

U.S. COMMISSION ON CIVIL RIGHTS

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ENVIRONMENTAL JUSTICE HEARING

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Friday, January 11, 2002

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The Commission convened in Room 540 at 624 Ninth Street, Northwest, Washington, D.C. at 10:06 a.m., Mary Frances Berry, Chairperson, presiding.

PRESENT:

MARY FRANCES BERRY, Chairperson

CRUZ REYNOSO, Vice Chairperson

JENNIFER C. BRACERAS, Commissioner

CHRISTOPHER EDLEY, JR., Commissioner

ELSIE M. MEEKS, Commissioner

ABIGAIL THERNSTROM, Commissioner

VICTORIA WILSON, Commissioner

LESLIE R. JIN, Staff Director



ALSO PRESENT:

PETER REILLY, Parliamentarian/General Counsel
JENNY PARKS, General Counsel

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

(10:06 a.m.)

CHAIRPERSON BERRY: This hearing of the United States Commission on Civil Rights will now come to order.

This is the environmental justice hearing, and I have already sworn in the court reporters, interpreters, and signers. Do I need to do it again? No, I don't.

Could the signers ask whether anyone at this time needs signing interpretation?

We're still getting that whatever.

COMMISSIONER THERNSTROM: Yeah, it's still here.

COMMISSIONER WILSON: Commissioner Thernstrom needs microphone training.

(Laughter.)

COMMISSIONER THERNSTROM: This was placed on my jacket before me.

COMMISSIONER WILSON: A likely story.

COMMISSIONER THERNSTROM: I take no responsibility.

CHAIRPERSON BERRY: Okay. Good morning, and welcome to the public hearing on environmental justice.

I am Mary Frances Berry, Chairperson of the Commission, and I will be presiding over this hearing. Scheduled testimony will commence at ten, 10:05, and should conclude at 4:00 p.m., as indicated on the agenda.

Before I detail the purpose and scope of this

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hearing, I would like to introduce myself further and then allow the other members of the Commission to introduce themselves.

In addition to serving as the Chairperson of the Commission, my day job is Geraldine R. Siegel Professor of American Social Thought, Professor of History and Adjunct Professor of Law at the University of Pennsylvania in Philadelphia.

Joining me today are Commissioners Jennifer Braceras.

Would you like to say something about yourself, Commissioner Braceras?

COMMISSIONER BRACERAS: Sure. I'm a research fellow at Harvard Law School, and I'm new to this Commission, recently appointed by President Bush in December.

CHAIRPERSON BERRY: Commissioner Christopher Edley.

COMMISSIONER EDLEY: I (pause) --

CHAIRPERSON BERRY: Do you have a job?

(Laughter.)

COMMISSIONER EDLEY: Yeah, I -- well, there's a dispute about that. I'm a professor at Harvard Law School, where I've been for about 20 years, specializing in administrative law, but I just finished teaching environmental law for the first time this past fall. It was a character building experience

CHAIRPERSON BERRY: I see. Okay.

COMMISSIONER THERNSTROM: Did your character need building?

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COMMISSIONER EDLEY: It did. It always does.

CHAIRPERSON BERRY: Okay. Commissioner Elsie Meeks.

COMMISSIONER MEEKS: Yes. I'm Elsie Meeks. I'm from Kyle, South Dakota. I'm a member of the Ogala Lakota Tribe, and have been involved in economic development at Pine Ridge and across the country, and now I'm Executive Director of First Nations Development Institute, which is a nation -- excuse me -- First Nations Owesta (phonetic) Corporation, which is a national Indian development organization that help tribes start community development financial institutions.

And I've been on this Commission since 1999.

CHAIRPERSON BERRY: Thank you.

Commissioner Victoria Wilson.

COMMISSIONER WILSON: Oh, hi. I hale from New York City, and I am a Vice President and Associate Publisher and Executive -- no, I'm not executive editor. I'm a senior editor at Alfred Conaf (phonetic) Publishers, where I've been for 29 years.

CHAIRPERSON BERRY: Okay. Commissioner Abigail Thernstrom.

COMMISSIONER THERNSTROM: I'm a Senior Fellow at the Manhattan Institute in New York. I am a member f the state Board of Education in Massachusetts, and I have been writing on issues of race and ethnicity for more than two decades.

CHAIRPERSON BERRY: And the Vice Chair of the Commission, Cruz Reynoso.

VICE CHAIRPERSON REYNOSO: Yes. I have been with the Commission since 1993. I teach law at the University of California at Davis. I'm associated with a law firm that's special counsel, and the law firm is Kaye, Shuler (phonetic), and I been involved with civil rights matters professionally since 1959.

CHAIRPERSON BERRY: And our Staff Director is Les Jin, and our Deputy General Counsel is Debra Carr, who is sitting behind me.

Today the Commission will focus on the environmental justice movement, and in doing so the civil rights and social justice issues intertwined with this movement.

The environmental justice movement began and substantially remains a nationwide grassroots movement, blending civil rights and environmentalism. Communities and others involved in this movement call attention to the environmental problems that disproportionately burden social, economically disadvantaged communities, and communities of color as well as women and children.

Environmental justice is not a modern invention. In fact, in the mid-1800s, urban dwellers and factory workers, mostly poor and white, protested for improved public health, safer working conditions, and cleaner air and water.

Today minority and low-income communities complain about polluted air and water, contaminated soil and hazardous

waste sites in their communities. Some studies suggest that women and children of all races are particularly vulnerable to environmental contamination.

While health issues have been the mainstay of the environmental justice movement, issues of land use, zoning, property values, housing, economic development, and sustainable communities are now a part of the modern environmental conversation.

And because of the complexity of the issues, communities are seeking equal access and opportunity to participate in decisions that will change their neighborhoods and their quality of life.

These 21 Century issues make the movement of the 1800s even more relevant and compelling. However, these new issues may make the task of balancing conflicting interest, while being mindful of the need of all Americans to have basic human dignity, becomes more difficult.

As required by law, notice of this hearing was first published in the Federal Register on December 13th, 2001. A copy of this notice and any other relevant notice will be introduced into the hearing record and has been supplied to all persons scheduled to appear here today.

The authority of the Commission to conduct hearing emanates from the 1957 legislation which establishes it as an independent, bipartisan, federal agency of the United States

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government.

Among the Commission's duties are, to appraise the laws and policies of the federal government, to study and collect information, and to serve as a national clearing house for information, all in connection with discrimination under NOW (phonetic) and equal protection of the law to this nation because of waste, color, religion, sex, age, disability, national origin, or in the administration of justice.

The Commission submits reports containing findings and recommendations to the President and to the Congress. To enable the Commission to fulfill its duties, Congress has empowered the Commission or a subcommittee of it to hold hearings and issue subpoenas for the attendance of witnesses and the production of documents.

Consistent with Commission practice, all witnesses within its jurisdiction have been subpoenaed to attend today's hearing. We have about 16 witnesses. They've been selected due to their knowledge of and experience with the issue on which this hearing will focus.

We will hear from environmental advocates, community representatives, academicians, members of the business community, and other concerned individuals.

In addition to the scheduled witnesses, there will be a limited opportunity for concerned persons to testify during an open session scheduled at the end of the day.

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Members of the Commission's Office of General Counsel staff will be available at the appropriate time to assist anyone interested in delivering sworn testimony during the open session.

Before we proceed, I want to stress the functions and limitations of the Commission. The Supreme Court of the United States explained, quote, "This Commission does not adjudicate. It does not hold trials to determine anyone's civil or criminal liability. It does not issue orders, nor does it indict, punish, or impose legal sanction. It does not make determinations depriving anyone of life, liberty, or property. In short, the Commission does not and cannot take any action which will affect an individual's legal rights."

The Commission takes very seriously, however, its mandate to find facts which may be used subsequently as a basis for legislative or executive action designed to improve the quality of life of all inhabitants of these United States.

I'm certain that my colleagues joint with me in the hope that this hearing will lead to open dialogue and will educate persons on existing civil rights problems, encourage sensitivity in our continuing effort to resolve these problems, and decrease any adverse environmental disparities.

Then there are the technical aspects. First, the record of this hearing will remain open for 30 days for inclusion of material sent to the Commission at the conclusion of this hearing. Anyone who desires to submit information relevant to

these proceedings may do so during this time period in accordance with the Commission's rules.

Second, and most important, you may have noticed that -- well, I don't want to read that. I don't know what this is about.

We will have security at this hearing in order to preserve the atmosphere of dignity and decorum in which our proceedings are held.

Federal law protects all witnesses before this Commission. It is a crime punishable by a fine of up to \$5,000 and imprisonment of up to five years, or both, to interfere with a witness before the Commission.

I thank everyone for their attention, and we will try to adhere after this to the times in the agenda.

Vice Chairman Reynoso will now read the statement of the rules for this hearing.

Please, Vice Chair.

VICE CHAIRPERSON REYNOSO: Thank you, Madame Chair.

At the outset I would like to emphasize that the observations, which are about to be made concerning the Commission's rules, constitute nothing more than brief summaries of significant provisions. The rules themselves should be consulted for a fuller understanding.

Copies of the rules, which govern this hearing, may be obtained from a member of the Commission staff upon request.

Scheduled witnesses appearing during the course of this hearing have been supplied a copy. Staff members will also be available to answer any questions that arise during the course of the hearing.

The Commission is empowered by statute to hold hearings and act at such times and places, as it deems advisable.

The hearing is opened to all, and the public is invited and urged to attend.

As Chairperson Berry indicated, all witnesses appearing today within the Commission's jurisdiction have been subpoenaed for this hearing. Everyone who testifies or submits data or evidence is entitled to obtain a copy of the transcript on paying of costs.

In addition, within 60 days after the closing of the hearing, a person may ask the Commission to correct errors in the transcript of his or her testimony. Such requests will be granted only to make the transcript conform to testimony presented at the hearing.

If the Commission determines that any witness' testimony tends to defame, degrade, or incriminate any person, that person or his or her counsel may submit written questions, which in the discretion of the Commission may be put to the witness.

Such person also has a right to request that witnesses be subpoenaed on his or her behalf.

All witnesses have the right to submit statements prepared by themselves or others for inclusion in the record, provided they are submitted with the time required by the rules.

Any person who has not been subpoenaed may be permitted at the discretion of the Commission to submit a written statement in this public hearing. Any such statement will be viewed by the members of the Commission and made a part of the record.

The Chair has already advised you that federal law protects all witnesses at a Commission hearing. These witnesses are protected by the U.S. Code, which makes it a crime to threaten intimidate or injure witnesses on account of their attendance at government proceedings.

The Commission should be immediately informed of any allegations relating to possible intimidation of witnesses. I emphasize that we consider this to be a very serious matter, and that we will do all in our power to protect witnesses who appear at the hearing.

Finally, I should note that these rules were drafted with the intent of insuring that Commission hearings be conducted in a fair and impartial manner. In many cases, the Commission has gone significantly beyond congressional requirements in providing safeguards for witnesses and other persons. We have done so in the belief that useful facts are best developed in an atmosphere of calm and objectivity. We trust that such an atmosphere will

prevail at this hearing.

Let me stress, however, that with respect to the conduct of every person in this hearing, whether testifying or not, all orders of the Chairperson must be obeyed. Failure by any person to obey an order by Chairperson Berry or the Commissioner presiding in her absence will result in the exclusion of the individual from this hearing room and criminal prosecution by the U.S. Attorney when --

CHAIRPERSON BERRY: Except Commissioners who don't abide by --

(Laughter.)

CHAIRPERSON BERRY: Sorry.

VICE CHAIRPERSON REYNOSO: When and if required. That is, the U.S. Attorney has discretion and need not, but it has the discretion if it seems appropriate to it to proceed with criminal prosecution with anybody who interferes with the proceedings of this Commission in violation of any ruling issued by the Chair or the person sitting in her stead.

As previously noted, unless otherwise indicated, each session of this hearing will be open to the public. All are welcome to attend.

Thank you very much, Madame Chair.

CHAIRPERSON BERRY: Thank you very much.

And you may have noticed the presence of federal marshals in the audience or you may not, but there is a federal

marshal here. The Commission's procedures require the attendance of marshals at all of our hearings. They have developed security measures that will help us preserve the atmosphere of dignity and decorum in which our proceedings are held.

At the completion of the testimony today at around 4:15, we will hold an open session where persons affected by environmental pollution hazards or contamination or those wishing to speak on the issue of environmental justice can tell their concerns and experiences to the Commissioners.

For anyone in the audience who would like to participate in the open session, please talk to a Commission staff member by 3:30. All staff members are wearing Commission identification badges to identify themselves.

There is a brief interview process, and each person will speak for three minutes. There are limited times, and the lists will be compiled on a first come, first served basis.

The first panel is the overview panel of this hearing, which will talk about the environmental justice movement, its beginnings, and its relationship to the civil rights movement, the type of issues faced by communities seeking environmental justice and how federal agencies have attempted to incorporate environmental justice principles into their programs and policies consistent with Executive Order 12898.

There will also be information on how industry generally has reacted to the environmental justice movement and

government's attempt to enforce Title VI.

Mr. Peter Reilly, who is an attorney advisor in the Office of General Counsel, will now call the witnesses participating in this panel forward to be administered the oath.

Panel One: Overview

MR. REILLY: Thank you, Madame Chair.

Would Dr. Robert Bullard, Ms. Monique Harden, and Mr. Michael Steinberg, please come forward and remain standing?

CHAIRPERSON BERRY: Okay. Please remain standing and raise your right hand while I give you the oath.

(Whereupon, the witnesses were duly sworn.)

CHAIRPERSON BERRY: Thank you very much. You may be seated.

Dr. Robert Bullard is a Professor of Sociology at Clark Atlanta University. He is one of the leading authorities in the nation regarding environmental justice and has written and edited several issues in the book, including Dumping in Mixed Waste Class and Environmental Quality and Equal Protection and Environmental Justice in Communities of Color and Confronting Environmental Racism: Voices from the Grassroots.

We don't mind mentioning your books, but we don't mention ours. Okay?

(Laughter.)

CHAIRPERSON BERRY: Dr. Bullard has played a major role in organizing and mobilizing the environmental justice

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movement over the past decades.

Ms. Harden is an attorney and community liaison director in the New Orleans office of Earthjustice, a nonprofit environmental law firm. Ms. Harden has advocated at local, national, international levels for environmental justice matters dealing with toxic industrial pollution.

In April 1999, she was part of a delegation of environmental justice advocates that traveled to the U.N. Human Rights Commission meeting in Geneva.

Ms. Harden co-wrote with the Tulane Environmental Law Clinic a legal petition opposing the permitting of the proposed Shintech vinyl production facility in the predominantly African American community of Convent, Louisiana. As a result of this legal challenge, the EPA overruled the state's decision to issue permits to Shintech.

Mr. Steinberg is a partner and professional development coordinator of the Environmental Practice Group resident in Washington, D.C. For more than 20 years he has experience with federal and state environmental law, including challenging EPA rules and decisions in courts, defending against EPA cost recovery actions, and handled private party cost recovery.

He served as the Assistant Chief of the Environmental Defense Section of the Justice Department where he handled and supervised litigation against EPA.

Mr. Steinberg is a graduate of Yale and received his law degree from the University of Pennsylvania law school, yes.

VICE CHAIRPERSON REYNOSO: What a fine law school.

CHAIRPERSON BERRY: What a fine law school.

Each witness may make a five-minute presentation; is that right, Mr. Reilly?

MR. REILLY: That's right.

CHAIRPERSON BERRY: And Dr. Bullard will be followed by Ms. Harden and Mr. Steinberg.

Would you please proceed, Dr. Bullock?

DR. BULLARD: Thank you very much.

CHAIRPERSON BERRY: I thank you very much for coming.

DR. BULLARD: Thank you very much, Madame Chairperson. Good morning.

PARTICIPANTS: Good morning.

DR. BULLARD: I'm very pleased to be here this morning and to present to you an overview of 20 years of work in five minutes.

(Laughter.)

DR. BULLARD: The environmental justice movement has come a long way since its humble beginning in 1982 in Warren County, North Carolina. Although the beginning of the movement was concentrated on addressing toxics and locally unwanted land uses and siting of noxious facilities, over the last decade or so, the issues have expanded to include not only just the siting issue

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of facilities, but have also included issues of housing, particularly the impacts of lead based paint on housing and children's health, particularly children of color who are disproportionately impacted by lead poisoning, the residual of a time past, lead in housing.

It also has evolved into addressing issues of transportation and equity and the issue of who gets what when, where, and how much.

When we talk about this whole question of documentation and looking at the reports and looking at the data, there are numerous studies that have documented the fact that environmental racism, environmental injustice, disparate impact, the issue of health threats, toxic terror. These are these; these are issues that were present before September 11th.

When we talk about this whole question of people's fear and anxiety about chemical and biological threats, living near a concentration of petrochemical plants and having to wake up in the middle of the morning or three o'clock in the morning not being able to breathe because of an accident, because of a spill, because of an explosion, and the only thing that you have in terms of resource is shelter in place, meaning close your doors, lock your windows, and pray.

That is not what I think America is all about. When we talk about this whole question of health effects, we can talk about not just children. We can talk about workers. We can talk

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about pesticide poisoning, farm worker issues, occupations that are concentrated where people of color are concentrated. We're talking about occupational health and safety of workers.

A recent study, 1999, by the Institute of Medicine documented what many of us have been saying for many years, that communities of color are disproportionately impacted by pollution, and that they experience certain diseases in greater numbers. It's very good to have very smart people from the national academy basically verify what you've been saying for many years.

If you talk about urban air pollution and the impact of urban air pollution on populations that don't even have cars, but have to breathe pollution from other people's cars, 33 percent of all African Americans who live in cities don't have cars, but they breathe pollution.

Rising asthma rates, it's an epidemic, and it's getting worse. So when we talk about this whole question of discriminatory zoning and the fact that race still plays a major role in where people live and the environmental quality, when we talk about this whole question of lack of green space and parts that is an environmental issue.

So the environmental justice is more than just where the landfills are, where the petrochemical plants are. It's also about benefits, having benefits that are distributed from our economic development policies that will also accrue to low income, working class, and community of color.

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When we talk about this whole question of the transportation oriented development, for example, we're building roads. We're building transit systems. We're developing housing, but again, oftentimes the development pattern disenfranchises those populations that are at the lower end of the spectrum and oftentimes people of color.

When we deal with cost and we deal with benefits, we deal with externalities, I think it's very important to understand that the environment is basically everything, where we live, work, play, go to school, as well as the physical and natural world.

And what the executive order in 1994, Exhibit Order 12892 actually did was reinforce two major laws, the Civil Rights Act and the National Environmental Policy Act.

CHAIRPERSON BERRY: You have to finish up and we will ask you question, and you will get to talk more about what you have to say.

DR. BULLARD: Okay. I think it's very important to understand that the issues are very broad. It involves housing, transportation, health, education, land use and economic development.

CHAIRPERSON BERRY: Okay. Thank you.

Ms. Harden, please.

MS. HARDEN: Good morning, Madame Chair and Commissioners. I have provided you all with copies of the 24-page presentation, and for purposes of my statement, I'm going to just

hone in on a few key points in that document.

My focus is looking at EPA's obligations under Title VI of the Civil Rights Act, and its obligations under the President's Executive Order 12898.

And I want to first point out that in 1975, this U.S. Commission on Civil Rights recognized that EPA was lax in executing its Title VI mandate, and then 27 years later, while the EPA is heavily resourced with tools and procedures that have been developed over the years, that laxity continues to this date to the detriment of many communities of color throughout the United States who are living and breathing high levels of toxic pollution by industrial facilities that continue to grow and expand in their communities without end.

Just a quick list of the various resources that are available to EPA at this point. There's the Title VI Civil Rights Act, as well as key provisions of the EPA's implementing regulations that prohibit discriminatory effect, as well as intentional standards against discrimination.

There's also a 1994 Department of Justice environmental justice legal analysis that was prompted by the President's executive order 12898, and this document explains to EPA the various ways within existing environmental laws the agency can use its discretionary and mandatory authority to insure environmental justice.

There's also a national Environmental Justice

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Advisory Council that was created as part of the President's executive order which has advised EPA on a number of issues involving environmental justice on a case-by-case basis, as well as policies, and one of these policies being EPA's Title VI guidance which I'll get into in just a moment.

And then we also have established civil rights case law that has dealt with discrimination in housing, education, and employment which all set standards that can be used in the environmental context.

What we're looking at right now is a complete and utter failure on the part of EPA to enforce Title VI. Currently there are over 60 Title VI cases that were filed by organized citizens in communities of color that are now pending before the EPA.

In every single one of these cases EPA is out of compliance with its own Title VI implementing regulations that set deadlines for accepting, referring, or rejecting complaints that are filed with the agency within 25 days.

