

U.S. COMMISSION ON CIVIL RIGHTS

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PUBLIC MEETING

+ + + + +

Friday,
December 13, 2002

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Brooklyn, New York

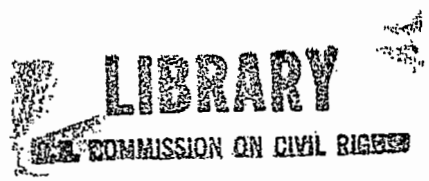
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The Commission convened at 8:45 in the
Legends Ballroom, New York Marriott Brooklyn Hotel,
333 Adams Street, Brooklyn, New York 11201,
Chairperson Mary Frances Berry presiding

MEMBERS PRESENT:

- FRANCES BERRY, Chairperson
- CRUZ REYNOSO, Vice Chairperson (via telephone)
- JENNIFER C. BRACERAS, Commissioner (via telephone)
- CHRISTOPHER EDLEY, JR. Commissioner (via telephone)
- PETER N. KIRSANOW, Commissioner
- ELSIE M. MEEKS, Commissioner
- RUSSELL G. REDENBAUGH, Commissioner
- ABIGAIL THERNSTROM, Commissioner

- LESLIE R. JIN, Staff Director



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STAFF PRESENT:

KIMBERLEY ALTON
DEBRA CARR, ESQ., Deputy General Counsel
KI-TAEK CHUN
IVY DAVIS
PAMELA A. DUNSTON
SHELDON FULLER
JOYCE SMITH
AONGHAS ST. HILAIRE
AUDREY WRIGHT

COMMISSIONERS ASSISTANTS PRESENT:

KRISTINA ARRIAGA
LAURA BATIE
PATRICK DUFFY
JOY FREEDMAN
KRISHNA TOOLSIE

STATE ADVISORY COMMITTEE MEMBERS PRESENT:

GHAZI KHANKAN
GLORIA LOPEZ
SETSOKO NISHI

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

8:45 a.m.

CHAIRPERSON BERRY: We'll come to order.

APPROVAL OF AGENDA

The first item on the agenda is the approval of the agenda. Can I get a motion from somebody to approve the agenda, please?

COMMISSIONER REDENBAUGH: So moved.

CHAIRPERSON BERRY: Could I get a second, please?

COMMISSIONER MEEKS: Second.

CHAIRPERSON BERRY: Any discussion of anybody?

All those in favor indicate by saying "aye." Opposed. So ordered.

APPROVAL OF MINUTES OF NOVEMBER 15, 2002 MEETING

The next item is the approval of the minutes of November 15, 2002. Could I get a motion on that?

COMMISSIONER REDENBAUGH: So moved.

CHAIRPERSON BERRY: Could I get a second?

COMMISSIONER THERNSTROM: Second by incoming amendment to them.

CHAIRPERSON BERRY: Okay. Okay. All right. Any changes, discussion?

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1 COMMISSIONER THERNSTROM: Madam Chair,
2 it's not properly recorded in the minutes that
3 Kristina was also on the phone coming in by telephone,
4 by conference call, whatever it's called.

5 I managed not to have my book with me.

6 CHAIRPERSON BERRY: Oh, okay.

7 STAFF DIRECTOR JIN: Madam Chair, if
8 that's the case, then in that case I was not aware she
9 was on the phone.

10 CHAIRPERSON BERRY: Okay. Well, fine, all
11 right. So somebody could add that.

12 Anybody have any other changes? Okay.

13 All in favor with that change indicate by
14 saying "aye." Opposed. So ordered.

15 **ANNOUNCEMENTS**

16 The next item on the agenda is
17 announcements.

18 The first is that the Chair of our Arizona
19 SAC, Ms. June Webb-Vignery, who was with us in San
20 Diego, reported to the Commission staff that Arizona
21 state representative Richard Kyle, Republican from the
22 6th District and Arizona Senator John McCain toured
23 the Arizona/Mexico border last week and have decided
24 to take leadership on the issue of trying to sort out
25 those border issues that we heard about out there. And

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1 they were very pleased about that.

2 As you know, we agreed to send a letter to
3 Assistant Attorney General Boyd requesting the DOJ to,
4 investigate whether or not the alleged acts of
5 vigilantism were occurring that we heard about. But
6 the Arizona SAC wanted us to know how pleased they
7 were that they've gotten Representative Kyle and
8 Senator McCain to take interest in the issue.

9 The other is to just in passing remind
10 ourselves that December 18th marks the passage of the
11 13th Amendment to the Constitution which abolished
12 slavery, and that's the basis of many of our civil
13 rights laws. And I, for one, am glad that it was
14 ratified in 1865.

15 COMMISSIONER THERNSTROM: And I'm sure
16 everybody else is, too.

17 CHAIRPERSON BERRY: And the other is to
18 just mention in passing the fact that there are some
19 cases before the Supreme Court right now, just a
20 couple of them I would mention, that have to do with
21 the Indian Trust issues. Because when we were in San
22 Diego we met informally with some leaders of the
23 Indian tribes from various nations who discussed this
24 with us, among other things. And those cases that they
25 were talking about, U.S. versus White Mountain Apache

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1 Tribe and U.S. versus Navajo Nation are now up there.
2 And there's been a lot of discussion about them.

3 And then finally, just to say that
4 December 1st marked the start of the Montgomery,
5 Alabama bus boycott, which of course mobilized much of
6 the so-called modern day civil rights movement.

7 Does anyone else have any announcements
8 that they wish to make?

9 COMMISSIONER THERNSTROM: I do, Madam
10 Chair.

11 CHAIRPERSON BERRY: Yes.

12 COMMISSIONER THERNSTROM: And with your
13 permission, I'd like to read something into the
14 record. This week the four Republican appointees to
15 the Commission issued a statement deploring Senator
16 Trent Lott's recent comments, and the statement is
17 short and I would like to read it into the record.

18 CHAIRPERSON BERRY: Go right ahead.

19 COMMISSIONER THERNSTROM: "As Republican
20 appointees to the United States Commission on Civil
21 Rights we deplore Senator Trent Lott's December 5, --"

22 CHAIRPERSON BERRY: Excuse us just a
23 minute.

24 COMMISSIONER THERNSTROM: Sure.

25 CHAIRPERSON BERRY: We can start again

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1 once we sort this out.

2 Is there something we should know?

3 Okay. Please proceed.

4 COMMISSIONER THERNSTROM: Okay. "As
5 Republican appointments to the United States
6 Commission on Civil Rights we deplore Senator Trent
7 Lott's December 5, 2002 statement that if Strom
8 Thurmond had been elected President in 1948 'We
9 wouldn't have had all these problems over all these
10 years.'

11 The central issue on which Thurmond ran
12 was support for racial segregation, Senator Lott thus
13 lends credibility to the view that such civil rights
14 advances as President Truman's Executive Order
15 mandating an end to racial segregation in the U.S.
16 Armed Forces, the Supreme Court's decision in Brown
17 versus Board of Education, the Civil Rights Acts of
18 1957 and '64, and the Voting Rights Act of 1965 were
19 grave mistakes. Certainly in 1948 Strom Thurmond
20 opposed all of them.

21 This is a particularly shameful remark
22 coming from a leader of the Republican Party, the
23 party of Abraham Lincoln and the party that supported
24 all these essential steps forward far more vigorously
25 than did the Democratic Party, which at the time was

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1 the home of congressional southerners committed to
2 white supremacy.

3 The civil rights era was a shining moment
4 in American history. We believe Senator Lott agrees,
5 and invite him to join us in celebrating the
6 revolutionary change in the status of African
7 Americans that flowed from a movement in which blacks
8 and whites joined hands to make a better America."
9 And it was signed by me, by Jennifer Braceras, Peter
10 Kirsanow and by Russell Redenbaugh.

11 Thank you very much.

12 CHAIRPERSON BERRY: Thank you very much.
13 That was a very important statement, a very timely
14 one, Commissioner Thernstrom.

15 COMMISSIONER THERNSTROM: I would hope
16 this is going to continue.

17 CHAIRPERSON BERRY: I certainly hope so,
18 too.

19 We're okay again? All right. We're okay
20 again, whatever that means.

21 I did yesterday issue a statement based on
22 our preexisting policies about the need for positive
23 leadership on civil rights, pointing out on behalf of
24 the Commission that as Commissioners we did not regard
25 Mr. Lott's leadership on this issue as positive and

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1 leaving it at that, with a few other little details.

2 Just for the record, because I think it is
3 an important issue. I think it's important and I
4 appreciate it.

5 COMMISSIONER THERNSTROM: Thank you very
6 much.

7 **STAFF DIRECTOR'S REPORT**

8 CHAIRPERSON BERRY: The next item on the
9 agenda is the Staff Director's report. Does anybody
10 have any questions on this report or anything that
11 they'd like to raise?

12 If not --

13 COMMISSIONER KIRSANOW: Madam Chair, I
14 have one question of the Staff Director.

15 CHAIRPERSON BERRY: Yes.

16 COMMISSIONER KIRSANOW: And I was
17 wondering if we know today what the subject matter for
18 January and February meetings are going to be.

19 CHAIRPERSON BERRY: Staff Director?

20 STAFF DIRECTOR JIN: Yes, Commissioner.

21 In January we're going to be in
22 Albuquerque, New Mexico and basically we'll be doing
23 what we generally do when we go on the road, which is
24 that the main focus is to be there and to listen to
25 the advisory committees in that region or in that

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1 state, and to leaders in the state talk about civil
2 rights issues in that state. And so that will be the
3 main focus. And, of course, we're still putting it
4 together, working with the advisory committees and
5 with the regional director. He's been working with
6 the advisory committee already.

7 Also, in terms of on our own calendar,
8 January is our project planning month. So we will be
9 prepared to give the Commissioners documents relating
10 to that and proceed with project planning.

11 CHAIRPERSON BERRY: And in February?

12 STAFF DIRECTOR JIN: And in February we
13 will, again, in terms of the Friday meeting we will be
14 doing the same kind of things in Charlotte, North
15 Carolina. We're hoping to finish putting together for
16 Thursday the thing that we discussed here a number of
17 times, that is the briefing on educational
18 accountability and it's not just quite ready to be
19 finalized to the point of being announced. But that is
20 why we asked you to keep Thursday open, hopefully for
21 that.

22 Commissioner Redenbaugh

23 COMMISSIONER REDENBAUGH: Yes. I have a
24 follow up question then for the Staff Director on the
25 planning. You're going to give us documents, as you

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1 said, do you anticipate any discussion and how much
2 discussion do you anticipate given that we have the
3 other agenda that you just mentioned?

4 STAFF DIRECTOR JIN: Yes. Well, the
5 bottom line is, you know, we'll allow for as much
6 discussion as the Commissioners feel is necessary.
7 I've only been through, I think, two of these and in
8 those I think the discussions have been, you know,
9 fruitful and robust but they have not taken more than
10 about an hour or so, if I remember. If I misjudged
11 that, then I apologize. But that was kind of my sense.

12 So, we do plan to have a good discussion,
13 absolutely, as much as you want.

14 COMMISSIONER REDENBAUGH: Well, I'm a bit
15 concerned that an hour is really insufficient. In the
16 past sometimes we've consumed more than entire meeting
17 with this. And on occasion we had an off-site retreat
18 to do our planning. IS there something that has you
19 think this one will go much quicker than those have in
20 the past?

21 STAFF DIRECTOR JIN: Well, like I said,
22 first of all if the Commissioners wanted to go along
23 with it, certainly that would be fine. But, again, my
24 best memories of the ones I've been associated with
25 have not run nearly that long, and they still had some

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1 good discussions I think.

2 COMMISSIONER REDENBAUGH: Maybe I'm
3 anticipating a meeting. But do you think that what
4 you'll present will mean that we need to make a number
5 of decisions and trade-offs or do you --

6 STAFF DIRECTOR JIN: Well, as
7 Commissioners I think though the main projects that
8 come forth in those meetings are the ones that Office
9 of General Counsel and Office of Rights Evaluation
10 propose. And I've had substantial conversations with
11 the heads of both of those offices, and how we want to
12 do this. And I think we'll be able to present it in a
13 way that's clear and crisp, and will allow for the
14 Commissioners to have a good basis going into the
15 discussion as to the issues it wants to look at and
16 the number of projects to look at.

17 So, I'm confident that you will get
18 materials that will be very helpful to the discussion
19 and will allow the discussion to go well.

20 COMMISSIONER REDENBAUGH: Well then, how
21 much ahead of time will we have those materials?

22 STAFF DIRECTOR JIN: It'll be certainly
23 the plan we have is what we've done in the past with
24 the mail outs, and I think with the project planning,
25 which is that you will get it a week in advance.

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1 COMMISSIONER REDENBAUGH: I just don't
2 think that's sufficient to do project planning review
3 and discussion. I also would ask that you include an
4 updated opinion but not yet completed projects and
5 their timelines for completion.

6 STAFF DIRECTOR JIN: We have done that
7 because both the Office of Civil Rights Evaluation,
8 and the Office of General Counsel is now providing on
9 a regular basis the information statements, the
10 progress of each of the projects that's ongoing, the
11 ones that the Commissioners have proposed, and we've
12 started.

13 CHAIRPERSON BERRY: You mean the MIS?

14 STAFF DIRECTOR JIN: The MIS, yes.

15 CHAIRPERSON BERRY: Russell, as you know,
16 Commissioners can also at this meeting propose
17 projects, right? Remember that, Russell?

18 COMMISSIONER REDENBAUGH: I do remember
19 that. That's what started me thinking an hour's
20 insufficient.

21 CHAIRPERSON BERRY: Yes. So maybe you
22 ought to suggest how long -- well, let me see. Would
23 you mind letting me let Elsie speak?

24 COMMISSIONER MEEKS: Well, actually, I
25 think you were just going to say what I was going to

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1 say.

2 CHAIRPERSON BERRY: Go ahead.

3 COMMISSIONER MEEKS: You suggest how long
4 you might take and so that the agenda can be defined
5 accordingly.

6 STAFF DIRECTOR JIN: Yes.

7 COMMISSIONER REDENBAUGH: Thank you.

8 Well, I suggest that Commissioner
9 proposals be considered ahead of -- I think we're
10 going to need to have at least two hours in January. I
11 think that's an absolute minimum. And a subsequent
12 discussion. I don't see how we can, with only a
13 week's review of the meeting materials and then the
14 presentation by other Commissioners of other proposed
15 projects, how we could reach a decision in any amount
16 of time on one single day.

17 So, I think we'll need the subsequent
18 meeting or meetings.

19 CHAIRPERSON BERRY: In other words,
20 Russell, you don't think that we could set aside 2, 3,
21 4 hours that day and do the whole thing?

22 COMMISSIONER REDENBAUGH: I don't think
23 so. I mean, you know, if a Commissioner comes up and
24 says "Look, I'd like to do this," and then that could
25 involve, you know, the development of that theme. And

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1 we need to get back to consider alternatives.

2 If we're given something that is just a
3 straight up or down vote, we're going to this or not,
4 we could do that in an hour.

5 CHAIRPERSON BERRY: Yes.

6 COMMISSIONER REDENBAUGH: If we're going
7 to have an menu in which staff says, look, these are
8 the seven things we think are worth doing that
9 resources allow us to do for or at most five of them,
10 then I don't know how we could resolve that in an
11 afternoon in 2, 3 or even 4 hours.

12 CHAIRPERSON BERRY: Okay. So you think
13 that --

14 COMMISSIONER REDENBAUGH: This is a
15 negotiation.

16 CHAIRPERSON BERRY: Well, do you think we
17 should do it in more than one meeting then?

18 COMMISSIONER REDENBAUGH: I do.

19 CHAIRPERSON BERRY: Well, maybe we should
20 do it -- we've never done that, but there's no reason
21 not to that I understand, Staff Director, is that
22 right?

23 STAFF DIRECTOR JIN: That's correct.
24 There's flexibility.

25 CHAIRPERSON BERRY: So maybe we should

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1 have a couple of hours at this meeting and then the
2 next meeting do it again.

3 COMMISSIONER REDENBAUGH: I think so.
4 Because I think the Commissioners would like the
5 chance to have the staff go back and modify that,
6 along these lines, come back and then let's look at it
7 again.

8 CHAIRPERSON BERRY: So that sounds like a
9 better plan, Russ?

10 COMMISSIONER REDENBAUGH: Yes. I think
11 so.

12 CHAIRPERSON BERRY: Any others have any
13 comments or --

14 COMMISSIONER THERNSTROM: Well, I hope
15 we're not going to discuss it today, because I need --
16 for two reasons. One, Madam Chair, you know, I'd like
17 to have a chance to think about it a little bit. But
18 also, unfortunately, a Commission related matter has
19 come up and I'm going to have leave early today. And I
20 don't want to miss this discussion.

21 I also have an additional question for the
22 Staff Director. It's never been completely clear to
23 me, and this goes to the question of Commissioners
24 properly preparing for meetings, exactly what the
25 educational topic is. And if I knew precisely what the

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1 topic was, I would like if possible to suggest some
2 names of people who might appear before the Commission
3 if, indeed, we're going to have a hearing a briefing.

4 I mean, education is an enormous topic.
5 And I would trust that the Commission is not going to
6 be all over the map on the issue and that we're going
7 to focus a couple of discreet questions that are
8 manageable. And I would really like to know what those
9 are and also, again, would like the opportunity to
10 suggest names of people we might hear from if we are
11 hearing from people.

12 And, you know, this goes back to something
13 that I said before. I'm a kind of allergic to coming
14 to meetings professionally unprepared so that when I
15 heard rather belatedly that this was a meeting about
16 Immigration, well Immigration is again a huge topic. I
17 have no way of preparing properly for it. And it's
18 just a matter of intellectual pride that I like to
19 come to meetings prepared.

20 So, I would like more information and
21 earlier information. More specific information and
22 earlier information.

23 CHAIRPERSON BERRY: First we'll come to
24 your second point. We need to get first some closure
25 on the first point. Because the staff will need to

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1 know, since this is December, what they're doing
2 about the January meeting. And Russell's idea, as I
3 understand it, is that instead of doing what we've
4 done in the past, and he's been here to do it with us,
5 where we just have one planning meeting and it's in
6 January. And the Staff Director's right, that it's
7 turn out in the last few years that we spend about an
8 hour on it or something. That maybe we spend a couple
9 of hours in January, and then maybe we go back at it
10 again. He's not talking about substance, he's talking
11 about procedure, as I understand it.

12 COMMISSIONER REDENBAUGH: That's right,
13 yes.

14 CHAIRPERSON BERRY: And agree so the staff
15 knows what it is they're supposed to be planning.
16 That we would come back at it again in February.

17 Now, Commissioner Kirsanow, do you have
18 any objection to Russell's idea?

19 COMMISSIONER KIRSANOW: No, no. I think
20 it's a splendid plan.

21 CHAIRPERSON BERRY: So, I mean it sounds
22 reasonable to me. We've never done it before, but if
23 you think that might work.

24 COMMISSIONER REDENBAUGH: Well, actually,
25 I think we've done it both ways before.

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1 CHAIRPERSON BERRY: We have?

2 COMMISSIONER REDENBAUGH: The Staff
3 Director is right. In the last two years it's been
4 pretty straightforward. But in the past, in fact we
5 had a two or three day kind of planning retreat.

6 CHAIRPERSON BERRY: Yes, we went off
7 somewhere or other. I've forgotten where.

8 COMMISSIONER REDENBAUGH: We did. I'm not
9 suggesting that. But we've done it a number of
10 different ways.

11 CHAIRPERSON BERRY: Do you have any
12 objection, Elsie, I assume you don't to doing it that
13 way?

14 COMMISSIONER MEEKS: No.

15 CHAIRPERSON BERRY: So then the staff in
16 terms of how they're guided about what they're
17 supposed to be doing, will be thinking in terms of a
18 couple of hours in January.

19 STAFF DIRECTOR JIN: Okay.

20 CHAIRPERSON BERRY: And then maybe a
21 couple of hours in February. And we'll see how it goes
22 in January, but at least they have some idea of what
23 it is they're supposed to be planning.

24 Now, to go to the second point, do you
25 want Debra or whoever's doing this education thing, to

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1 briefly say how it's being done or how they're going
2 about it?

3 COMMISSIONER REDENBAUGH: Sure.

4 COMMISSIONER THERNSTROM: Can I just
5 before you do that, one little minor procedural matter
6 in terms of these meetings. When we're in the middle
7 of the winter, obviously, traveling it is always
8 possible at the last moment that that the air travel
9 will not, for those of us coming from the northeast,
10 will be impeded. And I assume that if that happens,
11 that at the very last moment we can -- and it's a
12 question directly to the Staff Director, obviously.
13 That we can very quickly set up an alternative means
14 of participating in the meeting by teleconferencing
15 from home, or whatever.

16 I've got nightmarish visions of stuck in
17 Chicago, whatever.

18 STAFF DIRECTOR JIN: Yes. I'll have to
19 check to see how exactly prior to the last minute
20 we're talking about. But certainly the concept of if
21 something happens and you need to be hooked up at home
22 or something, that to the extent that it's
23 technologically possible, we can do that.

24 COMMISSIONER THERNSTROM: Yes. I think
25 it's particularly important at the planning meetings,

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1 obviously.

2 CHAIRPERSON BERRY: Okay. Now, do you want
3 Debra to tell us just how this is done and give some
4 information to -- I don't see her.

5 STAFF DIRECTOR JIN: Debra's behind.

6 CHAIRPERSON BERRY: Okay.

7 STAFF DIRECTOR JIN: Yes, I think that
8 would be a good way to do it, Madam Chair.

9 CHAIRPERSON BERRY: So could you please do
10 that? And then answer any questions you think you
11 might have.

12 GENERAL COUNSEL CARR: Generally the
13 tentative February education briefing is scheduled for
14 Charlotte. It's primary emphasis will be on the
15 educational reforms undertaken in North and South
16 Carolina. We will have basically an emphases in terms
17 of speakers from those two states or that region. They
18 will be discussing the role of content and performance
19 standards, and education reform and their importance
20 in increasing student achievement.

