, by the way -- I think the issue was addressed earlier -- most businesses in this day and age start for relatively little amounts of money. The idea that you need to spend thousands of dollars to go into business is not typical. So when you're talking about spending \$500, that's a tough one.

I understand that balancing legitimate interests of commerce and residents -- I mean there certainly are clear balances here. And they have to be adhered to. But nonetheless,

it really imposes a really severe limitation if you don't have the balance and we get really carried away (inaudible).

Now I have a whole series of tax issues, but I'm already way over and I apologize. So I'll be happy to come back to a couple of those if you'd like during the question and answer period, but let me just conclude with these remarks and that is: This is not a Federal issue, even though the Federal people have to look at it this way. It's not a state issue, even though the state people tend to look at it that way. And it's not a local issue, even though state and local people tend to look at it that way. It's an overall encompassing one and that's the one the small business owner feels.

The second point is that the business of business is business. And the extent that the owner must devote time to regulatory compliance -- it takes away from the thing that that person does best, and the reason for its existence. So we have to be very careful on what we're demanding.

The third thing is that every study that I am aware of on small business and regulation shows the problem is becoming much more severe. It has over the last 10 to 15 years. It's one that is really growing in the estimation of small business owners.

And the fourth and last one, and maybe the most important one, is that the overwhelming majority of black people, by a Gallup poll that we've just recently conducted, show great

good will for enterprise and small business owners. Seventy-six percent believe this is a positive influence in the way things are going in this country today. More importantly, blacks more than any other group we broke out believe that this is the best -- or one of the best -- avenues in this country to economic advancement and social benefit. So I'll just leave it right there.

VICE-CHAIR REYNOSO: Very good. Thank you very much.

Dr. Simms?

DR. SIMMS: Thank you. Good afternoon. I'm pleased to have the opportunity to be with you and to present some findings from two studies that I am familiar with, the impact of government regulations on minority businesses, one that I conducted for the Minority Business Development Agency, and another that was recently completed under the auspices of the Joint Center for Political and Economic Studies. I have left a copy of the latter study for your record.

VICE-CHAIR REYNOSO: Thank you very much.

DR. SIMMS: The focus of one of the studies was specifically on state and local regulations. The other focused more on the impact of recent changes in the Department of Defense regulations on the minority contractors. Let me speak first to one that -- and this is the disadvantage of going last -- that everybody has addressed -- and that is --

VICE-CHAIR REYNOSO: Yes, but you're going to agree or

disagree with that.

DR. SIMMS: -- is to speak to the issue of occupational and business licensing. This is a frequent complaint about licensing requirements, not licensing per se, but licensing requirements that go beyond those necessary to protect the public interests. Often in state provisions, existing licensees can block the issuance of a new license to an applicant, and in several of the states in which I did interviews, people complained of discriminatory impacts in the way in which these complaints were filed -- that existing licensees were much more likely to register complaints when the applicant was a minority or a woman. As somebody said in Texas, if you weren't one of the good old boys, you were not welcomed into the club.

The other regulations that people complained about most had to do with doing business with the government. The reason these loomed large in their estimation is in part because of the industries that we were focusing on, and because minority businesses tend to look to government markets because they're often discriminated against and excluded from opportunities in private markets.

In the case of government contracting, at all levels of government -- the Federal, the state and the local -- one of the most frequent complaints concerns specifications in requests for bid that exceed those necessary to achieve a government purpose. For example, the inclusion of unique qualifications that only the

current contractor was able to comply with. For example, if one of the requirements was that you had to have done this for the city for eight years, obviously only one person was eligible.

Another feature is the large minimum size of contracts. This has been mentioned before and here, in fact, the current move toward deregulation in the Federal Government is having and is expected to have an adverse impact on minority contractors because of certain features such as bundling of contracts. This -- the bundling of contracts -- stems from the reduction of Federal paperwork, the move to be more efficient in government contracting, so that you want to manage fewer contracts, and therefore larger contracts. This, in effect, bars the new and expanding business from being able to bid.