I can tell you that there are about 11 cases -- that have been pending with EPA for over 11 years that have not received that kind of a determination from the agency.

There's also a 180 day period time line set for the agency to make preliminary findings and also make recommendations for voluntary compliance. Within these 60 cases about 20 cases -- for over five years there are about 11 cases that have been

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pending with the agency that have not had a preliminary finding on those complaints.

I should go back and correct my previous statement. There are actually 20 cases held by the EPA that have not received a determination on the rejection, acceptance or referral.

And the other thing is that we also have EPA's first and only Title VI decision, which is known as the Select Steel case. It sets a horrible precedent for Title VI case law in the administrative context.

Just focusing on the time lines and the missed deadlines by the agency that have gone on for five years, what EPA is doing is sending a really troubling message to the communities about its right to seek the protections of Title VI within the agency.

And this is made all the more detrimental because we now have recent federal court decisions like Sandoval from the U.S. Supreme Court, as well as the Camden citizens case out of the Third Circuit disallowing a private right of action under Title VI and Section 1983, which really puts the onus on EPA to step up and enforce the law and its discriminatory effects regulation.

EPA's guidance for investigating Title VI complaints is limited to just permitting. There are a lot of other areas, for example, enforcement, that also have tremendous problems with regard to discrimination.

There are a lot of things you can say with the flaws

in the guidance, but I want to just hone in on one or two problems. One is that there is not a clear definition of disparate impact, and the second is that the burden of proof completely departs from established civil rights jurisprudence.

And I have that further spelled out in the statement.

CHAIRPERSON BERRY: Okay. You have to finish up.

MS. HARDEN: Okay. The last note is that with regard to the environmental laws that EPA has before it, we are seeing the agency continuing to issue new rulemaking and policies that result in increasing the pollution burdens on communities of color.

Recent news reports are showing a roll-back of the Clean Air Act standards, which would mean that many communities like those that I know and work with in Louisiana who are fence line to oil refineries would assume a humongous burden of additional toxic pollution poured on their communities.

So I'll end it there.

CHAIRPERSON BERRY: Okay. We'll have questions.

Mr. Steinberg.

MR. STEINBERG: Good morning, Madame Chair and members of the Commission.

I think it's important to begin by asking exactly what we mean when we use the term "environmental justice" because this term is often used by different people and different groups to cover a range of different concepts and as difficult as this

territory is, if we can at least get straight on the definitions, I think it will be helpful.

Environmental justice is often used as a shorthand for race neutral or colorblind decision-making. In other words, environmental decisions should be made without regard to the race, color, or national origin of those who are affected.

Sometimes environmental justice is used to mean the ability of local residents to participate meaningfully in the decision-making processes either about industrial facilities or about other land uses that may affect those residents. For example, local residents should have the opportunity to review a draft permit before it's issued, to appear at a public hearing, et cetera.

Third, environmental justice is sometimes used to mean equal standards and equal enforcement. In other words, government officials charged with protecting public health and the environment should set equal standards to control pollution and should enforce them equally regardless of the demographics or the political clout of the communities that happen to be involved.

With all three of those definition of environmental justice, I believe there's general agreement on the goals and the means of achieving those goals. American industry strongly supports race neutral decision-making, expanded public participation, equal standards, and equal enforcement.

And as you will hear from other witnesses today, I

believe, we are making real progress in the field on many of these issues.

The controversy in my experience centers around yet a fourth definition of environmental justice. Some people use the term as a way of calling for the equitable distribution of environmental benefits and burdens throughout our society.

To put it a little differently, it is sometimes said that no group should have to shoulder a disproportionate share of environmental burdens. This definition is in many ways the most interesting and the most perplexing of the four. It implies or assumes that we have a satisfactory test for deciding when such a disparate impact exists and how to solve it.

The reality is that devising such a test poses many challenges, legal, policy, factual, and otherwise. To understand just how difficult this is, we need only look at EPA's ongoing struggle to apply the Title VI anti-discrimination mandate in the context of environmental permitting by the states.

Despite years of hard work and several rounds of draft guidance, we still do not know today which disparate impacts violate Title VI and which ones do not. This means that no one, not the state permitting agencies, not the permit applicants, and not the affected communities have the ability to tell which impacts are lawful and which ones are not.

This lack of certainty and predictability benefits no one.

It has become fashionable to blame EPA for moving too slowly under Title VI, but I would suggest that this is a bum rap.

Title VI provides no guidance whatsoever on disparate impacts in the context of environmental permitting by state agencies.

And so EPA had no choice but to invent event its own approach. This amounted to a social engineering project with very high stakes, and it should come as no surprise that the results to date have fallen short of expectations.

The real problem it seems to me is the assumption that Title VI mandates an equal distribution of all environmental burdens. That assumption was always debatable.

Last spring I believe the Supreme Court ended that debate with Alexander v. Sandoval. Sandoval held that Title VI, like the 14th amendment, prohibits intentional discrimination, not disparate impact.

In the aftermath of Sandoval, we need to rethink the role of Title VI in addressing this fourth definition of environmental justice, and as we do so, I would suggest that we keep in mind just how much common ground exists on many other aspects of environmental justice today.

We may not have solved all of the problems, but we have surely solved some of them, and we have narrowed the scope of disagreement as well.

Thank you.

CHAIRPERSON BERRY: All right. Thank you very much.

Mr. Reilly, do you have questions for the witnesses?

MR. REILLY: Yes, I do. Thank you very much, Madame Chair.

CHAIRPERSON BERRY: I'm sorry. Can we first have questions from our counsel?

COMMISSIONER BRACERAS: I'm sorry. I just have a point of order.

CHAIRPERSON BERRY: Yes.

COMMISSIONER BRACERAS: How is this going to proceed in terms of the questioning? Will Commissioners ask --

CHAIRPERSON BERRY: Well, if you would listen, Commissioner Braceras, I just said first counsel asks questions of the witness.

COMMISSIONER BRACERAS: I understand that. I'm saying --

CHAIRPERSON BERRY: Then after -- after --

COMMISSIONER BRACERAS: -- what procedure you will follow.

CHAIRPERSON BERRY: Could you answer her question, please, Vice Chair.

COMMISSIONER BRACERAS: It's not an unreasonable question. This is my first hearing.

CHAIRPERSON BERRY: Could you answer --

COMMISSIONER BRACERAS: I'm simply trying to ascertain --

CHAIRPERSON BERRY: -- her question.

COMMISSIONER BRACERAS: -- how we're going to do this.

CHAIRPERSON BERRY: Commissioner Braceras, you were given a briefing book by the Commissioners when you became a Commissioner. I am going to answer your question, but could you please read it? And if you have questions --

COMMISSIONER BRACERAS: I've read it.

CHAIRPERSON BERRY: -- about how the Commission proceeds, could you meet with the Staff Director and have a conversation about any questions that you have so that we don't get these interruptions all the time?

But as soon as counsel is finished, the questions will be passed to the Commissioners to ask any questions they wish.

COMMISSIONER BRACERAS: That's all I wanted to know.

CHAIRPERSON BERRY: Please proceed, Mr. Reilly.

MR. REILLY: Thank you, Madame Chair.

Good morning. I'll be asking each of you questions, but please feel free at any time to jump in if you have something to offer.

Let's begin with Dr. Bullard. Dr. Bullard, is there a relationship between the environmental justice movement and the civil rights movement?

DR. BULLARD: Yes, there is.

(Laughter.)

DR. BULLARD: I think it's very important to understand that when we talk about environmental protection and equal protection of environmental laws, these are basic rights that really gave birth to a movement.

And because of the fact that many of our environmental laws were not being enforced equally across the board, the environmental component actually was taken up by the civil rights movement.

So when we talk about the environmental justice movement, it's basically a convergence of two movements, environmentalism and civil rights.

MR. REILLY: Okay, and you mentioned race in your opening remarks, and there are some people who would argue that the issue is one more of economic circumstances. Could you specifically speak to race and its factor, how it's factored in?

DR. BULLARD: Well, race is a very important variable that oftentimes can be determined in housing patterns, residential patterns, land use, and also quality of life. Institutional racism exists in housing, education, employment, and so why should we not find it in the way that environmental laws and regulations are carried out?

When we talk about this whole question of environmental racism is real. It is not something that was cooked up by a sociologist. When we look at the location of older home

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and whom lives in housing that is -- well, lead based paint. Childhood lead poisoning, for example, is the number one environmental health threat to children. That's not my statement.

That's a statement of the former Secretary of Health and Human Services.

And if you look at who's poisoned, which children, these are children of color. It's not just a poverty thing. Race trumps income when it comes to childhood lead poisoning.

A middle income African American child is more likely to be lead poisoned than a low-income white child. Everything being equal, you would expect to find a pattern that would be consistent with income across.

And so when you talk about this whole question of race, race is still an important driver and determinant in terms of planning and zoning, in terms of who gets variances, how land use is determined.

And so when we talk about race, race is prevalent in the way that housing patterns develop and industrial facilities and how industrial land use occurs. And you can't be reduced solely to an economic and income variable. Income and race are very correlated, but they can be separated out by sophisticated multivariate analysis, and race oftentimes comes to the top.

MR. REILLY: Okay, and is that also true in, for example, citing, you know, waste facilities? Does race also, just as you said, come to the top?

DR. BULLARD: There have been numerous studies that have looked at the location of waste facilities, the location of toxic release inventory database facilities, the reporting facilities, the location of highways and freeways, the location of petrochemical plants and other Lulus, locally unwanted land uses.

This is not rocket science, understanding that oftentimes these things follow the path of least resistance, and those communities that don't have representation on boards, commissions, task forces, city councils, county commissions, et cetera. So when we talk about the interplay and the intersection and the nexus between race and class and income and resources and political clout, we don't find a whole lot of these Lulus in Beverly Hills and Buckhead and other very affluent areas.

And so when we talk about these issues, race is implicated in many cases, and I think it should not be denied. It's not an invisible variable.

MR. REILLY: Okay. Thank you, Dr. Bullard.

Ms. Harden.

MS. HARDEN: Yes.

MR. REILLY: You talked about the current failings in the EPA. What should the EPA be doing that it is not doing now? And I know that's a very large question, but --

MS. HARDEN: Well, a number of things. I think first is that it's got to replace its guidance. What we have for definition of a disparate -- let me back up and say this.

It was not until five years after initial Title VI complaints were filed that EPA decided in response to a threat of litigation by environmental justice organizations to develop guidance in the first place, and what we have is a very rushed and unruly guidance that sets out provisions that really tolerate and allow discrimination to exist.

EPA establishes a disparate impact analysis, for example that's, you know, needlessly technical and based on shifting criteria. And it's also conditioned on environmental standards that don't address discrimination.

To give you an example, in the Select Steel decision, EPA ruled that there was no Title VI civil rights violation in Flint Michigan where there are a number of industries in a predominantly people of color community because there was not a violation of the national ambient air quality standards.

These standards apply to very large geographic areas in setting levels for six types of pollutants. For example, Louisiana national ambient air quality standards are applied to the equivalent of five counties.

But if you're looking at what's particularly going on in one community and the way that community is being impacted, to say that there's no discrimination because of pollution is -- within the threshold for a very large area -- is in my mind not only unreasonable, but it really shows the strong opposition and influence industrial associations have in this whole civil rights

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scheme that EPA is now developing.

What I would suggest instead for a disparate impact model, and this was actually used by the Nuclear Regulatory Commission in a case that we brought about two or three years ago, is based on established civil rights law, and that's where your disparate impact is based on a comparison of impacts among different demographic groups.

What I should mention in the Select Steel decision is that there was no legal counsel. It was just a nun and a priest writing a two-page letter, and that was considered a Title VI complaint by EPA.

In another case, in Shintech, which I was heavily involved in and there was a Title VI case filed, EPA was moving in this direction of a demographic analysis and comparison and along the way tried to assert that white residents who live farther away from the industries were equally impacted as the 88% or so African Americans who live near seven or so very toxic hazardous industrial facilities.

They base that analysis on very flawed data. It was actually a sugar processing plant that one year, you know, since 1990 actually emitted 250 pounds of chlorine because they were washing down the facility, whereas with the African American folks, there was 17 million pounds of air pollution alone.

So what we're finding is that with EPA, the complexity and the difficulty really is not in the analysis. The

reason why the analysis is so technical and so unruly is because there's a real lack of will on the part of EPA to speak truth to power, and if EPA just looked at established civil rights law and just did a comparison of demographic variables -- let me just show you one example of what I'm talking about.

Could you hand me that map?

EPA has the research. In fact, this is an EPA map of a section of Louisiana, and this is a section of Louisiana that's known as Cancer Alley. As you can see these green spots along the map -- this is the Mississippi River -- the green sections are industries that release toxic pollution.

The dark areas are an indication of the population of people of color and as you see, the darkest color is a brown, kind of chocolate color, and that's where the population is anywhere from 68.41 to 100 percent African American.

The disparity is clear, and it's obvious. But what EPA is doing because of industrial pressure is creating these analytical models that are yet unfinished and really don't get at the end of the day, to the result that discrimination is occurring in these communities.

CHAIRPERSON BERRY: Without objection, we'll include the map in the record.

MR. REILLY: Okay. Thank you, Madame Chair.

Okay. Thank you.

I want to ask a question to Mr. Steinberg, and I

think that it will sort of loop together the heart of what has been discussed previously and, I think, maybe the heart of this issue in some ways and something that we want to try to shed light on, that the Commissioners will want to try to shed light on when they write a report, and this is the question.

Mr. Steinberg, in an amicus curiae brief that you submitted to the Court in South Camden Citizens in Action v. New Jersey Department of Environmental Protection, you argue that claims of disparate impact from environmental permitting strain judicial competence because they're highly subjective and essentially standard less.

MR. STEINBERG: That's correct.

MR. REILLY: Could you discuss that concern? I mean, you sort of alluded to it earlier.

MR. STEINBERG: Certainly.

MR. REILLY: And I think if you could both comment on your own views, as well as give reaction to Mr. Steinberg's (sic) comments.

MR. STEINBERG: It may be helpful to remember where disparate impact came from. It came from the Title VII employment discrimination context where the -- in an effort to address the difficulties of plaintiff's burden of proof, the Supreme Court said, "Let's compare the work force, the qualified labor pool, with the employer's work force because if race is not a factor in hiring decisions, you would expect that over time the racial make-

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up of the work force would come to match fairly closely the racial make-up of the pool of qualified job applicants, and over the years we've developed statistical tests for how much of a difference is significant. We have a notion of justification and defenses that apply, and that's become a fairly predictable system.

I think what we've tried to do in Title VI is to import those concepts into the arena of environmental permitting by state agencies, and I think it doesn't work very well.

To begin with, what should we compare to what? If the notion is that when you've got an above average minority population in a community, that to site a facility in that community is per se a disparate impact, then it seems to me we're saying that entire areas should not be available for new development, new construction, and new facilities of any kind.

I don't really think anyone is proposing that test, and yet if we're simply comparing the percentage of a minority group in the population to some national average or statewide average, we end up really with a strange kind of reverse redlining that I don't think is what anyone is seriously championing here.

So the question is: what do we compare to what? Is it realistic -- it was said earlier that we don't have a lot of industrial facilities in Beverly Hills. Is it really realistic to think that without race entering into the decision making process industrial facilities would be uniformly distributed everywhere in

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the United States?

I think the answer is no. I think we know that because of power needs, raw material needs, transportation needs, industrial facilities tend to be located in certain areas and not in others, and those factors which go into the site selection process by the facility are largely independent of demographic considerations.

You simply can't build a factory where you have no transportation and no power, regardless of the demographic make-up in that area.

So I think when we talk about disparities, we don't have a paradigm like comparing the work force to the applicant pool, and so we don't really know what we're comparing to what. And so when we find a high percentage of minority population in a given area, we don't really know what it means. We don't know if that should give rise to an inference that impermissible factors are being considered.

And even if it does, who's doing the impermissible considering? It's not the state permitting agencies because they don't have site selection authority anyway. The sites are selected by the applicants, and Title VI applies to the federal funding recipients, the state environmental permitting agencies.

They don't have the authority to say to a permit applicant, "We'll issue the permit you requested, but only if you move the facility from your proposed location to this other

place."

And then when it gets to the federal court level, which is to get to your question directly, federal judges are now being asked to second guess these decisions, really overriding local zoning determinations, overriding state regulatory determinations, and I would say that is a standard less, highly subjective process.

MS. HARDEN: Can I just jump in?

MR. REILLY: Ms. Harden.

MS. HARDEN: I think it's way over broad to say that what we're ultimately talking about, as Mr. Steinberg put it, is redlining facilities of any kind from communities of color. These Title VI complaints that are with EPA are not because there's a day care center in a person's community or an ice cream parlor. These are facilities that damage health and contribute to the declining quality of life, period, and that's what people are complaining about.

And the site selection is clearly within the purview of state environmental agencies. In a number of states that I have checked, and I am willing to look for the entire 50 states, there is a decision that's part of each permit that looks at alternative sites. So states are very much involved in making sure that the site selected is one that creates the least amount of -- or ought to -- damage to the environment and human health.

In fact, in the Nuclear Regulatory Commission titled

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In the Matter of Louisiana Energy Services, that commission was a licensing board for a uranium enrichment facility. They made a site selection determination on this uranium enrichment facility known as Louisiana Energy Services.

And let me tell you this. When Louisiana Energy Services was making its decision of where to locate, they wound up with a small road connecting two historical African American communities in north Louisiana, their reasons were not of water or energy or raw materials. Their reasons for selecting this community and rejecting the others were because the other communities, which were predominantly white, have, quote, in their own documents a nice lake and a nice church.

And in these two communities of Forest Grove and Center springs, each one had its own church, and there's Washington Lake, but it was, quote, unquote, nice for this facility.

What we also find is that in the case of Shintech, the Vice President tried to defend their site selection, which is next to an elementary school and many homes, all lived in by African American families, by saying, "When we chose this site, we didn't see the people," which if anyone has read Ralph Ellis' The Invisible Man is a sign of racism right there.

So what we know to be the case is that if facilities had to go into communities that were not disenfranchised as they are in people of color communities, we would see very different

facilities operating in those communities, and there are quite enough examples in the United States, as well as in Europe, to show the very different mechanisms that go on in refineries or other facilities that are not within predominantly people of color communities, where they are safer and they are cleaner.

And those kinds of investment decisions, those kinds of choices are what our industries are ultimately not ready to do, and that's what's driving a lot of EPA's regulatory policies, is trying to relax pollution controls.

MR. REILLY: That you.

Dr. Bullard.

DR. BULLARD: Well, first of all, redlining is real.

We have three decades of studies showing insurance in banking redlining. This other redlining that Mr. Steinberg is talking about I'm not familiar with.

When we talk about -- let's talk about landfills and incinerators. Everybody produces garbage, but everybody doesn't live where the garbage is disposed of, and that's a function of something. It's not, well, we need to have good raw material nearby the landfill or the garbage dump.

In Houston, Texas, I did a study in 1979 that documented that Houston basically had two forms of waste disposal, land filling and incineration, and we documented that 100 percent of all the city owned landfills were located in predominantly black neighborhoods in Houston. When I say, "predominantly

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black," that's like me saying my family is predominantly black. They were all black neighborhoods.

However, during the period of time from the '20s up until 1978, the city African American community was only like 25 percent. The private disposal companies in Houston during that same period, three fourths of the landfills were located in predominantly black neighborhoods.

Now, this is a city that does not have zoning, that's never had zoning. So these are decisions that were made by individuals who were on city council and these are decisions made -- and during the time, there were on African Americans on the city council. These are conscious decisions as to where you put a landfill.

It's not based on how close the garbage is to its source. If that were the case, then you would have an extension on the landfills located where white people are.

So when we talk about where facilities are located and trying to use a market economic argument, oftentimes these things don't make economic sense for the simple reason that the costs that are borne are oftentimes borne by those who are on the lower end of the socioeconomic spectrum and this, quote, path of least resistance.

And if there are people who are not on boards and task forces, et cetera, the largest hazardous waste facility in the country is located in the Alabama black belt, and it was

located at a time when some of the counties was 75 percent African American, but there were no African Americans on the county commission.

So when you talk about power and when you talk about decision and you talk about siting decisions, these are oftentimes things that are not race neutral.

CHAIRPERSON BERRY: Okay.

MR. REILLY: Thank you, Dr. Bullard.

Thank you, Madame Chair.

CHAIRPERSON BERRY: How many Commissioners have questions? One, two, three, four, five.

Commissioner Meeks.

COMMISSIONER MEEKS: I would like, I think, to Ms. Harden.