21 They will also be discussing the role of
22 testing as a tool in increasing student achievement.
23 They will be discussing the media or other measures
24 that could be brought to bear in instances where you
25 have low performing schools or a student group that

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1 has been identified as under performing.

2 There'll also be a discussion of civil
3 rights implications that education reform raises.

4 CHAIRPERSON BERRY: What is mainly what
5 we're about, right?

6 GENERAL COUNSEL CARR: Exactly.

7 CHAIRPERSON BERRY: If I understand it
8 correctly.

9 Commissioner Thernstrom, do you want to
10 add anything?

11 COMMISSIONER THERNSTROM: So that the
12 eventual product that comes out of this, is it going
13 to be some kind of report that comes out of this will
14 focus on these 2 states? Because maybe a
15 misunderstanding on my part, but I thought originally
16 the conception didn't focus on 2 states as kind of
17 emblematic of the larger issues, but that's really how
18 it has shaped up.

19 GENERAL COUNSEL CARR: Actually, if you
20 recall in January of this year we had a document
21 return session from two states. They were Maryland and
22 Virginia.

23 CHAIRPERSON BERRY: Right.

24 GENERAL COUNSEL CARR: Those two states
25 will be the primary focus of the project report that's

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1 noted on the MIS. These two states, North and South
2 Carolina, will be the source of secondary information.
3 And going to Charlotte builds on some work undertaken
4 by the region in terms of a briefing or forum that
5 they conducted in the last year focusing on
6 educational issues in that region.

7 COMMISSIONER THERNSTROM: So eventually
8 the report will reflect on four states?

9 GENERAL COUNSEL CARR: The report will
10 primarily focus on two states. There will be some
11 background information in the report --

12 COMMISSIONER THERNSTROM: Maryland will be
13 in there.

14 GENERAL COUNSEL CARR: Exactly. That will
15 be incorporated from North and South Carolina and
16 other sources.

17 COMMISSIONER THERNSTROM: And will this be
18 a Commission staff report or a Commission report that
19 we will be able to discuss and, like, you know
20 dissents and vote on, and whatever -- vote on before
21 we write --

22 CHAIRPERSON BERRY: Well, the first report
23 that you mentioned is a Commission report.

24 GENERAL COUNSEL CARR: Exactly.

25 CHAIRPERSON BERRY: The report she's

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1 talking about?

2 COMMISSIONER THERNSTROM: And that would
3 be the only work product other than possibly an
4 Executive Summary just summarizing the testimony and
5 events, and the briefing if it goes forward in
6 February.

7 CHAIRPERSON BERRY: Okay. Thank you very
8 much.

9 Does anyone have any other questions on
10 the staff report.

11 COMMISSIONER THERNSTROM: And thanks to
12 Les Jin for this information.

13 CHAIRPERSON BERRY: Okay. Any other
14 questions on it? Okay.

15 **STATE ADVISORY COMMITTEE APPOINTMENTS FOR INDIANA**
16 **AND MASSACHUSETTS**

17 CHAIRPERSON BERRY: The next item is a
18 state advisory committee appointments for Indiana and
19 Massachusetts. Could I get someone to move those?

20 COMMISSIONER THERNSTROM: I so move.

21 CHAIRPERSON BERRY: All right. The
22 second?

23 STAFF DIRECTOR JIN: Madam Chair?

24 CHAIRPERSON BERRY: Yes.

25 STAFF DIRECTOR JIN: Additionally we have

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1 leadership statements from Arkansas, New Hampshire
2 and Texas that we ask that the Commissioners vote on
3 today. We don't have a leadership statement from
4 Indiana. That'll have to wait until a better time for
5 the Chair, but we do have one for Massachusetts, and
6 we'd ask a vote on that one, too.

7 CHAIRPERSON BERRY: So let me get this
8 clear. We have first this motion for Indiana and
9 Massachusetts?

10 STAFF DIRECTOR JIN: Right.

11 CHAIRPERSON BERRY: Which is on the floor.
12 Can we go ahead and pass that? I read the leadership
13 statement, the guy from Massachusetts, whose name I
14 forget. Yes. He sounds like a very good involved
15 hard working guy. He's giving up a lot. He's not
16 going to serve on the school committee so he can chair
17 this.

18 COMMISSIONER THERNSTROM: What school
19 committee is that?

20 CHAIRPERSON BERRY: The Boston school
21 committee. Is that an important school committee?

22 COMMISSIONER THERNSTROM: Well it's a tiny
23 little town in Massachusetts.

24 CHAIRPERSON BERRY: No, but I mean I don't
25 know whether -- is that the school board?

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1 COMMISSIONER THERNSTROM: Yes.

2 CHAIRPERSON BERRY: It's called the school
3 committee.

4 COMMISSIONER THERNSTROM: Yes. I mean,
5 sure it is. That's an interesting decision on his
6 part, because of course it is, and Boston, of course,
7 is in deep educational trouble.

8 CHAIRPERSON BERRY: Because he says --

9 COMMISSIONER THERNSTROM: I mean, it's not
10 unique in that sense. We've got urban districts across
11 the country that are in deep educational trouble.

12 CHAIRPERSON BERRY: Yes, but he feels that
13 he can do a lot with this SAC, and that would be great
14 if he did.

15 COMMISSIONER THERNSTROM: Is Jennifer
16 Braceras with us by phone, as she was supposed to be?
17 I know that she --

18 CHAIRPERSON BERRY: Did she have her baby?

19 COMMISSIONER THERNSTROM: No, not yet.

20 CHAIRPERSON BERRY: Okay.

21 COMMISSIONER THERNSTROM: But coming soon.

22 CHAIRPERSON BERRY: My understanding is,
23 somebody tell me if that's true, is that Braceras,
24 Reynoso and Edley are out there in the world and are
25 hooked up?

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1 STAFF DIRECTOR JIN: Yes. We're
2 absolutely confident that they can hear us. We're not
3 quite as confident that we can hear them.

4 COMMISSIONER THERNSTROM: Well, because
5 Jennifer and I did discuss the question of whether we
6 might recommend some additions to the Massachusetts,
7 that was a possibility.

8 CHAIRPERSON BERRY: Yes, she said they can
9 hear us.

10 COMMISSIONER THERNSTROM: They can hear
11 us. Well, then I will speak for Jennifer.

12 Jennifer and I did briefly speak this week
13 about the question of whether we could suggest some
14 additional members to the Massachusetts SAC. Is that a
15 possibility? I understand there's no cap on the
16 number of members. And, of course, we would only
17 invite people we also thought could add strength.

18 STAFF DIRECTOR JIN: I think we did it in
19 the past where it's been appropriate. You know, it's
20 something that we try to avoid because the advisory
21 authority, some directors working with the -- they try
22 to put together a good group without appropriate
23 balances in place. I mean, I think that it's something
24 certainly we can consider. But I think that we ought
25 to be careful to give a certain amount of deference, I

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1 think to the process in place.

2 CHAIRPERSON BERRY: But Commissioners can
3 make nominations.

4 STAFF DIRECTOR JIN: Yes.

5 CHAIRPERSON BERRY: And have done so in
6 the past.

7 STAFF DIRECTOR JIN: Yes.

8 COMMISSIONER THERNSTROM: Yes. And we're
9 here suggesting that we bring a far out -- you know.
10 We might have a couple of suggestions.

11 CHAIRPERSON BERRY: Commissioners
12 Redenbaugh's made suggestions.

13 STAFF DIRECTOR JIN: Yes.

14 CHAIRPERSON BERRY: I've made a couple.
15 Not a large number, but you know every now and then.

16 STAFF DIRECTOR JIN: I think one of the
17 members of the Massachusetts delegation now is
18 somebody Commissioner Redenbaugh recommended
19 previously.

20 CHAIRPERSON BERRY: Yes. So, yes, it's
21 entirely appropriate for Commissioners to make
22 nominations, not only for their particular state,
23 which seems logical, but for anywhere else that they
24 think --

25 COMMISSIONER THERNSTROM: I'm very sorry

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1 that we can't hear the Commissioners.

2 CHAIRPERSON BERRY: I am, too. I miss
3 their dulcet tone. That was dulcet -- not dull. No.

4 Now we have to vote on this state advisory
5 committee appointments for Indiana and Massachusetts.
6 All those in favor of these appointments indicate by
7 saying aye. Opposed. So ordered.

8 Now what else did you say we should vote
9 on?.

10 STAFF DIRECTOR JIN: Yes. Leadership to
11 approve the chairs for Massachusetts, for Arkansas and
12 for Texas and for New Hampshire.

13 CHAIRPERSON BERRY: I see. So separately
14 we're going to approve the persons who are listed as
15 the chairs of these particular SACs. And we had the
16 others before.

17 STAFF DIRECTOR JIN: Yes.

18 CHAIRPERSON BERRY: And agreed to them,
19 but a couple of them hadn't sent their letters.

20 STAFF DIRECTOR JIN: That's correct, Madam
21 Chair.

22 CHAIRPERSON BERRY: But they've sent them
23 in and we've got them, and so now you're asking us to
24 formally approve those, is that right?

25 STAFF DIRECTOR JIN: Yes, that's correct.

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1 CHAIRPERSON BERRY: Could I get a motion
2 to do that, please?

3 COMMISSIONER REDENBAUGH: So moved.

4 CHAIRPERSON BERRY: Could I get a second?
5 All those in favor indicate by saying "aye." Opposed.
6 So ordered.

7 CHAIRPERSON BERRY: Now we go to the
8 presentations from the state advisory committee
9 members. And we thank you, New York State Advisory
10 Committee members. And the way this is done, if I can
11 find my -- I begin with the panels, right? Is that
12 right? Or am I -- we're supposed to begin this at
13 9:30, I guess.

14 And since we didn't have the three of them
15 to talk, the three of the Commissioners, we finished
16 10 minutes in advance of 9:30. So we can take a break
17 here just briefly and maybe by that time they'll be
18 able to figure out how to put --

19 STAFF DIRECTOR JIN: Yes, that would be
20 good.

21 CHAIRPERSON BERRY: We're going to start
22 the panels at 9:30. Since we didn't hear you guys
23 talking, we got finished faster than we expected. But
24 at 9:30 we'll start the panels.

25 (Whereupon, a recess until 9:33 a.m.)

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1 **PRESENTATIONS FROM INDIVIDUALS AND ORGANIZATIONAL**
2 **REPRESENTATIVES ON CIVIL RIGHTS ISSUES FACING**
3 **IMMIGRANTS IN NEW YORK CITY**

4 CHAIRPERSON BERRY: We are here to hear
5 from you all because we agreed that we would insofar
6 as possible travel around the county and hear from the
7 American people on the ground where they are. And
8 we're happy to be here in New York City, and in
9 Brooklyn, as a matter of fact, not in Manhattan.

10 Someone asked me yesterday why we are
11 meeting in Brooklyn. And I said because, people
12 always every time they say they're going to New York
13 to a meeting, they go to Manhattan. There are lots of
14 folks who live in Brooklyn, and lots of communities in
15 all the other boroughs, too.

16 And so there's a letter that we have.
17 Michael Hanley has just been appointed the SAC Chair
18 from New York. And we're very pleased that he was able
19 to accept the Chair of the SAC, but because of some
20 medical problems that he has, he can't be here today
21 and he has sent a letter to us about the SAC and
22 expressing his views about Immigration. And he's been
23 very much involved with the staff in talking about,
24 the putting together this session today. And there
25 are other members of the SAC who are here today who

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1 will be speaking to us as soon as the panels are
2 concluded. And in particular we have PROfessor Nishi
3 here, will be talking to us. And she is the past Chair
4 of the SAC who serves on the SAC for 2 terms. Very
5 distinguished Japanese-American scholar who I'm
6 pleased have served with us, and other members of the
7 SAC will be here to bring us up to date.

8 But Mr. Hanley wishes us well here, and is
9 just so pleased that we are here.

10 And the Commission has long been concerned
11 with issues concerning Immigration. We were out on the
12 border issues in San Diego at the last meeting. The
13 Commission has done various reports on Immigration.
14 The major one was called "The Tarnished Golden Door,"
15 which is still cited and used by everybody. Isn't that
16 right, Stan?

17 MR. MARK: Yes, that's right.

18 CHAIRPERSON BERRY: Yes. Civil rights
19 issues and Immigration, which examined the Immigration
20 and law enforcement process and civil rights problems
21 encountered by Americans who were racially and
22 culturally identifiable with a major immigrant group.

23 And there have been other reports we've
24 done, and we had a briefing in December 2000 called
25 "Crossing Borders," an examination of civil rights

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1 issues raised by current Immigration laws and
2 policies. And we have continued to focus on this
3 issue.

4 And here in Brooklyn, just as in New York,
5 when Major Guiliani was the Mayor and he came before
6 us at a hearing, he talked about the diverse
7 communities and how many immigrants there are in this
8 area, and new immigrants and new immigrants coming all
9 the time. And what we want to do is listen to
10 individuals and organization representatives who will
11 update us on civil rights concerns.

12 The purpose of our doing this is so that
13 we can identify directions for the work that we do
14 more precisely as we continue to work on these issues.
15 And that's why we want to hear from you.

16 And the first person we're going to hear
17 from is Margie McHugh, who is the Executive Director
18 of the New York Immigration Coalition, which is an
19 umbrella policy and advocacy organization for 150
20 groups in New York that work with immigrants and
21 refugees. Ms. McHugh has led the NYIC since 1990, and
22 it has turned into a leading voice for generous and
23 fair Immigration policy.

24 Ms. McHugh, could you please present to
25 us. And thank you for coming.

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1 **PANEL 1 - IMMIGRANT ISSUES EMERGING FROM THE 107TH**
2 **CONGRESS AND RECENT EXECUTIVE ACTIONS & JUDICIAL**
3 **DECISION**

4 MS. McHUGH: Thank you. Good morning,
5 Commissioner Berry. Good morning other Commissioners.

6 We're delighted that the Commission is
7 here this morning in New York and allowing us to speak
8 about the very, very important issues that we see here
9 in the city.

10 I gather from looking at the prior record
11 of the Commission and many of the documents that
12 you've produced on this, that you have a great deal of
13 expertise and knowledge about immigration issues. I
14 think one of the things that should be interesting
15 about this morning hearing is that we will probably
16 talk more than maybe you've heard before about what we
17 call immigrant policy issues. That there's
18 traditionally been a large focus in policy circles on
19 Immigration, the system by which we let people into
20 the country, whether it's working or not, what's the
21 various categories and numbers should be. But there's
22 been traditionally not been as much focus about what
23 happens once immigrants get here. And we've become
24 very quickly the most diverse society in the history
25 of the world, I guess. And we seem to be expecting if

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1 by magic this will all work, and there really has not
2 been as much examination about how we make sure that
3 the various programs that we put together as a society
4 to make sure to provide opportunity for all people, to
5 provide educational opportunities, voting
6 opportunities and the like; to make sure that those
7 systems are truly relevant now that we have such
8 incredible diversity in all of our major cities. And,
9 frankly, in every state in the nation.

10 As I'm sure you're all aware, one of the
11 newer phenomenons with Immigration is that many
12 immigrants are bypassing larger cities and simply
13 going directly to suburbs and to rural areas. And so
14 these issues are quite important for every state in
15 the nation, and obviously New York has a particular
16 place for that dialogue having been the gateway for so
17 many centuries for immigrants to the country.

18 As you said, Chairwoman Berry, our
19 organization is an umbrella for about 150 groups in
20 New York that work with immigrants and refugees. A
21 quick demographic snapshot of New York is that two-
22 thirds of our population, two-thirds of New York's
23 population is immigrants and their children. About 35
24 percent of the city is foreign born. Twenty percent
25 of the state, actually, is foreign born. And almost

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1 50 percent of New York City residents speak a
2 language other than English at home. You can imagine
3 what the implications of that are for a school system,
4 for government agencies and the like. And this is
5 similar to other large population centers that it has
6 a high number of immigrants over the past 20 years.

7 Income is varied between immigrant
8 families and native born families. It's unfortunate,
9 and also quite dramatic despite higher labor force
10 attachment rates, 30 percent of immigrant families in
11 the city are poor and over 50 percent are below 200
12 percent of poverty. That's below the 200 percent
13 federal poverty guidelines. Again, that is twice the
14 rate of native born families in the state.

15 The first issue that I'm going to touch on
16 quickly is education. I'm sure you're all aware that
17 we had major activity at the federal level this past
18 year with the passage of the No Child Left Behind Act.

19 The Act sets very laudable goals trying to make sure
20 that every school in the nation brings all of their
21 students up to state performance standards and closes
22 achievement gaps that are based on race, ethnicity,
23 language and income.

24 ELO students in particular, immigrant
25 students as a whole, of course, are a source of great

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1 concern for our organization. But we have a
2 particular focus on English language learner, students
3 who come into the system often in their later years,
4 middle school or high school years, who are facing
5 these high stakes testing standards and need to meet
6 them in a very, very short period of time, often
7 without systems in place in the schools that they're
8 entering to allow them to acquire sufficient English
9 language skills. You know we're faced now with the
10 very tough English language Regents' standards here in
11 this state that's been in place since 2000. It's
12 similar to the standards that are in other states. But
13 I would say that most education experts agree that New
14 York standards are quite high by national standards.

15 The exception, of course, with students
16 taking this exam is that 12 years of English language
17 instruction is what's needed to do well on this exam.

18 But we have immigrants coming in and they're expected
19 often in the space of 2 to 3 years to be able to pass
20 this exam.

21 When the Regents implements this exam, our
22 State Board of Regents implemented it, they
23 acknowledged that this was going to be a very
24 difficult standard for English language learners to
25 meet. And so they put together with they called the

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1 12 Step Action Plan acknowledging that we needed to
2 increase the quality and quantity of English language
3 instruction, that we had to recruit more certified
4 bilingual and ESL teachers, that we had to provide
5 extended day and weekend classes and the like.

6 Unfortunately, none of those 12 steps was
7 implemented, yet the implementations of the standards
8 has gone forward. And not surprisingly, and quite
9 unfortunately, we now find that the dropout rate for
10 English language learners has doubled and it's now the
11 highest dropout rate for any subgroup of students in
12 the system.

13 Another factor that's quite troubling but
14 somewhat hidden right now, but I think you'll see this
15 as you look around the country and certainly in New
16 York state, there's a new phenomenon that we call
17 "push-out," which is where schools realize that they
18 look bad when they have these very high dropout rates.
19 And so they try to get rid of students in a different
20 way so that they don't show up on the dropout record.

21 They instead, are counseling students just to leave,
22 go get a GED. And using various types of record
23 keeping, to show that the student has transferred out
24 of the school. Normally these records you're only
25 allowed to use this procedure if the student has come

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1 to you and said that they're being discharged to
2 another school district. But what we're finding is
3 that where we had about 3,000 to 5,000 students in
4 this category 3 and 4 years ago, we're now up to close
5 to 50,000 students being in that category in New York
6 City.

7 So it's pretty clear that schools are
8 using this as sort of a means to have these children
9 sort of disappear and not be counted against them in
10 terms of the eligibility, and the accountability
11 standards. Not look as though they're dropout rate is
12 increasing. And we're hearing from education advocates
13 and community advocates in those other parts of the
14 country that this is happening around the country
15 where high-stakes testing regimes have been put into
16 place.

17 I'm flagging all of this, just saying that
18 on the one hand we're very happy that No Child Left
19 Behind actually makes schools keep track of their ELO
20 students, keep track of students by English language
21 ability and also in terms of race and ethnicity so
22 that we'll finally have better data to show us
23 actually what's happening with these students. But
24 some of the main provisions of the bill actually don't
25 allow us then to put into place what the vision was in

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1 the legislation that parents would have more choice
2 about where to send their students if they were in a
3 failing school, and also that they would be able to
4 obtain the services that they needed to help the
5 students meet the standards, which is of course the
6 goal for immigrant families just as it is for native
7 born families.

8 And I think Joe will talk about this
9 morning, his testimony. But what we are finding in the
10 state is that we've been very, very slow in
11 implementing the Act. I know in other states, other
12 states are far ahead of us. But the city is pretty
13 fastly realizing that almost a third of its schools,
14 actually, could be shutdown technically if the Act
15 were to be implemented as many might have envisioned
16 it going forward. But it doesn't do us much good to
17 close down a third of our schools if we don't have
18 better schools in which to put those children.

19 There's not real choice right now for
20 parents. Because most immigrant parents in ELO -- most
21 ELO students are in districts where it's not district
22 to go to a school that was just 15, 20 minutes from
23 their home and be in a better school. The better
24 schools for these students simply don't exist. And
25 even while the Chancellor has said that students could

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1 look across the city to try and find a better school
2 to go to if they're EOL, but that doesn't do much good
3 because, again, the schools that we have that are
4 excellent schools are really boutique programs.
5 They're not programs that have been replicated in a
6 large number of schools.

7 And then an additional enormous problem
8 there is that the after school assistance is not
9 available. That while the city has contracted with
10 quite a few large learning centers and the like to try
11 and allow students who want to get additional help to
12 meet the standards, almost none of those providers
13 provide assistance to students who are English
14 language learners.

15 So, we think that this is an issue, not
16 just in New York but around the country. And that it
17 would be a great service if the Commission would look
18 at this issue in greater detail, see what's going on
19 around the country in terms of the implementation of
20 No Child Left Behind with a particular eye to what
21 sort of services are available for English language
22 learners now that the demographics of our schools have
23 changed so dramatically. And because we have not
24 sufficiently invested, it appears in attempting to put
25 together programs that will help students who are

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1 English language learners to succeed as we move
2 toward high stakes accountability in the nation, and
3 particularly in most of our larger immigrant receiving
4 states.