Connected to this also are bonding requirements that are very prominent at state and local levels -- often -- as has been documented in a number of instances -- minority firms have less access to bonding, in part because of non-discriminatory features such as the fact that you can't build up a bonding experience if you never had one. And secondly that in many states, bonding agencies and companies can arbitrarily choose not to bond a company. They're not bound by some of the anti-discrimination regulations, or at least the way that they structure themselves it's easy to avoid them.

And the way in which the government intersects with that is that there are often bonding requirements that exceed

those necessary to protect the government's interests. One example that was given to me is if you have a performance bond it's to protect the government in case the contractor fails to perform, and if you have a janitorial services contract, it usually only takes three months to rebid and get a new contractor. But in fact, the bonding that is required is 12 months performance bond, not three months. Another example was if you wanted to repair a pot hole on a runway at the airport, that you had in fact to put up a bond that was the equivalent of the cost of a jumbo jet in case the tire hit the pothole that was improperly repaired.

And has been mentioned by several people previously, there are -- there were complaints with regard to the operation, structure and enforcement of regulations surrounding minority business specific programs. Many complaints concerned the certification process. That is that if you wanted to do business with several state agencies, each had their own certification form, their own requirements -- and very few had any kind of centralized certification process where you could go to one place and take care of your certification.

But the other thing that they complained about was lax enforcement of requirements -- that is, the failure to verify that businesses that submitted papers were really minority-owned or really women-owned businesses, so that in fact it diluted the effect of the program.

But in sum let me just make two points. One is that frequently what was being argued was that regulation might need to be reduced or modified. Few argued that no regulation was needed. Secondly, that in the scheme of barriers or obstacles to minority business development, very few thought that it was among the top barriers. Generally it was ranked lower than capital availability, market opportunity and management expertise. And in addition, in the examination of regulatory stringency where states were arrayed in terms of their regulatory environment, there seemed to be no connection between stringency and minority business development as measured by the number of firms and the number of firms per 1,000 population.

I would like to just take an opportunity to comment on two things in the broader context of minority business development and related employment issues, since I've done work in a number of those areas.

I would like to respond to Mr. Reynolds' comment. There is in fact no consensus among labor economists that the impact of the minimum wage is significantly negative. In fact most studies show very small impact if any at all in terms of an increase in the minimum wage and overall employment.

And I would like to say that in studies such as a study that we recently conducted in terms of minority businesses and their employment potential -- minority firms do make a big contribution. They're much more likely to have minority

employees. They are much more likely to recruit in low income neighborhoods, and they pay competitive wages and don't seem to find that a problem.

And secondly I would just like to respond to the question of measuring discrimination. There are in fact a number of studies that have attempted to quantify the impact of discrimination, but not in this particular area. There are many statistical techniques that have been developed to sort out and separate discrimination from differences in qualifications, for example, and differences in wages paid. So there is a literature there. I'm not aware of any that have been able to measure the impact of regulation, or the level of regulation, on minority business expansion. Thank you.

VICE-CHAIR REYNOSO: Thank you very much.

CHAIRPERSON BERRY: Are there any questions from Commissioners? Yes, Commissioner Horner.

COMMISSIONER HORNER: I have a question for Dr. Simms. On the subject you alluded to of the size of the Federal Government contracts, I know the Clinton administration has, I think by new regulations, indicated that contracts now can be larger. Is that the case?

DR. SIMMS: That's correct.

COMMISSIONER HORNER: You expressed some concern that that will deprive small minority-owned businesses of the opportunity to contract, and that would seem on the face of it to

be correct. And therefore problematical. But my question is what is -- give me your critique of an alternative -- and the alternative would be that for the sake of the government's efficiency, large contracts be permitted, but minority contractors who are small then would become subcontractors to the large contract. Would you critique that scenario?

DR. SIMMS: Well, there are two or three reasons, based on experience, that would suggest that that's not the most efficient or effective way to engage minority firms. In fact, many minority firms do operate as subcontractors. The problem that arises is the making of the connection between the majority contractor and the minority subcontractor. This is an avenue where good faith effort is very widespread, not just at the Federal Government level but at state and local levels as well. That is the government can put in provisions or give extra points for the inclusion of minority subcontractors and contractors will say that they made a good faith effort but they weren't able to find them.