On the issues, and this wasn't talked about directly here, but we have some information. On the issues of risk assessment and comparative risks and the cost-benefit analysis regarding environmental justice issues, could you provide us with some information on those issues?

MS. HARDEN: Risk assessment is shown to be a very poor tool in terms of protecting health or the environment, and it kind of falls back to the example that Bob gave. Who's making those decisions, whether it's a zoning decision or it's risk assessment?

So that what we're finding with risk assessment is

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that burdening communities of color with, you know, the various other types of pollution or other industrial hazards is fine. That's considered an acceptable risk under the various kinds of calculations that the science advisory boards to the EPA come up with.

What I propose instead is going with a precautionary principle, which is something part of an international declaration that this United States is part of that replaces the whole risk assessment scheme, which basically says you can accept this much risk because I'm a scientist and I can vouch for that, but, again, not live with those consequences.

It replaces that with looking at ways avoid the threat to human health, harm to the environment altogether. Do we really need another landfill, for example? Does this community need another landfill, for example?

How can we create the offsets at the front end so that we're not living with the consequences later on down the road? And that's something that, you know, internationally has been accepted and validated and adopted, and this country is part of that, but it hasn't been able to trickle down to EPA at this point.

CHAIRPERSON BERRY: Does that answer your question?

COMMISSIONER MEEKS: Well, it's helpful.

CHAIRPERSON BERRY: Are you trying to answer the same thing?

DR. BULLARD: Yeah, I want to chime in because when we look at a lot of these risk assessments and risk analysis that are done for a specific facility or a specific proposal, oftentimes they do not take into account the cumulative impacts and the cumulative risks when you add up all the things that are already there in a specific area.

It really does not take into account vulnerable populations, such as children, and people of color tend to have more children. People of color tend to have more lower incomes.

And so when you talk about vulnerability in terms of diet, in terms of children, and in terms of not having access to health care, et cetera, and when you use the norm, you know, use the norm as white male, five foot, ten, 160 pounds as the impact, you know, to compare, I mean, it really doesn't measure the total impact on a population that is already over burdened, that really don't have access to adequate health care, that already has some type of diminished quality of life for whatever reason.

CHAIRPERSON BERRY: Okay. Commissioner Thernstrom and then Commissioner Wilson and then Commissioner Braceras and Edley.

Yes.

COMMISSIONER THERNSTROM: Well, I have a question primarily to Dr. Bullard and Mr. Steinberg, though basically all through of you can respond.

I'd like to tell a very little story that I promise

does contain an important question. An acquaintance of mine grew up only two blocks from Republic Steel, and huge smoke stacks spewed clouds of smoke 24 hours a day over the neighborhood. His mother had to wash the windows continuously three times a day. His clothes smelled like the sulfurous smoke that hung over the neighborhood.

And my acquaintance is black. He lived in a largely black and Hispanic neighborhood, and most of the residents of the neighborhood did work in the steel mill or in the nearby foundries and stamping plants.

In the early days, like most of the neighbors, his family had no car, and he put in long hours of work and those two conditions together made living next to the place of work imperative.

The mills paid more than almost any other job someone without a college diploma could get, and the good wages that his father earned eventually allowed the family to buy a larger home and form the foundation for sending my acquaintance to college, and he was the first member in his family to do so, and it also provided medical benefits, and their family considered themselves extremely fortunate to be living next to these polluting mills.

Now, the mills closed recently, and the result, thousands of people will have a hard time sending kids to college.

They'll lose medical coverage. The press coverage of the closure made no mention of the environmental effects of idle smokestacks,

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but it did contain copious accounts of the economic devastation to steelworkers' families.

Well, this is the personal story of Commissioner Peter Kircenow, and it's obviously a story of a tradeoff. With pollution came good wages, and with good wages came social mobility, and it's not his story alone obviously. It's got to be familiar to all of you.

I'd like to hear your response. Would we want to prohibit today the equivalent of Republic Steel in areas that need jobs? Because the question is on the table all the time.

DR. BULLARD: Well, I think the answer to that is -- the example that you gave is not an example -- it's probably not an isolated example, but it is not oftentimes the majority of the examples that are occurring today, and we've documented that.

In many of the industries that are located fence lines with the communities do not employ the communities that are fence lined. Oftentimes -- and you can tell that by looking at the automobile plates, and you can look at the commuters who drive in and drive out and look at the poverty rates and the unemployment rates among the residents in those contiguous neighborhoods for those plants.

I think what the environmental justice paradigm says is that if a person or family or individual chooses to live next to a nuclear power plant, it's their choice, but if, in fact, they want to trade off their health for that, it's their choice.

But it's like a person sitting in a room with somebody else smoking. If they're blowing smoke in your face and you can't leave the room and the room is locked, that's not a choice.

Racism and housing discrimination and residential segregation forces many people of color to have to live next door to facilities. Racism has made it very difficult for many communities and many residents to exit environmentally threatening conditions.

And so what I'm saying is that what the environmental justice movement is not trying to deny anyone a job. As a matter of fact, unemployment is highest among people of color, and so we need jobs. We want jobs.

But we do not want to have to trade off our health just for a job. And, again, I think we can have both. We can have a clean environment, a livable wage, and at the same time, we can have income and resources to send our kids to college.

Children should not have to play on a playground that is across the street from a petrochemical plant just because that's the only playground that's available.

So when we talk about we want our kids to be outside and we want them to exercise, but should they have to trade off the fact to breathe chemicals just to get exercise? I mean, there are issues that are there, and so I think health trumps the economics.

CHAIRPERSON BERRY: What we do is, for those who have forgotten, is everybody gets to ask a question, and then if you have another one we go around again. That's so that people don't monopolize the whole thing.

Commissioner Wilson.

COMMISSIONER THERNSTROM: Oh, but wait a minute. I did ask Mr. Steinberg as well.

CHAIRPERSON BERRY: The same question?

COMMISSIONER THERNSTROM: Yeah.

CHAIRPERSON BERRY: Okay. Go ahead.

MR. STEINBERG: I guess I would answer it two ways, the historical and looking forward. Historically I think we sometimes assume that when we have low-income residences, chock a block (phonetic) with big factories, that discrimination or racism is how that happened, is why that happened.

And it's interesting to take a look sometimes at the social history that led up to these situations. In the Chester situation, for example, Chester is a waterfront community that is overwhelmingly black and low income. It's zoned heavy industry, M-1. It was zoned that way before the Second World War at a time when it was 100 percent white.

What happened is the zoning stayed the same. The whites fled the city in a very familiar pattern. Blacks moved in in search of more affordable housing.

So one question is how did we get into some of these

proximity of residence to factory situations.

The second point though is moving forward, and you asked do we want to prohibit this sort of thing. And I would say not only do we not want to prohibit it. We have on the books, and indeed, the President is signing today a new law designed to encourage, to attract, to induce jobs, businesses and industry into communities that are economically blighted, that are in need of redevelopment. Often environmental clean up is the first step on the path to redevelopment, but federal and state government around the country are pushing to bring jobs to these communities.

And so to say that we're going to shut the door because of concerns about distributional issues I think is really totally contrary to that policy.

CHAIRPERSON BERRY: Commissioner Wilson, who is responsible, by the way, for suggesting these hearings, and it's only her persistence and tenacity that brings us here today.

You had a question, please, Commissioner Wilson?

COMMISSIONER WILSON: Actually, thank you, Madame Chair.

I was going to -- first of all, I would like to thank you all for coming, to say how happy I am that we are having this hearing. I think a lot of very important issues are being raised and will be raised during the course of the day.

And I was going to monopolize the question period with two questions, but since you've reined me in, I will for the

moment limit it to one, which each of you may answer, but I'm going to ask the question to Ms. Harden.

And I had many other questions for you, but finally my question is: what kind of specific recommendations would you like to see the Commission make in its report, a report, just to remind you, that does go to the President and to the Congress, if you had to come up with five specific recommendations?

MS. HARDEN: I think I have about five recommendations in this document, it so happens.

(Laughter.)

MS. HARDEN: I think at the outset there should be a recommendation for complete assurance that EPA is implementing the legal analysis prepared by the Department of Justice in 1994 that shows the agency how in the Clean Air Act, the Clean Water Act, RCRA, CERCLA, many other environmental statutes. The agency its discretionary mandatory powers to root out the basically disproportionate pollution burdens that now exist. So that's one.

Second, I think I would advise the Commission to recommend the replacing of EPA's Title VI guidance and replacing it with, whether it's agency guidance or regulations, provisions that address not only permitting, but also enforcement and other environmental protection arenas.

And there's a real clear, kind of step-by-step correlation between the guidance and established civil rights law. There should be within the guidance a fair process, which is now

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currently lacking, for a complainant to be involved in EPA's investigations, which was not the case in Select Steel, as well as an appeals process for reconsideration of the agency's decision.

I think also that EPA should also be given the difficult, but necessary work of providing remedies to complainants who would have prevailed in their Title VI complaints if they were not ignored by the agency. I mean, we can't leave that unaddressed and pretend as though, okay, we can start all over afresh when you've got 60 complaints that the agency has ignored, and these industries have moved in and at this point, you know, some of them date back to 1993 and are probably expanding as we speak.

And last, I would suggest that, kind of going back to the first point, there be a real concerted effort on the part of EPA to look at its rulemaking and policies that relax pollution controls, and seeing those as contrary to its obligation under Title VI because whatever EPA mandates in its rulemaking or policies will be what the states implement as part of their various permitting or enforcement programs.

And if those new policies or rulemakings actually make it easier for facilities to increase their pollution levels, that's a clear contradiction with obligation under Title VI of the Civil Rights Act, as well as the President's executive order.

CHAIRPERSON BERRY: Okay. Do others have recommendations? The same question beyond what you've heard that

you'd like to make at this time.

DR. BULLARD: I think there should be a strong effort and initiative to eliminated childhood lead poisoning, which is a preventable disease. I think it is scandalous that we allow lead that is in older homes now to poison children who are innocent. I think this is scandalous, and I think it is shameless, and I think it's criminal.

This is not industry. This is basically housing, a basic necessity.

CHAIRPERSON BERRY: Okay. Commissioner Braceras.

COMMISSIONER BRACERAS: Thank you.

My question is for Professor Bullard. You stated in your opening remarks that the disparities factor in pollution is race, that that one factor is the factor that is most disparities in terms of where communities that are polluters -- is that a correct --

DR. BULLARD: Race is a major factor.

COMMISSIONER BRACERAS: Okay.

DR. BULLARD: It's a major factor. It's not the only factor. There are lots of factors, but race is a predominant factor in determining --

COMMISSIONER BRACERAS: Predominant factor.

DR. BULLARD: Yes.

COMMISSIONER BRACERAS: Okay. I'm wondering whether you'd be willing to share some of your data that led you to that

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conclusion with the Commission because I'd be very interested in seeing those studies.

But my question for you is: based on that data, in your professional opinion, what is the reasons why race remains a predominant factor? Is it because our law enforcement officials are not enforcing environmental laws in those communities? Is it because people are intentionally siting facilities in minority communities? Is it a combination?

Are you able to isolate in your research the reason why race comes up as a predominant factor?

DR. BULLARD: Okay. The first answer to the first question, I would be glad to share with you the data.

CHAIRPERSON BERRY: Please submit it.

DR. BULLARD: Dumping in Dixie, Race Based Environmental Quality, Confronting Environmental Races, these are books that I've written.

COMMISSIONER EDLEY: They are books and articles he's written for 20 years. I mean he's got a voluminous --

COMMISSIONER BRACERAS: No, I understand that. I was wondering --

CHAIRPERSON BERRY: Edley, you were not recognized.

COMMISSIONER EDLEY: Well, you looked at me and asked. I'm sorry.

COMMISSIONER BRACERAS: -- made a gesture, but my question is for purposes of this hearing, I know we can all go off

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and do independent research and read some of your works and others, but can you submit for the record the data that has led you to these conclusions?

COMMISSIONER THERNSTROM: That disaggregates race from social class.

CHAIRPERSON BERRY: Commissioner Thernstrom, you were not recognized either.

COMMISSIONER THERNSTROM: I'm just clarifying. Sorry.

COMMISSIONER BRACERAS: I am looking for the data upon which you base your conclusion, and I'm looking for it to be included as part of the public record here so that Commissioners can access it easily, but also so that it is available to the public.

DR. BULLARD: Yes.

CHAIRPERSON BERRY: Without objection, so ordered. It does not mean putting your entire series of books in the record.

(Laughter.)

CHAIRPERSON BERRY: Okay. Proceed.

COMMISSIONER BRACERAS: And so the question is: to what do you attribute --

CHAIRPERSON BERRY: Which means she got two questions, but that's all right. Go ahead.

COMMISSIONER BRACERAS: Oh, well, it was a request.

DR. BULLARD: Let me just try to answer.

COMMISSIONER BRACERAS: To what do you attribute this issue that you've pinpointed and that you describe as, you know, race continually showing up in your data as a predominant?

I'm wondering if you're able to pinpoint a reason for that.

DR. BULLARD: Well, I'm a sociologist, and without going through and bringing all the data, the fact that we are not a color blind society; that institutional racism permeates public policy making at every level.

As I said before, if we take the example of childhood lead poisoning and look at that example and disaggregate that and show it that at every income level African American children who live in cities are more likely to be lead poisoned, why? Because middle income, low income, and no income African Americans live in urban areas, live in older housing, and are more likely to be lead poisoned.

Now, why do African Americans live in certain areas?

Well, there's a whole body of data. I wrote a book called Residential Apartheid, the American Legacy, UCLA, 1994, and it goes through the fact of redlining, housing discrimination, and other types of institutional barriers to free choice.

When you combine housing, residential patterns, land use, and you add all of those things up, you come up with this magic bullet of racism, underlined. It's just that simple.

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CHAIRPERSON BERRY: Okay. Thank you very much.

Commissioner Edley has not had a question.

COMMISSIONER EDLEY: I'm trying to wrestle with the problem in siting decisions of case-by-case permitting decisions versus the aggregate or cumulative impacts on communities and the way in which one would try and demonstrate disparate impact.

I must say I didn't find Mr. Steinberg's question of how would you prove it particularly persuasive because, as I say, it existed in Title VII. An individual employment decision taken on its own doesn't become a basis for establishing a disparate impact case.

There's certainly a need to look in the aggregate about what's happened. So if we start with, if you will, the prima facie case that is suggested by these maps and by other sorts of data, including the multivariate analyses that Professor Bullard is talking about, I got it.

So I just wanted to say for purposes of the conversation or of my question, let's just stipulate that we've got a prima facie case. Let's just stipulate that there is under the current Title VI regs. or under a Title VI as reformed by Congress in the wake of Sandoval, whatever. Let's just assume we've got it.

What's the solution? What's the remedy that you would recommend for, let's say, state LULU permitting decisions, like the processing the permit applications one by one and yet if

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in good conscience they want to be thinking about the environmental justice impact, is the solution to simply say that a factor in the permitting decision should be some aggregate judgment about community impacts and vulnerable subpopulations?

Do you see? I'm trying to get at what is, in a remedial sense, what analytical change would you make in the way in which individual permitting decisions are made in order to prevent this accumulation of disparate impacts?

MS. HARDEN: I've kind of touched on it earlier. I think that is something to be worked on. But what I can offer at this point because -- and part of the reason why I'm saying it's something to be worked on is because a great deal of my job has been in battling really moronic analyses that just move you far off onto the moon and away from what is obvious - a focus on a clear pattern of discrimination occurring in communities.

And I think it would be similar to, for example, gender discrimination cases where you look for discriminatory effects and say no. That's what communities are saying. Enough is enough, and they're basing that on being burdened and saturated with millions of pounds of existing pollution levels and then seeing the gates open for more pollution.

I think what EPA has to do is -- and the states themselves to avoid Title VI complaints -- is to look at and pay particularly close attention to the proximity of the industry to communities that are already burdened with other industrial

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facilities or contaminated sites or other environmental vulnerabilities or health problems and make the decision that a permit cannot be issued.

You know, that's the bottom line for me, and what we see is a real hesitance and a reluctance on the part of our agencies to move in that direction because it really defies the status quo and the expectation of, you know, very well monied and well powered industrial associations who really call the shots and get a permit that they then, in many cases, do not comply with. This is what occurs in communities that I'm familiar with.

I really think that the bottom line is you've got to do the comparable. You've got to look at other demographic areas.

You've got to make the comparison, and if there is disparity, you've got to say no.

CHAIRPERSON BERRY: Okay. Mr. Steinberg, did you want to respond to that?

MR. STEINBERG: May I respond briefly with your assumption of a prima facie case and now we're at the remedy stage?

I think there are extraordinary analytical difficulties at the remedy stage, which I would say, underscore some of the problems on the front end. If we deny or rescind the permit to the individual facility that is the focus of the complaint, we surely haven't solved the problem if it's a cumulative impact problem.

We've also been, I would suggest, terribly unfair to the facility that happened to be the last permit in line, but let's not dwell there. If we look at the cumulative situation, we've got a mix of grandfathered sources, unregulated sources, and permitted sources. We've got industrial, municipal. We've got all kinds of facilities contributing to the problem, many of them outside the jurisdiction of the permitting agency, and yet we're focusing on the permitting agency as the entity that's allegedly engaging in the discrimination that we're talking about when a large part of the problem is both legally and factually outside their control.

I don't think it's going to be easy to fashion a remedy because I think we're looking at the wrong part of the picture.

CHAIRPERSON BERRY: Yes, you can add briefly, but we're going to have to move on, and even the Vice Chair and I are going to not ask questions so that we can move on, but I'll let you go ahead and comment.

VICE CHAIRPERSON REYNOSO: We may have some questions in writing.

CHAIRPERSON BERRY: Yes, in writing, but we won't take up the time here. But go ahead briefly.

DR. BULLARD: Before we leave, I would like to emphasize the fact that this is not just an EPA issue. The Department of Transportation, for example, there are many

environmental justice issues involving transportation, transit systems where you have one system, but it treats minority communities very differently.

You know, it runs the light rail lines, underground tunnel when it goes through the white community, and when it comes to the black community it's at grade, and it sound barriers along freeways that are built, and the same freeway, when it goes through East L.A. it's at grade, and when it goes through South Pasadena, it goes underground, and then comes back up when it comes to Pasadena.

I mean, those kind of issues I think must be dealt with. It's not an EPA issue. It's an issue in terms of equity, and it touches a lot of the federal agencies, and we need to understand that.

CHAIRPERSON BERRY: Okay. Were you trying to say you

--

MS. HARDEN: The Housing Authority and Health and Human Services as well are involved, in this kind of discriminatory problem that exists in communities.

I think cumulative impact analysis should be used as a way to prevent problems. It should not be used as a defense to throw up your arms and say, "This problem is way to difficult for us. So let's just let the permit go through."

You've got to start somewhere.

CHAIRPERSON BERRY: Okay. Thank you very much.

VICE CHAIRPERSON REYNOSO: Thank you.

CHAIRPERSON BERRY: I want to thank the panel for coming. We have some sign-out procedures for witnesses, and a member of our staff will assist you.

And we're going to quickly call the next panel because despite my best efforts we are running behind. I don't know what I did wrong, but I'll try to do better.

Panel Two: Background and Health Experts

MR. REILLY: Thank you, Madame Chair.

Would Dr. Christopher Foreman, Mr. Michael Gerrard, John Groopman and Professor H. Patricia Hayes please come forward and remain standing to be sworn?

CHAIRPERSON BERRY: Our second panel will bring another perspective to the table on the environmental justice movement as a social justice movement. After that we will hear on specific legal and health care issues implicated by the movement.

The panel will provide information on the requirements of President Clinton's Executive Order 12898 and EPA's environmental justice guidance under Title VI. We will also hear about the ramifications of the Supreme Court decision in Sandoval and the correlation between elevated pollution and contamination levels and adverse health effects.

Mr. Reilly, please call the next witnesses.

MR. REILLY: They're here and seated.

CHAIRPERSON BERRY: Oh, you called them already.

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MR. REILLY: Sorry.

CHAIRPERSON BERRY: Thank you very much.

Let me say who they are. Dr. Christopher Foreman heads the Social Policy Program at the University of Maryland. College Park is it? And teaches courses on social policy and political institutions and leadership. He is a political science Ph.D. from Harvard, and he's written several books, including Signals from the Hill, Congressional Oversight and the Challenges of Social Regulation.

Michael Gerrard is a partner in the New York office of Arnold & Porter, where he's involved in environmental litigation, project development, regulatory compliance, and transactional services, whatever that is.

He currently serves as the editor of a monthly newsletter, "Environmental Law in New York," and is the author of the environmental law column for the New York Law Journal.

He has a book called Environmental Law Practice Guide and Brownfields Law and Practice, the Clean up and Redevelopment of Contaminated Land.