5 We'll also talk today about voting rights.
6 And I know that Stan is prepared to talk about the
7 federal voting rights legislation changes this past
8 year.

9 I'll just say briefly that our
10 organization works with a wide range of immigrant
11 groups who have been attempting to help in the
12 immigrant refugee voters understand the U.S. electoral
13 process and also to protect their rights when they go
14 to the poles on election day.

15 We now have a situation where one in four
16 voters in New York City is foreign born, fully 25
17 percent of voters now are foreign born in the city.
18 And two-thirds of first time voters are immigrants.

19 So, I will put in a good word for our New
20 York City Board of Elections, that they have tried to
21 be sensitive to the issues around language diversity
22 and have tried to cooperate with community groups in
23 opening up language access in languages other than
24 those that are required under the Voting Rights Act.
25 But at the same time, I think they would acknowledge,

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1 and we certainly have been very vocal, that they have
2 not been very effective in even doing a good job with
3 the languages that they're mandated to be providing
4 assistance in. That it's spotty, is the fair way to
5 put it.

6 We're very concerned with what's coming
7 down now with the new Voting Rights legislation --
8 sorry, the Help America Vote Act because it now
9 mandates that first time voters have to provide photo
10 ID and also that through our voting rights rules will
11 become part of the statewide voter registration
12 database.

13 Stan, I know, will talk and retell about
14 what they found with their exit polling in Asian
15 American communities. I'll just say that we have been
16 working particularly closely with the Russian American
17 community because they have had particular problems
18 out here in Brooklyn for the last several elections
19 where there have been contested elections, where you
20 now have Russian speaking candidates who are on the
21 ballot. Many community members are coming forward to
22 vote. And we've, unfortunately, had I think it would
23 be fair to say hundreds of incidents where Russian
24 voters were told that they were not allowed to speak
25 Russian when they were within a polling site.

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1 We had people who were there and
2 appointed by the Board of Elections to be providing
3 assistance. They were bilingual Russian English
4 speakers. They were told by others at the poll, and
5 particularly staff of elected officials and people on
6 the ballot that they were not allowed to be speaking
7 Russian in the poll. And they brought in police to
8 try and have them arrested and bring them out of the
9 polls, and the like.

10 So we've had some very serious
11 difficulties with new immigrant voters coming forward
12 and then the way that this played out on election day.

13 We also have very serious
14 disenfranchisement of immigrant voters, simply because
15 their names are different from us and harder to
16 decipher for some of the people apparently who work
17 for the Board of Elections. And so we have thousands
18 of cases during the last several elections where
19 immigrant voters come forward. They give their names
20 to people who were working and looking through the
21 book for them, say "No, you're not here. You're not
22 allowed to vote."

23 In some cases it is that voters came, that
24 the polling sites are hard to understand and so you
25 may have 7 or 8 electoral districts voting in one

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1 polling site, and it is a failure on the part of the
2 Board of Elections that they don't train their workers
3 to simply say "Well, you might just be in the wrong
4 line. You go over to that corner of the room instead
5 of this corner and see if you're in that book over
6 there." But even notwithstanding, those sorts of just
7 operational problems that we would hope that the Board
8 of Elections would figure out.

9 There's a very big problem with immigrant
10 names simply not being entered correctly into the
11 books. And we think that this will be an enormous
12 problem once we begin to try and create a database.

13 The issue here is similar to one of the
14 issues in the worker race area that you'll hear about
15 today, that the SSA, Social Security Administration
16 database is often the foundational database that other
17 government agencies want to tie into to do this work.

18 SSA acknowledge, and I believe it was in some sort of
19 federal testimony, that they had a 30 percent error
20 rate with their entries and that their database was
21 not going to be adequate if that was going to be the
22 main database that people were networking into. And
23 that we foresee very, very serious problems with
24 immigrants coming to the polls and that their names
25 will be incorrectly entered into those databases. And

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1 that it will be another reason then for poll workers
2 who already are resistant to working with these
3 communities, to actually letting them come forward and
4 exercise their right to vote.

5 The third issue that we're dealing with on
6 today's panel is worker's rights. I know that Mayra's
7 ready to talk about the Hoffman Plastics decision in
8 particular that's having a very impact here and
9 nationally. While the decision was actually quite
10 narrow and only addressed the issue of whether a
11 documented worker would be allowed to collect back
12 pay, it's being used as an opportunity by employers to
13 sort of declare an open season upon immigrant workers
14 generally. And there have been many, many violations
15 that have been reported to dozens of organizations and
16 group in New York City that deal with immigrant
17 workers where employers are now trying to get away
18 with not paying for work that's actually been
19 performed and engaging in a variety of discriminatory
20 practices that we believe flow from this decision.

21 Another very serious issue there is the
22 impact of the Social Security no-match letters that
23 are being sent out to immigrants and to employers of
24 immigrants. Almost 7 million employees nationally are
25 being effected by this.

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1 I think I'll leave that one to Mayra also
2 to talk about in greater detail. But employer
3 dependent measures like the no-match letters and also
4 the proposed Social Security number verification
5 service. One, it's giving employers the authority to
6 abuse and harass their immigrant workers and they hurt
7 both legal and undocumented workers. And we think that
8 this, too, is an important issue that the Commission
9 could look into and propose ways to Congress that
10 civil rights and labor rights violations could be
11 prevented that are now taking place as a result of
12 these policies.

13 Another worker issue that sort of didn't
14 fit between the two panels that you're going to hear
15 today or that there wasn't a speaker just dedicated to
16 these issues, is the issue of worker training.
17 Referencing back to the earlier part of my remarks,
18 would be the great disparity that we see in terms of
19 immigrant earnings and the sorts of jobs that
20 immigrants are filling in the labor force. It's
21 obvious that immigrants are in working situations
22 where they're being paid a great deal less than native
23 born workers and where they appear not to have the
24 opportunities for advancement, the opportunity to move
25 into higher paying jobs, higher skilled jobs.

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1 The federal government's response to that
2 is the Workforce Investment Act, recently several
3 years ago put forward as a compromise trying to make
4 more sense the various streams of funding that were
5 funding job training programs and trying to bring a
6 different sort of order to the job training system.

7 I think if you look more closely at that,
8 you would find that it's a system that largely
9 excludes immigrant workers. And the reason is that
10 the system does not address the needs of workers who
11 did not speak English as their first language. And so
12 we have job training programs in the city that we know
13 are very, very eager to be trying to serve immigrant
14 workers, especially since you really can't be relevant
15 in New York if you're trying to do virtually any kind
16 of work, whether it's health care, education, housing
17 or job training if you're not meeting the needs of
18 immigrants because our city is two-thirds immigrants
19 and their children.

20 What we see in these various funding
21 streams that support worker training, what we see is
22 that they're more geared toward paying people to maybe
23 do a 40 hour training program to help something move
24 into a particular kind of job, give them the skills or
25 a certificate to go into that job. But if you have a

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1 worker whose English language skills, where they have
2 not had the ability to learn sufficient level of
3 English, those programs can't address that.

4 And we did a study about a year and a half
5 ago showing that we meet only 5 percent of the needs
6 for English language classes here in New York. Many,
7 many of our English language providers run their
8 programs on the lottery, because it would be too
9 discouraging they feel to people who want to learn
10 English to tell them that they're on a list and they
11 can get a class in 4 or 5 years, which would be the
12 case for many of these programs.

13 And so we don't have a way to meet the
14 English language acquisition needs of adult immigrant
15 right now. And then we see that that makes then the
16 job training system and the money that the government
17 is putting into that much less relevant to populations
18 in cities like New York. Because if you can't bridge
19 the language gap, you really can't be effective in job
20 training programs.

21 Now, that's especially an issue here in
22 the city post-9/11. Because immigrants were over half
23 of the job loss and low wage immigrants in particular
24 are a big piece of the workforce that has been most
25 severely impacted by 9/11.

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1 We have a spotlight shined on these
2 issues now because we're trying so hard to figure out
3 how to effectively recover from the hit that New York
4 City took with the 9/11 attacks. A big piece of that
5 is trying to make the job training system work for
6 people who have been thrown out of jobs as a result of
7 9/11. And we're now seeing that the fact that we
8 haven't addressed these issues with trying to help
9 immigrant, adult immigrants learn English and with
10 making the job training system relevant to them, that
11 we simply don't have the ability then to help the
12 workers who have been more disproportionately impacted
13 by 9/11.

14 So, as another issue that the Commission
15 might look at. This is an issue, as I said, of great
16 importance here in New York post-9/11, but it's an
17 issue that's been with us for many years since we've
18 had high rates of immigration into the country and
19 since we've been trying to rework the job training
20 system from the federal perspective, that we think it
21 would be very helpful if the Commission would look at
22 this issue and attempt to make recommendations about
23 how to close that gap to make this system be more
24 relevant. Because right now it is pretty much unable
25 to meet the needs of immigrant communities.

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1 So that's maybe a little more than a
2 quick snapshot of all of these issues. But, again, I'd
3 just like to emphasize in closing that we deliberately
4 or are deliberately this morning didn't focus on the
5 50 issues that a bunch of our groups would have liked
6 us to also focus on that are so relevant in terms of
7 Immigration law and Immigration policy because we saw
8 this as an attempt to say to the Commission that these
9 issues are the ones that often don't get on anybody's
10 radar screen. That we really need to be looking at
11 the experience of immigrants once they arrive in the
12 country and because they're working in occupations
13 where their rights are more generally violated, where
14 they're not making wages that can help them move up
15 and realize the promise of the American dream that has
16 been there for immigrants of prior generations, that
17 these are serious issues for the Commission on Civil
18 Rights to look at. And we hope that you'll think about
19 that as you look to what your agenda will be and what
20 your work will be in coming years. Because we think
21 they're so significant, not just for New York City,
22 but for the nation.

23 Thank you.

24 CHAIRPERSON BERRY: Margie, that was just
25 so depressing. I mean, what a mess, if I may be

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1 privileged to say so. There'll be questions, but
2 let's go through and hear everyone first.

3 All I can say about Stan Mark, who is
4 officially a program director, the Asian American
5 Legal Defense and Education Fund, which means that he
6 runs the clinics, and the community education, the
7 policy work and so on. He has been at the table at
8 every policy decision of major import nationally on
9 these issues for as long as I can remember. So that's
10 all I can say.

11 And so, Stan, with that please give us
12 your view of things.

13 MR. MARK: Well, thank you for that
14 generous remark.

15 I'm going to talk about the Immigration
16 issues and the impact on some of those folks here in
17 New York City, particularly around issues from 9/11,
18 World Trade Center. Also from the standpoint of
19 detention. We represent about 40 or 50 people in
20 detention, mainly Asian, Middle Eastern people,
21 persons of Middle Eastern Muslim decent.

22 Let me just start just to speak a little
23 bit about an issue that hasn't gotten as much
24 attention from Immigration. There has been a post
25 before and after 9/11 about legalization for

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1 undocumented people here in the United States.

2 There's also a group, actually a network
3 of people whose family members were killed at the
4 World Trade Center and who are legally here. And
5 we're working, representing people to try to get
6 extentions on their current nonimmigrant status,
7 meaning that they're not lawful permanent residents.
8 And we think that they deserve some legislative remedy
9 to allow them to get lawful permanent residence in the
10 United States. And that's something that has a direct
11 impact on quite a few Asians, as you're aware of, who
12 suffered the tragedy of the World Trade Center
13 collapse directly effecting their lives. We feel that
14 that's an issue that you should be taking a look at.

15 Also I should tell you because of our work
16 around relief, and I know there's a separate panel,
17 but I just want to call it to your attention that a
18 group of us have submitted about an inch or two inch
19 of material to you describing the impact of funding
20 of relief assistance. I just want to mention some of
21 the things that we've discovered.

22 We've done a Freedom of Information
23 Request, which we did get quite a bit of material
24 describing the relief assistance and how it's been
25 disparately impacting on the lower Manhattan area,

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.1 particularly people in low income.

2 You may not be aware that there's been any
3 provision in the in the human rights and the internal
4 guidelines that requires -- not only based on race and
5 national origin and on religion but also based on
6 income as well.

7 So we discovered through the data that
8 we've gotten so far, and perhaps we'll be getting more
9 data through our lawsuit against FEMA, that people who
10 are living on the West Side of lower Manhattan are 40
11 times more likely to try and succeed in getting
12 approval for the mortgage rental assistance program
13 and that -- there are people on the East Sid. And
14 that people on the West Side of lower Manhattan are 30
15 times more likely to receive a grant from the
16 individual family grants program also administered by
17 FEMA and the New York State Department of Labor.

18 And just an example. In the area code
19 10002, which is the lower East Side, which is made of
20 mainly Chinese, there were grants to the Latino, Black
21 and white people. They applied at a rate of only .7
22 percent for the assistance -- excuse me, 1.7 percent
23 and only 0.7 percent of the people were approved for
24 relief. So there's a tremendous difference
25 desperately between relief that was made available to

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1 people on the West Side as opposed to the East Side.

2 We're holding now FEMA accountable for that and we're
3 contemplating looking at some litigation.. That deals
4 with the 9/11 relief area.

5 In the area of voting rights, as Margie
6 mentioned, there has been new legislation called To
7 Help America Vote Act. And as Margie described,
8 there's an additional requirement of identification
9 that is now imposed newly by registered or people who
10 are applying to be registered to vote. And what we
11 believe at our office, although it hasn't been fully
12 implemented and we anticipate that it will be soon and
13 I think these forms are being produced at the Board of
14 Elections at this moment so that they can be
15 distributed. I should just as a side note mention to
16 you my office has for years, and I guess thousands and
17 thousands of people have been registered by volunteers
18 and people from our office at the courthouse down here
19 in 7th district every week. We believe the enactment
20 of this new law will actually make it much more
21 difficult for us to do that voter registration. And we
22 also believe that it will have a desperate impact on
23 newly registered people because they will now be
24 unable -- at the courthouse may produce that kind of
25 document to be registered at that moment. So we will

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1 have to think of other ways as a practical matter to
2 trying to get that voter registration done more
3 efficiently and effectively.

4 Of course, there are provisions later on
5 where a person doesn't have the ID attached to their
6 registration form, but they can produce ID at the
7 Board of Elections at the polling site, which has been
8 a bone of contention for us for many years.

9 We think that the desperate impact occurs
10 because many of the people who are now registering
11 from the Asian American community are recent
12 immigrants and that's evidenced and documented by our
13 exit polls.

14 By the way, we have conducted exit polls
15 more than ten years in the Manhattan area and Queens,
16 and Brooklyn and for the first time conducted exit
17 polls in Michigan in this past election and
18 Massachusetts and in New Jersey as well. So through
19 these exit polls we've discovered that most of the
20 people who are voting are recent voters, recent
21 arrivals being 5 years, within 5 to 7 years. We also
22 found that many of them are living -- and do require
23 language assistance.

24 We also note that at the exit site, exit
25 polls particularly here in New York where Korean was--

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1 from the Chinese has been -- been required as part of
2 languages provided by the Board of Election for the
3 last ten years or more, this is the first election
4 where Korean language assistance has been mandated. We
5 found that there were at certain polling sites a lack
6 of interpretative services and assistance. Some of
7 the signs that were in Korean and Chinese were not
8 made available to people. There was confusion. Some
9 of the exit poll workers believe Chinese was Korean or
10 vice versa, did not have the materials to put out.
11 Signs were not posted for the interpreter services
12 were not utilized consequently because of that signage
13 problem.

14 We also discovered in certain instances
15 poll workers who -- Asian voters that they were dirty,
16 that they smelled, those kinds of individual anecdotal
17 stories.

18 And I think that the bigger problem which
19 has been with us for a while is that a lot of the
20 Asian names don't appear on the voter registration
21 books and people aren't informed that they're allowed
22 to get affidavit ballots, or they're sent away because
23 if their name did not appear and they were given their
24 right to vote, were not given a ballot.

25 So these are some of the problems that

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1 we've encountered in our exit polls this past
2 election 2002.

3 And then if I could just move on to
4 briefly summarize some of the other problems that
5 we've seen.

6 As I've mentioned, we are currently
7 representing about 40 or 50 people in detention.
8 Bigger issues, I'm sure, policy issues that we believe
9 that the indefinite and in some instance mandatory as
10 well as secret detentions are flying in the face of
11 our traditions, civil liberties and civil rights.

12 As you know, most of the people if not all
13 of them have tried to because of their religion as
14 well based on their race or national origin, feel that
15 this kind of activity shouldn't continue in secret.
16 And we participated in a lawsuit with the -- are the
17 names of the people who have been detained as well the
18 name of the returnees, where and how they've been
19 arrested and other information surrounding their
20 charges.

21 So with that, I would just say that that's
22 a quick overview of some of the issues that we've been
23 dealing with and that have impacted on immigrants on
24 an Asian American community. And if we have time, we
25 can discuss some of them in more detail, some of the

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1 issues that I raised.

2 CHAIRPERSON BERRY: Okay. Thank you, Mr.
3 Mark.

4 Now we have Joe Semidei, whose a Deputy
5 Executive Director of the Committee for Hispanic
6 Children and Families. He has worked in the
7 Department of Division of Children and Family Services
8 in the New York Department of Social Services where he
9 helped to implement or did it all by himself the Child
10 Welfare Reform Act single-handedly with no staff, and
11 is now as I say, he is Deputy Executive Director of
12 the Committee for Hispanic Children and Families.

13 Please proceed.

14 MR. SEMIDEI: Thank you.

15 We're part of Margie's coalition. We've
16 been around for 20 years and we basically are
17 dedicated to the Latino community and advocating for
18 their rights in education, public health and child
19 welfare.

20 In 1998 there was this uproar about the
21 testing in New York state on the state level and a
22 city level. And Mayor Giuliani was very key on
23 holding the school system accountable. There was
24 widespread publicity on that.

25 And in 1998 there was citywide statistics

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1 on elementary schools and their Latin reading scores.
2 We did this study and only had one report which we
3 will give to the Commission. And Mayor Giuliani was
4 bragging on his leadership, the Spanish were higher
5 performance for the students. And citywide it was
6 49.6, meaning that more than half the students were
7 not reading at the level in which -- whatever grade
8 they were in. But for 3 districts that we studied in
9 the South Bronx that were largely Latino, District 7,
10 District 10 and District 12, the statistics are very
11 different. Hugely different.

12 For District 7 it was 14.3. For District
13 10 it was 9.4. And for District 12 it was 9.5. So if
14 you're looking toward education as the great
15 equalizer, as the immigrant parent is so desirous of
16 their children getting that education to make a
17 difference in their socio-economic status to have
18 equal opportunity, then the school system is not
19 fulfilling that role that it may have for previous
20 immigrant groups.

21 The new immigrants are actually
22 experiencing the school system as the great depressor
23 of motivation to succeed in school. Because
24 everywhere they turn there is no help. And as a
25 consequence of that, the school experience is a very

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1 frustrating experience for the children and we have
2 incredible dropout rates that I think are a great
3 crises that has not been attended to by the state or
4 by the city.

5 It's wonderful that -- and our agency will
6 support this -- that every child could get the best
7 education possible and that the standards should be
8 high and they should succeed and we shouldn't try to
9 discriminate against children's learning potential.
10 But when you have high standards and you have these
11 statistics in some of these school districts, and the
12 assumption is basically very simple. Poor children in
13 poor communities -- every system, every social system
14 that impacts on children and poor family is failing
15 them, whether it be the health care, whether it be the
16 police, whether it by the hospitals. So this is a real
17 emergency, a real crises, something that's worthy of
18 investigation by your Commission.

19 So I'm going to do two things, and one --
20 in a typical style I'll be very thorough. So I'm
21 going to go and give some details in terms of
22 educations in terms of immigrant children from the
23 state.

24 The state has assumed the same attitude
25 Leave No Child Behind, which is high standards and

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1 accountability. Create a 12 step action plan that
2 identifies what school districts had to do to get the
3 English language learners to be able to pass the
4 Regents exam that Margie spoke about earlier, which is
5 the English language arts exam. That was designed
6 originally for English speaking, native English
7 speaking people after an experience of being in a
8 school for a while to be able to graduate from high
9 school.

10 They're being put to this standard and
11 there's no middle standard. They say either you get
12 that or you fail, or you're asked to leave the school
13 or you're encouraged to leave the school and get an
14 equivalency diploma. And we know the economic impact
15 of these decisions on poor people.

16 So the state created two advisory boards
17 to look into this problem. If we were going to have
18 these high standards and these 12 step programs were
19 going to be created, what was needed. And one of the
20 recommendations that both advisory boards made was to
21 create a safety net for the English language learners.

22 One because so many come from countries rather
23 recently. They may come a year or two before they
24 have to take the Regents. So it's very unfair. And
25 so what they thought was to create an intermediate

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1 step of English exam that would accommodate for their
2 reality and their situation.

3 This was sent up to Commissioner Mills,
4 the state Commissioner, Department of Education. And
5 he rejected it flatly. And as a result, we have some
6 interesting statistics.

7 The class of 1997 for the four year
8 dropout rate for English language learners was 15.9.
9 And 40 percent of the English language learners
10 graduated on time.

11 Then with all these so called reforms and
12 accountability, the class of 2000 the dropout soared
13 to 30.6 and only 30.3 of the English language learners
14 graduated on time.

15 The experience of the class of 2001 is
16 that the dropout rate will be 31.7, nearly doubling
17 the dropout rate in only four years.