The other one that is often used is that they will bid or put in the names of minority subcontractors when they bid for the contract, and then won't use them so that in fact what happens, unless the government continues to track the actual usage, is that a company will say 15 percent of this money will be passed through to minority subcontractors and here are the names of the firms that I will use. And then when they get the

contract, that 15 percent does not go down to those firms.

Let me make just one more point, and that is that if I go back to the question of the experience then gets you more experience -- that often serving as a subcontractor does not give you the credential that you need to go on to the next step.

COMMISSIONER HORNER: How does business become big if not by starting small? Isn't the big contractor the outcome of somebody who started as a smaller contractor?

DR. SIMMS: That's true, and I don't think anything I said would dispute that.

COMMISSIONER HORNER: I'm sorry. I may have misunderstood. Didn't you just say that starting out as a small subcontractor to a large contractor wouldn't give you the experience or credential to expand your business?

DR. SIMMS: That is often the case, but that's not synonymous with saying that big contractors didn't start small.

COMMISSIONER HORNER: Okay, I guess I have a paradigm in my mind of somebody who has a very small business, and perhaps a specialty business, and that specialty serves a larger project that may have 10 specialties on it. And the small business may be a small, minority-owned business and offers the primary contractor a really good deal on the cost; and the primary contractor being reasonably rational says, *Yes, I want this minority-owned firm because they're giving me a really good deal on the cost*, and then over time the minority contractor learns

more about the business, hires more people, can be more competitive in making demands of primary contractors, and eventually by virtue of this activity, gains the magnitude to become a primary contractor. What's wrong with that scenario? In other words, I'm asking why do we need to induce inefficiencies in the government's contracting processes in order to assure the presence of minority work as a result of government activity, when the minority work could start small as a subcontractor and get big on its own?

DR. SIMMS: Let me see if I can separate the two pieces. I'm not going to dispute the question of whether firms that start small can get big. As to the question of why should we support government inefficiency for the purpose of promoting minority business contractors, I would respond by saying that there are many things that government does that might be viewed as inefficient in a strict for-profit sense, but they serve a social or public purpose. And it seems to me that the issue becomes one of how you weigh the public benefit against the question of the efficiency.

COMMISSIONER HORNER: Yes, and that is how I understand the choice also. But I guess my question is, are we posing a false choice here in the government decision-making? Why must the government contract directly with an inefficient -- and therefore inefficiently -- with a very small provider? What is the failure in the market implied by that?

DR. SIMMS: The failure in the market based on the experience of 20 years is discrimination.

COMMISSIONER HORNER: Okay, that's what I wanted to know. Okay. In other words, government procurement officials are discriminating against the interests of the taxpayer.

DR. SIMMS: And contractors in the scenario that you presented, and prime contractors, are discriminating against minority subcontractors.

COMMISSIONER HORNER: Are you saying it is almost exclusively the prime contractor discrimination, or are you saying that government procurement officials discrimination is also significant?

DR. SIMMS: I wouldn't make the blanket statement that government procurement contractors are all discriminatory. There is certainly evidence that -- both historically and I'm sure you could find it currently --

COMMISSIONER HORNER: Currently. Why do you think the Clinton administration, given its record and its affiliation with a long standing anti-discrimination tradition through the Democratic party, is not sensitive to this issue, if it's true?

DR. SIMMS: I would not assert that they have not given attention to it.

COMMISSIONER HORNER: But they've made the decision to make the change.

DR. SIMMS: I think that they're -- that here -- this

may be one of the unintended consequences of a government action that has not been thoroughly reviewed. And, in fact, the purpose of one of the studies that I cited was in fact to look at what was going on in the Defense Department as a result of the changes, both in place and those proposed.

CHAIRPERSON BERRY: Any other questions from Commissioners? I only have one, I guess.

COMMISSIONER GEORGE: One.

CHAIRPERSON BERRY: You've got one? Go ahead.