He teaches environmental law as an adjunct at Columbia and Yale, Columbia Law and Yale Forestry.

Dr. John Groopman is educated at Elmira and MIT. He is on the faculty at Johns Hopkins University School of Hygiene and Public Health. His research interests involve dose and effect from environmental carcinogens; also some work about children's

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exposure to environmental carcinogens in Baltimore City.

He's the Director of the National Institute of Environmental Health Sciences, which is located on Johns Hopkins University's campus.

We also have with us, and I heard you mispronouncing her name. So how is it pronounced?

MR. REILLY: Hynes.

MS. HYNES: Hynes.

CHAIRPERSON BERRY: Hynes, Professor Patricia Hynes; is that right?

MS. HYNES: Yes, that's right.

CHAIRPERSON BERRY: She's an environmental engineer, has worked on hazardous waste programs at EPA and as Director of Environmental Management at the Massachusetts Port Authority, MASSPORT; is working now on an environmental health initiative within BU's, Boston University's, School of Public Health, and she's the author of The Recurring Silent Spring, Taking Population out of the Equation and A Patch of Eden, America's Inner City Garden.

You'll have to stand up so that I can swear you in, which I'm supposed to do even though you sat down already. So could you please stand and raise your right hands?

(Whereupon, the witnesses were duly sworn.)

CHAIRPERSON BERRY: Thank you very much. Please be seated.

Mr. Reilly -- oh, I see.

You will each have five minutes to make an opening statement, and there's a little clock there that starts off with five minutes, and we ask you to please abide by the five-minute rule. After that there will be questions as you've heard if you've been here. So, therefore, you'll get to say other stuff if you want to.

We begin with Dr. Foreman. Please, Dr. Foreman.

DR. FOREMAN: Thank you very much.

Good morning. You've ask that I be brief, and I will be. The essence of my perspective is that environmental justice has succeeded remarkably well as a rhetorical platform, but unavoidably fared much less well as a practical policy orientation.

Now, there are a number of reasons for that, and I want to highlight what I take to be the most significant among those.

However, let me first observe that environmental justice activists and the movement have beyond all doubt accomplished two extremely impressive things.

First, they have effectively injected equity concerns deeply into our national environmental policy discourse. They have clearly triumphed at what political scientists call agenda setting: dictating that some set of concerns will receive attention by politicians, academics, government agencies, and the

media.

Mobilized neighborhoods and their representatives now have the ear of public health and environmental officials. This very hearing is, of course, evidence of this.

Second, environmental justice activism has scored clear victories in forcing the delay, the reconsideration, and sometimes the complete abandonment of proposed facilities. At the very least siting sponsors find that the old ways of doing business are no longer viable because challenging questions are being posed by participants who were not at the table when our landmark environmental laws were being crafted a generation or more ago.

The Environmental Protection Agency has said both during the previous administration and in the current one that the term "environmental justice" means at least two things: fairness and inclusion. That was Administrator Carol Browner's formulation, more or less, and the environmental justice memorandum signed by Administrator Whitman on August 9th appears to appropriate it intact.

Let us put aside for the moment but only for the moment the difficult problem of what fairness and inclusiveness require in a practical sense. I know we'll come back to it.

I would suggest both to the Commission and to the EPA that environmental justice policymaking requires yet a third thing, which is to say honesty. As we strive for participatory

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and accessible processes and just decisions, there are some things to keep firmly in mind.

First, environmental justice continues to elude precise definition, which is not surprising, given that the purposes for which it was devised were political and not analytic.

This rubric binds a diverse grassroots movement together, effectively commands attention from the establishment, and announces to the general public that what is being sought is also deserved.

Most of what are regarded as local environmental justice issues are, in another nomenclature, "not in my back yard" or NIMBY disputes in which some version of racial or ethnic politics has arisen.

Secondly, the largest grievances being raised under the environmental justice rubric cannot effectively be addressed by any realistic regime of environmental policy. If one wants to preserve and enhance health in low income and minority communities, and if by health one means a reduction in disease, disability, and premature death, then environmental justice is an exceedingly weak vehicle for reasons I can elaborate on if you like and which I suspect others will.

The EPA and public health authorities ought to be hammering home this essential point far more aggressively than they have so far.

I'd make a similar observation regarding the economic

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aspirations that underlie environmental justice. People with lots of money generally enjoy more choices and louder political voices than poor people. We should try harder than we do to address the most egregious imbalances and risks that result, but we're not going to abolish a market economy or private property. We can neither banish all pollution or equalize its incidence.

We will, moreover, continue to have limited resources with which to confront our vast menu of environmental problems.

Now, these essential facts of environmental life imply that unequal proximity to pollution will endure, and that we must carefully choose when and where to intervene.

This, in turn, means that we must have some scheme of environmental justice priorities, and these, I must tell you, will have to come from policy makers and not the advocacy community because the environmental justice movement, like most diverse coalitions, is resolutely unable to generate priorities.

In the end, I think environmental enforcement can yield real benefits for low income communities and communities of color. I believe it can do this by addressing collective quality of life challenges, guarding not so much against cancer and hypothetical endocrine disruptors, and so on, but instead reducing more prosaic, intangible threats.

These include filth and the risk of infectious disease that come with it; odors; dust; noise; congestion; the absence of recreational and park facilities.

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On the health front I would identify three reasonable, though by no means easily addressed, environmental priorities for communities of color: asthma, childhood lead exposure, as Professor Bullard did in the previous panel, and the continuing threat of acute chemical poisoning faced regularly by some of our nation's poorest citizens, the largely Latino farm worker population.

Communities of color confront many additional disparities in health status, but I regret to say, although I perhaps remain to be instructed to the contrary in the next hour, the leverage over most of those offered by environmental policy alone, even when aggressively sensitized to considerations of environmental justice, is minimal or nonexistent or so it appears to me.

Thank you for the opportunity to share my thoughts with you today.

CHAIRPERSON BERRY: Thank you very much, Dr. Foreman. There will be questions of course.

Mr. Gerrard, please.

MR. GERRARD: Thank you, Madame Chair.

I sent up in advance ten copies of my book The Law of Environmental Justice, and so they are available to anyone who likes them.

CHAIRPERSON BERRY: Okay.

MR. GERRARD: I would like to address the legal

authorities that are available for prosecution of environmental justice cases. There are four of them, four primary legal authorities.

The first is the equal protection clause of the United States Constitution.

The second is Title VI of the Civil Rights Act. However, in order to make out a case under either of those, it's necessary to prove discriminatory intent, and no one has ever been able to prove discriminatory intent in an environmental justice case.

The third is the regulations issued under Title VI by EPA and a number of the other federal agencies that do not require discriminatory intent and where discriminatory impact is sufficient.

For many years, the major issue in environmental justice law was whether there's a private right of action under those regulations. As you've heard, the U.S. Supreme Court decided in the negative in the case of Alexander v. Sandoval last April, a five to four decision, saying there was no private right of action.

It left open the door for another way for a private right of action under Section 1983, but that door was shut in December by the Third Circuit's decision in South Camden Citizens in Action v. New Jersey Department of Environmental Protection.

So that's no longer available.

The fourth is President Clinton's executive order of 1994, Executive Order 12898 on environmental justice. It applies to federal agencies. It applies to income as well as race, but there is explicitly no private right of action under the executive order.

So federal regulation is all important. EPA's guidelines under Title 6 as you have heard are still -- the final version of them is still being awaited. The EPA has not said what it will do about it.

In August of 2001 Administrator Whitman of EPA came out with a statement strongly supporting environmental justice efforts and saying that EPA was going to be beefing up its effort to respond to civil rights complaints.

Very few of the many civil rights complaints that have been filed with EPA over the years have ever been responded to, and EPA has said it's now going to be addressing that.

For now citizens are left with three kinds of legal recourse. The first is the complaint processes that are theoretically available to them under EPA and other federal agencies, but as I've said, those have yielded very few decisions.

Second is causes of action under the environmental laws, and those often are effective in stopping projects. However, they tend to be quite off point from the real environmental justice concerns that communities have. There are strong laws on endangered species protections and wetlands and so

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forth. And so in fighting a project, it's usually necessary for a community to find one of those hooks rather than a hook based on discriminatory impact.

The third is the use of state laws, but again, the state laws do not have substantive environmental justice requirements either. There are many procedural protections and many of these wetlands and other kinds of strictly environmental provisions, but not substantive requirements.

There are a few things that I'd like to point out partly based on the discussions that I heard this morning about siting. Environmental justice concerns very often focus on the siting of new facilities, but by the time you get to a debate about the siting of a facility, you already have gotten past the question of whether you need the facility.

And so the question becomes: where should we put this hazardous waste landfill, not does society need more hazardous waste landfills.

If one were to back up the process and think about how much hazardous waste do we really need to generate and what is the best way of dealing with it, before you get to the question of where do you put it or how much electricity do we really need, how much solid waste do we need to generate, that would be a more productive method, I think, of dealing with some of these issues earlier up in the chain.

Also, there's a great deal of focus on trying to stop

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new facilities, but for the most part the new facilities that are being built are a lot cleaner than the older facilities that they may replace, older facilities that enjoy grandfather protection under existing environmental laws.

So one perverse impact of blocking new facilities is often to perpetuate the existence of these older, dirtier facilities.

The final issue that I'd just like to mention is that EPA precedent says that when a facility is proposed that is subject to health standards and it would meet those health standards, there is no disparate impact because the health standards have been satisfied. There's nothing to worry about.

That begs the question of whether the health standards are adequate, whether the cumulative impacts have been fully addressed, and that's something that the following witnesses may want to address.

Thank you.

VICE CHAIRPERSON REYNOSO: Thank you very much.

Dr. Groopman.

DR. GROOPMAN: Thank you.

I'd like to start off by providing a little bit of a historical perspective that was perhaps touched upon a little earlier today in that for over 100 years the environment and environmental issues were part of Departments of Public Health, and so the linkages between public health and the environment was

very tight.

But then starting about 30 years ago with the creation of EPA and a creation of a variety of legislative acts and the like, the health community and the environment community have really been brought apart, and I think this is an issue that leads to some of the discussion that needs to be touched upon in terms of the dialogue of how we look at health outcomes with respect to environmental concerns.

Now, we are faced with the reality that there is a steadily improving overall health status in this nation, but residents in cities have a disproportionate burden of acute and chronic disease outcomes. Statistically it's well documented that we are seeing very rapidly rising rates of asthma, Type II diabetes, cancer, and neurological disorders in residents in our urban areas.

And as the further recent data showing the insidious relationship between a variety of air pollutants and increased cardiovascular disease deaths among the elderly.

The combination of interactions between the biological, chemical and physical agents increase the disease burden in communities. It's disproportionately borne in urban areas.

Today a vast majority of people in this country live in cities, and by 2025, 85 percent of the population in this country will be residents of urban environments.

We need to be concerned not only with single point exposures to environmental toxicants, but we also have to recognize, and I think this was touched upon earlier, that there's a legacy of several centuries of land usage in urban areas in this country, and that legacy leads to a whole variety of environmental toxicants that people are exposed to.

We need to recognize this legacy, and often we are faced with an unrecognized set of contaminants for which the data is available with respect to where these things exist, but they have not been pulled together and integrated into an overall public health process.

The inner city poses unique and intransigent problems with the imposition of multiple environmental stress factors in special populations ranging from the children to the elderly, and we have limited access to health care and health education in these communities.

And while Dr. Bullard touched upon children, I'd also like to point out that many inner city areas also have a very high percentage of the elderly who are frequently pruned by exposures to environmental agents.

So I think the public health challenge that faces us is how we can improve the health of individuals who now and in the future will live in these urban environments and accomplishes what I would stress, is that we need to develop an integrated set of what I describe as environmental health report cards that can

outline the continuum from exposure to disease outcomes in our communities so we can begin to integrate all of the data that's available and look at at least some of these factors that impact on environmental justice with respect to overall health status of residents of communities.

I'll leave the rest of my comments to be handed in later, to leave more time for discussion.

CHAIRPERSON BERRY: Thank you very much.

Professor Hynes.

MS. HYNES: Thank you.

Do I get the minute he didn't use?

(Laughter.)

CHAIRPERSON BERRY: If you like it, you can have it.

Put six on her.

MS. HYNES: Okay. Thank you.

First I'd like to thank all of you for the opportunity to testify before you on environmental justice and congratulate you also for holding this hearing.

The focus of my remarks is housing and its relationship to the health of low-income people and people of color in urban areas. Housing is arguably the most intimate and significant environment for many reasons.

First, the amount of time people spend indoors not only in housing, but of course, work place and in schools, but it's 80 to 95 percent of people's time.

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Secondly, young children and the youngest children and elderly who are most vulnerable to pollution spend proportionately more of their time indoors than others.

Third, the indoor environment concentrates pollutants. It concentrates both indoor pollutants and outdoor pollutants. The exposure to outdoor pollutants is often through their being brought indoors.

Consequently, the fourth point, the proximity of housing to locally unwanted land uses, external pollution sources, is very critical

Fifthly, the history of residential patterns of housing segregation, which is highest in this country for African Americans in urban areas, has resulted in poorer services, sanitation, crime control, public transportation, poorer schools, and poorer health services. It has resulted in their living in older housing, which is in poorer condition, and the two most common childhood illnesses, asthma and lead poisoning, are strongly correlated with housing conditions, both age and condition of them.

And fifthly, because of segregated housing, particularly for African Americans, they have been in most proximity to pollution sources.

Sixthly, the issue of housing and home ownership. There are social science sources, which have calculated the loss of money, particularly for African Americans, as a result of

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redlining and bias in lending and home ownership. And this has resulted in a racialization of poverty.

So the questions that came up before about is it income or class or is it poverty, I think are often a cross-divide because if poverty is racialized, as it has been we know feminized, then African Americans or any other race or ethnic group, which has been structurally impoverished, is suffering two burdens. One is the burden of race, and there are some studies, as Dr. Bullard mentioned, which have demonstrated that no matter what class, African Americans have higher rates of lead poisoning, and I think it's due to housing and housing segregation.

But secondly, if they're also poorer because of bias in lending, smaller rates of home ownership, and studies have shown that the middle and lower middle class have built their wealth on the equity of housing. Without that, you don't build it.

So with all of that, I won't even touch HUD and the operation and maintenance budget for residents living in public housing. Five to ten percent of the country does. They are the poorest, except for homeless, and they're also disproportionately people of color.

The O&M budget for HUD has never provided for sufficient money for renovation of housing, and secondly, it has declined in the past ten years through the Clinton Administration and the Reagan. We're doing studies in Boston on the condition of

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public housing's relationship to asthma. We have found extraordinary problems with leaking, moisture, and mold, factor for asthma; pest infestations, another factor for asthma; and we have found rates of asthma, which are five to ten times higher than what you find in the literature.

So let me move quickly to lead poisoning and asthma.

Lead poisoning dropped, we all know, when lead was taken out of gasoline from 88 percent to six percent of U.S. kids now have it dropped, the elevated levels.

We do see though that children in poverty are three and a half times more likely to suffer elevated blood lead levels.

Twenty-two percent of African American kids in older housing, typical urban areas have elevated blood leads.

The study that we're doing called lead safety arts in Boston, which is looking at the soil of these same houses, has found from 100 to 25,000 parts per million lead in soil. The, quote, safe level is 400 parts per million.

This has heretofore not been regulated. Studies have shown that 30 to 50 percent of the dust in houses, which was thought to contribute to lead poisoning, comes from outside.

So what we're saying is that the lived in environment of yards and houses in inner cities contributes to lead poisoning.

The lived environment also contributes to asthma.

So it is not surprising to see higher levels of lead poisoning in inner city kids because of the risk factors: older

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housing, poverty, so housing in poor conditions, and then higher levels of lead burden in both soil and houses.

My time is just about up. I'll say there's a similar story for asthma that there has been for lead, and maybe in questions we could talk about that.

I also am submitting many articles which have documented all of this for those who want the data, and also a separate study which has looked at census tracks throughout the country in metropolitan areas, very recently done by a doctoral student in my department, which shows that African Americans and Hispanics disproportionately are exposed to air toxics, non-criteria air toxics and, therefore, at elevated risk of certain kinds of cancer. So we have all of that to submit.

CHAIRPERSON BERRY: We will accept all of that for the record without objection and include all of your statements in the record, both the written ones and the oral ones, without objection.

Counsel, do you have questions for the witnesses?

MR. REILLY: Yes. Thank you, Madame Chair.

As I said to the previous panel, I'm going to direct the question to each one of you, but if anybody has a response, please chime in, and I will have fewer questions this time because there were so many questions last time from the Commissioners. Not everyone was able to ask all of their questions.

First of all, Mr. Foreman -- excuse me -- Dr.

Foreman, your book on environmental justice challenges some of the claim that have been made by environmental justice advocates. Could you please tell us about some of your findings, specifically the claim that -- and this was discussed a lot in the previous panel -- the claim that race is a driving force that can be separated from income or class.

DR. FOREMAN: Yes, I would simply say this. I didn't do original database research. I'm not one of the premier empirical researchers on this subject. What I did do though is to read a fair amount in the literature produced by people who are, and what it suggests in general is that there is reason to question whether race is the driving factor in all of this.

I think there are certainly inequities out there, lots of them, but the role that race per se plays in driving them is in my view questionable. There are a number of citations I can give you, and I will supply them for you, things that you and other members of the Commission staff should look at, which do, in fact, suggest that there was a larger story to be told about this.

MR. REILLY: Okay. Thank you.

Could I ask Dr. Groopman and Professor Hynes just to comment on that response by Dr. Foreman?

DR. GROOPMAN: Well, I think, I mean, let me come back to use the lead example as a paradigm for some of this in that we've often looked at lead from the perspective -- I think a large number of people look at lead from the perspective of

childhood exposure, decline in IQ and other measurable endpoints, and therefore have developed a variety of regulations and potentially protective mechanisms using those types of endpoints.

But we also recognize from a large amount of the health data that lead is an extremely potent kidney toxin that's very much related to increased hypertension in people who have lead exposure. So in young and middle age adults you see a lot of hypertension in workers that were exposed to lead during their working time, which is clearly a major cardiovascular health outcome in inner city areas, particularly elevated among the African American community.

In the elderly, we now recognize that early life exposure to lead leads very much to a cognitive decline where we're seeing increased amounts of dementia in the elderly and in workers and in children who were exposed to lead in early life.

There are now well-documented studies showing these neurological declines in the elderly.

So to come back to this issue, the reality is that in our inner city areas, which are very frequently over represented by members of the African American community, Hispanic community, I look at Baltimore, which is 72 percent African American, which lead exposure is incredibly high.

My concern is that I think that in our regulatory aspects in dealing with the environmental justice areas, oftentimes we're being truncated to only one small aspect of the

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public health endpoint, which is doing an enormous disservice to the large amount of health burden that is being borne by people of all age groups from these types of exposures.

So it does not take very much of an epidemiologist -- and I'm not very much of an epidemiologist -- to sort of say that here is where the exposure is occurring. These are the people who are living there. There is very little to expect that if you had any individual living in these environments that you wouldn't see these types of health decrements because we've seen that historically.

And the reality is that we need to develop the types of policy that protect the health of communities irrespective of their ethnicity or gender or age.

And that is my overriding concern on this issue, and the mere reality is that in my personal opinion, the overwhelming recognition that is driven by racism and a whole variety of factors in the society puts people of certain ethnic groups at greater risk for these health outcomes because of these exposures, and that's wrong.

MR. REILLY: Thank you, Dr. Groopman.

Professor Hynes.

MS. HYNES: All right. I won't speak to lead and asthma because it's been spoken to so much, and I think there's going to be a lot of evidence for the fact that by race people are disproportionately burdened with those.

Instead I would like to make just a couple of remarks about this very difficult debate that seems to get stuck on is it race or is it class.

First, my experience, and I'm really learning from other researchers doing this, is that the relationship between income and race and disparate exposure to environmental problems varies with the -- the results vary with the level of geographic analysis for which the study has been done.

Is it cities and municipalities? Is it states? Is it counties? Is it zip code areas? Is it census tracks?

And depending on the geographic level unit of analysis the results differ as to whether it is income that is low income or race, which are a stronger correlate with the exposure.

That's one level.

But another level I'd like to just simply address that is to say that --

CHAIRPERSON BERRY: Sorry. Somebody just hit the switch by mistake.

(Laughter.)

CHAIRPERSON BERRY: Go ahead.

MS. HYNES: It wasn't my remark.

(Laughter.)

MS. HYNES: -- is that I think that often the structural causes of poverty, particularly for people of color, I mean, there are also structural ones for whites, but particularly

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for people of color, historical structural causes. There are social causes; there are political causes; there are economic causes, have a consequence for health and for environment, but those of us who do health and environment are not social scientists. We're not housing experts. We're not historians.