18 So this is a crises. You can just tell. I
19 was in a situation where I did not know English when I
20 went to school. My mother didn't know English. So how
21 could she help me? So the school is the only resource
22 to make that difference for immigrant families. And if
23 they are indifferent, don't structure their curriculum
24 and programs to be commiserate with that reality, this
25 is what I had to do. When I was in school and a

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1 teacher was speaking in English, I had to draw things
2 because I could not read English. So whatever little
3 bit I understood, I drew. Jane is running. Spot is
4 here. Things like that.

5 When I went home and I looked at the
6 stuff, I couldn't see exactly what I wrote. And I
7 turned to my parents, they couldn't help me. So as a
8 result I did very poorly in school. It took me a long
9 time to catch up. And I can tell you it helps to have
10 people in the early years helping you. Because middle
11 class parents, that's all they do is try, even with
12 better resources and English as their native language,
13 to raise a support system all through their elementary
14 and junior high school and high school so they have a
15 better future. The opposite it true. If we don't have
16 these things for immigrant families and children,
17 they're not going to have that. Yet our American
18 democracy is built that education is the equalizer and
19 it's not performing this function.

20 So the 12 step program had no new
21 resources attached to any of its recommendations. And
22 so it's a high standard, high accountability. So we
23 have accountability by government for the students. We
24 don't have it for the school system and we're not
25 really measuring what their able to do.

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1 And we're seeing it in the junior high
2 school, the preparation for immigrant children is
3 where it's very critical and there's where they're
4 really failing. So by the time they get to high school
5 and try to pass these Regents, it's almost a foregone
6 conclusion that they're not going to do it.

7 And then what's happening is they are
8 discharging them and specifically -- and you'll be
9 held to this accountability. You want your statistics
10 to go high. You're not going to want a whole body of
11 population to go and suppress your statistics. And
12 they're covering it over here. We know what human
13 nature is like. So the discharge is happening.
14 55,000 kids every year are being discharged. A good
15 bulk of those kids are our kids and we're very
16 concerned with the kind of treatment they're getting
17 in the school system.

18 In terms of Leave No Child Behind,
19 President Bush, I think that it's a very good law. I
20 think it was very good in the sense that it wants to
21 be able to improve educational results for school
22 children and for communities. I think, as Margie
23 mentioned earlier, the data is very important to hold
24 the schools accountable. Tracking within the schools
25 in terms of how they treat or how they are impacting

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1 on English language learners. I think it's a step
2 forward. Therefore, we will have real data to be able
3 to hold them accountable.

4 I think that the annual progress report is
5 a good one, and giving annual English tests to measure
6 the proficiency of this group is very important.
7 Because then we can measure from year to year exactly
8 what's going on. We can differentiate where a problem
9 is mostly in the elementary school, the junior high
10 school or in the high school or in all three. So that
11 is good.

12 School choice provision is very good in
13 theory. In a sense, and Margie mentioned this before,
14 that the assumptions that you would move within a
15 school district to another school. But if you're in
16 the South Bronx and you're a parent looking at where's
17 a better school than the school my kid is in, and you
18 take these statistics, we broke it down into every
19 school. And one of the things we wanted to do was
20 have like a palm pilot for the parents so when they go
21 to the parent teacher association meeting, the parent
22 can say I have 3 kids at 3 different schools. Look at
23 the overall results of my kids. Are they getting a
24 fair share? They can hold the school accountable.

25 But to his credit, the Chancellor has

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1 liberalized so that you can go into another school
2 district. And Margie mentioned that if the other
3 schools are better, they may not have bilingual
4 education that's so needed for our kids. So it's good
5 theoretically but practically I'm not sure. It may
6 have a very marginal difference.

7 One very good provision is the need for
8 supplementary services to be able to readdress some of
9 the gaps in educational achievements. Only 10 percent
10 of the students have been able to take advantage of
11 this. And to our understanding there has been no
12 provider. Most of the schools have elected to do it
13 themselves, mostly, against providers who do it. And
14 we have not identified any provider that has a
15 bilingual ESL component to it. So it's another thing
16 where theoretically it sounds good, but we're not
17 getting the benefit of that provision of the law. So
18 that needs to be examined.

19 So what we think in my agency and working
20 with the coalition is there's a variety of issues that
21 impact on these kids. These kids wouldn't go to
22 school, may not have proper nutrition or health care,
23 so all that adds to an atmosphere of frustration when
24 they get to school. So this dropout rate is
25 incredible and we have to do something about it, and I

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1 recommend that this Commission give a very systematic
2 and careful study.

3 CHAIRPERSON BERRY: Thank you very much,
4 Mr. Semidei.

5 And the last person on this panel -- we'll
6 have some questions -- is Mayra Peters-Quintero, who
7 is Puerto Rican Legal Defense and Education Fund.
8 She's been a clerk for district court. She's both a
9 lawyer and has a degree in international development.
10 She developed the Immigrant Workers Rights Project at
11 PRLDEF. And could you please proceed.

12 Thank you very much.

13 MS. PETERS-QUINTERO: Thank you very much
14 for having me.

15 I work for a Latino civil rights
16 organization, but I work exclusively on the issue of
17 immigrant and low wage worker rights. So I'm glad to
18 know the Commission has recognized, the way my office
19 has, that this is an issue that falls clearly in our
20 traditional civil rights framework, and it's often
21 excluded. So I'm very happy to have been invited here.

22 I'm worried because you thought Margie's
23 presentation was depressing. I wanted to start by
24 just giving you a little bit of context and sharing a
25 little bit about my clients, as I believe they are

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1 pretty representative of the low wage and immigrant
2 work force here in New York City to give you a sense
3 before I talk about the Supreme Court case I've been
4 asked to remark on.

5 Unfortunately, the age of the sweat shop
6 is alive and well here in New York. Just a few miles
7 from here where we sit in Brooklyn, there are plenty
8 of sweat shops, garment shops, factories with horrible
9 health and safety conditions. None of my clients work
10 less than 60 hours a week, many of them work a 100.
11 Virtually all of the employers I deal with violate
12 minimum wage and/or overtime provisions blatantly and
13 recklessly.

14 I don't have any clients who have ever
15 reported any paid vacation or sick days, health
16 benefits or job provided health benefits are wholly
17 unheard of. And although we are happy that the
18 AFL/CIO has changed its stance towards immigrants, it
19 hasn't trickled down quite enough. We have very
20 little union representation amongst low wage and
21 immigrant workers here so far.

22 You've probably seen the reports.
23 Immigrant workers are killed and injured on work sites
24 at rates far higher than their nonimmigrant
25 counterparts, so on and so forth.

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1 So these workers come to me for legal
2 advice or for help getting organized because they want
3 to get together and demand their wages. And for the
4 hardest request of all, they usually come to me asking
5 for dignity and respect on their jobs. Something very
6 simple, but very difficult to deliver if the skills
7 you have are legal skills or organizing skills.
8 Because, as Margie pointed out in her introduction,
9 it's kind of open season in New York for employers
10 against immigrant workers.

11 I have workers who call me saying that
12 they sliced their hand on a machine at work. There's
13 no first aid kit and their employer said they'll fire
14 him if he leaves for the emergency room. What can he
15 do?

16 As I go into the repercussions of the
17 Hoffman Plastics decision, like Margie said, it is a
18 narrow holding and it does apply to a set of
19 circumstances. It's a remedy specific to a particular
20 action on the part of the employer. But the
21 ramifications in New York has been outstanding.

22 As for the employers I deal with, they are
23 across the board, as I mentioned. Unscrupulous at
24 best. Usually they seek to hire only immigrant
25 workers. Often they specifically prefer undocumented

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1 workers and are explicit about this. We know these
2 workers, of course, are vulnerable, afraid and easy to
3 exploit. This is nothing new. This has gone on for
4 decades.

5 These same employers, of course, then hide
6 behind the illegality of the worker's present in the
7 U.S. when we challenge the employer to treat the
8 workers fairly. So the same employer who cries for
9 tighter Immigration restrictions and has rallied
10 behind the Hoffman Plastics decision is the same
11 employer that piles his new workers when he hires them
12 into a car and drives out to Queens to buy them their
13 fake Social Security card so he can file out the I-90.

14 We have a complicated situation, which
15 brings me to the topic I've been asked to speak on,
16 which is the Hoffman Plastics Supreme Court decision.

17 On an aside, Margie mentioned the Social
18 Security no-match issue, which is possibly equally
19 depressing concern for immigrant workers and their
20 advocates. It's the policy of the Social Security
21 Administration to generate these letters alerting
22 employers of mismatches between name and numbers. And
23 more importantly, what is of concern to us, is the
24 matter in which these letters are now being used to
25 discriminate immigrant workers from asserting their

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1 workplace rights.

2 Because my time is limited, and I feel the
3 issue of Hoffman Plastics is very important, I don't
4 know if I can submit my more detailed remarks on that
5 in writing.

6 CHAIRPERSON BERRY: You can do that.

7 MS. PETERS-QUINTERO: Okay. I'll do that.
8 Then I'm just going to focus on Hoffman Plastics.

9 CHAIRPERSON BERRY: Very good.

10 MS. PETERS-QUINTERO: You probably already
11 know Hoffman Plastics Compounds versus NLRB was a
12 Supreme Court decision that came down in March of this
13 year. It has to do with the worker who had been fired
14 illegally for union activity in his workplace, and no
15 one is contesting the fact that he was fired
16 illegally. The issue revolves around the question of
17 backpay for that worker for the time he was illegally
18 excluded from work. And the Supreme Court reversed the
19 D.C. Circuit Court of Appeals and the NLRB saying that
20 because the worker was of undocumented status, he was
21 not entitled to his backpay despite the fact that the
22 firing was definitely illegal.

23 There's been plenty of legal analysis on
24 this. And I thought I would just take this opportunity
25 to give you a snapshot of what we now call the post-

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1 Hoffman world in immigrant worker circles and let you
2 know how the impact of Hoffman Plastics has really
3 been devastating here in New York.

4 I am hoping that you'll accept the New
5 York Immigration Coalition's recommendation that the
6 Commission thorough assess the negative impact on
7 immigrant workers.

8 The courts and lawyers like to use this
9 term of chilling effect. They say "Oh, the chilling
10 effect of this decision," or the other. It's often an
11 academic term. It has to do with somewhere the line a
12 meritorious claimant might not come forward and there
13 is chilling effect. Well with the Hoffman the
14 chilling effect was direct and very immediate.
15 Literally the day after the decision was announced in
16 Spanish language media, I was flooded with phone calls
17 from clients and non-clients alike in a panic; worried
18 that the claims that they already submitted, they had
19 courageously come forward to submit, that this may now
20 be dismissed. Is it true that they've lost all their
21 rights. You told me if I stood up for my rights and I
22 got fired, there was something you could do. The
23 panic mounted. And the chilling effect has been
24 direct.

25 It has very hard at this stage to convince

1 workers, rightfully so, to come forward and assert
2 their rights. Because we don't know the real impact of
3 the Hoffman Plastics decision legally as yet. And I
4 know at a minimum, although I know NLRB is a long and
5 slow process, I did rely and have successfully relied
6 on NLRB process to vindicate some of my clients when
7 they've been fired for coming together for any
8 collective action. I have been able to successfully
9 use the NLRB. Now I have no promise to offer the
10 worker, which brings me to the second impact, which is
11 legal.

12 Not surprisingly, we've seen employers
13 trying to extend Hoffman to a variety of employment
14 contexts. They've been moving in courts for these
15 blanket inquiries into worker's immigration status.
16 Thankfully, many federal courts have been good on this
17 and said, no, there's no reason. Hoffman doesn't
18 apply to work performed. I mean, that's a very
19 important distinction here is that workers
20 undocumented or not are still protected and entitled
21 to their wages for work perform. Hoffman only spoke
22 about the time after the worker was fired.

23 Here in New York employers we're seeing
24 them arguing even that immigrant workers don't have a
25 right to protest their labor conditions because of

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1 Hoffman Plastics. I mean, they've challenged every
2 case we have on Hoffman Plastics grounds, even though
3 as we said initially, it's a narrow holding.

4 We're worried about where Hoffman Plastics
5 will go, how courts will treat it. There's also
6 serious concern about whether backpay will be
7 available to undocumented workers under our other
8 anti-discrimination laws.

9 The EEOC, thankfully, has reaffirmed its
10 position that undocumented workers are protected by
11 our civil rights and discrimination statutes, but it
12 has also determined and made public through a
13 memorandum that based on its interpretation of
14 Hoffman, the EEOC will no longer pursue any backpay
15 for undocumented claimants. So we're starting to see
16 the legal ramifications of Hoffman in other arenas.

17 And then the final and most important
18 impact of the Hoffman decision is something a little
19 less concrete, but something I'd like to leave the
20 Commission with as you plan your work and shape what
21 you're going to do.

22 The worst impact of Hoffman, in my
23 opinion, is the world it has created for all workers
24 regardless of status. It has really changed the way we
25 think about the protections we offer our workers.

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1 In a 1984 case Shurtain versus NLRB, the
2 Supreme Court rightfully predicated that if
3 undocumented workers were excluded from participation
4 in union activities and were excluded from protections
5 against employer intimidation "there would be created
6 a subclass of workers without a comparable stake in
7 the collective goals of their legally resident
8 coworkers, thereby eroding the unity of all employees
9 and impeding any effective collective bargaining."
10 Well this really resonates now that the subclass that
11 the Supreme Court predicted, has definitely been
12 created. Unfortunately, a defining features that all
13 of my clients share is that they've all suffered from
14 some form of retaliation on the job for asserting
15 their rights, every last one of them, whether it's a
16 boss screaming and yelling at them, a cut in their
17 wages as punishment, threats to call the INS and most
18 commonly, unfortunately, just the straight firing.
19 Just dismissal off the bat for a worker asserting
20 their rights.

21 By stripping undocumented workers of their
22 right to recovery backpay, there's essentially no
23 remedy left for us as advocates to fight for them.
24 This subclass idea is being set in a word about how to
25 turn that back.

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1 There are no other penalties, you should
2 know, under the NLRA unlike other anti-discrimination
3 statutes where we can pursue other forms of penalties.
4 The NLRA has no penalties against management. The only
5 remedy that costs anything to management is backpay,
6 and we've lost that.

7 Undocumented workers, can they fight for
8 reinstatement; we've lost that as well.

9 So in sum, Hoffman has really diminished
10 the incentive for workers to stand up and assert their
11 rights. And it's hard for us as advocates to convince
12 them, because we no longer have the tools that we had
13 to vindicate their rights if they were retaliated
14 against all at the same time creating an additional
15 incentive for employers to hire and exploit these
16 vulnerable workers.

17 I told you it would be depressing.

18 CHAIRPERSON BERRY: It is. I'll say thank
19 you anyway. It's all very informative.

20 I have a lot of questions. Anybody, other
21 Commissioners have questions.

22 COMMISSIONER REDENBAUGH: Thanks everybody
23 for your presentations.

24 MR. MARK: Excuse me. I forgot to mention
25 -- I wanted to submit for the record a piece that I

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1 co-authored with several other folks, the parallels
2 between the -- detentions which this presentation
3 doesn't allow me --

4 CHAIRPERSON BERRY: Okay. No objection,
5 we'll put it in the record.

6 Yes, Commissioner Kirsanow.

7 COMMISSIONER KIRSANOW: My question is
8 directed at Ms. Quintero. You indicated that being
9 deprived by being deprived of the backpay remedy that
10 has a chillness factor, and I've recognized that. I'm
11 wondering if there's been any attempt to explore other
12 remedies that could actually have a more chilling
13 effect on an employer attempt to discriminate on the
14 basis of national origin; that is by utilizing
15 whistleblower sketches for example where you may even
16 have punitive damages and attorneys fees available
17 that would scare employers a lot more than simple
18 backpay.

19 I also recognize or understand that in
20 California Supreme Court's recognized the RICO cause
21 of action where employers are, as you say, engaged in
22 a conspiracy to employ undocumented workers and
23 deprive them of their FLSA protections. Has there been
24 any attempt in New York to look at a RICO cause of
25 action where there is possibly a joint or coordinated

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1 employer attempt to deprive employees of OSHA, FLSA
2 or any other kind of statutory protections?

3 MS. PETERS-QUINTERO: Stan's office is
4 working on that exact issue, so I'm going to let him
5 answer.

6 But I just wanted to say one thing about
7 that. In the Hoffman case the employer allegedly did
8 not know that the worker was undocumented. So we
9 don't know -- well, we haven't tested yet a case where
10 the employer was complacent in hiring an undocumented
11 worker under Hoffman. So we're waiting to hear on
12 that.

13 And the second thing I was going to add,
14 as far as exploring other remedies, the NLRB General
15 Counsel in his guidance that he issued post-Hoffman
16 has encouraged his board agents and his regional
17 offices to get creative and to think outside of the
18 usual remedies we've been applying, to think about new
19 ways. There are no concrete suggestions in the memo,
20 but their tone is to try to come up with other
21 solutions.

22 As far as the RICO Act cause of action,
23 the worker's right, Stan's office is doing just that.
24 So I'll let him speak to that.

25 MR. MARK: I'll talk about the other

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1 areas.- Our office also represents low wage workers,
2 Chinese, Korean, South Asian workers and also taxicab
3 drivers, domestic workers as well. And the big issue
4 in the low immigrant -- low wage worker immigrant
5 community is the unpaid wage for overtime enforcing.
6 And I would say one strong recommendation for those
7 who support labor standards, is to fund -- properly
8 fund the Department of Labor both at the federal level
9 and the state level to fully enforce the minimum wage
10 laws. That act is the greatest disincentive for
11 employers treats workers. That's the first thing.

12 The second thing is on the RICO, we've
13 attempted in one of our cases to utilize that theory.

14 One comment further then that, that we are trying to
15 do that in I would say creative ways to extend it.
16 I'm not aware of any particular case that's been
17 successful with that, but we're certainly looking at
18 that and we are --

19 COMMISSIONER KIRSANOW: One other follow-
20 up. With respect to FLSA, are you exploring class
21 actions on the basis of FLSA deprivations merely with
22 respect to overtime?

23 MR. MARK: Yes. We're engaged in a class
24 action suit against -- actually where we're utilizing
25 the economic reality discussed -- joint liability

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1 theory to bring in the manufacturing. In many of
2 these instances the manufacturers because of publicity
3 as well as, you know, their concern that they are
4 compliant with the law, they will -- settlement. And
5 that case is in mitigation. And actually one of the
6 rulings that we had in the discovery level was that
7 the judge in the case refused to compel us to disclose
8 the Immigration status of our plaintiff workers and
9 did not apply Hoffman. It was under a discovery
10 motion.

11 We're not in a -- I think that at this
12 point it is pretty much uphill in terms of trying to
13 enforce labor standards both, you know, in our office
14 at least we're trying to think of different ways of
15 creatively utilizing what we have and to enforce those
16 laws.

17 I'm not sure if I'm answering your
18 question.

19 COMMISSIONER KIRSANOW: No, you are.

20 I'm sorry for monopolizing.

21 One other problem. With respect to the NRB
22 position and the -- guidance saying that reinstatement
23 back will not be afforded to undocumented aliens or
24 undocumented workers, any thought given to the
25 prospect of -- my understanding of Hoffman also is

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1 that however if that plaintiff or that complainant
2 later becomes or chooses legal status, he then has
3 what you will see -- and I don't know if I'm right
4 about that, but that's my understanding -- any thought
5 to raising a cause of action with the understanding
6 that while that individual may not be properly
7 documented now, he may be in the future and therefore
8 may be in entitled to remedies. So therefore, keeping
9 any backpay on a hold or in escrow or something of
10 that nature by the court?

11 MS. PETERS-QUINTERO: Well, the error
12 being for reinstatement has even post-Hoffman is that
13 they're going to keep what they call their remedy of
14 conditional reinstatement, which essentially says the
15 worker is reinstated upon proof that he's authorized
16 to work in the country. The backpay for that worker
17 who can later provide proof will be from the time he
18 or she was fired to the time they were asked to
19 provide the proof, and then assuming they were able to
20 provide the proof.

21 If the worker is never able to provide
22 this proof, and there is a time frame, I'm not sure
23 how long it is.

24 MR. MARK: Even in decisions prior to
25 Hoffman, back in Shurtain the remedies were limited to

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1 a certain period. I don't recall whether it was one
2 year or two years, or even less than that for a person
3 to return to the United States in legal status.

4 With Hoffman I think the same problem
5 exists. People who are out of status generally cannot
6 -- the reason why they're out of status because they
7 can't legalize their status. So it's very hard to come
8 back.

9 At this point I'm not sure if there's a
10 way to circumvent that bar. But unless there's a new
11 registry statute or a new legalization for people who
12 have been here, I mean we're going to see a broad
13 class of people. And I think it goes back to an old
14 issue of employee statutes being one of the problems
15 that -- and that has caused discrimination towards --
16 and the fact that that policy has failed to achieve
17 its purpose in deterring or hiring of undocumented
18 workers, we have current growing class of people. And
19 I believe that it has be a reexamination of that
20 policy. Because it's been -- at least by employers,
21 really to not only discover the status of their
22 individual workers are, but a hammer over them to
23 force them to work in very exploited conditions -- and
24 using that hammer, that particular law as a way to
25 keep them in bondage basically. It's a very

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1 disturbing trend.

2 COMMISSIONER KIRSANOW: Thank you very
3 much.

4 CHAIRPERSON BERRY: Thank you.
5 Commissioner Thernstrom?

6 COMMISSIONER THERNSTROM: I'm very
7 interested in what you call the push-out problem and
8 would be very interested in how you collect hard
9 evidence of that problem.

10 I've been on a state board of education
11 for, I don't know, 7 years, something like that now.
12 This is in Massachusetts. One of the things that's
13 very, very clear from my experience on the state board
14 is that the dropout problem is -- that dropout
15 statistics are totally unreliable. We have got a
16 terrific problem in Massachusetts, and I know it's
17 nationwide, with counting kids in school. Because a
18 lot of very low income families move about a great
19 deal, I mean particularly low income families move.
20 Schools have no idea where they go. They don't know
21 whether they're in school, they don't know whether
22 they're out of school.