COMMISSIONER GEORGE: Well, you --

CHAIRPERSON BERRY: No, I'll wait. I'll go last.

COMMISSIONER GEORGE: I'd like to address a question to both.

CHAIRPERSON BERRY: Okay.

COMMISSIONER GEORGE: Mr. Dennis, your presentation was very interesting and enlightening -- many valuable points. But having in mind that we're a Civil Rights Commission, is there anything that you would like to say to us as civil rights Commissioners about the impact of overregulation? Much of what you say goes to -- and I could see if you were testifying before Congress or for a state legislature or a city council, but as civil rights Commissioners, what is your message to us?

MR. DENNIS: My message to you is that most -- the vast majority of -- minority small business owners are very small business, and to the extent that regulation really bothers very

small businesses, it will disproportionately impact minority small business.

COMMISSIONER GEORGE: Okay. And Dr. Simms, you anticipated the question that I would, of course, have asked you because it was the one that I had put to others. But as you already have heard, the Chairman is very interested in balance, and I am very interested in balance in these hearings, and I'm judging from the biographical statement that we've got here -- my sense here is that your own perspective is one that differs quite (inaudible) from Nicole Garnett's, or say from that of Mr. Reynolds earlier. Now you did disagree with Mr. Reynolds on the question of whether there's a consensus of labor economists --

DR. SIMMS: That was an issue of fact.

COMMISSIONER GEORGE: That's an issue of fact? Do you find yourself generally disagreeing with the perspective of --

DR. SIMMS: Well, I think I probably disagree with the assumption on which your statement is based, that you can look at my biographical sketch and assume that I differ with certain people with no other information before you.

COMMISSIONER GEORGE: No, I'm guessing. Is my guess correct?

DR. SIMMS: If you wanted to say that what I said in my formal statement is at odds with theirs, that's one basis of --

COMMISSIONER GEORGE: I'm trying to determine whether we have balance here or not. If I'm right in surmising -- but

maybe I'm not right. Does your perspective differ from what you heard from Nicole Garnett or Mr. Reynolds?

DR. SIMMS: I would say that it probably does, but the Joint Center is in fact a non-partisan organization, and it has not taken ideological bent, contrary to your assumption, and it would appear on the basis of the statements of what I know about at least one of those organizations, that they do start from an ideological perspective that colors the way they look at the issues.

COMMISSIONER GEORGE: So -- I'm not sure what you had in mind, but Nicole Garnett told us that her organization was non-partisan, but it's well known that it's a conservative libertarian-oriented think tank -- I think I've got it right. Now you're saying that the Joint Center could not be characterized in a way which we characterized Nicole Garnett's organization even though it's technically -- and she said quite accurately -- non-partisan.

DR. SIMMS: The only constant in the Joint Center's work is that we approach work in terms of the perspective or the impact on African Americans, since our main mission is to provide information that would promote movement of African Americans into the political and economic mainstream of American life.

COMMISSIONER GEORGE: Okay, so it's not ideological, at least in the sense that the Institute for Justice is ideological?

DR. SIMMS: For the third time, no, it does not have an

ideological bent.

COMMISSIONER GEORGE: You made yourself clearer than you know.

CHAIRPERSON BERRY: I wanted to ask Dr. Simms if she would be surprised at the research findings -- one of my colleagues who is finishing up a study on contracting -- billion dollar contracts in a particular state -- and her finding was that the contractors who got the contracts, the big ones, perpetuated themselves over time. In other words, if you looked at the firms 20 years ago that got all the bid contracts -- we're talking about billions of dollars -- from the state, that they still get them, or the successor firms to them do, and that minority firms at first got nothing, and only begin to get something after the minority provisions were passed by that state in the 1970's. And that even now the big firms still perpetuate themselves, and she also reported the same subcontracting experience that you were describing for us with contractors, saying they're going to hire people and then they do not, and then even when they were hired as subcontractors, they were told later that that experience was not sufficient to make them eligible to compete as primes because they had only been small subcontractors. That's one question. And so then the tag-on, the question about the Clinton administration -- it would not be surprising -- and other states have done this -- bundling you talked about? This same state that my colleague does work in has

bundled contracts, and they have found now that it interferes with women-owned businesses, small businesses in general, whether they're black, white, whatever they are, trying to compete, and they did it in the name of efficiency. It would be faster for them, easier, and only have to do it once. And no one even thought of the impact, so it wasn't an intended consequence.