And so often that does not sort of seep in and influence, bring the complexity to the analysis that should be brought to it, and I'll just point to housing and say: why do 75 percent -- why 75 percent of inner city Baltimore, people of color, mainly black?

Boston, less so, but similarly we have whole neighborhoods. Roxbury-Dorchester, they're virtually all -- they were black. Now they're sort of mixed people of color.

We have an arc, a comma shape, which is those neighborhoods in which we have our highest prevalence of lead poisoning and asthma, ER visits, et cetera.

So I think patterns of segregation in housing have complicated who was poor, added a burden of poverty to people who shouldn't have been poor, and even if poverty is found as a social factor to be more important, what caused the poverty? That's my question.

And if it was race and if it was structural bias in lending and redlining, then race is in there as a factor, and it shouldn't be diminished by pitting it against poverty. That's another argument.

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Thirdly, I'll just mention that some new analysis which has come out recently at BU School of Public Health, which has looked at exposure to air toxics, does conclude that race is a stronger factor than low income, and essentially it's premised on the literature which shows that segregation has a health impact on blacks.

Not only have studies found that racial segregation is associated with increased mortality, but they've also pointed the way for further research that might help us understand why.

Some research has concluded that there is higher mortality in neighborhoods of higher segregation because of the stress that that causes, the stress then leading to ill health.

Others have said it's because of lack of services in segregated neighborhoods.

Either way it's probably both. Either way though the greater the degree of segregation, the greater the degree of morbidity and mortality. It is known -- HUD has done the studies, others -- that African Americans in this country live in the most segregated neighborhoods; Hispanics next. I guess you could say whites do in wealthy neighborhoods as well, but it doesn't seem to be a disparate health impact as far as I know.

COMMISSIONER WILSON: Mental.

(Laughter.)

MS. HYNES: But I'd just like to add --

COMMISSIONER WILSON: Sorry.

MS. HYNES: -- research --

CHAIRPERSON BERRY: Wilson, you weren't recognized.

MS. HYNES: -- at BU has looked at segregation with respect to air toxics and the exposure to air toxics, and this is non-criteria air pollutants using an EPA database, a study of 1990 exposures found that African Americans were breathing air with higher total modeled air toxics. That's EPA's database that modeled air toxics.

In every metropolitan area of the United States the degree of segregation was an important risk factor for this disparate exposure while income differences were not.

So we've done this updated for 200, and this paper is being published in environmental health perspectives, and we'll make that available to you.

CHAIRPERSON BERRY: Okay, counsel.

MR. REILLY: Okay. Thanks very much.

I just have one final question. It's more of a legal question for Mr. Gerrard.

You touch briefly on Sandoval and the Third Circuit South Camden case. If you could just give us a brief history and also, what are the implications for private right of action in the area of environmental justice based on those cases?

MR. GERRARD: Well, there was litigation earlier in Philadelphia, in the Philadelphia area, the Chester Concerned Citizens case, where the Third Circuit held that there was a

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private right of action under the EPA Title VI regulations where there had been a showing of disparate impact, although not disparate effect.

The United States Supreme Court granted cert. on that case, but before they heard it, the project itself was withdrawn and the Supreme Court vacated that decision.

After that, the District Court began hearing the South Camden case, which concerned a proposed cement processing facility in a minority community, and the District Court found that there was a disparate impact and that the State of New Jersey had not followed the right procedures, that there hadn't been adequate consultation; that there hadn't been adequate consideration of the potential disparate impact.

So the District Court rendered a resounding plaintiff's victory in that case in South Camden. Four days later, the Supreme Court undid it in the Sandoval case. It went back to the District Court which found that although there was no longer a private right of action under Title VI, you could still get that way through 1983. The District Court said, yes, you could get that way through 1983.

That was appealed, and just last month the Third Circuit said, no, you can't. There's no private right of action under 1983 either.

The plaintiffs in that case have moved for reargument in front of the Third Circuit. Relatively few petitioners for

reargument are successful. If it did go up to the U.S. Supreme Court, I think there's some sense that the same five to four vote that ruled there was no private right of action under Title VI might also come out that way under Section 1983, and so I think the prospects for a private right of action in the absence of congressional action are quite bleak.

MR. REILLY: Okay. Thank you, Mr. Gerrard.

Thank you, Madame Chair.

CHAIRPERSON BERRY: Are there any commissioners who would like to ask questions of the witnesses? Any other Commissioners?

Okay. One, two, three, four. This time we will begin with Commissioner Edley.

COMMISSIONER EDLEY: This is, I suppose, a semi-philosophical question. Putting to one side the question of whether or not there might be discrimination of some sort in a particular fact pattern, fact situation, I want to ask you, any of you who would care to speak to it, about the role of race, in particular, but perhaps also poverty in more of the institutional sense, and specifically regarding the allocation of attention and resources to working on this set of problems.

So when you step back, and if you would step back and comment on the priority setting that takes place particularly in public institutions with respect to enforcement priorities, with respect to research priorities, with respect to public education

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priorities, et cetera, do you believe that it's arguable that there is loosely some form of institutional racism at work in that here's an agenda that simply doesn't get the attention which in light of the public health impact, and so forth, doesn't get the attention it deserves, or in contrast, would you say that your sense is that there are a lot of people worrying about this; there are a lot of people thinking about this, prosecuting this agenda in various contexts, research contexts, public education contexts, enforcement contexts, and that you don't think that at least presently you see an under attention, an under investment in addressing this very complicated set of problems?

DR. GROOPMAN: I can begin if you like. The environmental movement, the environmental laws, and the environmental bureaucracies to a large extent resulting from the amalgamation of two quite different movements, the conservation movement, which was primarily interested in natural places and natural resources, and the public health movement.

For many years the conservation movement element of it I would say was more dominant, and most of the environmental laws tended to focus on preservation of natural places.

I would say that since the emergence of the environmental justice movement some years ago, that balance is beginning to shift somewhat, and there's now a lot more attention being paid to some of the disparate impacts that play out in the public health context.

There's always been attention to public health, but I think that we're now seeing much more attention than there was ten years ago to these kinds of impacts. So that's shifting now in which I think most people would regard as a positive direction.

DR. GROOPMAN: Well, I'd only comment very briefly in trying to provide a perspective that we have an appalling lack of exposure information about if you ask the question are people in Washington, D.C. exposed to a spectrum of different agents during the course of their day compared to Baltimore City, compared to Portland, Oregon, we don't have those data.

I mean, our exposure assessment data and that type of information to be integrated in with the health statistics and a whole variety of other endpoints fundamentally doesn't exist.

And that lack of information makes it very questionable how you design regulations to protect individuals, and I look at this as being across the board. I think it --

COMMISSIONER EDLEY: It could also mean that policy gets driven by anecdote.

DR. GROOPMAN: Very much so. Well, let me give you one anecdote. If I were to ask the question where do you feel the highest levels of pesticide exposures occur in the United States, you might say, well, in agricultural areas or in some sort of rural communities.

And in point of fact, it's in inner city apartments that are being over sprayed for controlled cockroaches. So here

we have situations where the unanticipated consequences of often regulatory policy that's driven by exposure assessment is not being equitably applied to the at risk community, and I think that this is something that, sure, if we have started to do this 40 years ago, I think much of the questions that Chris Foreman raises and others, you know, we could address in a more quantifiable and based upon data.

But I would like to say that I would not like anyone's commission to believe that we actually have an extraordinary amount of information upon which to operate.

DR. FOREMAN: If I may --

CHAIRPERSON BERRY: I didn't understand. Did you say you do not or did you say you did?

DR. GROOPMAN: No, we do not have in terms of the exposures of individuals. We don't have that information.

CHAIRPERSON BERRY: I just didn't understand it. Okay.

DR. FOREMAN: If I may, I would second that and actually amplify that point. If you were to call, say, Terry Davies in here from down the street at Resources for the Future, what he would tell you is that one of the most scandalous inadequacies in our regime of environmental policy is simply the lack of monitoring data, the lack of data on which to base assessments of any kind.

It's amazing how little we actually know and what we

-- how little we actually monitor, and therefore, policy can't be made in an intelligent way, and indeed, to amplify something that Michael has said, part of the reason for this is because historically the environmental policy was driven by, you know, people who were interested in hiking and biking and not people who were interested in whether they were being poisoned or not.

This is a new development in environmental policy, and unfortunately environmental justice comes on the scene politically at a time after all of the foundational environmental statutes have already been written.

And the result of that is that now we have to go back and try to find ways to retrofit all of these statutes in ways that will address the problem that we know to exist and we don't have the tools for.

MS. HYNES: You asked, your question was -- just paraphrase it again for me. I can't tell if I'm speaking to them or speaking to you.

COMMISSIONER EDLEY: Is the environmental justice problem in its various manifestations getting the attention it deserves in institutions of public --

CHAIRPERSON BERRY: Edley, are you repeating your question?

COMMISSIONER EDLEY: She asked me to repeat the question.

MS. HYNES: Yeah, I was following the flow of their

ideas.

(Laughter.)

MS. HYNES: First, just to affirm what was said, I think it's -- for those of us who have been in the environmental movement a long time, it's very evident that environmental justice enlivened and emboldened the environmental movement and even environmental protection.

It's kind of a necessity at this point for it to move beyond its origins and its appeal to an upper middle class cohort.

I think my experience in research and work at BU School of Public Health is that within about the past six years -- this is like anecdotal comment -- since the executive order that Clinton signed, I have seen RFPs come out from the federal agencies for research, environmental health research, environmental protection research, which are different from ones that came prior to that in a couple of ways.

First, they are more interested in community based partnerships, that is, communities with universities so that university researchers pursuing, let's say, environmental health research in urban communities are intended through these RFPs to partner with community groups, some of whom are testifying with you here today.

A sign that there is evidence base that we need, researchers need, community knowledge, community input, that's number one.

Number two, there has been more of a focus on the part of federal agencies, even like the Forest Service and USDA, as well as EPA, CDC, on urban areas. It surprised me, and also on collaboratives among those agencies on urban areas, urban forestry, urban agriculture.

I work with nonprofits that have gotten grants like this to do farms in cities, for example, in Boston.

Thirdly, there has been more than urban focus in a lot of these RFPs to an extent that I don't think was there before.

So my sense is that there's an awareness at the federal funding level of the issues that we're talking about. Whether it's proportionate to the rest of the money they're giving out I don't know, and you know, that's a question to pursue.

But, secondly, whether that impacts the agencies that then spend money on these issues, like on solving these issues, and I'll just pull out HUD for example. HUD is investing, as is EPA and CDC, in a ton of research on healthy housing. Health and public housing is one grant, collaborative grant I have. Health and housing initiatives are going on all over the country funded by those agencies, particularly with an emphasis on asthma and respiratory health and its links with housing conditions.

Whether these findings translate into HUD's budget for improved public housing and better enforcement of Section 8 housing to insure that roofs don't leak, that integrated pest

management is de rigour in these places and we get rid of cockroaches, I don't know.

So it's a mixed -- if not a mixed sort of assessment, it's an unclear assessment as to whether some of these good initiatives which I think were really spurred by the people of color challenge to their federal government at their Congress in '91, and then you see this executive order in '94 and you see some funding flowing; you see some partnerships; you see some good questions being addressed not at the exposure level that Dr. Groopman talked about yet.

But whether that then translates into budgets for those agencies that handle housing, that handle these issues, even the health disparity side of it, CDC, et cetera, NIEHS, that's what's hard to tell. And I think someone following this, I mean, documenting it, following it from a data and numbers perspective -

CHAIRPERSON BERRY: That means us.

Commissioner Braceras.

COMMISSIONER BRACERAS: I guess my question is for all of the panelists, but I'd like to direct it in particular to Professor Foreman.

I know that federal law does not currently provide for private rights of action to bring disparate, impact claims arising out of these types of situations, but what I'm wondering is in a normative sense, do you think that the adversarial legal

system is the best mechanism to resolve the public health crisis in the minority community?

And if not, where should we be focusing our efforts?

DR. FOREMAN: I do not think that. Well, obviously litigation is always going to be an important feature of almost any policy you can name, especially in environment. This is America.

(Laughter.)

DR. FOREMAN: However, we --

COMMISSIONER BRACERAS: I'm sorry. In particular, do you think that discrimination lawsuits under Title VI --

DR. FOREMAN: No.

COMMISSIONER BRACERAS: -- are an appropriate mechanism for resolving --

DR. FOREMAN: I think what we can do is look -- if we can take past as prologue, let us look at what has happened to claims filed at EPA under the -- claims that have been invited under Title VII to EPA for investigation.

There hasn't been much, if any, action on these claims. I don't think Title VI is the solution to this, no. I think that, indeed, we need to move beyond the existing paradigm of lawsuits and top-down regulation to something that has been called and increasingly discussed as civic environmentalism.

And I have a copy of a new little paper for each member of the Commission, and I will share that with you and put

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that in the record. It's not a --

CHAIRPERSON BERRY: Without objection so ordered.

DR. FOREMAN: Thank you, Madame Chairperson.

COMMISSIONER BRACERAS: Where do you think the focus of our efforts to improve public health in communities of color should be then?

DR. FOREMAN: All right. Well, as a substantive matter, I would reemphasize what some of my colleagues up here have already said. Indoor air, indoor environments do not get the priority they deserve, and that is, in part, I think, because of a political difficulty of mobilizing people against these kinds of hazards.

It's much easier to talk about dumpsites and smokestacks and so forth than to talk about these other things, which I think have a much greater impact on the day-to-day health and the long-term health prospects of low income and African American and other people of color.

But I think recasting environmental governance so as to further empower communities not only with responsibility, but with resources to make environmentally related decisions and environment based to face environmental challenges that they confront -- the problem is our environment is too diverse. We have a large, far flung country with 280 or so million people, lots of different contexts that have to be addressed.

And I think moving down to a level and genuinely

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empowering people at a level where they can address the quality of life issues that clearly burden people and that are much of what is at stake here -- people talk a lot about cancer. There's certainly cancer threat, certainly long-term, chronic health hazards here, but a big part of what drives environmental justice advocacy has always seemed to me, is simply quality of life problems, quality of life issues.

You know, I think people who are embracing environmental justice are looking for a rubric. They're looking for a way to embrace these quality of life issues, and to that extent I've always sympathized with environmental justice as an initiative.

CHAIRPERSON BERRY: Does anyone else want to answer Commissioner Bracer's two-part question before we go to Commissioner Thernstrom?

Go ahead.

DR. GERRARD: By the time these controversies get to court, they usually come down to obscure procedural issues which are beside the point or the question of whether the agency that made the decision was arbitrary and capricious, which stacks the deck.

I think that a much more effective place for resolving particular siting disputes is at the administrative process before, but in order for the communities to participate effectively in those, it would be extremely helpful if they were

provided with technical assistance grants that allowed them to retain the experts who are necessary so that they can really say something meaningful in the process.

There's ample precedent for that under the federal Superfund program, in site clean-ups, and at many states, such as New York State in the power plant siting process. There's ample precedent for technical assistance grants being provided at the expense of the applicant rather than the government. And I think that's an effective way of improving the quality of citizen participation.

I would also more philosophically want to move the process earlier up, as I said before, and address the need question before you have to get to the siting question, but that's a more intractable problem.

CHAIRPERSON BERRY: Does anyone else wish to comment before Commissioner Thernstrom asks her question?

Please, okay. Commissioner Thernstrom.

COMMISSIONER THERNSTROM: Well, I think this is a very interesting panel. I thank all of you for coming.

Professor Foreman, you offered before some empirical literature that disaggregates races from social class, and I would very much like to have anything forwarded that you thought was particularly useful.

One of the things that strikes me in listening to the discussion here is that it sounds to me as if an awful lot of

issues, either housing quality, housing segregation, services, even stress, and that list could go on, they've all become part of the definition of the problems of environmental justice, and it seems to me that that, you know, expansive definition is part of the problem here in, you know, fashioning any kind of career policy recommendations and effective policy recommendations.

And I assume that it's why Professor Foreman -- correct me if I'm wrong -- does say in his statement that environmental justice is an exceedingly weak vehicle for addressing the problems we've been discussing.

Well, anyway, anybody can address it.

DR. FOREMAN: I would simply say this by way of response, Commissioner Thernstrom. Yes, I believe that one of the fundamental challenges that environmental justice as a movement has is that it's a diverse grassroots coalition that is inclined to define everything as a priority. I don't see --

COMMISSIONER THERNSTROM: Everything as a matter of environmental justice

DR. FOREMAN: Well, pretty much. I mean, it's certainly difficult if you watch enough, if you attend enough meetings devoted to this subject; it's certainly difficult to avoid that impression.

I understand, I think, some of what the environmental justice movement is up to with this. It has really in my view been a broad social justice movement that actually uses

environmentally oriented rhetoric as a platform for addressing a broad menu of social inequalities.

Now, one cannot blame them for this. It's actually quite an intelligent and clever political strategy up to a point.

The problem though is that when you get -- it's not a bad strategy from the standpoint of agenda setting, of raising the issue. It becomes intractable though when you move to the policy making arena when policy makers then have this unwieldy menu of demands and grievances that they are presented with and, you know, have to then look at Title VI and the National Environmental Policy Act to figure out what to say about these things.

That's a challenge. That's a genuine problem I have, and I confess that the only way I can get out of it is to simply say that we have to accept the movement as what it is and then ask policy makers, empower policy makers with as much data and resources as we can to try to fashion some kind of coherent response.

CHAIRPERSON BERRY: Dr. Hynes.

MS. HYNES: Yeah, I'd like to respond.

I have drawn exactly the opposite conclusion as yourself, and I think probably as you, with respect to what we have gained or lost with this kind of inclusive definition of environment that environmental justice provides.

My response to this multi-dimensional definition is that finally the environment has been made whole again.

We have a definition of environment historically, which has limited it to air, water, and soil contaminated by waste. Conservationists also sell it as sort of wilds, separate from cities when, in fact, the environment that influences our health and well-being is physical in nature, air, water, and soil, as well as natural resources. It's built. It is transportation, air pollution, cars, whether we go public transportation or cars, et cetera. I mean, air pollution and cities is the result of the built environment.

Asthma lead poisoning is directly related to housing, housing patterns. Lived housing patterns are directly related to social policy. We live life holistically. We experience it; we get sick because of it holistically.

And yet you've had to litigate it, I suppose. I'm not a lawyer, but I mean, you had to think about it separately, and so have environmental protection engineers, as I was trained because I worked for EPA who saw it as air, water, and soil.

And thankfully, these agencies even have, as I said, begun to collaborate so that EPA collaborates with USDA and the Forestry Service in Boston to make sure that vacant land becomes urban areas, but it's cleaned before they do it. So if it's a Brownfield, they fund it to get cleaned up, and then USDA brings in funding to a nonprofit for community food security.

That is holistic environmental protection.

COMMISSIONER THERNSTROM: But you're talking about

the environment as a broad definition of the environment, which is perfectly legitimate. I agree with you, and I was addressing the narrower question of the definition of environmental justice, which is a subsection of the environmental --

MS. HYNES: Actually environmental justice was the instigator of this fuller, more dimensioned not only understanding, but definition. I don't find it vague at all personally.

CHAIRPERSON BERRY: Okay. Commissioner Meeks.

COMMISSIONER MEEKS: I think that the answer -- my questions were around this same issue and, you know, that the policy makers are the ones that, you know, should set the priorities and not, you know, the community; that the community wasn't doing that.

But I think this argument really came out, and it came out really well. So I'll just save my question.

CHAIRPERSON BERRY: Okay. I appreciate it.

Vice Chair, do you have any questions?

VICE CHAIRPERSON REYNOSO: The reality is that very often we don't ask questions when we don't want to know the answers as a society, and it seems to me that if we really want to deal with pollution in the home, et cetera, policy setters would fund those studies and so on.

So my question to you is: how do we get the incentives for the policy makers to fund and really look at these

issues to empower the community groups and others to have the facts with which to show these disparities?

Because I don't think it's accidental that we know how many unemployed people there are in the country and how much we're manufacturing, but we don't know how many kids are being poisoned by lead or what the pollution is in housing in a given area.

So that's my sort of broad policy question.

DR. GROOPMAN: Well, but I think part of this I'd like to suggest comes back to a really unfortunate set of consequences of really the dislocation and the removal of the environmental community away from the public health community that started 30 years ago.

Just as an example, we did a study and published a study looking at children's exposure to environmental tobacco smoke in Baltimore, and we were looking at children under the age of six. So they were not active smokers.

VICE CHAIRPERSON REYNOSO: Hopefully.

DR. GROOPMAN: No, I mean, we knew this.