23 And in any case it seems to me that one of
24 the interesting questions that arises, at least in my
25 head, is to look at some comparisons here. That is,

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1 what do the dropout figures look like, say, for
2 African American students, second generation students
3 versus newcomers, and give a breakdown of these
4 figures to see exactly the degree to which it is an
5 immigrant problem.

6 And just one last word, and unfortunately
7 I'm on the run in about 2 minutes. One last word.

8 You know, you talked about the South
9 Bronx. The South Bronx is the home of one of the best
10 charter schools in the nation. It has the kids from
11 the South Bronx projects almost exclusively. They are,
12 as you know, African American students. That is the
13 Kipp Academy. And, of course, they have the best math
14 scores in the entire Bronx, and I think second or third
15 best in all the city. Their English scores are also
16 very, very high.

17 So, good schools can make a huge
18 difference. And I think -- and we should never let --
19 you know, let that fact out of our sight.

20 CHAIRPERSON BERRY: Okay. So was that a
21 question or just --

22 COMMISSIONER THERNSTROM: I just wanted to
23 say, look --

24 MR. MARK: Could I make a comment as well?
25 This is sort of related.

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1 COMMISSIONER THERNSTROM: Yes.

2 MR. MARK: We should also take note that,
3 I believe it's a high school in Jersey City, which is
4 a public school, which is under a controlled state of
5 New Jersey, has produced its first two Westinghouse
6 Science winners. That school and many public schools
7 all through the country compete.

8 COMMISSIONER THERNSTROM: But, I mean, the
9 Kipp Academy doesn't -- per pupil spending is not
10 high. You know, I mean the fact was there are charter
11 schools very important to what they hope to do with
12 them. Anyway, I would be very curious, as I say, I'm
13 on the run but very curious to know. I mean, I like
14 hard evidence. I'm a data person. And the counting
15 dropout problem really bothers me.

16 CHAIRPERSON BERRY: Could I just before
17 Commissioner Thernstrom leaves, a newer edification
18 since you're working on these issues, trying to work
19 on them and the people who are working on them. And
20 she's on the state board in Massachusetts. Maybe she
21 could tell us how the state board in Massachusetts has
22 dealt with collecting data and what guidance have you
23 given to your local school system? What formats do
24 you have them use. And do you have a task force on
25 this or is there something you're doing that they

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1 could learn from in terms of trying to grapple with
2 this issue?

3 COMMISSIONER THERNSTROM: Well, we're in
4 the midst of trying to grapple with it. I mean, a lot
5 of -- it's a twofold problem. One, we don't know where
6 the children are going who disappear from a particular
7 school. We don't know if they're in school or out of
8 school. But also there's a daily attendance problem.
9 And that is when we see students not passing the
10 statewide examine, which is equivalent to the Regent's
11 exam.

12 We cannot have accurate attendance data.
13 That is a lot of these students we have one study from
14 a nonprofit, a lot of these students really attending
15 school. They are being marked in as having arrived,
16 but they're really hall walkers. They come in and out
17 of class. They stay, you know, they talk with their
18 friends in the halls. They get a lunch, a good lunch,
19 and so forth. But they're not really in school.

20 And in order to -- I mean school systems
21 have to get serious about keeping attendance figures,
22 keeping track of these students, dialing a phone when
23 they're not really in school, dialing the phone to
24 their parents. You know, all sorts of action needs to
25 be taken, and I'm afraid too many schools are not

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1 taking any.

2 And one of the benefits of the high stakes
3 testing is for the first time the schools are under
4 pressure to make sure that no child is left behind,
5 and they really weren't doing that before.

6 CHAIRPERSON BERRY: All right. Thank you.

7 Did you have any questions earlier on this
8 side of the table?

9 COMMISSIONER REDENBAUGH: I have none.

10 CHAIRPERSON BERRY: Okay.

11 COMMISSIONER THERNSTROM: And I apologize.
12 I'm sorry. I apologize to the group. Because this is
13 extremely interesting and I apologize to the group for
14 having to go. And I thank you very much for your
15 testimony.

16 COMMISSIONER KIRSANOW: Madam Chair, I'll
17 be very interested in reading the transcript. The
18 presentations were extremely informative. Very
19 important issues that I think we'll be undertaking in
20 our future.

21 CHAIRPERSON BERRY: Commissioner Meeks?

22 COMMISSIONER MEEKS: Well, maybe I missed
23 this in the presentations, but on the ELO issue, has
24 there been any legislative action or talk even on
25 tracking that particular follow up from the No Child

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1 Left Behind?

2 MS. McHUGH: Well, I think that there
3 hasn't been much action vis-à-vis No Child Left
4 Behind, because it's only just being implemented in
5 the state. And, frankly, I think the way the state
6 looks at it is mainly from the finance side, that
7 they're interested in using that money, getting the
8 money down into schools in part because there's been
9 such controversy around school funding. And part of
10 the way we, I think, avoided or the state has
11 attempted to avoid some of the controversy is to put
12 the federal money and to try and quiet people instead
13 of really adjusting the very large lawsuit that we
14 have in the state and the like.

15 We've attempted to get legislation to
16 create an alternative examine. We think that it
17 failed in the past, but I think that we're getting
18 closer and that there's more agreement with the
19 Regents. But they're very concerned that the dropout
20 rate has shot up so dramatically.

21 And then the other legislative track that
22 this has effect on was when the state tried to bundle
23 all of its money by school district, now it's talking
24 about having a lot more flexibility. And so the big
25 push over the last two years at the state level has

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1 been to try and send money to the schools under a
2 flex pay formula. And we fought very hard against
3 that because it's been so hard for us to track and to
4 see any money going into these services, that the last
5 thing we wanted was for schools to lose their
6 accountability to be showing that they were at least
7 using this money to provide services to ELLs. So
8 there's not been legislative work, I think beyond
9 those two areas.

10 COMMISSIONER MEEKS: So on Commissioner
11 Thernstrom's remark about how it's hard to get, you
12 know, hard data about dropout rates, but then is it
13 clear that the dropout rate, no matter how it gets
14 counted, went it up?

15 MS. McHUGH: Yes, you know --

16 COMMISSIONER MEEKS: I mean after -- yes.

17 MS. McHUGH: I want to say that we had
18 that trouble in New York. Our problem has been that
19 to take state gets the number and tries to deny that
20 it has the number for about 6 months, because to
21 verify it. So our bigger problem has been getting them
22 to release the numbers when they have them.

23 But you actually hear very little at
24 either, the advocacy or legal levels or at the system
25 levels that there is serious concern about whether the

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1 numbers are accurate.

2 And there's only been one report published
3 so far, and it was published about 4 to 6 weeks ago,
4 maybe, that looks at this push-out issue. And I think
5 that the push-out issue is going to be much more in
6 the limelight in the coming year because that's really
7 where between where the system's now adjusting to the
8 dropout rate is through this push-out.

9 We felt we were going to have a hard time
10 getting a handle on it because we were hearing about
11 cell providers who were saying why do I have 16 year
12 old kids coming to my class that, you know, normally I
13 have only 50 and 60 -- you know, 40 and 50 year old
14 people coming to. And then also so many community
15 groups saying we're being inundated in our GED
16 programs. Can you tell us how to get funding to set
17 more of them. And then the more we looked at the kids
18 who were in them, we were saying, no, no, no. These
19 kids have been illegally discharged. They need to be
20 back in school and you need to fight to get them back
21 into classrooms, not to be trying to set up GED
22 programs for them.

23 So we can get you that before -- it was
24 produced by Advocates for Children and New York City
25 Public Advocate -- and the data sources there -- I've

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1 not heard anything other than that they were quite
2 reliable and we couldn't believe that more people
3 weren't looking at them.

4 CHAIRPERSON BERRY: I know when you have
5 to look at all these issues together, I assume, but as
6 I listen to you talk, all of you, and thought about
7 the issues and then put it together with other things
8 we know from the work we do, like being in San Diego
9 last month and going down on the border and looking at
10 the inconsistent policies where on the one hand
11 they've tighten up the border to keep people from
12 coming across in California and now they're going
13 through the desert or the mountains in Arizona and
14 people are dying. And the Park Service says "Well, we
15 didn't mean for them to die. I mean, that wasn't the
16 point." But the policy. And then at the same time
17 employers hiring lots of undocumented workers in
18 California and everywhere else as fast as they can get
19 them and paying them low wages to do their jobs.

20 Well, what I was struck by, that was all
21 these inconsistencies. The lack of coherence in the
22 policies. The contradictions in the policies which may
23 reflect just a general contradiction in the way
24 Americans have developed a consensus about -- maybe
25 there's no consensus about how to deal with these

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1 issues. Because none of what you've said put
2 together made any sense.

3 I mean, why would you have a bunch of
4 people and not educate them properly when you know
5 that it's going to, if I understand Russell the things
6 he said before, that education is key, human capital
7 is key to developing productivity and so on. So are
8 wages key, I guess, to what employers pay.

9 But why have a bunch of kids and have a
10 law that says they're not going to be left behind, and
11 people are going to be accountable for teaching them
12 and then you don't deploy the resources because you
13 don't have them? Let's face up to that. There aren't
14 enough teachers with all the languages that the kids
15 need unless you come up with some other solution, like
16 using people from the community, or some other way to
17 do it, or some massive program. And then what about
18 the supply side of teachers? I mean, where do you get
19 the teachers? What do you pay them? No one ever
20 talks about that, or how do you get them to do that as
21 opposed to something else?

22 And so all of these things are examples of
23 inconsistencies and lack of coherence and
24 contradictions. And if I didn't know better, I would
25 think that somewhere there was someone going ahead and

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1 design to have a bunch of people who want to come,
2 because they're seeking opportunity and then to
3 exploit them and then to deny them of upper mobility.
4 And then to blame them for it, but get them to vote
5 for you, but if you think they're not, then don't let
6 them vote, you know. But I don't believe in
7 conspiracy, so I don't believe that.

8 But anyway, the question about all this
9 was to see how the pieces of it fit together and to
10 wonder, hey, you got a coherent policy on this.

11 Russell, do you have any idea?

12 COMMISSIONER REDENBAUGH: Well, having
13 reflected on this greatly, no, I don't have an idea.
14 But it does strike me that the explanation about how
15 pieces fit together is that these groups are
16 politically under represented and without power and
17 politically and economically marginal. And therefore,
18 the systemic response, the system is marginally
19 indifferent and it's the very good work of the groups
20 that are represented on the panel today to shake up
21 the system and shake up that indifference.

22 So I commend you for what you're doing and
23 for calling these problems to our attention. Thank
24 you.

25 CHAIRPERSON BERRY: Yes. All right.

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1 Well, with that, we'll have the second panel.

2 You have educated us sufficiently, I
3 think, on this. And I really appreciate what you had
4 to say and it'll help us in setting our action. Thank
5 you very much.

6 Oh, and there is a reception by the way at
7 the end of all the panels. We are sponsoring a
8 reception for everyone who wants to come with free
9 food. And we'd like to meet with you and chat with
10 you.

11 **PANEL II: POST-9/11 CIVIL RIGHTS ISSUES AND**
12 **DISASTER RELIEF BENEFITS CONCERNS**

13 CHAIRPERSON BERRY: Thank you very much
14 for coming, all of you. We really appreciate it. So
15 far this has been very, very interesting and
16 illuminating and we've learned a great deal.

17 On this panel I'm going to introduce
18 everyone first, and then we'll go through.

19 Mr. Muzaffar Chisti has been before us
20 before, the Civil Rights Commission. And he directs
21 Migration Policy Institute at the NYU School of Law,
22 which focuses on labor, Immigration law, civil
23 liberties, immigration integration. Before he was at
24 the Migration Policy Institute, he was with the
25 Immigration Project of the Union Legal Trades, which

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1 is where I think he was the last time he came before
2 us. He is a member of a variety of organizations that
3 deal with this issue, and we very appreciate him
4 coming.

5 And the next person that we're going to
6 have is Mr. Hiram Monserrate, who is a member of -- is
7 he from the New York City Council? And so he is going
8 to be second. He's been a police officer, that was
9 interesting in Bayside, wherever that is. It's in New
10 York somewhere. Is it New York?

11 MR. MONSERRATE: Yes.

12 CHAIRPERSON BERRY: Which part of New
13 York.

14 MR. MONSERRATE: I also 1999 about police
15 practices.

16 CHAIRPERSON BERRY: Right. I'm just trying
17 to figure out where Bayside is.

18 MR. MONSERRATE: Queens.

19 CHAIRPERSON BERRY: Queens. Oh, okay.
20 Thank you very much.

21 He was the first police officer selected
22 to serve the Board of Regents, New York Civil
23 Liberties Union. He served as co-chairman to --
24 chaired the select committee on civil rights. And very
25 pleased that he is with us today.

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1 We also have Emira Habiby Browne, who is
2 the founder and Executive Director of the Arab-
3 American Family Support Center established in 1993 to
4 serve the Arab speaking community in New York. She
5 also has had a wide variety of community contributions
6 and experience, and we're pleased that she is here
7 with us today.

8 And next to her we have Mr. Bobby Khan, is
9 the Director of the Coney Island Avenue Project. After
10 9/11, he along with members of other communities
11 started the Coney Island Avenue -- he started this
12 project and it's a multiracial organization that links
13 people to legal and financial resources. He was a
14 political activist in Pakistan and has been jailed
15 several times in his fight for peace and justice.

16 The next presenter that we have is Mr.
17 Omar Mohammedi, who is an attorney practicing law in
18 New York. His main practice is civil rights law,
19 employment discrimination business actions. He's
20 President of the New York Arab Muslim Bar Association.

21 And next to him we have Margaret Chin, who
22 is a leader and advocate for the Asian Americans and
23 immigrant communities. Over 20 years of experience in
24 working in that community. She's the Deputy Executive
25 Director of Asian Americans for Equality, AAFE, where

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1 she oversees and directs the organization's overall
2 response to 9/11

3 We will begin with you, Mr. Chisti, please
4 proceed.

5 MR. CHISTI: Thank you, Madam Chair. What
6 a stunning memory you have.

7 I'm very glad to be here this morning, and
8 we thank you for coming down all the way to hear
9 what's happening here in New York.

10 CHAIRPERSON BERRY: You're welcome,

11 MR. CHISTI: I will just give a very quick
12 broad overview of the implications of the policies
13 that have been connected, mostly at the federal level
14 with the attacks since 9/11.

15 I think all of us agree that 9/11 was very
16 germane, an extremely important chapter in America's
17 immigration history if for no reason that all of the
18 19 people who -- were foreign born. And therefore,
19 attention on traditional policy on immigrants was
20 expected to be very high or very heightened.

21 The initial stages of the reaction after
22 9/11, there was a strong concern that we'd take a very
23 broad brush that all Muslims and Arab Americans in
24 this country would be equally viewed with terrorism
25 and terrorists. And I think to the credit of some

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1 parts of the leadership, the right tone was set quite
2 early on. I think one should credit President Bush,
3 and even Hollywood for setting the right tone so that
4 Muslims should not be.

5 But given the right tone of that political
6 speech, I think, it sharply contrasts to the actual
7 actions taken by this Administration since 9/11. And
8 they importantly be mostly in the form of executive
9 decisions taken by the Attorney General that in almost
10 all cases circumventing the normal Immigration process
11 of oversight and even normal regulatory process of
12 issuing regulation and taking public comment.

13 So what we have seen in the last 14 months
14 or so are streams of measures from the Attorney
15 General's office which I feel have strong implications
16 for our constitutional position and structure and have
17 had involved very important attack on the local
18 communities. And, obviously, not very popular at all,
19 the issues that post-9/11 action are raised, I just --
20 and I would say they are secrecy, it's the targeting
21 of individuals on the basis of national origin, it's
22 the abuse of detention practices since 9/11 and it's
23 the increased threat that local state law enforcement
24 officers are going to be enforcing on Immigration law.
25 And these are each of them in order.

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1 Secrecy. It's the most important
2 development that has happened in the actions of the
3 government since 9/11. It will frequently compare our
4 present chapter with the World War II internment of
5 the Japanese Americans. The distinguishing thing
6 about today is the secrecy. We did intern Japanese
7 Americans. We did intern them in large numbers. A
8 hateful chapter in our history, but it was at least
9 done openly. The 2000 people who have been caught of
10 the dragnet of the arrests since 9/11 has been
11 shrouded in secrecy. We have never had this much of
12 secrecy in the operations of our government.

13 It's the names of these people, the places
14 they are being held, the charges that were brought
15 against them, whether they have counsel or not, that
16 their bond is posted against them and there have been
17 a blanket policy for secrecy by the government.

18 Even conservatives in this country have
19 equated that scenario with the military divisions of
20 Chile and Argentina, and we frankly did not think that
21 we were going to have that as part of our practice of
22 the government.

23 The second part of the secrecy is the
24 secrecy of the proceedings in immigration itself. The
25 government issued a directive early on that they had a

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1 right to seal many Immigration proceedings from the
2 public. They won't allow the press in. They won't
3 allow relatives there. And that, obviously, that
4 people have said that democracy is hiding behind
5 closed doors as an issue that has troubled federal
6 judges and they're beginning to speak about that.

7 As you probably know by now, two courts of
8 appeals have come under -- with that issue, and that
9 issue once again we've had to probably go -- a measure
10 that you're too familiar with it.

11 The second major category of issues raised
12 by 9/11 is the targeting of individuals on the basis
13 of national origin. And, yes, there are many programs
14 of the government which made clear that the targets
15 have been Arab Americans and particularly Muslims.
16 And I'll just mention some of the programs that you
17 might have heard of.

18 It's believed that there are about 340,000
19 people in this country who have had their final orders
20 of deportation and have not left. This is within the
21 parlance, now we call it, common. Of these 340,000
22 people, the government decided they were going to
23 target only 6,000 people for action. And all these
24 6,000 people are being picked for priority targeting
25 are people of Muslim countries and, obviously, they've

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1 had a huge impact in our communities. There are a
2 lot of people of my fellow panelists here who I'm sure
3 will touch on the details of the impact of this. But
4 suffice it to say so far we know from facts that none
5 of the people picked up in this strong initiative have
6 been linked to terrorism. The people who have been
7 picked up in this initiative have been garden variety
8 folks in our community who have deep ties, previously
9 -- spouses and children, have had businesses that are
10 obviously ruined by their arrests and the families
11 that they leave behind for no one to take care of.
12 These are gas attendants. These are taxi drivers. The
13 normal grocery store owner.

14 The second program which has had
15 significant national origin of impact in terms of the
16 targeting is the voluntary interview program. The
17 Attorney General decided that he should invite about
18 5,000 initially and then 3,000 additional people of
19 the ages of 18 to 33, I think, only from countries
20 which have tried with what they call the "outsider
21 ties." And by all practical implications, that has
22 meant Muslims from certain countries. These are people
23 who are getting legal status. These people have done
24 nothing illegal. Who are asked to come for interviews
25 with FBI officials and ATF officials. And we're now

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1 to send frequently to local law enforcement
2 officials, including -- to brief the FBI about their
3 activities in the United States.

4 This is just to say just to paint and
5 paint in such broad terms an entire community has had
6 a strong chilling effect on the community in general.

7 And the third part of the national
8 targeting has been now what we now call the new entry
9 immigrant registration system. That only people from
10 certain countries when they arrive in the United
11 States will be fingerprinted. And they are the people
12 who will be asked to come to periodically for
13 registration and fingerprinting at U.S. Immigration
14 offices.

15 The other item is of abuse in detention
16 factors. As I know my time is running out, here you
17 will find evidence that we have engaged in prolonged
18 detention of people before we brought charges against
19 them. We have kept people in detention frequently for
20 months, even before we brought the charge. And after
21 we brought the charge, we did not let them out on
22 bond, which we would normally do, in secret.

23 And third detention factor, that even
24 after people have been ordered deported or they accept
25 voluntary departure, the government has kept them in

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1 jail for months before they are released from jail.

2 So I think both in terms of how the law
3 and then how the abuse of these factors are, they
4 raise very strong concern.

5 The last thing is the state and local
6 enforcement, which I'm sure my colleague Hiram
7 Monserrate will talk more about. The Attorney General
8 has concluded that the state and local authority have
9 been held the authority to enforce Immigration law.
10 They have made this an opinion, but they have not
11 released it. And we have all been speculated about
12 how they're releasing. One of the important things
13 you will do today is to make sure that if maybe you
14 could make a request to the Attorney General as to how
15 they will release their legal opinion which will give
16 me some proof that can be done and that the law, which
17 obviously raises both important constitutional
18 questions and (2) raises very strong policy
19 implications about the trust that local police has
20 built with the community in which they operate in.

21 This is all I'm going to say on the
22 government election. There are private actions that
23 have had very significant impact, and I won't touch on
24 them. There's the hate crimes which we know we have
25 risen 1600 percent in the last year against Muslims in

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1 the United States, in the FBI report about a week
2 ago. There are obviously very severe economic
3 discrimination -- work place discrimination which I'm
4 sure my colleague will talk about. There is a heavy
5 new increase in airport profiling, which is now in
6 litigation. And in New York there's training of
7 landlords done by the police department to teach them
8 how to spot terrorists either in -- obviously a very
9 important new dimension of a chilling effect on the
10 community.

11 Thank you.

12 CHAIRPERSON BERRY: Okay. I don't see any
13 questions. Thank you.

14 Mr. Monserrate?

15 COMMISSIONER MEEKS: I just want to say
16 one thing. I apologize so much that I have to leave.
17 But I will very much be interested in the transcript.

18 And thank you all for coming. I didn't
19 realize there was going so many speaking, and I have
20 to travel back to South Dakota. But thank you all for
21 coming.