So I take it what I've described, and about my colleague's work and so on, is consistent with what you reported to us? Is that --

DR. SIMMS: It is consistent. It's certainly consistent with a number of studies across states. I think one of them referred to earlier in terms of the experiences in Richmond in reverse. That is when you remove the minority business focus or goal, that contracting tends to go down. It was found in Georgia as well. There's also, which I did not think to bring, some work that the Joint Center did in conjunction with Tim Bates, who is now at Wayne State University, looking at the aspects of minority business programs in 50 large cities and all the states, in terms of the effectiveness of certain regulations and how it relates to minority business development. If that's of interest, I can have it for you.

CHAIRPERSON BERRY: I'd like to see that. We would. And the last question from me, on segregation. Was desegregation -- did it have a negative impact on the growth and development of small, black-owned business, so from that perspective we might

argue that segregation was better? I mean I don't understand the statement --

DR. SIMMS: I wouldn't argue that segregation was better. There is some evidence that suggests that the opening up of markets did have an adverse impact on minority businesses because they had -- that is, the nature of minority businesses at that time, because they were very neighborhood oriented, and as people began to move among communities and have more choices in where they made their purchases, that in fact the "captive markets" did disappear.

Now, what one could argue -- and in some sense part of this discussion is about ways of opening up economic opportunity -- the parallel should be that the black consumers, or Hispanic consumers, or Asian consumers can now purchase in more places, then black and Hispanic and Asian businesses ought to be able to sell to the larger public. And the question that arises is why is that not the case. In fact, there is a new world of minority business that is not often visible because it does not show up in the Census Bureau numbers -- and that segment of the minority industries in fact does sell more to the government and to the general public, and it's just those kinds of firms that are in the expansion mode, that we need to have an environment that promotes that. And I guess that I'm arguing that we should be more concerned not about individual self-employment, but about nurturing those firms that employ people, that go beyond the 15

employees, that have maybe 100 to 200, which may seem like no longer small business, until you look at the standards of the Small Business Administration as to what qualifies, and you can have many millions of dollars in revenue, and under 500 employees I believe it is, and still qualify as a small business by their standards.

CHAIRPERSON BERRY: Well, most of the black businesses during segregation were small operations. They weren't huge businesses.

DR. SIMMS: They were mostly small -- quite small.

CHAIRPERSON BERRY: Okay. Mr. Dennis, you were trying to say something. Were you?

MR. DENNIS: Yes, one thing to remember is that virtually all businesses start very, very small. So if you support the gazelles, for lack of better terminology, at the expense of the new start, you have a real problem, particularly if you try and target those gazelles at a very early stage. We have learned no way to do that.

COMMISSIONER HORNER: I'm sorry, I'm missing your metaphor, because we've been at this for about six hours now. Gazelles?

MR. DENNIS: Oh, I'm sorry. Yes.

VICE-CHAIR REYNOSO: You tell her.

MR. DENNIS: Yes, *gazelles* is a term that's used by the time for high growth, fast-growing businesses.

COMMISSIONER HORNER: So you're saying if you support the high growth, fast-growing businesses at the expense of brand new starts, is that what you're saying?

MR. DENNIS: Yes, opening up for starts, yes, because we have not yet learned how one ought to target -- we don't have a clue as to how to do that, so if the expense is opening up the market and bringing in a bunch of firms, some of those are going to become these fast-growing companies, and we have no idea how to determine what's in the mooring. A lot of these things are mutually exclusive.

CHAIRPERSON BERRY: Okay, any other questions? All right.

Thank you both very much for your patience and for coming to enlighten us. We appreciate it. And if there's no objection, the meeting is adjourned.

(End of Briefing)