But the fact is that we had a lot of children -- first of all, 85 percent of the children were positive for environmental tobacco smoke.

Secondly, many of these children were the equivalent of a pack a day smokers, and this is all because of the indoor air they're breathing.

Now, why? Several fold. I mean, this was touched upon. The average American spends 15 minutes a day outdoors. I mean, how much time are you going to spend outdoors today?

Secondly, in many inner city areas, windows are hardly opened. So you have windows that are closed, barred. The air doesn't exchange, and so on. I mean these are issues.

Now, does EPA regulate indoor air? No. Is this an important issue with respect to the linkage between what we look at in the health community?

CHAIRPERSON BERRY: Are you rephrasing the same question? Go ahead. This is the second part of a two-part question.

VICE CHAIRPERSON REYNOSO: It follows up.

But if we had studies for that, then we could have the programs as we have in California now encouraging people to save electricity, for example. Don't we need the factual foundation?

DR. GROOPMAN: We need the factual foundation, but we also need the ability to translate across different vocabularies, and frankly, my jargon is not necessarily your jargon, and I think that's something this Commission can probably do a very good service for.

VICE CHAIRPERSON REYNOSO: Thank you.

CHAIRPERSON BERRY: Okay. We will try to.

DR. FOREMAN: If I may, as Dr. Groopman said, EPA's

jurisdiction ends at the window.

VICE CHAIRPERSON REYNOSO: Yeah.

MS. HYNES: The outside window.

DR. FOREMAN: And it's mostly inside that people breathe.

VICE CHAIRPERSON REYNOSO: Yeah, yeah.

DR. FOREMAN: And so there's this tremendous regulatory disconnect, and filling that regulatory gap would accomplish a great deal.

CHAIRPERSON BERRY: Okay. Let me just say that I won't ask a question, but let me just say that the two panels this morning, including yours, have been very, very informative, and we very much appreciated it. It brought together a number of themes that I'm reminded of.

One is that the Civil Rights Commission, this Commission, was instrumental in forcing the EPA in the first place to even look at issues of environmental justice. I remember the Commission -- it was before my time, but I remember the history of it -- subpoenaed the head of the EPA to come over to talk about these issues and was told that "we don't have anything to do with that."

And they came and that was the beginning way back in the Nixon administration of this whole issue and environmental justice.

You're right about the grassroots people, too, and

the impact that they had in bringing the issue before people.

I was also thinking in the panel, especially your testimony, Dr. Hynes, about the importance of political leadership, and Commission studies over the years have shown that in the absence of political leadership on these issues of equity and justice, nothing will be done.

So what you have coming together is the grassroots you have expressed in the political leadership of the executive order, which came about because of political leadership, and now you see it in RFPs. You've told us about that.

DR. GROOPMAN: That's great.

CHAIRPERSON BERRY: And then there's the question of data that you talked about; both of you talked about, and the power to determine, as the Vice Chair says, where the money goes and what kind of data you collect, that's all related to politics, too, and the impact of political movements on politics.

And policy, of course, one is not bound by the statutes that already exist. One can pass new ones if there's enough political will and enough pressure to do so.

And finally, on the Commission we have for years reported -- and that relates to the last panel and this one -- on the lack of enforcement, the lack of money devoted to civil rights enforcement in all of these agencies, and that's all related, according to an article I read before I came here about this, to political power and to leadership.

Again, I want to thank you all for coming, and we will now recess for a break until 1:30 when we will reconvene.

(Whereupon, at 12:37 p.m., the hearing was recessed for lunch, to reconvene at 1:30 p.m., the same day.)

Panel Three: Community/Advocacy Groups

CHAIRPERSON BERRY: Could we open the third panel, community advocacy groups? These community and advocacy group will explain community concerns and experiences involving permitting, siting, cleanup, Title 6 enforcement and other environmental justice issues. Ms. Jenny Parks of our Office of General Counsel will now call the witnesses, which you've already done, right?

MS. PARKS: Yes. They're all here, ma'am.

CHAIRPERSON BERRY: The witnesses are Mr. Damu Smith, Ms. Elizabeth Teel, Mr. Tom Goldtooth and Ms. Peggy Shepard. Would the four of you please stand -- I know you just sat down -- so that I can swear you in? Please raise your right hand. Do you swear or affirm that you will testify truthfully to the best of your abilities?

(Panel members sworn.)

CHAIRPERSON BERRY: Thank you very much. Please be seated.

Could I also ask the sign interpreters, if there are new ones, to stand up so they can be sworn? Raise your right hand. Do you swear or affirm that you will carry out the

responsibility to the best of your ability?

(Sign interpreters sworn.)

CHAIRPERSON BERRY: Thank you. Could you please ask if anyone new is signing at this time? Thank you.

Mr. Damu Smith has campaigned on behalf of Greenpeace across a wide range of toxic issues. He's been to scores of communities and Native American nations to support the rights and efforts of the people who live there, especially people of color and the poor who bear much of the burden of the nation's toxic pollution. He led Greenpeace USA's efforts to stop the world's largest producer of PBCs, Shin Hsu, from building the world's largest proposed PBC facility and convent.

He's been on the Board of the Washington Office of Environmental Justice. He has a wide variety of experiences. And for a number of years, he was a Program and Coordinating Consultant for the National Council of Churches of Christ, a black church environmental justice program.

The other panelists, Ms. Elizabeth Teel has been at the Environmental Law Clinic at Tulane Law School since 1997, primarily handling cases involving hazardous and solid waste, water pollution and environmental justice. Before that, she practiced with Phelps Dunbar in commercial litigation and has been an assistant DA in Orleans, Paris. She also teaches trial advocacy at Tulane University.

The next witness will be Mr. Tom Goldtooth, and he's

the national spokesperson for the Indigenous Environmental Network, IEN. It's a national grassroots environmental organization involved with stopping toxic and nuclear dumping on or near indigenous lands and with leading the struggle to reform national environmental, economic and energy policies that are genocidal to indigenous people.

And then, finally, we have Ms. Peggy Shepard. And Ms. Shepard is Co-Founder and Executive Director of West Harlem Environmental Action, Incorporated, WEACTION. West Harlem Environmental Action is a community-based, non-profit organization whose mission is to inform, educate, train and mobilize the predominantly African-American and Latino residents of northern Manhattan on issues concerning their quality of life -- environmental health, land use, open space, Brownfield and the like. It was founded in response to community struggles to address the poor management of the North River Sewage Treatment Plant.

The witnesses will have five-minute opening statements, and there's a clock here that will time your statements. And once you've summarized your statement and anything you'd like to introduce for the record, each one of you, then we will go to questions from the Counsel Jenny Parks and then from the commissioners. And we will start with Damu Smith.

MR. SMITH: Good afternoon. I want to, first of all, thank the U.S. Commission on Civil Rights for convening this

national hearing. This is very timely given the fact that there is a nationally orchestrated effort underway in the country to undermine civil rights enforcement as it relates to ensuring equal environmental protection to all people in this country, particularly to those of color.

My experience working with Greenpeace USA, as well as the Southern Organizing Committee for Economic and Social Justice some years ago, as well as with the National Black Environmental Justice Network has brought me into working relationships with scores of communities throughout the country fighting for environmental justice and against environmental racism.

I want to begin by just saying clearly environmental racism is real. It's not fiction, and if we move beyond the statistics and the graphs or charts and visit the impacted communities, we see the impact of racially discriminatory siting decisions that have had a devastating impact on the health, safety and welfare and economic viability of poor and communities of color.

I've traveled and length of breadth of this nation, working with Native American, African-American, Latino, Asian communities. And everywhere you go the story essentially is the same: Scores of polluting facilities and environmentally degraded environments are in places where there are communities of color. It is communities of color that are in closest proximity to these areas.

I want to mention to you a visit that I made to a place I believe called Minden, West Virginia where there was a superfund site that I saw some years ago. The community in this area is a majority white community, and prior to my arriving in this community I was told that this was the community that was mostly affected. When I got to Minden, West Virginia, indeed there was a majority white community near this facility, but as I walked closer to the facility, the homes nearest to the facility were homes of black people. And the whites were further from the community.

I've seen other examples like this around the country, like in northern Louisiana where you have some majority white communities near polluting facilities, but those closest to the fence line within that community happen to be people of color.

So we're not talking about fiction. We're talking about what's real. And I call these places the toxic prisons of America, because people are trapped by the circumstances of their lives into these living environments out of which they cannot escape, because they don't have the income to move to a better area. The people always say, "Why don't they just move?" In many instances, we're dealing with poor people who are economically disadvantaged. They can't just pick up and leave. They have made major investments into what little property they have, and it's not easy to do this.

When we talk about environmental injustice, we're

talking about the fact that people of color do not have equal access to clean air, clean water, clean soil, clean and safe living environments. Much of my work over the last few years has taken place in the State of Louisiana, one of the most polluted states in the nation. And along the Mississippi corridor between New Orleans and Baton Rouge, there are scores of African-American communities, many of them founded by ex-slaves, who are living next to huge, multinational corporations that are polluting their environments.

The people there are suffering enormously. They live nearly 24 hours a day, seven days a week in environments where they breathe noxious fumes, grain from grain elevators and a host of other emissions coming out from those plants. We're talking about huge petrochemical companies, plastic producing plants that sprawl for thousands of acres in these areas. Children cannot play in their front yards, and people cannot grow gardens.

So I just want to say that the major problem we face is the fact that there is a lack of enforcement of environmental laws and policies in place to protect our communities. And I'll say more in the question and answer period about why groups like Greenpeace and others have been called in to assist. Thank you very much.

CHAIRPERSON BERRY: All right. Thank you very much.

Ms. Teel?

MS. TEEL: Thank you. I want to thank the members of

the Commission for inviting me to come here to testify today. I'm a lawyer and instructor with the Tulane Environmental Law Clinic.

The Clinic did most of the legal work on the Shintech case, worked with Damu and Monique Harden, who you heard from this morning.

VICE CHAIRPERSON REYNOSO: You got in trouble too, didn't you?

MS. TEEL: Got in big trouble, yes. I'd be happy to talk about that, too. But I want to focus on the communities today, kind of pick up where Damu just left off. I had a great PowerPoint presentation for you. We couldn't get it together, but I had it copied for you, and so if I could ask you to just flip through. I can't get through all of it in five minutes, but I would invite you to look at it at your leisure.

But I'd like to look at some of these figures and preface it by saying that I would love it -- we would love it--if you would just pick two or three of these communities to go visit in person, because nothing we can say, statistics or pictures, can ever show you what seeing what these people have to live with every day would.

But let's look at some of these figures. Nineteen ninety-nine toxics release inventory and 2000 census figures, and one example, just one of many in Louisiana, show what the problem is. The percentage of African-Americans in Louisiana, the national average is 12.3; Louisiana is 32.5 now; the Alston

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community, which is north of Baton Rouge, is 94.2 percent African-American.

The next slide, pounds of toxic air releases per person, per year, again the latest information shows the U.S. average is seven pounds; in the Alston community and in fact the Industrial Corridor there, 60 pounds per person. Next crunch it by square mile. The U.S. average is 576 pounds per square mile; in the industrial corridor, more than 17,000 pounds per square mile. We weren't able to get the Alsten statistics in time to present them.

And what does that mean in terms of the really bad stuff, known carcinogens, not suspected, known cancer-causing chemicals? More than 12 pounds per person, per year in the Alsten community. The national average is 0.37. Known developmental toxicants, more than 18 pounds per person in the Alsten community.

Known reproductive toxicants, more than three pounds per year in the Alsten community. The U.S. average is 0.17 pounds per person.

Does it have to be that way? No. On Slide Number 9, pounds of toxic air releases per manufacturing job per year. The U.S. average is 121 pounds per job. In New Jersey, which is often held out as a dirty State, they've gotten it down to 42 pounds by very aggressive enforcement of their environmental laws. Texas, a lot of heavy industry in Texas, has the highest releases in the United States right now. It's a huge state. It has 116 pounds. In Louisiana, 412 pounds per job.

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What's wrong with this picture? It's obvious that we have a crisis in Louisiana, a failure of the state and local government to protect the citizens of the state.

What other burdens come with this? I know you've been discussing these. You get explosions, you have accidental releases, odors, dust, noise, vibrations, light pollution, traffic, decreased property values, those quality of life things that Mr. Foreman was talking about, which are a direct result of polluting industry locating in these communities. I'm talking just about what burdens they are bringing.

Well, do they bring benefits? Are there tradeoffs to the minorities in these communities? Absolutely not. Not in Louisiana, at least, because they don't bring jobs because the people that are in these communities don't have the skill levels to work in the facilities, and they don't bring tax dollars, because in Louisiana we have what's known as the ten-year industrial tax exemption. That money comes directly out of local government revenues.

Where do property taxes normally go? Who do you pay your property taxes to? The school district, that's right. Louisiana is the only state in the United States where these industrial tax exemptions come straight out of the school districts, in the communities where this pollution is. So what do you get? A vicious cycle -- I've got some specific statistics from a few parishes and admittances by the Louisiana Chemical

Association and the industry people, just some numbers crunching of those jobs for the next three slides.

As a result, you get a vicious cycle of minority individuals in some of the worst school districts in the United States, 50th, I think it is, and they've not been educated sufficiently to work in these facilities, they can't get the high-paying jobs, unemployment remains at record levels, and the entire community is basically trapped by the pollution and other quality of life problems in the communities. Are the industries the sole cause? Absolutely not. Is this a disparate impact? Absolutely.

And I see I'm out of time. I could talk for days, but I'll respond to questions.

CHAIRPERSON BERRY: All right. And we will keep this and keep it for the record. Mr. Goldtooth, please.

MR. GOLDTOOTH: Yes, thank you. Appreciate being invited to speak with you. In addition to the introduction, we do work with tribal governmental nations, tribal environmental protection programs and also many of the tribal community members throughout the United States, especially Alaska, which is pretty much left out in a lot of our discussions. And we've been working for the betterment of environmental protection and conservation of our rich, natural resources and our homelands, as well as protection of our biodiversity. Our organization has a long history of promoting native traditional knowledge and language as part of environmental protection infrastructure development within

native lands.

I think we've been pretty effective at elevating the issues around environmental injustice concerning native peoples, our native lands and traditional territories, which includes 556 federally recognized tribal governments in the United States. And of that, 223 are Alaska native villages. Not included in this figure is many of the non-federally recognized tribes that exist throughout the country.

CHAIRPERSON BERRY: How many did you say? I didn't hear you. How many --

MR. GOLDTOOTH: Five hundred and fifty three tribes. Of that, 223 are Alaska natives. We're talking about 54 million acres of land in the lower 48 parallel and about another 24 million acres of land in Alaska that are within native lands and that we take care of.

One thing that's very important that we stress is that many of the issues we deal with are within the scope of our inherent rights as sovereign nations. Within the United States government and throughout the many treaties and statutes and congressional actions throughout the years, there's special government-to-government relationship that we maintain. And through that relationship there is an obligation by the federal government to have trust responsibility over tribal lands as well as protection of our peoples.

Let me give you a snapshot, because we're dealing

with a number, a whole slate of different issues that we deal with when we talk about environmental injustice within Indian country, from toxic contamination, to agriculture, pesticides and other industrial chemicals that disproportionately impact native peoples, especially our subsistence and livestock cultures.

Inadequate governmental, environmental and health standards and regulations that fail to protect our native peoples, especially when we consider our culture and spiritual and social values. Clean up of contaminated lands, from mining to the whole military industry and other industry activities. Alaska is a whole hotbed of formally used defense facilities, peace talk stockpiles and PCB. And there just isn't enough money to clean up, adequately clean up the whole area of Alaska, and we have high levels of cancer and other environmental health illnesses in Alaska, and there's still a dire need for more health research within that area.

Toxic incinerations and landfills, inadequate solid and hazardous waste and waste water management capacity of tribes, unsustainable mining and oil development on and near native lands, climate change and global warming as a result of fossil fuel greenhouse gases. There's a lot of documentation that we've gathered around this area that the ice is thinning with the Alaska native people. It's affecting their culture, their spiritual connection to the land. Also that extends to great lakes and many pockets of the lower 48.

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Coal mining and coal-fired power plants result in mercury contamination, water depletion, destruction of our sacred sites and environmental degradation. Uranium mining, there's a whole history of uranium mining from the contamination of the miners and millers in Navajo and Pueblo and LaCota, South Dakota and Spokane that fueled the Cold War industry. It was a federal policy and just recently we were able to successfully get some compensation to the miners, but unfortunately some of the miners have passed on because of cancer and are not here to reap the benefits of that.

Nuclear waste storage proposals, you've been hearing on CNN the whole -- the issue of the Governor of Nevada concerned about storage of nuclear wastes in Nevada. If you don't know, it's that that is land of the Western Shoshone people.

This is only a snapshot of the issues that we deal with within native lands. We also have our own definitions of what environmental injustice is that really involves also sacred sites, infrastructure protection. And I can go on, but I'll leave a lot of that opportunity for questions and answers. Thank you.

CHAIRPERSON BERRY: Thank you very much. We'll go to Ms. Shepard, please.

MS. SHEPARD: Yes. Good afternoon. Thank you for the invitation. I'm speaking on behalf of my organization, WEACTION, as well as the Northeast Environmental Justice Network.

Again, the environment is where we live, work, play

and go to school, and that's a very significant definition in an urban environment where you might do all of those things within two or four square blocks. But the urban environment has very special characteristics. We have the oversaturation of communities with multiple sources of environmental toxicants in highly congested spaces. We co-exist, residential and industrial sites, as a result of improving land-use decisions and as well because of zoning. And many of the manufacture zones are generally located in low income and communities of color.

Most of environmental health risks, as we've heard, are not documented. And we have the existence of multiple and cumulative environmental exposures and the synergistic effects of those exposures. And, again, these are exposures that are not being monitored, and we don't really have the tools to ascertain what they are.

There's a virtual non-existence of environmental enforcement or compliance in communities of color, a very bad lack of health services, access to quality health care and adequate information on environmental risks. We have severe infrastructure decay, especially in key neighborhoods in terms of housing maintenance because of the age of housing, especially in New York City and in our older northeastern neighborhoods. There's a high degree of social alienation and decay that's exacerbated by living in densely populated areas, and we have numbers of vacant, abandoned lots that are contaminate or brownfields.

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Now, we see a very tight nexus between air pollution, transportation and public health. And as you've heard earlier, urban communities have a higher exposure to urban air toxics than other communities do, and that's been borne out in numerous studies. So we believe that transportation is a critical issue for environmental justice in the Northeast, because communities of color in the Northeast are so heavily dependent on public transportation. In fact, people of color in cities are twice as likely to use transit to go to work, as are others.

Now, we know that there's unequal spending between highway and transit. We know that transit is especially poor in many communities even though those are the same communities that often bear the brunt of hosting these bus facilities. In fact, in New York City, my organization recently filed a Title 6 complaint with the Department of Transportation, because we house over one-third of the City's bus fleet, which is the largest in the country, in 7.4 square miles where 500,000 African-American and Latinos live. Out of the 60 POs in Manhattan -- out of the eight in Manhattan, six are located above 96th Street in poor and minority communities.

The brownfields problem is very severe in urban communities because there are so many abandoned industrial sites.

And the abandonment of cities by businesses was really fueled by not just changing economic conditions but because of directly federal housing, transportation and economic policies that

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encouraged and subsidized the growth of the suburbs. Neighborhoods abandoned became the target for numbers of unwanted noxious land uses, such as cement factories down in Camden, auto body shops and waste transfer stations.

In fact, all across the Northeast, the waste industry reigns supreme, reigns unchecked. Many of these facilities are unpermitted, they're right next door to people's homes, doors open, trash, rodents, and they mean hundreds of truck trips daily into a variety of neighborhoods. And let me say that the export of waste to other cities and internationally always ends up in communities of color.

So brownfields development, which we believe is a strong nexus between economic development, environmental protection and public health, is not leading to beneficial reuse in our communities; in fact, the inequities result in unequal and incomplete cleanups in communities of color and lack of enforcement of existing regs.

Now, with the new emphasis across the country on use space standards, instead of cleaning up a site to perhaps residential standards, if you want to place a school there, we're finding across the country that developers are targeting brownfield sites to build schools. They're simply paving them over with asphalt and putting housing or schools right on top.

So community residents are now understanding that economic vitality and good public health can be achieved through a

coordinated approach to environmental decision making, earlier and significant public involvement, financial incentives to reduce and prevent pollution and use of cleaner technologies, resolution of disputes and avoidance of litigation through conflict resolution and more coherent land use measures.

I'd like to also say that housing, as we've heard, is a key environmental concern. I work primarily on children's environmental health. We have been a beneficiary of federal grants for community and academic partnerships and --

CHAIRPERSON BERRY: You have to sum up, Ms. Shepard.