22 CHAIRPERSON BERRY: Okay.

23 Go ahead, Mr. Monserrate.

24 MR. MONSERRATE: Good morning, members of
25 the Commission.

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1 CHAIRPERSON BERRY: Good morning.

2 MR. MONSERRATE: As you know, my name is
3 Hiram Monserrate. I'm a local legislator here in the
4 city of New York. I represent the 21st Council
5 District, which is in Queens, the areas of Corona,
6 Elmhurst, East Elmhurst and Jackson Heights. Probably
7 the most diverse place in the country and, obviously,
8 a very large immigrant population from all of Asia,
9 South Asia and Latin America.

10 I'm proud to join my fellow panelists to
11 address an issue which is all too easy to ignore, the
12 rights of immigrant communities in the post-9/11
13 world. Simple logic tells us that in a city of more
14 than 8 million people we are only as safe and as
15 healthy as each individual who calls it home.

16 There's victims of hate crimes that are
17 not reported incidents, at least for a fear of having
18 their identity disclosed, dangerous criminals continue
19 to walk the streets.

20 If immigrants fear fire marshals or fire
21 fighters will reveal their Immigration status to INS,
22 homes could possibly burn down.

23 If people living with HIV and AIDS or
24 disabilities do not access public hospitals for fear
25 their health status could be revealed, efforts to

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1 control the spread of disease are handicapped.

2 City services stop diseases from
3 spreading. They keep crime levels at historic lows and
4 put an end to systemic and individual occurrences of
5 discrimination. Despite these known facts, we are now
6 living in a post-9/11 world that rightly takes
7 additional means to ensure our national security.
8 However, we must approach this need in view of the
9 principles that have served as the foundation of this
10 country: Our historical support of civil liberties,
11 the nation's history as a haven for immigrants and
12 refugees, and the need to assure every community a
13 safe, healthy environment to live in.

14 Today I would like to briefly describe a
15 piece of legislation I introduced in the City Council
16 last week that seeks to protect these historical,
17 essential and sacred rights.

18 The Access Without Fear bill will remove
19 the barrier of fear that restrains people and
20 communities in need of accessing city services.
21 Specifically the bill will provide that no city
22 officer or employee shall disclose the confidential
23 information relating to an individual's health or
24 disability status, income tax records, sexual
25 orientation, status of his reasonable domestic

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1 violence or as a crime victim and their Immigration
2 status unless such disclosure is constitutionally
3 warranted.

4 The policy of confidentiality has a long
5 history of support in New York City. The support of
6 three mayors and a voter approved charter reform
7 proves the depth of support for protecting residents'
8 confidentiality. The Access Without Fear bill serves
9 to fill the void left when a similar Executive Order
10 No. 124 protecting the confidentiality of immigrant
11 related information originally issued under Mayor Koch
12 and reaffirmed by the Dinkins and Giuliani
13 Administrations appeared to be preempted by the
14 federal Immigration and Welfare Reform Act.

15 Although a legal challenge by the Giuliani
16 Administration to continue to enforce the policy
17 fails, the Executive Order stands. It pertained to
18 generalized confidentiality needs rather than solely
19 to those of immigrants. Stepping into the opening
20 left by the Second Circuit -- last year here in the
21 City of New York recommended several amendments to the
22 city charter that would authorize such generalized
23 confidentiality protections. The Access Without Fear
24 bills to enact these measures both supporting the
25 continuity of the essential policies that served our

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1 city well over the last three Administrations and the
2 voters' decisive support for a new policy in line with
3 local needs and federal law.

4 The necessity of a city confidentiality
5 law is exacerbated by the recent efforts by the
6 Department of Justice to institutionalize cooperation
7 between the INS and local police departments. As a
8 former police officer, I know from experience that
9 often individuals have been afraid to call for
10 emergency services or cooperate with police for fear
11 that confidential information would be disclosed. In
12 some cases, the real fear is deportation. The effect
13 is clear. Crimes go unreported and unsolved. In the
14 end a policy that breeds mistrust between the
15 community and its law enforcement officials can only
16 results in rising crime and -- quality of life.

17 At a time when the police department faces
18 the impossible task of doing more with less here in
19 the city of New York, the last thing we need to do is
20 to increase their burden by giving them additional
21 responsibilities as agents of the INS.

22 It will also serve to institutionalize the
23 practice police departments all throughout our country
24 have worked to eradicate, namely racial profiling.

25 New York City's legacy is based on its

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1 status as the most diverse city in the world. That
2 legacy continues to drive today in a culture that
3 should not tolerate discrimination. Clearly the
4 tragedy of September 11th has increased the need for
5 vigilance in regards to our public safety, both in the
6 city and nationwide. However, this imperative must not
7 and need not eradicate our values and undermine our
8 historical struggle to maintain a free society.

9 I distributed this package to all the
10 members of the Commission. It has the legislation,
11 some of the historical background, some of the news
12 clippings, and also some of the other municipalities
13 throughout the country that have enacted similar bills
14 such as this to ensure that everyone feels at least at
15 the municipal level that they can access the city
16 services without having their confidential information
17 disclosed.

18 CHAIRPERSON BERRY: Thank you very much.

19 There'll be some questions if you can
20 stay. I know you have a time problem.

21 Ms. Habbiby Browne, please.

22 MS. HABBIBY BROWNE: Good morning.

23 CHAIRPERSON BERRY: Good morning.

24 MS. HABBIBY BROWNE: I seem to be here to
25 talk to you about some of the issues that are a main

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1 concern to our community, the Arab American community
2 in our city.

3 We're a social service agency and we serve
4 the Arab American community throughout the city. And
5 I can tell you that since 9/11 it has been one of the
6 most difficult, most painful years that we have as a
7 community experience because of the backlash after
8 9/11 and all the issues that we have been addressing
9 to try to help our community members deal with the
10 discrimination and the racial profiling, and the
11 harassments -- all the backlash that has been taking
12 place.

13 There is a very, very serious sense of
14 being unprotected -- being targeted. Our people are
15 afraid to go out of their homes, they're afraid to
16 access services. And they're afraid just walking in
17 the street sometimes because they may be stopped at
18 anytime, questioned, picked up. There have been
19 families where a knock at the door in the middle of
20 the night. They don't know who it is. They're not --
21 the agents that come to their homes, do not identify
22 themselves, have been very brutal, many times in
23 racial slurs. No explanation.

24 As a matter of fact, we had a case it was
25 a mistaken identity, it was the wrong apartment, 5:00

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1 in the morning broke down the door and no
2 explanations whatsoever. And was even very physical
3 in their approach.

4 The children in the schools are afraid to
5 report any kind of harassment. They're afraid of
6 reprisals, they're afraid of retaliation. Domestic
7 violence victims. And I think you heard how really --
8 I want to stress what my -- the City Council member
9 just said of the fear of reporting the fear of
10 accessing services because there is a general feeling
11 that no matter where we go or what they do, somehow
12 they're going to be reported, whether they're
13 undocumented or not. But they're going to be -- their
14 name is going to end with INS.

15 This issue of the task force of three
16 different agencies working together, nobody really
17 knows. You cannot separate who is who. Who is NYPD,
18 who is FBI, who is INS. And it's become a situation
19 of terror in many ways. People feel insecure in their
20 homes, vulnerable and extremely frightened.

21 I think one of the major issues we have
22 seen is the distrust now with NYPD. We have worked
23 very hard to establish the community police relations.
24 I personally was on Mayor Giuliani's task force on
25 community relations in 1997. This is an area that I

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1 was extremely concerned about. But right now we see
2 that there is absolutely no trust in NYPD because they
3 feel that they don't know who they're working with or
4 if they go and report just anything, whether they're
5 going to end up being arrested, detained, their family
6 members being harassed, reprisals.

7 So, and we're talking about not just
8 feeling from nothing. These are cases that we have
9 seen that have come to us, people, families which have
10 been really torn apart by some of these issues that
11 I'm talking about.

12 We've had to deal with either immigrants
13 who don't necessarily speak English, who are new here,
14 who don't understand the system, who don't know their
15 rights, who really don't know where to go. They come
16 from oppressive regimes, basically. They come here
17 for the freedoms and civil rights of this country. But
18 they can't go to the police. They're petrified of the
19 police. And not only the police, but any other
20 government agency at this point, whether it's for
21 social services or any kind of services, or hospitals.

22 So I think this is an area that really is
23 very frightening to us as an organization. Our
24 community is feeling extremely vulnerable and
25 extremely targeted. And we just feel personally I

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1 have -- to address, talk about the fears. We are
2 dealing with families with children, and this is
3 across the board. And these are families that come to
4 us for services because they feel that maybe we can
5 help them. We speak the language. We're not going to
6 report them. But on the other hand, there is always
7 that fear.

8 And we're having a very difficult time
9 reaching out to get families to come out and seek or
10 access services, or really report. Because they really
11 don't know. They don't know when that knock on the
12 door is going to come and how.

13 People are being also discriminated in the
14 workplace. They're losing their jobs. They're having
15 police or whoever, the task force, whoever comes from
16 the task force, actually going to the workplace to
17 investigate, ask questions. This is extremely
18 embarrassing to the immigrants. They come to the
19 homes. It's embarrassing in front of neighbors.

20 One of the other issues that I think has
21 come to our attention a lot of the TIPS program where
22 anybody can be reported for anything. Some of the
23 cultural activities sometimes are misrepresented or
24 cultural positions are misrepresented. People just
25 don't understand and think that there's something

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1 strange going on, and therefore report whether it's
2 neighbors or people on the streets, or whatever.

3 So these are really serious, very, very
4 serious issues that we have to address.

5 We understand that we all need to feel
6 protected and we all need to fight against terrorism.

7 But we're very concerned that civil rights and
8 freedoms are being taken away and that this community
9 is being targeted and this may have some very serious
10 repercussions on immigrants.

11 And so I'm happy to be here and answer any
12 questions that you may have in any details about some
13 of these issues.

14 CHAIRPERSON BERRY: Okay. Thank you very
15 much. And there will be questions.

16 Mr. Khan, please.

17 MR. KHAN: Thank you. Good morning. It is
18 very difficult to maybe talk in this forum.

19 I started with this journey for the civil
20 and human rights while I was back home in Pakistan,
21 late '70s. Our country was ruled by a military
22 dictator and thousands of people were detained,
23 hundreds were hanged just for demanding democracy.
24 And thousands were lashed just for doing -- democracy.

25 And I mean these were the suggestions that one night

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1 I felt when I was lashed, I had 30 lash, and they
2 locked me up in isolation. And I heard somebody was
3 taken to the -- to hang, and he shouted that he will
4 fight for his rights. I mean, no matter what. So
5 these are the situations we were in.

6 And on the whole, there was the dream that
7 there's a piece of land, there's a part of the world
8 where there is liberty, there's a freedom, there's a
9 freedom of speech and discussion, and people started
10 to know -- somehow people, a lot of people they reach
11 here somehow. They came here. And they were having
12 these situations back home.

13 So what they did, they applied for their
14 adjustment of status somehow, like apply for political
15 asylum, or some other ways they tried adopt to be
16 legitimate citizen over here. But most of them, their
17 petitions are denied because of lack of -- I mean, I
18 don't know what is behind it. But so these are the
19 people, those are being arrested these days right from
20 the beginning after September 11th. I will talk with
21 the immigrants that since we are dealing with people,
22 I name those people that what happened to who.

23 Mohammed Rafiq-Butt, a restaurant worker.
24 Right after September 11 was arrested because of --
25 I mean, there wasn't any charge against him. They

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1 found out later on that he was overstayed visa. They
2 had interrogated him, FBI, and whatsoever the agency
3 was. He was manhandled badly. He was -- had no
4 American history. Had 4 kids back home. He was
5 working on a very low wage, which was about \$200 a
6 week and would support the family. And he was
7 tortured and his autopsy report -- he was dying in the
8 prison. And his autopsy report said that he was
9 tortured.

10 We keep demanding that whosoever
11 responsible should be brought into the light and
12 brought to the justice. But it never happened.

13 So afterwards -- it's just one example.

14 Another guy, Mohammed Azim whose apartment
15 they raided, was told -- he was told, he was at work,
16 was a construction worker. Was told that they are
17 looking for you. FBI is looking for you. And this guy
18 had a heart attack right away.

19 And then I have thousands of examples. We
20 have talked to about 150 detainees and their families
21 directly. But since we have limited resources, we
22 cannot do more than -- I mean, then our resources.

23 Ansar Mehmood's and Tayab Syed, these two
24 guys they were arrested from their home. Mehmood had
25 four kids and Tayab, he was recently married with a

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1 U.S. citizen wife. They had arrested them from their
2 houses in the middle of the night. And their families
3 never knew about them for four months. They keep
4 calling all over, and nobody told them about it, where
5 they are.

6 So after four months it was discovered
7 that they are in Mattaponax Detention Center and
8 they're not allowed to make any phone calls. They were
9 not allowed to -- they were not allowed to make any
10 phone calls.

11 And we had a rally outside the embassy.
12 And right after the first rally, they had painted the
13 windows black. The people who were in there, their
14 hope was just a small window from where they could see
15 the birds flying in the sky and sometimes sun is
16 coming out. Something like that. That will be only
17 hope in their life. Otherwise they were locked for 24
18 hours in isolation. And those windows were also
19 painted black after the first rally. So these were
20 the situation.

21 And the thing was that they just lost
22 their visas. And they were manhandled so badly, and--
23 we have seen him, you know. He was beaten so badly. He
24 was chained -- they kept him chained whole day and
25 night, and -- I mean, the situation in the prison is

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1 so bad. They're not given food, proper food. And
2 whoever is coming out of the prison, is carrying some
3 health problems. Some are Mohammed -- who was taken.
4 And they kept him eight months, 60 year of age,
5 homeless, jobless. Just overstay visas. And they
6 kept 8 long months. When he came out, he has -- and
7 some other diseases as well.

8 Then Shabqufta, she has 2 small kids and
9 she was -- for 8? months when in the middle of the
10 night they came for her husband. And she cried when
11 they were taking her away. And they threatened her
12 that if she will cry, they will take herself and her
13 kids too. So, I mean this was the situation.

14 CHAIRPERSON BERRY: You have to sum up
15 now.

16 MR. KHAN: I'm sorry?

17 CHAIRPERSON BERRY: Just sum up, finish.

18 MR. KHAN: Okay. So these are the
19 situations, just the detention issue.

20 Then we heard judges saying in the
21 courtroom that we don't trust this community, we don't
22 trust this nation. And then in the prisons, when we
23 are allowed -- when some people are allowed -- some
24 inmates are allowed to pray, they were cursed there
25 and they were tortured by the guards when they were

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1 praying.

2 I just want to tell you the whole system
3 is so horrendous. The whole system is so hostile. And
4 the mankind is looking for where they would go, where
5 they will find peace. Where they will live properly.

6 So this is my testimony.

7 CHAIRPERSON BERRY: All right. Thank you
8 very much.

9 Mr. Mohammedi?

10 MR. MOHAMMEDI: Good afternoon.

11 CHAIRPERSON BERRY: Good afternoon.

12 MR. MOHAMMEDI: I just tell you that I
13 wish I had 17 hours to speak to you rather than 7
14 minutes. Because what we're going through, it's just
15 horrendous. As a member of the community, I am
16 testifying as a member of the community, as an
17 attorney as well.

18 I would just say on behalf of the Muslim
19 Arab community, the Council on American-Islamic
20 Relations and the New York Arab Muslim Bar Association
21 and 9/11 Coalition for Civil Rights, I would like to
22 thank you for inviting us here so that we might pose
23 our concern. But before I pose my concern, I would
24 like to give you some statistics.

25 This was done by CUNY University, and they

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1 -- and the statistics show that there are civilian
2 Muslims living in the U.S. The Census community is
3 Hispanic 25 years ago. And that found that 67 of
4 other American Muslims have been there 4 years old.
5 But 67 of the other American population, the rest of
6 the population is over 4 years old, which means that
7 there is a future for our community in this country.

8 From the 7 million, we have 44 -- 24
9 percent African American, Asian American 26 percent,
10 South Asian 26 percent and all of us 25 percent.

11 And also the study showed that American
12 Muslims are well educated. We always talk about
13 Muslim being cab drivers. 67 of American Muslims have
14 bachelor's degree or higher. 44 percent of the
15 population of bachelor's degrees or higher. For
16 advanced degree is even greater.

17 So I just want to tell you we're here,
18 we're going to stay here and we're going to work,
19 we're going to contribute to this country.

20 Having said that, I am here to express
21 deep concern on the mounting civil rights violations
22 against Muslims, also Asian and those who perceived to
23 be Middle Eastern heritage. The perceived violations
24 are committed by law enforcement, private and public
25 institutions and ordinary citizens. Members of our

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1 community feel helpless, fearful and confused about
2 the future in America. The dream has been shattered.
3 The laws and their application are treating our
4 community as second class citizens.

5 There are key concerns and a few that I'd
6 like to mention. Some of them the perceptions that
7 Muslims and Arabs to be treated as terrorists until
8 proven otherwise. And that's what's happening at this
9 point.

10 Abuse by private individuals, employers,
11 FBI, state and civil service agencies it's horrendous.

12 Two problems. The two problems are -- I can give you
13 an example.

14 We just created this environment for
15 anyone who has dispute with the Muslim or Arab, can go
16 and inform the authorities that this person is
17 terrorist. I have cases. You know, I can cite many
18 cases. I'm sure I don't have time to do that. But
19 this is happening. It's a fact.

20 And the tragedy is that those agents can
21 they hear it, and they have perception that is true
22 before an investigation. Case in point, they're
23 treated -- they treat people -- mistreat people. They
24 treat them as terrorists before they find out the
25 truth. And like I said, I'll give you examples.

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1 I also can give you statistic to show the
2 horrendous application of the law, the abuse of power
3 that is applied on our community between September
4 2001 to September 2002; the Council on American-
5 Islamic Relations in New York alone, fielded 1800
6 complaints of discrimination, hate crimes, harassment
7 and intimidation.

8 As an attorney also, I have seen alarming
9 increase in cases involving hate crimes of violence,
10 harassment, intimidation, discrimination on members of
11 our community and the sad part is that people, they
12 believe they can do it to the community. It's like a
13 Catch-22. I give you an example.

14 Employers are condoning violence, not only
15 discriminating against the Muslims and Arabs of any
16 other -- people, they condoning violence. There are
17 organizations and there are institutions who they know
18 that a coworker assaulted another coworker who
19 happened to be Muslim. The Muslim victim fired from
20 plant. Nothing was done about it. Instead, the Muslim
21 was disciplined because -- I'll give you an example.
22 That Muslim, there was chemical sprayed in his face
23 and he was on his lunch break sitting there, closing
24 his eyes. Someone came and did it. They told him you
25 should not be closing your eyes during your lunch

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1 break. And that's what happened.

2 Many other cases that I can site that are
3 just horrendous.

4 Also there is the problem with
5 corroboration, INS and other agencies. This is
6 creating a safety and security problem, believe it or
7 not. Muslims and Arabs they are afraid to report
8 crimes; they're afraid to report -- there is also a
9 health issue. They go to the hospital, they know --
10 they're afraid they will be reported to INS or they
11 will be detained, and that happened.

12 There was a case where someone actually
13 was robbed and he was detained, he was arrested. His
14 green card -- he was arrested for 10 days for mistake
15 that happened at DMV that was not his fault. But he
16 was -- when they -- they went to -- they took him to
17 INS detention center and he was there for 3 days.

18 Someone was driving with his bumper
19 sticker saying "Go to his grave," that's a translation
20 in Arabic. He was arrested for just mentioning that.
21 For how long? For year a and 17 days. While he was
22 arrested, what happened to his family? They were
23 deported to Palestine. He was from Palestine. And
24 what happened to him, he had 2, 3 businesses. What
25 happened to them? They were auctioned. When he

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1 released he claimed the money from auction, he was
2 denied.

3 The racial profiling issue. You have NYPD
4 or any other police department stopping people when
5 they are driving asking them for their Immigration
6 status. That's profiling. Religious profiling
7 because the way they look. And that happen when they
8 don't show them that, they take them to INS detention
9 centers.

10 Profiling at the airport. U.S. citizens
11 are being profiled. Even citizens are being profiled
12 when they come back from the culture of origin. I have
13 many cases where they will be mistreated. Their
14 families are being mistreated for 9 hours, 10 hours
15 being there mistreated and for nothing. Just because
16 they happen to be Arabs or Muslim or some agent. That
17 is not -- I believe that will create fear in the
18 community, will create distrust, will create a problem
19 for our country as a America, because these people are
20 not going to report any crimes. They're not going to
21 do anything about this.

22 CHAIRPERSON BERRY: Okay. You need to sum
23 up. Please do, Mr. Kahn.

24 MR. KHAN: Yes. I just like to finish. And
25 I just like to recommend that something has to be done

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1 by the Commission. Something -- something has to be
2 done with the Commission to show to our community they
3 can trust at least one agency, though I don't know.
4 IF they know the same agency -- the other agency
5 within the same -- the same agency that are doing what
6 the community is presenting.

7 Thank you.

8 CHAIRPERSON BERRY: All right. Thank you.

9 Ms. Chin, please.

10 MS. CHIN: Good morning.

11 Thank you for the opportunity to speak
12 before you today.

13 I have submitted a formal testimony, but
14 I'm just going to highlight a couple of points.

15 CHAIRPERSON BERRY: We'll include your
16 formal testimony in the record.

17 MS. CHIN: Okay. What want to talk about
18 is really a problem immigrant community benefits after
19 9/11. And I will give you some examples of how they
20 turn crises into opportunities in our community.

21 Asian Americans for Equality, we're a 28
22 year old community based organization. It is
23 community development and, you know, for the housing
24 and we provide social services.

25 After September 11th, really everything

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1 has changed. We're very close to ground zero and we
2 caught in the closing zone. A lot of the main streets
3 that lead from Chinatown to all Manhattan were cut
4 off. And because of that, jobs were lost, businesses
5 had to close down because they couldn't get to those
6 streets, people couldn't come into their community.
7 And even if you lived -- and they set up arbitrary
8 boundary of Canal Street. So even though a resident
9 who, like my mother, who lives north of Canal Street
10 go visit my grandmother who lives south of Canal
11 Street, she has to show ID. And there are police
12 officers all over the place. And they don't speak
13 Chinese to explain to people what was going on.

14 A lot of the businesses really were
15 hurting because besides all the major streets were
16 blocked off and phone service was out, so people
17 didn't know if you were open or not. And a year later
18 we still have a large unemployment. 8,000 people are
19 still unemployed and a lot of the garment factories
20 that employ a lot of immigrant workers, have closed.

21 And besides that, when the federal
22 government, FEMA and SBA came into the community to
23 offer relief benefits, they forgot to really contact
24 community based organizations who really knows about
25 the community. And they come in without thinking

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1 about how having translators or having information in
2 languages that people can understand. And in some ways
3 our people were not able to access those services.

4 An example was FEMA. You have to register
5 with FEMA. You have to call a 1-800 number and you
6 have to speak English to answer all the questions that
7 they have. What we did was that we mobilized a
8 community meeting in a public school and we invited
9 FEMA and SBA to come in to talk about the programs and
10 benefits they offer, and we offered the translation.
11 And we literally had all our counselors sitting with
12 mobile cell phones to register the client to FEMA and
13 you have someone sitting across from you, and you're
14 just answering the question on the cell phone; your
15 name, your Social Security number, your address. And
16 back and forth to get people the benefits.

17 But even after you register, they send you
18 whole package of application and they're all in
19 English. And they're really long and detailed asking
20 for a lot of information. So ultimately a lot of
21 people were not able to get the benefits and all
22 because, as I said before, the arbitrary boundary of
23 Canal Street that a lot of the problems are actually
24 workers who worked above Canal Street, were not able
25 to access a lot of the benefits.

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1 And even with SBA when they came in, what
2 they were offering in the beginning was 6 percent
3 loans. And for a lot of the businesses who are losing
4 their customers and worried they might close down, do
5 not want to apply for a loan. Or they're afraid that
6 they're going to lose everything because they ask for
7 collateral. They ask for your home. If you have a
8 house, well that can mean collateral. And a lot of
9 people could not -- do not want to lose their home if
10 they're going to lose their business already. So that
11 was one of the other problems there.

12 And once a lot of community residents and
13 workers find out about benefits when FEMA came down
14 and opened up an office near Chinatown, we saw long
15 lines and long lines. And there were not enough
16 translators. A lot of community -- even all our
17 staff, had to offer our translation services.

18 And then when the federal dollars came in
19 to rebuilt lower Manhattan they totally ignored the
20 Chinatown community. That we were so close to ground
21 zero and one of the lower income neighborhoods that's
22 close to ground zero were not benefitting from the
23 federal dollars that were coming in to rebuild the
24 neighborhood.

25 And we're like the advocates and we had to

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1 really organize the community. And in turn we kind of
2 organized like our own rebuilding Chinatown mission as
3 to make sure that as they were rebuilding lower
4 Manhattan and that Chinatown will be included.

5 We thought that it was really important to
6 really start a community organizing planning process
7 that everyone will be involved. And in that effort
8 we're serving close to 2,000 households and we
9 interview a lot of community stakeholders, and we also
10 organize public meetings to really talk about how we
11 can plan and rebuild our community and make sure that
12 we are involved in the rebuilding effort of lower
13 Manhattan.

14 When they issued a residential plan
15 program to address the issue attracting residents back
16 to lower Manhattan and keeping the resident in
17 Manhattan, we applied for that. Because we want to
18 make sure that there'll be no more long lines when
19 people go and apply for these housing grants, that
20 people will get the information. And we were selected
21 as one of the partners in this program.

22 And one of the things that we demanded was
23 to make sure that literature where in Chinese and
24 information getting out were in Spanish, Chinese and
25 English. And some of the things that I think the

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1 government can learn from the effort that we did in
2 this program was what we call mobile education teams,
3 community workers who speak the different languages
4 who can go out into the projects, into the senior
5 centers, into the large housing complex and explain to
6 people the program and to assist them in the
7 application. And that was very, very effective. That
8 mobile education team in about 3 months time have
9 reached over 25,000 people.

10 But the main thing, too, is also that
11 these kind of programs with federal dollars is not
12 enough to just track short term relief. That he
13 larger issue is really building more affordable
14 housing for low income families, for immigrant
15 families. The federal dollar needs to be targeted for
16 that.

17 When we hear about, you know, Liberty
18 Bonds and money that's coming in, and what's happening
19 it's being used for luxury housing, and that is really
20 not appropriate. Because a lot of the government money
21 that are coming in, are from CDBG money that should be
22 targeted for low income communities. So I think that
23 is another major issue.

24 One last point that I really want to talk
25 about, the whole issue of mental health. After

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1 September 11th, and then the government realized that
2 there is a great need for mental health program and
3 there are a lot of funding coming in. But in terms of
4 our immigrant community, there are not enough
5 professional social workers who are filing. A lot of
6 times they have to wait a long time even to get an
7 appointment to see a bilingual psychologist or social
8 worker. And once the program got -- we launched
9 what's called the Wellness Program with private
10 funding. And we were able to set up support groups and
11 also interview clients that we served to access their
12 mental health needs.

13 And just to give you an example how,
14 clarify that I was serving we're able to launch this
15 program, was when we had a 9/11 anniversary, one of
16 the clients that we were able to help with this
17 program got up in public and talked to the staff about
18 the mental problem that she had, you know the thought
19 of suicide and how depression was. And how glad that
20 she was able to get some support groups and that she
21 was able to talk about her problem in her own
22 language.

23 And for our community where mental health
24 is such a taboo issue, that if we can develop more
25 community based programs that could really address

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1 this issue, that would be really helpful.

2 Thank you.

3 CHAIRPERSON BERRY: All right. Thank you
4 very much.

5 And then last, we have May Chen, whose the
6 Associate Manager of Local 2325 and an International
7 Vice President of the Union of Needletrades,
8 Industrial and Textile Employees, which is what Mr.
9 Chisti used to be, right? Have I got that right?

10 MS. CHEN: Yes, right.

11 CHAIRPERSON BERRY: And Local 2325 is the
12 largest local affiliate of the UNITE, with close to
13 10,000 members who are mostly Chinese immigrant women
14 working in the garment industry in New York City.

15 Could you please proceed?

16 MS. CHEN: Sure. Thank you.

17 I'm honored to speak before you, Ms.
18 Berry. I've followed your work and -- holding this
19 hearing and hope that -- we've all lived through a
20 very difficult time, the conditions were for the
21 government can assist in recovery of this city. We saw
22 the lights. And to make sure that the concerns of the
23 poor people of the city, especially people of color,
24 will be addressed.

25 UNITE represents the garment workers, as

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1 we spoke of, many of whom work in Chinatown. But as
2 an international union and city wide we represented a
3 large number of warehouse and laundry workers who are
4 also impacted by 9/11, especially the laundries which
5 were washing for hotels, restaurants and so on. And
6 there was massive displacement of jobs after September
7 11th. And that's what I'm going to talk about, is the
8 economic victims, the job loss and the difficulties
9 that we had.

10 As Margaret pointed out, in Chinatown the
11 Canal Street border ultimately which designated the
12 frozen zone was extremely problematical for Chinatown,
13 and especially for the garment industry. Because about
14 a third -- and all of our shops are clustered north
15 and south of Canal Street. And the border of Canal
16 Street really cut the ethnic community in half.

17 And then I think even more difficult for
18 the union, because we pride ourselves of all for one
19 and one for all, we have to represent all people. And
20 really in many ways all of our members who were
21 impacted in very similar ways, including those who
22 live in Brooklyn, Queens in other areas and work in
23 those areas, it became extremely difficult for us to
24 try to go through the maze of eligibility requirements
25 and to sort through our thousands of members to pick

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1 out those who were victims as defined by FEMA, the
2 Red Cross, you know each one, defining it differently.

3 And I'll just tell the story about the
4 "frozen zone." Essentially all of our factories
5 downtown were closed off from work immediately after
6 September 11th and workers who worked north and south
7 of Canal Street suffered the same types of job loss.

8 I want to also say that I feel a lack of
9 support for the other brothers and sisters from the
10 Islamic and Arab communities here. Because in the days
11 after 9/11, and in the garment industry you need a lot
12 of deliveries into these factories to get the work
13 moving in and out. And we had a lot of stories where,
14 you know, some of them are big trucks, and there were
15 small trucks. And whether they were delivering into
16 the frozen zone, which was south of Canal and had to
17 show IDs or north of Canal, things like this were
18 happening.

19 The truck drivers often are workers of
20 color; they're brown, black, you know, Arab, whatever.
21 And if they had to go into the frozen zone, they had
22 to show IDs to go through. And I remember standing on
23 the street corner one day, just watching this. Because
24 we had to help our factories to move the stuff in bins
25 up and down the blocks because they weren't allowed to

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1 go through the street.

2 And there were a couple of -- I think they
3 were probably Latino drivers, but they were just
4 pulled out of the trucks, thrown against the wall and
5 frisked. And there were just so many incidents like
6 this. And I can imagine that those advocates who come
7 from other communities saw even more for it.

8 So obviously the businesses uptown and
9 wherever they were delivering from were this type of
10 treatment, according to their drivers. They were just
11 told to avoid all the factories downtown. We're not
12 going to be able to get through, we're not going to
13 bring work down there. So we had a really massive
14 period of unemployment, which is continuing in some
15 form today, although we're fighting that.

16 I brought these shopping bags. We
17 developed a "Made in New York" program and we're
18 trying to list out, you know, products that are made
19 in New York, get the consumers to help out.

20 Our local joined with the efforts with
21 many community groups in doing surveys and studies.
22 The Asian Federation of New York came out with a very
23 important study soon after 9/11, and recently the
24 Asian Americans for Equality, as Margaret mentioned,
25 did a lot of surveying.

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And then, as everybody, we did a lot of translation for the various agencies. We have a major plan to help our workers with health benefits. We've been able to obtain some grants for wage subsidies and job training. And, you know, I think that those community based organizations are trying to rise to the occasion.

But I would like to just close with telling you about what I think are some of the continuing civil rights issues that occurred during this year or so since 9/11 and that continue to be issues and problems faced through the economic development area, which maybe the Commission as well as the community groups can work together to address.

First of all, this issue of the Chinatown as an ethnic community and its integrity and continuity and existence as an enclave was, of course, substantially by drawing these dividing lines. And just like political, gerrymandering, I think that those ethnic communities that were impacted by September 11th, there should have been some consideration. I think that they've adjusted that in terms of Canal Street as the border line. Needed to be taken into effect and the civil rights of these communities protected.

1 The language access issue, health care
2 and counseling, Margaret addressed very well, and I
3 think that those were very severe issues, not only in
4 the emergency relief like FEMA, but also for the
5 access even to unemployment benefits. Because here I
6 think they instituted a new hotline and phone system
7 which excludes many languages. Only English and
8 Spanish are there. The other languages are not there.

9 Finally, I think that the issue of the
10 immigrants. There is a real severe anti-immigrant
11 backlash that especially impacts the Arab and Muslim
12 communities. But it effects all immigrants in many
13 ways.

14 The Social Security Administration is
15 working closely with the Internal Revenue Service and
16 INS now to issue what they call no-match letters which
17 go to employers. And as a result of that, a lot of
18 immigrants are just losing their jobs. And these are
19 hard working immigrants in various work places who are
20 not terrorists. And this whole, you know, kind with
21 one stroke of the pen putting across an impression
22 that all immigrants or foreigners are normally bad is
23 a very dangerous thing.

24 So I think that the work here of trying to
25 fight profiling and put a real human face on these

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1 immigrants who come to this country to enjoy all
2 those same rights as everybody else is very important.
3 And not to use the work place as a place of trying to
4 enforce these issues is very important. Because we
5 cannot rebuild this city and our economy if our jobs
6 are going to be denied. And immigrants come here to
7 work. And especially those undocumented among us who
8 are not able legally to access any of the relief, if
9 they don't have a place to work or to survive for even
10 a legalization program, which seemed possible before
11 9/11, it now seems, you know, a pipe dream.

12 I think a lot of these issues really need
13 to be addressed in the immigrant communities.

14 So thank you very much for this
15 opportunity.

16 CHAIRPERSON BERRY: Okay. Well, let me
17 just say, and then I'll see if my colleague has any
18 questions. Let me just say several things.

19 First of all, thank you.

20 And secondly, to say that I was struck by
21 two or three things that I hadn't really focused on
22 before. Of course, I knew them, but I hadn't focused
23 on them until you said it, some of you.

24 And, Mr. Chisti, when you pointed out that
25 even with the Japanese internment, I think you're the

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1 one that pointed it out, that it wasn't done
2 secretly. Somebody said that. And I really hadn't
3 thought about that before. And about the difference in
4 a policy that however insidious it might be, that in
5 terms of American values whether it's done in secret.
6 And what you said about the comparisons between the
7 secrecy and the secret detentions and the disappeared
8 ones in Argentina and all over, in Chile and so on. I
9 hadn't really focused on that disparity in terms of
10 American values.

11 The other thing was, Mr. Khan, when you
12 talked about how people come here from countries where
13 they have been repressed and where they've been
14 brutalized because they've struggled for democracy.
15 And then they come here. You know, we are the city on
16 the Hill. And then when things like this happen to
17 them, because they never imagined it, it's like, you
18 know, running and running and running and being
19 thirsty and tired and being beaten and thinking that
20 "ah, ah, at last I've reached the promised land." And
21 then you get there and then bad things happen to you
22 which you don't quite understand.

23 So I hadn't really thought about those two
24 things in those ways in terms of American values and
25 what it means for us as people.

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1 And then the other thing is when you were
2 talking, Mr. Khan and Mr. Mohammedi, I was thinking
3 first of all the Commission, those of us on this
4 Commission, we started out immediately after 9/11
5 working on these issues of harassment and
6 discrimination of Arabs and Muslims, and so on. Not
7 only did we issue statements, we set up a hot line, we
8 collected people's complaints. We even got into a
9 little flap with the Justice Department because they
10 want us to give everybody's names and phone numbers,
11 and we wouldn't. Because people asked us not to, and
12 we didn't. And there was some people who thought we
13 should. And we thought that people came to us in
14 confidence and had a grievance that they wanted to
15 share. And they didn't want, because they scared, to
16 have it forwarded. Why should we do that and violate
17 the trust that they had?

18 We directed them to the Justice Department
19 if they needed to be directed there. And, of course,
20 follow up on this issue. And had the first hearing
21 about the detentions way back with INS. And we
22 continue to follow up on it.

23 But the other point I wanted to make is
24 that some of the bad things that you talked about that
25 happened are the kinds of things that, of course, have

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1 happened to African Americans throughout our history
2 in this country. And people in my own family, and
3 even home. And we all went around as -- there's a
4 famous poem that was written by a black poet.
5 Margaret Walker says "even as little kids we're always
6 wondering around wondering the reason why all of this
7 was happening and never knowing."

8 And so at least in this case you know --
9 we know now what the reasons are. You have -- you know
10 it's connected to 9/11, however unfair. At least you
11 can figure out that much. But you also know, all of
12 you, based on the strategies that movements have used
13 throughout our history and that some of you have used
14 on other issues, and that we've used of course in the
15 black freedom struggle, you know what you have to do
16 about these things, and you're doing them. And it is
17 very painful to have to do them.

18 But there is, you know, concern about
19 balancing security against interests and protecting
20 people's civil rights that come up.

21 We were in Detroit where we listened to
22 the Arab and Muslim communities and these issues came
23 up as to what is it, you know, how much of your rights
24 do you have to give up? Isn't no sense in which --
25 you know, and there was somebody there who thought

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1 that many of those people who were giving us their
2 evidence should be willing to give up certain rights
3 in the name of security, even if they had nothing to
4 do with whatever happened. So there is this issue of
5 how far do you go and what is the balance there.

6 I mean, I happened, to this issue as
7 others, I'm a purist, like I am on the First
8 Amendment. So I believe in civil rights and civil
9 liberties. But there is a question about it.

10 But, I again, got insight from this. And
11 the issue of privacy of information. And the
12 awareness that there are all these different agencies
13 working together and sometimes it's hard to tell whose
14 who and what information. I hadn't really focused on--
15 what I'm telling you is that I have learned from what
16 you said. Even though I might have known some of the
17 pieces of it; putting it altogether this way as it's
18 been done today is very helpful to us conceptually as
19 we try to finish up some of these reports we have and
20 as we try to do others. And that's why we come out
21 here to hear from you instead of sitting in
22 Washington, you know, in our conference room.

23 Does anyone else have a question? Do you
24 have any questions or comments? We're at the end of
25 this particular panel and we're going to go to our

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1 SACs now.

2 Commissioner Redenbaugh?

3 COMMISSIONER REDENBAUGH: No. I would
4 only have a comment, not questions. And that is I'm
5 retroubled and reminded of how troubled I was and now
6 again by the reports of the violations of civil rights
7 of Arab and Muslim Americans. From my point of view
8 there are no security concerns high enough that
9 justify the illegal and secret and then the beatings
10 and the torture or poor treatment of those detained.

11 I'm sure everyone on the Commission is
12 deeply troubled by that.

13 CHAIRPERSON BERRY: Right.

14 COMMISSIONER REDENBAUGH: That's
15 indefensible. That's all I would say now.

16 CHAIRPERSON BERRY: Right. And we hope our
17 fellow Americans will find it as deeply offensive
18 eventually as we do.

19 COMMISSIONER REDENBAUGH: I think as they
20 become more aware, more and more of them will, Mary.

21 CHAIRPERSON BERRY: Right. And one of the
22 things we do here is we illuminate these issues.

23 COMMISSIONER REDENBAUGH: Yes.

24 CHAIRPERSON BERRY: So that people can
25 have some -- and as we go around the country we do

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1 that. And hope that that will be helpful.

2 Okay. Thank you very much for your time
3 and thank you for coming.

4 (Whereupon, at 12:05 p.m. a recess until
5 12:08 p.m.)

6 **PRESENTATION FROM NEW YORK STATE ADVISORY COMMITTEE**
7 **MEMBERS**

8 **ISSUE FOR IMMIGRANT COMMUNITIES**

9 CHAIRPERSON BERRY: We have another panel.
10 We have Dr. Setsuko Nishi, who is going to tell us a
11 little bit about things from the SAC. And then we have
12 Gloria Lopez of Rochester who is here and who is the
13 Director of Human Resources and Civil Rights
14 Compliance Officer at the Urban League of Rochester.

15 Also, audience, as soon as they finish,
16 which will be a brief panel, there will be a reception
17 in the Wilby Room next door. There will be just a
18 brief report from our SAC, and then we'll have the
19 reception.

20 So if you can stay, we would really
21 appreciate it.

22 All right. We'll start with our Regional
23 Director Ki-Taek Chun.

24 MR. CHUN: Good morning, Commissioners.

25 CHAIRPERSON BERRY: Good morning.

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1 MR. CHUN: Of the six regions --

2 CHAIRPERSON BERRY: Yes?

3 MR. CHUN: Of the six regions we have, I
4 realize that Eastern Region is the first one that you
5 are visiting for the second time --

6 CHAIRPERSON BERRY: Yes, we were in
7 Wilmington, too, weren't we?

8 MR. CHUN: That's right, for the first
9 one.

10 CHAIRPERSON BERRY: Yes.

11 MR. CHUN: Now to sustain this momentum of
12 engaging and information presentation and dialogue,
13 I'm please to introduce the delegation of the New York
14 State Advisory Committee. As you noted earlier,
15 Michael Hanley, the Chairperson of the New York State
16 Advisory Committee can't be with us this morning for
17 medical reasons. Instead, he sent us a statement of
18 welcome. With your permission, it is okay, I'd like
19 to read that into the record.

20 CHAIRPERSON BERRY: Okay.

21 MR. CHUN: Or may I just summarize.

22 CHAIRPERSON BERRY: I thought I already
23 did it. I did it at the beginning. But we will
24 include the text in the record.

25 MR. CHUN: Thank you.

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1 Today the delegation is headed by Dr.
2 Nishi. Many of you know who she is.

3 CHAIRPERSON BERRY: Yes, of course.

4 MR. CHUN: And then other members of the
5 delegation is Gloria Lopez and on my far left are Al-
6 Haaj Ghaze Y. Khankan. Now there was supposed to a
7 fourth member, Dr. Gregory Rabb. But I got a text
8 message this morning at 6:15 saying that he can't --
9 he was here last night, but at 6:15 this morning he
10 had to leave for medical reasons. I am in the process
11 of finding what the status us, but I have just been
12 unable. So, we miss him very much. But welcome to New
13 York.

14 And Dr. Nishi?

15 CHAIRPERSON BERRY: Yes. Thank you.

16 DR. NISHI: Thank you very much. Good
17 morning.

18 CHAIRPERSON BERRY: Good morning.

19 DR. NISHI: My name is Setsuko Nishi. I'm
20 professor of sociology at the graduate school of
21 Brooklyn College in the State University of New York.
22 And I am the founding President of the Asian American
23 Federation of New York, which has already been
24 referred to the author of the reports of the economic
25 impact of 9/11 upon Chinatown, which I hope each

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1 member of the Commission received a copy of that
2 report as well as the follow up report the year after.