MS. SHEPARD: So I will sum up by saying that lead and asthma are key issues of housing and healthy schools. We now have 1,100 schools in New York City with over 1 million children enrolled. They all need major repairs, and they're threatening the safety and health of children in those areas.

I'd like to end up by saying as Chair of the National Environmental Justice Advisory Council to the EPA; I believe that the NEJAC and the EPA Office of Environmental Justice have had some impact on increasing public involvement and decision-making.

The EPA grants to states in the failed Title 6 guidance have served to stimulate perhaps unwillingly a dialogue between state environmental agencies and EJA advocates around permitting. So many states are now beginning to develop and adopt state EJA policies of varying credibility and effectiveness.

And these are good steps, but I've got to say if

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we're going to be truly effective in advising EPA that their staff has got to be ready to seek and accept advice on policy initiatives and that the other relevant federal agencies have got to be able to begin to address environmental concerns. The experience that we now have with the drastic disparities, health disparities between racial and socioeconomic groups will not decrease without this kind of interagency cooperation.

CHAIRPERSON BERRY: Okay. Thank you very much. Ms. Parks, do you have questions for the witnesses?

MS. PARKS: Yes, ma'am. Let me ask a question of Mr. Goldtooth. You mentioned in your opening remarks that you have a different definition of environmental justice. Could you explain that to us? And based on that definition, what would you recommend to ensure that Native Americans have environmental justice?

MR. GOLDTOOTH: Well, partly one of the reasons I made that comment is because of the legal and political relationship that our federally recognized tribes in Alaska really just have with the United States. Those are rooted, like I said, and various laws have been established, court decisions, treaties. There's a fiduciary responsibility that the federal agency has to protect the trust lands, the tribal lands.

And in my documentation and also other materials that I will submit for the record that are here, you know, we are very concerned that the federal agencies who are charged and mandated

with the responsibilities to protect our lands have not done that.

They have allowed corporations to come in without adequate environmental protection provisions.

They haven't -- for an example, the Bureau of Indian Affairs is the federal agency that's mandated to make sure that the provisions of the National Environmental Protection -- National Environmental Policy Act are followed. BIA basically is not competent to make sure that the provisions of NEPA are followed. They don't have the staffing. You break down that into the different area offices where industries have come in, and they have industry does environmental assessments, BIA looks at them, reviews them and approves those, and issues findings of no significant impact and business goes on as usual with no environmental oversight in tribal lands. In recent years, we've had successes with EPA to try to look at some of these issues, strengthen the capacity of tribes to hire and receive monies and to hire environmental staff people at the local level, at the tribal level to do environmental protection. But we're just reaching the tip of the iceberg on these issues.

In addition to the disproportionate impact usually, which has been the discussion of environmental justice, you know, we're dealing with the legal and political ramifications of trust responsibilities, which has been a total environmental injustice when it comes to federal responsibility. So I'm putting that on the table as well as sacred sites issues, which are continuing to

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be a serious concern. Yucca Mountain in Nevada is a sacred site to the Shoshone and Paiute people. But it seems like within the laws of this country that they don't recognize that -- and have -- they don't recognize that position of the tribes, which have put that forth. We have a lot of sacred land issues.

So those are some of those issues, as well as environmental justice involves international treaties as well. The United States is very engaged, as you know, with various environmental international treaties, such as the Persistent Organic Pollutants, the POPs Treaty, on the elimination of POPs and the climate change. Previous Secretary of State Madeliene Albright had issued a policy from her office from the Department of State that she respects government to government with the tribes.

If there's any implication of issues that her office is dealing with concerning trust responsibilities to the tribes, she would do what she can to respect the government-to-government policy, which the Department of State has failed to do, especially with POPs Treaty and now the climate change. So there's international ramifications here on the political level where the United States government has failed to consult, have consultation with tribes.

MS. PARKS: Thank you. This question is for Ms. Shepard. You had talked a little bit about brownfield and how there is no real economic benefit to the communities. Can you

talk about in the situations where it can be possible to bring sustainable economic redevelopment in these areas?

MS. SHEPARD: Certainly. We believe that community visioning processes that engage the community with developers in developing solutions to some of these issues is the way to go, and we've got many instances where we can show community visioning around waterfront in New York City, for instance, around the kinds of economic development that you can put on the waterfront after it is cleaned up can really make a difference.

We've got a Home Depot, for instance, going into East Harlem, which has the highest -- which is the highest zip code for asthma rates in the country with Puerto Rican boys being most susceptible to asthma. Yet we're going to have sidewalks widened -- sidewalks narrowed and streets widened for 24-wheeler trucks to come through 24 hours a day to make these deliveries. Now, are those 400 part-time jobs at Home Depot worth the hundreds of millions of trucks that will be coming in every year? Half the community said, yes, they were, and half said, no, they were not.

And we believe that without the public health departments being more involved in economic development decisions and land use decisions and being mandated as part of environmental impact statements, that a crucial piece of public health is being lost with economic development organizations taking the lead.

There is economic development that can happen without truck trips and without making certain communities the focus for

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the kind of cars and activity, pedestrian activity that you will have in New York City with the only Home Depot being in East Harlem, all of those cars and all of those people coming to this one small neighborhood.

So we believe that there are many other kinds of economic development. Community colleges have been suggested for sites like that, back room financial areas have been talked about.

Those provide real jobs. Again, it's about consulting with communities and really determining what's the best use for this land and this neighborhood.

MS. PARKS: And my follow-up question is to everyone on the panel. How do you assess the current level of public participation in the redevelopment, clean-up and permitting process decision-making process?

MS. SHEPARD: Well, I know that most states are just beginning to have these conversations. They are getting some grants from EPA to develop environmental justice programs. In New York State, we are doing that. Massachusetts, Maryland, a number of states are developing policies. And we believe that earlier notice of an initial permit, getting the community involved very quickly, drawing maps of environmental justice communities, showing health status and showing the polluting facilities already there begins to determine areas of concern so that a state agency is not simply depending on the applicant industry to determine that there's a concern there, that the agency's already aware that

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this is a sensitive community and that they've got to look closer.

And, in fact, should probably, if it's an environmental justice area, look at a different kind or look at a more intensive environmental impact process. And some of them are thinking about that.

MS. PARKS: Sure.

MS. TEEL: Speaking for Louisiana, public participation in enforcement actions is non-existent. There is no public notice when an enforcement action is filed. There is no public notice when an enforcement action is appealed. There is no public notice of an administrative hearing, no public notice of a proposed penalty, no comment period on a penalty, nothing. There's no right of intervention in administrative proceedings on enforcement actions.

In the permitting process, it's not much better, and really what exists is only because it's mandated by federal law. Thirty days of notice, 30 days to comment. And in the minority communities and low-income communities, 30 days to comment on what can be multi-volume air permits, for example, is, to some extent, really giving no public right of participation at all. I forget which commissioner suggested having grant money applied to help communities hire technical experts to help them participate. That would be a phenomenal idea, but not only to get them involved to help them, but get them involved at some point in the process where they could actually have time to go through this extremely

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complicated information and actually have some meaningful participation. Thirty days is grossly insufficient, and it's practically meaningless.

MR. SMITH: One of the major problems that communities face around the country when it comes to public participation is that oftentimes state and local officials, and in many instances federal officials, come into the situation with a very biased mindset against a community; in fact, often very hostile. And what that means, in many instances, is that you may have a community group that has been organizing and mobilizing their community and leading the effort to oppose a siting decision or a proposed siting decision, and government officials do everything to negate the significance and credibility of that group. And if public participation is to be meaningful in these processes, there has to be a recognition on the part of government agencies that groups that are organizing to protect their communities are legitimate actors in the situation and must be dealt with.

We've had so many problems in Louisiana and other places where the government officials have tried to encourage the creation of another group that they like, that is not opposed or has the same opinion as a group that's posing a potential toxic threat. So this is a major problem. And then, I don't have time to go through all of the details about some of these situations, but when you examine what has happened we have these situations

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where the groups that are trying to mobilize their community are often discredited with rumors being put out in the community about the credibility of members and things like that. This is very real.

What I want the Commission to understand is that so many of these situations we are dealing with very politically charged environments where you have an industry trying to come in and you have a local state government agency that wants them to come in, and they do everything possible to get them in. If that means going around the community making bad statements about the group that's organizing against it, so be it. That's what happens. And so these are some of the problems that many of the community groups are complaining about around the country.

We had a situation in Louisiana where during the Shintech fight the DEQ organized a hearing in such a way that many of the people who were in support of the Shintech Plant got a chance to testify early on in the hearing. And many of the people in the community who wanted to testify never were able to get on to the hearing list. These are the kinds of things that go on all the time, not just in Louisiana but in other parts of the country.

MR. GOLDTOOTH: In Indian country, the situation with Brownsville is really very shameful when it comes to the amount of resources that are not provided to tribes. Tribes have to compete with other community groups, other citizens' groups, and many groups, rightfully; do have good claims to seek Brownsville

monies. But I have to go back to the trust responsibilities is that we requested -- I've talked to different tribal leaders to where there should be set-aside programs, Brownsville initiatives just for tribes and adequate monies where tribes could get monies from each region or area offices of the country.

And it just -- a little more than ten years ago many of the tribes did not have an environmental specialist in their programs. It was a very innovative program; in fact, out of the region 5 at EPA where a multimedia program was put together where the different EPA programs committed some monies in their programs so that one multimedia type of -- environmental multimedia staff person could be employed at all the 30 tribes in Region 5. That was such a success that the EPA implemented that across the country, which is now called the General Assistance Program, the GAP Program.

Most tribes receive GAP Program, some do still. But these GAP workers are handling solid waste or handling pollution prevention, they're testing the water of water quality programs, do underground storage tanks. They're doing the whole realm. So we still have a big issue of developing our capacity to get involved with environmental protection on the local tribal level and to -- there's a lot of urban sprawl also issues and growth centers within many of the reservations, and some tribes are located in urban areas, such as the Nidas in Green Bay. There's a lot of potential for tribes to become participants and partners in

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federal brownsfield initiatives, but there just isn't adequate funding to do that. And pretty much they're left out of the loop.

MS. PARKS: And what do you see as the role of industry, and how can the interests of business and communities be balanced so that there's a win-win situation? And where is that possible? Everybody? Anybody?

MS. TEEL: I think the first thing would be for industry to acknowledge that there is a problem. You get a lot of representatives, at least in my experience, who want to deny that there's a problem. And I know that there have been some industry-funded studies showing that minorities aren't getting disparate impacts, but I would like to think that we're moving to the next level and realizing that the raw statistics establish a problem. And these statistics grossly underrated, the TRI is low-balling the pollution numbers. I think if everybody acknowledges that there is a problem and then works towards a dialogue then that is the essential first step towards resolving the problem.

And then the second main thing that needs to be addressed is there is a problem, you're bringing in a huge amount of disparate impacts to these communities. What are you going to offer in return? And there are two very fundamental things you can do as an industry if you want to come in. You can say, "Okay, I'm coming in and I can't" -- well, ideally, you would be non-polluting, of course, but we're only talking about polluting industry here.

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You would say, "Okay, I'm going to come in. I need to come in. This is a perfect place for me, and I'm going to put in the best pollution control technology, and I'm going to make sure that your burden isn't increased -- obviously, there's a lot of polluting industry in the neighborhood or you wouldn't have this issue to begin with. We're going to help them put on better pollution control technology so that your pollution burden doesn't go up. And/or we're going to bring benefits to your community."

"If we can't in any way avoid increasing the pollution in your community, we're going to at least bring you some economic benefits or some other long-term benefits, say, investing in your infrastructure by supporting the schools and the educational systems, by providing jobs in the communities and in other ways helping the infrastructure in the community."

MS. SHEPARD: And I agree, it's got to start with a facilitated dialogue. There currently is none. Public involvement is basically showing up at a public hearing, getting two or three minutes to speak, never really hearing from the developer, the industry, never being able to have your questions answered one on one. And then having a scoping session where you tell people what they should be considering, and a year and a half later you get a document and they tell you why they didn't have to consider it. So that's not public involvement. We need a dialogue to be started, and I think it will start there.

MR. SMITH: Again, I think when you survey what's

happened around the country and many of these communities, again, it goes back to the mindset. There is so much hostility and contempt and racism exhibited by industry officials against these communities. You know, people will call a plant, for example, and complain about something, complain about flaring, complain about something. And they won't get a phone call back. Once they get a phone call back, people say, "We can't really do much about it." And oftentimes these industries know that the local state agency is not going to do much about it. I mean this is a reality of what we're faced with in so many of these communities where the fights become so vicious because of this hostile attitude.

Now, you have many instances where around the country you've had these, what is it, the caps -- what are these communities, these advisory groups that have been created, the brain community and industry together. And oftentimes, these just serve as ways to sort of soften the response by the community to a particular concern that they might have around the role that industry is playing in polluting their community. So I think that you have a real deep-seeded problem whereby industry feels that they have to protect their bottom line, they want to operate their facility in the way that they want to operate it. And when the community raises questions about it, it's often met with just this extreme hostility.

One of the things I just want to mention on this point is that one of the reasons why I and Greenpeace and other

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national groups have had to get involved in these situations is because the local community groups cannot get any help from their local agencies. They don't get the information they need or if they go to a local courthouse, for example, they're charged exorbitant fees for copying of public records. They can't have access to agency officials to provide them with information. So we are then called in to help protect the community, and then we're called outsiders. And then a whole other controversy develops where we --

CHAIRPERSON BERRY: Outside agitators.

MR. SMITH: Outside agitators. We get this criticism in spite of the fact that so many industries and polluting facilities are owned by foreign actors from around the world, and all the profits are going out of the state or out of the local community.

So I just feel that, again, I want to emphasize something that Elizabeth Teel said earlier, that a visit to some of these communities by the Commission would be so important so you could hear firsthand the kinds of experiences that the communities are going through with industries and government agencies.

And there has been some improvement in some instances. It all depends on which EPA region you're in, it all depends on who's in the office. There are some good things happened, but for the most part you have this problem of

hostility, this hostile mindset.

MR. GOLDTOOTH: Let me pick up on that word, "hostility." You know, the whole history of colonization of the United States has been based upon hostility, actions against the first nation's people. In this room, I am proud to say that I am the first nation people here in this room, first peoples. And the whole history of colonization brought with it many different symptoms: Western form of development, and with that is the whole issues of internalized oppression that comes with that, federal policies, very paternalistic, pushing Western form of development.

One of the tasks of the Bureau of Indian Affairs -- and I need to mention the BIA. You read about them in the paper almost every week about how they failed in management of trust resources. Billions of dollars to have mismanaged of individual trust monies of individuals throughout Indian country, mismanaged.

They just lost billions of dollars. This is monies from royalties of oil, of coal, of mineral exploration, which has been the mandate of this government, which has allowed industry to come into Indian country basically without environmental protection infrastructures.

Tribes were left out of the language as the Clean Air Act was passed in the early '70s and the Clean Water Act. It provided provisions for states to receive delegated authority, but it left tribes out of the language. So we didn't get technical assistance. There was no mandate for EPA to look to the tribes in

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developing our programs, totally left out. Why is that? Continued racism, racism as far as being institutionalized in the governmental policies towards the first nation's people, because they wanted our land and the resources to the land. Okay.

So with that came the federal programs that prioritize economic development. Tribal leaders were trained to develop our lands with bringing in the industry. During the past couple of years, we've just been going through a process, as environmental justice of decolonization of our mindsets, bringing back traditional knowledge. So one of the requirements if industry is going to develop some sort of business with us is that they have to get sensitized and recognize what is value to us as indigenous peoples? Respect for the land, for the sacredness of Mother Earth. That goes beyond the concept of stewardship, which is still a level of ownership. So embracing indigenous knowledge is very important in this work of seeking a win-win situation. A new paradigm of working with the business sector. In fact, in this world, it's a big -- we're at that corner -- we are at that crossroads right now as society. It's not just a native issue now. Economic globalization, climate change, the Earth cannot produce like it used to produce. We're assuming too much.

So that I hate to mention it and put down into some perspective as we're talking about this. It's that win-win situation. Whenever -- I mean an example of this I need to mention is that just less than ten years ago the federal

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government employed a federal nuclear waste negotiator, it was an office of the federal government, to go out and -- they approached our -- this person approached our tribes.

His task was to build a monitored, retrievable facility, a high-level nuclear waste facility. And his approach was coming to our tribe saying, "You have the values and the philosophy of one with the Earth. We need that, and we have the technology of storing high-level nuclear wastes. Let's put your values and our technology together, and we can be one brother's keeper." That's their approach that many of the industries take.

We're dealing with the issue right now at the Colorado River Indian Tribes along the Lower Colorado River in Arizona and California border where an incinerator, a carbon regeneration facility, an incinerator where EPA -- it's so new, the facility, EPA didn't even have regulations on this kind of facility -- where they recycle these toxic filters of some of the most toxic facilities in the country.

Somehow this facility was built on tribal lands. The Company came in with the same position: "You have land, and we have the technology. You lease us the land, and we'll give you \$20,000 a year to lease that land." We'll build this incinerator, and they're making millions of dollars in this facility. And we're finding that it's totally been -- it's been mismanaged, and there's a lot of emissions coming out of there. People are getting sick and the tribe wants out, but they're afraid of being

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sued by the Company. These are examples of what we're dealing with. The community wants some answers.

Now, EPA wasn't doing their job out of Region 9. BIA issued a finding of no significant impact. The EA that was done was a conflict of interest by a corporate consulting group, and we're dealing with the same issue time and time again.

I'd like to say we're always looking for win-win situations, but there are very few in Indian country.

MS. PARKS: Thank you.

CHAIRPERSON BERRY: All right. Thank you very much.

Do the commissioners have any questions? Yes, Commissioner Meeks?

COMMISSIONER MEEKS: Yes. I've got questions or comments or both. I'm from Pine Ridge, and I'm sure you're pretty aware of issues at Pine Ridge, Tom. And it just happened that I happened at the Council meeting in Rosebud when the Council passed to bring in that confinement hog farm. And, you know, it goes back to the same issues of -- I mean really think these were sincere guys that were trying to do something about economic development. I mean Rosebud's pretty hard up themselves. And yet, you know, it really backfired. The same the BIA did to us said there was no -- it didn't look like there would be any adverse impact from this. But it really does show that there wasn't enough participation across.

But I've been involved in economic development for

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years on the reservations, not bringing industry in but helping community members get into business. You know, how do you settle that issue? I mean how do you bring this kind of participation? And this could go for everybody at the table. You know, how do you finally get to what is good economic development? What's good for people, what's good for the environment? And get those two together, because things are not -- you know, things aren't getting better at Pine Ridge or Rosebud or Standing Rock or any of the other reservations.

MR. GOLDTOOTH: There's a lot of similarities with what we experience in the Indian country when it comes to development and lack of environmental protection and with other people of color communities. The right for a community to be involved in the process is very important, and we deal with that issue as well.

The system that has been developed in many of our tribes as we went through a transition of the early '90s from a lot of our traditional form of governments where there was mechanisms for people to be involved in decision making and the substitution and imposition of the Indian Reorganization Act, which is really a federal initiative to impose an electoral form of government on our tribes.

And there is theories about this, like in Navajo, that the government and industry needed some kind of electoral government in order to negotiate the contracts to bring the

industries in. You know, there still needs to be a lot of discussion of that, but throughout these years, you know, there's been lack of community participation in a lot of the initiatives that we do within our tribes, and there really needs to be a way that leadership and the industry that comes in and community are participating equally in the same circle, at the same table, looking at these developments. That's very important.

Within our communities, we have traditional leaders.

We have people that still carry on in the traditional values. We need -- as native people, we need to assert ourselves with what those values are, because within those values is that respect for the Earth to where we cannot compromise some of these values when we talk about development.

The issue at Rosebud, when it goes fully online and fully developed, this will be probably, they say, the world's largest hog farm processing and production facility, processing near, what, 900,000 hogs per year, using 1.5 million gallons of water per day, hundreds of thousands of gallons of waster water. Definitely a serious issue. The tribe did not have consultation when they initiated this.

The industry didn't -- the Company didn't want it, didn't want public participation. Otherwise there would have been probably more community people looking at this, studying it, and saying, "We don't want this. There's a cultural -- significant cultural and historical site in that area where they built this."

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Elders would have said, "No, you can't do it there." They would have looked at the water, you know, "What is this going to do to the air?" When you get the community involved, there's accountability, but this was basically behind closed doors, government and the industry working together with no public participation.