3 CHAIRPERSON BERRY: All right.

4 DR. NISHI: Currently I'm principal
5 investigator of a major study of a report of the war-
6 time incarceration of Japanese Americans, which too
7 has been referred to in several instances for their
8 parallels to the current situation.

9 In the absent of the current Chairman of
10 the New York State Advisory Committee, it is my
11 privilege as the past Chair to welcome you in person.

12 As the federal body charged with fact-
13 finding and civil rights, a round so vital to our
14 well-being as a democracy especially in the crises
15 precipitated by 9/11, we know you face a daunting task.

16 As your eyes and ears in New York, we are to be
17 reactivated at least after our hiatus of 20 years.

18 In the light of what we understand are
19 severe budget and staff constraints in planning our
20 next project, of which we shall speak later, we are
21 challenged to find efficient and innovative ways to
22 document and to inform.

23 Today the aim of our panel is to provide a
24 brief overview of civil rights issues in the state of
25 New York, of reporting our staff who have already been

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1 introduced, my comments --

2 CHAIRPERSON BERRY: It's just some
3 technical thing. Go cut it off.

4 DR. NISHI: My own comments are based on a
5 round of report at a staff meeting just last week for
6 members about civil right concerns in their varying
7 locals and areas of expertise.

8 A significant factor in the changing
9 nature of civil rights concerns in the phenomenal
10 demographics are the rapidly increasing racial and
11 ethnic diversity of the New York population, including
12 the highest portion of new immigrants providing both
13 highly skilled and unskilled needed labor in our large
14 metropolitan areas and smaller towns, as well as the
15 rural areas. And of course the effect of the war on
16 terrorism has raised grave questions about our
17 cherished constitutional protection of rights in times
18 of crises.

19 A recurring theme in the presentations of
20 our advisory committee members was a matter of racial
21 profiling now reported to be vastly expanded and
22 broader based than when our staff developed a plan
23 several years ago to study police misconduct in
24 upstate New York communities.

25 In addition to the continuing practice by

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1 police, it is reported that authority has been
2 adopted by other security police personnel now
3 including those who appear near Middle Eastern, Muslim
4 and/or South Asian. Prosecution in the war on drugs
5 had disproportionately targeted minority communities,
6 despite evidence that the market for illegal drugs is
7 largely in white middle class populations. This has
8 contributed to the highly disparate incarceration
9 rates of African Americans and Latino men and women.

10 Another issue which was frequently
11 mentioned was that of voting rights of racial and
12 language minorities. That was a pervasive concern
13 expressed in our committee review, with many accounts
14 of apparent violations. Because this matter has been
15 discussed in a previous panel, here I only mention
16 this.

17 Worker protection, this too has been
18 discussed, under our labor laws has not been available
19 to day laborers, to many migrant workers and, of
20 course, to possibly many undocumented workers
21 generally according to the observations of our
22 committee members.

23 We might note here that New York is
24 extremely varied. It has rural areas. It has midtown,
25 side of town, as well as this glorious city of New

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1 York. And the civil rights concerns that have been
2 addressed certainly apply to these varied kinds of
3 locals.

4 Previous panelists have already discussed
5 this -- excuse me. While filling labor needs they are
6 deterred by fear and lack of knowledge in obtaining
7 protection against exploitation. This is a matter
8 that can be observed daily as one goes through these
9 small villages of day laborers seeking work, waiting
10 on street corners.

11 Another issue, of course, and how can we
12 avoid it, is the 9/11 and related increase in bias
13 against Arab Americans, other Middle Easterners and
14 South Asian Americans was a most present concern
15 expressed by SAC members and was the subject of a
16 briefing at our meeting. We note here that it is not
17 only overt hate crimes, but also more covert forms of
18 discrimination in employment, in housing in which
19 these groups have been subjected.

20 Related to it is the crucial matter of the
21 constitutional protections in times of crises. As one
22 who was frustrated during World War II on the basis of
23 my race, I am keenly aware of the futility of
24 constitutional safeguards of rights in periods of
25 crises. As far as an official apology and token

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1 reparations from the United States Government,
2 candidly I must express a deep worry that America has
3 not learned the lessons of that dark history.

4 Though there are differences, there are
5 too many parallels between the wartime treatment of
6 Japanese Americans, particularly of our foreign born
7 parents and the present day threats to the civil
8 rights of immigrant communities exacerbated in the
9 wake of September 11. It is this latter topic that is
10 a threat to the civil rights of the immigrant
11 communities in New York, particularly in the aftermath
12 of 9/11 that our committee looks forward to exploring
13 in our next project.

14 Thank you.

15 CHAIRPERSON BERRY: Thank you very much.

16 DR. NISHI: Gloria Lopez.

17 MS. LOPEZ: Gloria Lopez, and I will share
18 with you a few civil rights issues that effected
19 Latinos and the immigrants from Rochester, New York,
20 where I come from.

21 No; contrary to what many New Yorkers
22 believe, I'm not one mile north of New York City. I'm
23 the about the opposite diagonal corner of New York
24 state, 600 miles away and we, too, suffered numerous
25 civil rights violation.

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1 CHAIRPERSON BERRY: Ms. Lopez, could you
2 push the microphone a little bit closer to you? Just
3 a little bit.

4 MS. LOPEZ: Is that better?

5 CHAIRPERSON BERRY: Yes.

6 MS. LOPEZ: As to the Latinos, I will
7 speak with you about three of the main civil rights
8 issues that face us: Racial profiling, housing which
9 also dovetails into education and voting.

10 As to the racial profiling, many police
11 officers routinely stop Latinos on public highways and
12 on public sidewalks. The officers stop the Latinos
13 who are driving on the public highways under the
14 pretense of traffic violations. However, when the
15 officer stop the car, they're entry level to the
16 contraband, but they don't find anything -- however
17 they still issue traffic ticket. And the Latinos --
18 and African Americans are also stopped as well, must -
19 the appear in the suburban court. But if you go to
20 the suburban courts and you serve the composition of
21 the courtroom, what you'll see, at least what I saw is
22 approximately 17 percent Latinos and blacks, 5 percent
23 of other nationalities and 25 percent white. Then I
24 compared that to the Census of that particular suburb,
25 and I found that the town consisted of 8 percent

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1 Latinos and African American, 2 percent others and 90
2 percent white. That there was a disproportionate of
3 Latinos and African Americans that were in the
4 courtroom.

5 Not only are Latinos stopped while driving
6 on the public highways, they're also stopped while
7 talking on the sidewalk, hanging on the sidewalk. And
8 since 9/11 officers have stopped more Dominicans than
9 they have stopped previously. So, yes, we have to
10 mention they're not Puerto Ricans. Well, Puerto
11 Ricans they are U.S. citizens and Dominicans, well we
12 have to prove that we are U.S. citizens, we have to
13 carry our cards.

14 About six months ago I tried a well-known
15 Dominican restaurant in Rochester, which is --
16 Central American, Cubanos and Dominicans. Officers
17 stopped two men on the sidewalk. The officers asked
18 them to show ID cards. The men produced their
19 driver's license. The officer said "No, we don't want
20 your driver's license. We want to see your green
21 cards." He said "No, the driver's license only proves
22 that you have a Social Security card."

23 So one of the men dug in his pocket and
24 pulled out his green card. The other man said "You
25 know, I've been advised that I don't have to show you

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1 my green card." Fortunately, the officers backed
2 down.

3 Another incident happened about a month
4 and a half ago in which these youth were just sitting
5 on a corner (speaks in Spanish), which is -- but we
6 call it a Spanish (speaks in Spanish) and we got a
7 street name. They were sitting on the sidewalk. And
8 this police officer literally drove his motor vehicle
9 up the sidewalk, stopped within a couple of feet of
10 the Latino youth and said "You guys are up to no good.

11 Probably have a long record." He took one of the
12 youth, threw him in the car and about half an hour
13 later they released him, but the youth was stunned.

14 The youth and other Latinos in my
15 community, you know, we have a mistrust of the police
16 officers which is contrary to how I was raised. When
17 we came to America police officers are there to
18 protect us. But the Latinos and the African Americans
19 feel discrimination.

20 Now, besides the racial profiling, there
21 is also the housing issue that dovetails into the
22 education. And I'll echo some of the statements made
23 by Mr. Semidei that every child should have the
24 opportunity to the best education possible, but I'll
25 share with you something I also think you should look

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1 into.

2 Many of the Latinos and African Americans
3 in the county where I live, they generally tend to
4 live in high poverty concentrated areas. And these
5 high populated concentrated areas, they consist of
6 poor housing stocks -- for education. Housing stock,
7 generally, many of them have lead paint in their
8 homes. So these Latino youths are exposed to the lead
9 paint, which has been shown to have a detrimental
10 effect on the physical and the mental abilities of the
11 youth. So here they are, they're exposed to the lead
12 paint. They go to school. They're having difficulties
13 in school. Some of them have low attention spans, so
14 they're not learning very well. Others are
15 belligerent, so they -- from school. Besides being
16 disproportionate -- the Latinos from this high
17 concentrated, poverty concentrated areas also tend to
18 infect the schools in receiving a poor education.
19 They're not receiving the same comparable education as
20 their counterparts in the wealthier suburbs.

21 We also found that it's not just for their
22 counterparts in the wealthier suburbs, but it's also
23 within the wealthier low poverty concentrated areas in
24 the city. We have a school in a low poverty
25 concentrated area where the wealthier people live, and

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1 those youth in those schools, they have high tech
2 equipment. They have computers. They have books. They
3 have a low teacher/student ratio. And they're doing
4 better on the tests. However, the youth, the Latinos--
5 the immigrants who first come to America, come to
6 Rochester, they attend some of the schools in the high
7 poverty concentrated areas and they're lucky if they
8 have any kind of computer in their school. They're
9 lucky if they have textbooks. Some just do not have
10 textbooks, or they have textbooks of ten years ago.

11 There are also high student to teacher
12 ratio and they're not performing well.

13 You know, education for what we're looking
14 at, is the unequalizer in our society which is not
15 what it was when we came to America.

16 In Rochester we started a lawsuit called
17 the great philosophy -- and the purpose of the lawsuit
18 is to try to equalize the funds and to provide
19 resources to educate the individuals.

20 Besides racial profiling and the housing
21 and education, there's also the voting issue, which
22 has been remarked is a very depressing issue. For the
23 2000 election the Latino community, too, suffered.
24 For instance, voting takes ten minutes and during the
25 2000 election and I noticed there was a Latino who

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1 cannot spell her name in English, who was using the
2 Spanish alphabet. She was stating her name, spelling
3 it correctly, but the voting inspector could not
4 understand her. And I was just like doing whatever I
5 was doing, but then when the voting inspector said you
6 cannot vote, -- bears her name on that line and she
7 was just spelling it in Spanish.

8 After helping her, it took me two hours to
9 leave the voting poll that night, because I was
10 helping other people who were initially told you
11 cannot vote, you leave. But because I was the
12 attorney for the Board of Election what the elections
13 law was and what's necessary to protect this
14 individual so they could have their own personal --

15 Thank you.

16 CHAIRPERSON BERRY: If Ms. Nishi says so.

17 MS. LOPEZ: Just two other issues.

18 One is the migrants. To address the
19 migrant issues, and from where I come from, I will
20 share with you a couple of examples.

21 Migrants in my community are facing racial
22 -- concerns as well as discrimination. Little old
23 store keepers. As soon as -- profiling, in the rural
24 parts of my community the Latino migrants who go to
25 the stores, through the supermarkets, you know, for

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1 their necessities, they are told by the merchants "We
2 do not want you here. Don't shop here. Get out." And
3 so what we did -- we commenced a lawsuit and we were
4 successful in settling it. However, this practice of
5 discrimination continues and the migrants still are
6 being targeted.

7 New York State Police officers in my area
8 are constantly detaining migrants who are traveling on
9 the public highways. They're checking them for legal
10 residency. An example happened in a county that is
11 contiguous to -- the driver and his wife were
12 transporting 4 migrants. The officers stopped them and
13 asked for proof of legal residency. None of them had
14 any. How many of us here have proof of legal
15 residency? I couldn't prove it unless you tell the
16 officer, go home with me and let me show you my
17 naturalization paper. But I'd still have to drag him
18 home or they'd have to call INS.

19 Anyways, the officers took these
20 individuals to the police station -- to the police
21 station and held them while they called INS. Two hours
22 later the driver and his wife, who were U.S. citizens,
23 were released. Three of the four immigrants were
24 released because they were legal residents and they
25 had their green card. The fourth was deported.

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1 The car was stopped for no apparent
2 reason.

3 And then the last matter is day laborers
4 who have suffered OSHA and wage violations right here
5 in New York City, from my understanding. Because the
6 job of the day laborers are temporary, when a day
7 laborer who is injured files a complaint with OSHA,
8 it's a while before OSHA comes and investigates and
9 knocks on the door. So the day laborers have moved on.

10 The jobs have been completed. The day laborers may be
11 out of the city, out of the state. For all we know,
12 they may even be out of the country, but they don't
13 get the benefits and support of OSHA.

14 So, these day laborers are doing some of
15 this work, the employees do not train them in safety
16 issues. The employers do not provide them with
17 protective equipment. The most recent example is at
18 the World Trade Center. At the World Trade Center you
19 have local and national union members working right
20 next to the day laborers. But the local and national
21 union members, they had the protective gear to protect
22 them from the toxic fumes, substances that they were
23 inhaling, the asbestos, the fibers, the lead, but the
24 day laborers did not. They were not protected. They
25 should have been. They did not receive the safety

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1 training that they should have received. As a result,
2 the day laborers continued to suffer form the injuries
3 that they sustained at the World Trade Center, and
4 that shouldn't have happened.

5 Thank you for listening to me.

6 CHAIRPERSON BERRY: Thank you.

7 MR. KHANKAN: In the name of God, most
8 gracious, most merciful, my name is Ghazi Khankan,
9 Executive Director of Council on American Islamic
10 Traditions in New York and Director of Interfaith
11 Affairs at the Islamic Center of Long Island, and a
12 member of the New York Advisory Committee.

13 It is indeed a pleasure to welcome you in
14 New York City and thank you for listening so
15 attentively and humanly, and with great interest, as I
16 noticed to the testimonies of the expert panels who
17 focused on, among other things, post-9/11 civil rights
18 issues and concerns of the 7 million Muslim Americans
19 and the Arab Americans.

20 After listening to these panel experts, I
21 am sorry to say images of Hollywood movies about Nazi
22 occupied Europe came to mind. The summary of the
23 discussion were, really, that security should not
24 deteriorate our civil and human rights.

25 In the words of Senator Russ Feingold

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1 regarding the new laws of the anti-terrorism bills
2 and the U.S. -- Act, Senator Feingold said about them
3 that the government can compel disclosure of the
4 personal records of anyone, perhaps someone who worked
5 with or lived next door to, or went to school with, or
6 sat on an airplane with, or has been in the company of
7 or whose phone number was told by the target of the
8 investigation under these provision, the government
9 can apparently go on a fishing expedition and collect
10 information on virtually anyone, and all it has to
11 elect in order to get an order for these records from
12 the court is that the information is sought for an
13 investigation of international terrorism or --
14 intelligence gathering. That's it. And that minimum
15 showing in an ex parte application to a secret court
16 with no showing even that the information is relevant
17 to the investigation, and the government can lawfully
18 compel your doctor or hospital to release medical
19 records or a library to release -- records. This is a
20 truly breathtaking expansion of police power. So says
21 Mr. Feingold.

22 Our country, more so than at anytime in
23 the past, I believe stands at the crossroad. Our
24 government has invoked historical proceedings to
25 justify these wartime tactics and in doing so has

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1 brought key segments of American society and politics
2 to the brink of repeating much in our history that we
3 have come to regret.

4 It is especially true that immigrants and
5 others, citizens and noncitizens alike have been
6 mistreated in wartime. This dreadful internment of
7 Japanese Americans remains a stain in our national
8 honor. Not to mention the first Holocaust of the
9 African Americans and the enslavement. Concepts of --
10 military justice and international human rights have
11 advanced substantially since World War II. Departure
12 from these principles has detrimental consequences for
13 the war on terrorism. Some national leaders downplay
14 these concerns saying, oh that limitation on civil
15 liberties are temporary and normal conditions will
16 return once hostilities end. But the war on
17 terrorism, unlike conventional wars, is not likely to
18 come a public end, these types of ends.

19 Restrictions on civil liberties may be
20 with us for a very long time. So long, in fact, that
21 they may change the character of our democratic system
22 in ways that very few Americans want and desire.

23 I have quoted part of the American Civil
24 Liberties Union here because I thought that would be
25 appropriate. The Commission, as we all know is a fact-

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1 finding agency of the federal government, in addition
2 to preparing reports on these those post-9/11 civil
3 rights issues and concerns of Arab Americans with
4 Eastern and South Asian Americans -- Asian Americans
5 in New York and because of the urgency in the
6 deteriorating conditions of the civil rights of these
7 groups, may I humbly urge that the USCCR issue on an
8 urgent basis public service announcements -- or deny
9 of protection of the laws of these groups. This, as
10 you know, is a step in one -- listed as one of the six
11 steps which the Commission is authorized by Congress
12 to work on. The others being to investigate
13 complaints, to study and collect information, to
14 appraise federal laws and policies with respect to its
15 determination or denial of equal protection of the law
16 because of race, color, religion, sex, national origin
17 or in the administration of justice.

18 This, indeed, a historical meeting. You
19 can either make history or become history. This is
20 indeed a challenging task because you will be
21 submitting your reports and findings and
22 recommendations to the President of the Congress, who
23 have themselves decreed these unconstitutional and
24 unjust laws.

25 Mr. Ashcroft himself according to an

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1 interview with syndicated columnist Cal Thomas was
2 quoted as saying Islam is a religion in which God
3 required you to send your son to die for him. But
4 it's a shame if God had sent his son to die for you.

5 Now, Mr. Ashcroft, these words are
6 inaccurate, offensive and are becoming an -- of the
7 law enforcement official who is further initiating and
8 administering policies have a disproportionate impact
9 on Muslim Americans and Arab Americans. Also these
10 remarks are indeed indirect contradiction to President
11 Bush's repeated statements on respect to Islam -- says
12 in the Holy book in closing, "Stand firm before
13 justice, even it is against yourselves. Follow now the
14 -- hearts, lest you swerve from justice. And if you --
15 justice or decline to implement justice, God is well
16 acquainted with all that you do.

17 Thank you very much.

18 CHAIRPERSON BERRY: Your concrete
19 suggestion that you made about the PSAs, public
20 service announcements, you know, we have to see
21 whether we do something. I did one at the beginning
22 of August after 9/11 and harassment, there were a
23 whole series of them done. But we probably should do
24 as we have done on other things, get other people to
25 do PSAs. I mean, that is a very concrete kind of thing

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1 that we can do. And all of these other issues that
2 we have been looking into and that we will be looking
3 into, I appreciate the work you're doing. And let's
4 hope we can find some resources to help the New York
5 state committee to get off to a good start in this
6 rechartering. But you're already off to a good start
7 because I think today, what we did here today, and
8 what you are responsible for today, I think it was
9 very important and it was very well done and very
10 informative. And so I think it was fantastic. So
11 you're off to a good start already.

12 And thank you very much.

13 DR. NISHI: You know, I would just to add
14 that we regret that Dr. Rabb who was unable to be with
15 us because of some medical problem, but I know that he
16 was eager to have brought before the Commission a
17 couple of concerns, which have not been mentioned
18 today.

19 CHAIRPERSON BERRY: Oh, sure. Go ahead.

20 DR. NISHI: One is the -- so often we don't
21 think of New York as having very significant rural
22 population. And these characteristics mean that they
23 are some variations in the manifestations of civil
24 rights violations. But nonetheless, they're very real
25 and very present, and he was eager that this not be

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1 ignored just because we are in the north, we do have
2 a large rural population as well.

3 The other thing that he wished to have
4 brought to the attention of the Commission was the
5 matter of the civil matters or the issue of sexual
6 orientation that would certainly not, as he understand
7 it, an established protected category for the
8 Commission. Nonetheless, this is an emerging concern
9 which is arising not only in the state of New York,
10 but elsewhere of course in the country.

11 And he noted also being an academic that
12 some of the Immigration restrictions are being
13 targeted against the Middle Eastern and Islam and
14 South Asian populations had seriously interfered with
15 the function of academic inquiry, that the
16 restrictions on the exchange of scholars and the
17 students is an interference in the process of learning
18 and scholarship which would indeed be a very sad thing
19 if were permitted to proceed.

20 And these were three issues that I recall
21 that he had intended to set before this Commission.
22 So I appreciate your attention to these matters.

23 CHAIRPERSON BERRY: Well, we will take
24 those and add those to our list. But let me point out
25 that on the sexual orientation one, I for one think

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1 that the Commission's jurisdiction should be extended
2 just as we did in the past when it started out with
3 race and national origin and religion. And then we
4 went to age and disability and sex, and so on. That
5 clearly the Commission should have explicit
6 jurisdiction to consider matters of discretion based
7 on sexual orientation. But the way we have interpreted
8 our jurisdiction is that under the administration of
9 justice, which is a separate jurisdiction we have,
10 that we can consider matters of sexual orientation
11 under that particular rule. Because it's not
12 restricted.

13 But I have suggested several times that
14 our jurisdiction should be expanded explicitly, but
15 that people in the advocacy community always the
16 timing was not right to do it. We haven't revisited. I
17 don't know if this timing is anymore right, given
18 whose in Congress and so on. But we do -- there is
19 flexibility for SACs to consider and for us to
20 consider work on sexual orientation under our
21 administration of justice authority. And we will take
22 these others on advisement.

23 And let me thank you all again for coming.

24 Thank you very much.

25 STAFF DIRECTOR JIN: Remember the

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1 reception is right next door.

2 (Whereupon, at 12:43 the meeting was adjourned.)

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