MS. SHEPARD: It really starts with government, because government is often leasing services from industry so that they can develop contracts in a certain way that, you know, really calls for certain kinds of public involvement or calls for certain kinds of tax incentives or pollution prevention measures, but they don't do that. In New York City, we have very little industry, so most of the polluting facilities are run by government. They're municipal- or state-run, yet we still have the same kinds of problem with having a dialogue and having an open forum. And when there are meetings, I mean power plants and waster transfer stations right now are huge issues, hundreds of people are there.

So people want to be involved, they have something to say; yet the mechanism just really is not designed for that input yet. And we've got to develop ways to do that.

CHAIRPERSON BERRY: Yes.

MS. TEEL: I'm sorry.

CHAIRPERSON BERRY: Well, you go ahead. You didn't answer yet.

MS. TEEL: Sorry. Administrative agencies, both

federal and state, are the fourth branch of government. They are the unelected and unaccountable branch of government, in large part, and some would disagree with me, but last I checked we still live in a democracy. And if the public is not allowed to have meaningful participation in administrative agency decisions, then our government has seriously undermined its credibility, and that's what's missing here.

And it is this fourth branch of government that is making these environmental decisions, and it's the fundamental problem here, particularly when you're dealing with minorities and low-income individuals, those communities that are least capable of organizing and appreciating the process and participating in the process.

And I think our government has a special responsibility to these individuals, especially since they're the ones that are sucking on the tailpipe, drinking the discharge more than any other groups. We have a special responsibility to ensure that they at least participate in a meaningful way in the process.

Is it time-consuming; is it messy, it is annoying? Of course. It's a democracy, and we owe it to these people.

MR. SMITH: Just real quickly, I mean I think the ultimate solution to all of this is, you know, alternative economic activity that substantially reduces environmental threats, substantially reduces or eliminates environmental threats and non-discrimination in environmental policymaking. But until

we get to the first, the issue of non-discrimination in environmental policymaking is so key.

I just can't begin to tell you how frustrating it is for communities when they're already saturated with a variety of polluting facilities in so many instances. They have to deal with threat after threat after threat. You know, some industry trying to come in, some incinerator trying to come in, some landfill trying to come in. And the communities are not equipped capacity-wise to deal with all of those simultaneously. So eventually what happens is -- and because there is no policy in place in the state regulatory system to say, "Let us try to be sensitive to the fact that this is a community that's already saturated."

There's no sensitivity. They're still trying to come in all the time, and they know, and they feel that they can get away with it, because they have the backing of the state or local government apparatus. This is the problem that our communities are having to deal with. They cannot face these threats by themselves, so they end up losing time and time again. So they might defeat one threat and then another comes in, because they can't -- they don't have lawyers, they don't have the money, they don't have the resource capacity, and they're dealing with firms, agencies that have staff, they have researchers, they have attorneys, they have public relations firms. Our communities cannot deal with this.

And so until we get to the ultimate thing of, you

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know, clean production and clean economic activity, this discrimination problem is what we have to deal with, and this is where we need help from this Commission and from the government and from the legislators to come up with solutions to enhance the laws that are already in place, enforce the laws that are already in place and figure out more creative ways to protect communities that are already under siege. We have communities who are in crisis, who need help immediately in all of these areas. Otherwise, we're going to have to continue to deal with this problem in the way the communities are having to face it right now.

MS. SHEPARD: And just one more point. When we talk about jobs and economic development, the communities that bear the brunt of these facilities are not getting the jobs. Damu can tell you, the people from Louisiana can tell you, the people who are living fence line to these huge facilities don't have jobs. They have huge unemployment rates. So when we begin to even talk to some of these industries and facilities, and we say, "Well, if you come in, your 200 jobs, can we ensure that the people in this community are going to get them?" "Oh, well, of course there are laws, and we can't ensure that just this group of people are going to get them." And so what happens you have vast unemployment, you know, of people sitting right next to huge facilities. So it's a red herring.

CHAIRPERSON BERRY: Will they get the hog farmer --

excuse me for interrupting -- the hog farm or whatever that thing is, hog --

MR. GOLDTOOTH: Hog farm.

MS. SHEPARD: Hog farm.

CHAIRPERSON BERRY: -- hog farm, have they guaranteed that the Rosebud Sioux will get those jobs?

COMMISSIONER MEEKS: There's actually not that many jobs associated with it.

CHAIRPERSON BERRY: There aren't any jobs. It's just a bunch of waste, a bunch of hogs.

MR. GOLDTOOTH: There were promises of many jobs.

CHAIRPERSON BERRY: Bunch of hogs and a bunch of waste.

MS. SHEPARD: That sums it up.

CHAIRPERSON BERRY: Commissioner Wilson, I'm sorry, you had --

COMMISSIONER WILSON: Thank you, Madam Chair. First of all, I'd like to thank you all for coming here and for speaking so eloquently about all of this and for your powerful and moving observation and comments. And I have a question and a parenthesis. This information is just shocking. I mean it's -- I'm appalled by looking at this, I have to say. And I mean even in relation to Texas.

(Laughter.)

And I understand the dilemma, and I understand the

disenfranchisement' and the lack of power and money of the people who are basically the victims of these numbers. But my question is -- what is my question? I mean the thing is that on the state level, in terms of the governor, the senator, the representatives on the local level, I mean this -- it affects everybody in the state. So the question is, which may sound naive, particularly after everything you've said, but I mean how is this being allowed to continue in the way that it has? I mean what are the conditions that allow it to continue? I mean there isn't even -- I don't even know how much industry there are in New Orleans, which has been in a terrible economic slump. I mean maybe it's pulled itself out of it, but I'm just curious to know how this has been allowed to go on like this.

CHAIRPERSON BERRY: Let the good times roll.

COMMISSIONER WILSON: Yes.

MS. TEEL: Louisiana has practiced the race-to-the-bottom mentality for quite some time. Manufacturing only provides about ten percent of the jobs in the state, but if -- I don't have these figures in front of me, but if you look at the amount of political contributions that industry makes to our elected officials in this state, I think that those numbers would speak more eloquently and answer your question.

The states' rights movement whereby the federal EPA delegated primary enforcement and permitting authority, particularly for the Hazardous Waste Program, the Air Program and

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the Water Program, have all had a terrible effect in Louisiana. The situation is literally so bad that today, as I speak, the State Department of Environmental Quality and the State Department of Health and Hospitals are under criminal investigation for allowing two minority communities to drink groundwater that they knew was contaminated with poisons: vinyl chloride in the community of Myrtle Grove and near Bossier City in Bossier Parish, northern Louisiana, they were drinking -- it was a plume of gasoline contamination that I've been told, just anecdotally, was so severe that at one point one of the residents pulled the water out of the well, put it into his lawnmower and mowed his lawn with it. It's hard to believe --

VICE CHAIRPERSON REYNOSO: It's economic development.

MS. TEEL: Economic development. The Criminal investigation, a grand jury has been convened, and they have been called before the grand jury on this issue. When I tell you something like that, I don't know what else I can tell you. It is what it is. It's a horrifying situation. We who live with it every day, in some ways we've become callous, and we do, we joke about it, because what else can you do except get up at three o'clock this morning and come and ask you guys to please help us. I know that your powers are limited, but we are desperate for help. And we've petitioned EPA.

We're literally -- right now, we're in the middle of trying to get the Water Permitting and Enforcement Program

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withdrawn, because more than 50 percent of Louisiana's water permits are expired. They're operating under invalid permits, because the state agency is not capable of issuing permits, even in a timely manner, much less enforcing properly the permits that have been issued.

I could literally spend all day going from problem to problem to problem. There's not the political will, whether it's intentional, negligent, I'm not going to assign a motive to it. The reality is that there's been a complete abdication of responsibility for environmental protection at the state level and, for the most part, at the local level, I think because of the politics -- follow the money, and because of this "jobs versus the environment" myth that, for some reason, even though study after study after study shows pollution protection is good for your economy, I don't know why but they don't want to accept that.

We had one good governor who protected the environment strongly between 1988 and 1992. Emission levels went down approximately 50 percent, investment in the state went up almost 600 percent, employment dropped from 12 percent to six percent. Four years of good government, and that's what happened in Louisiana. And since 1992, we lost Governor Buddy Roemer, and we lost Dr. Paul Templet, who was the head of the State Department of Environmental Quality, and we've basically just been going down the tubes since then. The situation has worsened -- I know emissions -- I know they went up last year. They actually went up

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last year.

COMMISSIONER WILSON: Who's the governor now?

MS. TEEL: I mean for 1998.

COMMISSIONER WILSON: Who's the governor now?

MS. TEEL: The governor now is Mike Foster.

COMMISSIONER WILSON: And the Senate -- who are the senators?

MS. TEEL: Senator John Breaux and Senator Mary Landrieu.

CHAIRPERSON BERRY: You can follow-up, yes.

COMMISSIONER WILSON: Can I ask one more question?

CHAIRPERSON BERRY: Yes.

COMMISSIONER WILSON: Okay. The situation in Harlem, is sort of, seems to me, at an interesting moment right now, where it seems to me that Harlem is the one place, except for the Village, where there's any light in the City, because there isn't -- there aren't all of these tall buildings, et cetera. I mean it seems to me that it's about poised for a lot of construction and a lot of buildup. The first part of my question is, in terms of Home Depot, was that a Giuliani decision, was it a Johnnie Cochran decision, and was the community involved in making that decision?

MS. SHEPARD: It was a Giuliani decision, because the City owned the old Washburn Wire Factory, which was the brownfield site, and actually auctioned it off to the Home Depot folks, even though our Congressman Rangle had other plans more benign, like

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community centers, colleges, I think they had ABC wanted to put a sound stage there as well. So it was a City project, and the state came in with money and then ultimately took the lead on developing the property.

But because of 9-11 and some of that development now coming uptown, we're very concerned about zoning issues. Zoning is very, very key to all of these land use problems. Some areas in the south have almost no zoning regulations about separation between residential and industrial. So zoning is very key. And the states say they can't get to zoning, EPA says they can't deal with zoning; it's municipal. So that's at the heart of many, many problems.

But the empowerment zone, which is now being headed by Johnnie Cochran, they have brought in a lot of economic development. They, again, do not seem to understand environment, our elected officials don't seem to understand it. All they see is jobs, and they see campaign contributions. Our lead poisoning prevention bill was thrown out by state court because it was such a landlord giveaway, and the landlord lobby of real estate rules New York City. That's why over 90 percent of all new lead poison cases of kids are African-American, all living in ten particular neighborhoods. The ten lead neighborhoods are the ten asthma neighborhoods. I mean, you know, it's not science here, it's obvious.

So New York's ruled by real estate and money, and

Harlem, you're very right, low-rise, broad streets, broad avenues.

And as I said in East Harlem, they're narrowing sidewalks and widening streets to allow these trucks.

COMMISSIONER WILSON: So but in terms of what's going to happen in the -- because there's no question that there's going to be a huge amount of development there. It's probably one of the last beautiful places in New York. Is the community actively involved in trying to effect some kind of path?

MS. SHEPARD: We have a community board situation in New York City where the whole City's divided into 52 community advisory boards, and the Land Use and Housing Committees are always the most active and most contentious. And they are like the sentinels trying to guard what's happening in our communities.

So people are interested, they want to be involved. When there are meetings around these kinds of issues, hundreds of people are coming out.

We haven't talked here about smart growth, which is also a transportation initiative. And smart growth is bringing more people back into the City. We see gentrification, we see more white residents and families moving to the Harlems of this country. And we are not quite sure what's going to happen. Fortunately, we have so much investment in low-income housing that we will never have a significant majority of low-income people gentrified out.

But, certainly, you know, it's -- smart growth is

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going to mean some major changes in cities like New York. And without poor people and people of color in that debate, it cannot simply be a debate by the transportation engineers and the conservationists. It's going to be very important that there are safeguards for affordable housing and other kinds of initiatives around smart growth.

COMMISSIONER WILSON: Okay.

VICE CHAIRPERSON REYNOSO: You may have heard this morning a lot of concern about the lack of information. We were talking about the quality of air and houses in poor communities in the city and so on, and we had that discussion. I must say that you folks, on the other hand, this afternoon have presented evidence where the information is there, and you've asked yourself, "What can we do about it, and how can you, as the Commission, or other folk help us?"

So I was wondering what your own assessment was about priorities, whether we ought to urge a priority to have society work on the issues that we see there now or should we urge that we fortify the efforts to get more information? Do we do both at the same time? And I must say that we have many -- with respect to the issue that's been of most concern to this panel, I think, which is community involvement, we have many examples of community involvement provided by statute and regulation. For example, in California, in the Public Utilities Commission, community groups can become involved and then ask to be reimbursed for their own

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legal and other expenses in formulating their testimony before the Pacific -- the PUC.

So there are techniques that we can come up with as a people if we want to. I dare say that probably we haven't for some of the same political reasons that you folks have mentioned.

But my concern has to do with that first question, where do we put the priorities right now? Any of you.

MS. TEEL: Speaking as a lawyer, I think the first thing to be done has to be a reversal of the Sandoval decision. If the federal government is unwilling to protect minorities who are suffering from disparate pollution and impacts, as they have thus far shown themselves incapable of, I think that you need to at least make it possible for these citizens to seek help from the judicial system. The Sandoval decision, a five to four decision by the Supreme Court, and the following decision in the 3rd Circuit, have now effectively made it impossible for citizens to protect themselves. If the government won't, at least let's make sure that the citizens have a possibility of protecting themselves in the court system.

CHAIRPERSON BERRY: Well, I would think that if -- that it may be unrealistic to expect the Sandoval case to be overruled in short order, perhaps, unless some miraculous transformation takes place in the Supreme Court. Paul on the road to Damascus.

VICE CHAIRPERSON REYNOSO: I've heard of it.

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(Laughter.)

CHAIRPERSON BERRY: And I'm not sure that's going to happen. And I was just wondering in general if you are correct that if the people can't protect themselves and the government won't protect them, there's nobody to protect, at least to the only question I had, we had a witness earlier today, and I've forgotten which one it was exactly, whose testimony was about some things that would make your testimony, all of you, seem naive, as well as the people who were advocates on the other panels.

The person said, "People with lots of money naturally have more choices than people who don't have a lot of money and have louder political voices and the rest. And that nobody's going to abolish that capitalist principle. And that, therefore -- and, obviously, if the people who have less money and less power are correlated with people of a particular race, national origin, ethnicity, then that means those people won't have much power. And if you don't have power, then obviously you don't get to decide what happens."

And that person also says that the environmental justice movement is unable to generate priorities, environmental justice priorities, because like most of those coalitions none of them can generate priorities really. Policy makers have to do that for them. And if all of that is true and the person further suggested that instead of focusing on things like cancer and other threats, that advocates ought to focus on the communities doing

things for themselves, like working on filth and odors and the absence of parks and recreation in their own communities.

So I was just wondering if you believe that maybe you're just being naive in thinking that all these problems, which do exist, obviously, would be resolved? And isn't it the case that if people who like power, the problem is that they like power? And anything you see that is specific, like a court decision coming down that makes it harder or the fact that everybody we've heard from agrees that for years government agencies haven't enforced all this stuff. I haven't heard anybody disagree.

Even the people who aren't advocates said that the government agencies put out fuzzy rules, and they're not very clear about whatever they're doing. And our own studies show that the government agencies aren't adequately funded. No civil rights enforcement agency has ever been adequately funded. When I say "adequate," I mean adequate to the caseload, adequate to the problem. The commissioners found that for years, no matter whose administration it was.

And you also talked about these matters that have been going on. They didn't just start now. As I heard you, this has been going on for years, is that right, both in the Indian nations and in the urban communities and in the places where you are? This didn't just start yesterday, right?

MR. SMITH: Right.

MS. TEEL: Right.

CHAIRPERSON BERRY: So that is the answer that when communities are powerless, they can generate movements, but they aren't really able to make change of the kind you want until what?

I mean what happens to the movement? How big does the movement have to be or what has to happen in order to get -- we're hearing you, but as you say, we have very few powers. We can hear, we can speak, sometimes I think we have more power than some people would like us to have. But we hear, we speak and we will encourage, but how are you really going to get -- as movements, how are you really going to get these problems solved?

MR. SMITH: Well, I'd like to say two things. One, it's quite obvious that the person who made those statements has not followed the environmental justice movement, perhaps not sat in on a single meeting of those of us who are working on these issues. We have clearly established priorities for our movement, in general, focused on the need for health, healthy and safe communities, enforcement of existing laws, we've demanded equal protection, we've clearly articulated over the years a series of demands that have been discussed in a variety of forums.

I would just say that we have won a number of victories over the past several years, because we have become organized, and when you get organized and you're able to combine the power of community activism at the local level with the power and resources of regional, state and national organizations,

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sometimes international organizations, we have been able to win. When I say, "win," I mean it all depends on which struggle you're looking at, but we were able to at least at the level of Convent, Louisiana, stop that facility from coming in when our community did not want it.

But I'm telling you, we would have never been able to win that fight. That community could have been as organized as it wanted to in Louisiana, and it was organized, but had we not joined the power of state and regional and national and international organizations with the local community, we would have lost that fight. But we won because we got organized together with the community.

But the most important element in that situation was the community determined to keep that facility out but more importantly determined to have a cleaner and safer environment and future for their community. It wasn't just about that one plant.

That effort to bring Shintech in and the effort of that community to keep it out was symbolic of a larger struggle where the community began to articulate its vision for their future.

So I think the point I want to make is that around the country we have won a number of victories alongside many defeats, but those additional victories would never occur as long as the resources are not there to assist the local communities and as long as we have the resistance of state and local governments in particular as well as the federal government to the concept of

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equal protection for all communities and the need for alternative ways of generating economic activity to reduce toxic threats and environmental degradation.

CHAIRPERSON BERRY: It's time for this panel to be up, and let me just say that since I'm a lawyer I can always argue every side of everything. Having said what I just said about this person's argument, which I presented and then asked you that question, let me just say that on the other hand I feel the environmental justice movement has one of the major late 20th century successes -- 21st century successes -- 20th century successes when one traces the history of it and when it started to what happened since. I mean there's no way to say that it has not been enormously successful as a grassroots movement. And movements, in order to be successful, based on the history of them, have to be grassroots movements.

And that the policy problems we face are no different from the policy problems that everybody who comes to talk to us about any civil rights issue faces. Every civil rights advocate faces no money, the enforcement agencies don't want to do what they're supposed to, and they never have, they never will, the political problems and all the rest of it. But you have been successful in articulating priorities, vision, even little things like saying you ought to focus on cleaning up your own community. You can't clean it up if people keep polluting it.

So I want to thank you for coming, and you have also

identified for us the kinds of questions that we need to ask the government people when we talk to them, which is one reason for this. And thank you very much, and we are finished, right? And there are certain sign-out procedures, but this panel is concluded.

MR. SMITH: Thank you very much.

MR. GOLDTOOTH: Thank you.

MS. TEEL: Thank you.

MS. SHEPARD: Thank you.

CHAIRPERSON BERRY: Then we will go with the next panel, which is the last panel.

CHAIRPERSON BERRY: Jenny, are you doing these two?

MS. PARKS: Yes.

CHAIRPERSON BERRY: How many do we have in this one?
How much time do we have?

We now have on this panel witnesses representing industry and public interest foundations. Ms. Parks, you have already called the witnesses; is that correct?

MS. PARKS: Yes, I have.

Panel Four: Industry

CHAIRPERSON BERRY: Ms. Sue Briggum and Mr. Richard Samp, could you please stand and raise your right hands -- I know you just sat down -- so that I can swear you in?

MR. SAMP: Good exercise.

CHAIRPERSON BERRY: Do you swear or affirm that you

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will testify truthfully to the best of your abilities?

MR. SAMP: I do.

MS. BRIGGUM: Yes.

(Witnesses sworn.)

CHAIRPERSON BERRY: Thank you very much. Please be seated. Ms. Sue Briggum has been a Director of Government Affairs in the Washington, D.C. Office of Waste Management since 1987. Where is Waste Management?

MS. BRIGGUM: It's headquartered in Houston.

CHAIRPERSON BERRY: Houston.

MS. BRIGGUM: We pick up most of your garbage.

CHAIRPERSON BERRY: Is that where Bill Ruckleshouse went?

MS. BRIGGUM: No, that's our competitor.

(Laughter.)

CHAIRPERSON BERRY: Are they also in Houston? Is Waste Management where Dean --

MS. BRIGGUM: Buntrock had been, yes.

CHAIRPERSON BERRY: Yes. He used to serve with me on the National Wildlife Federation Board. So that's Dean Buntrock, okay. Ms. Briggum -- that is neither here nor there, I just -- you can strike that from the record, I was just reminiscing. Ms. Briggum has been a Director of Government Affairs in the Washington D.C. Office of Waste Management since 1987. Before joining Waste Management, she was the Environmental Regulatory

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Counselor and Superfund litigator with a law firm. She is a member of the NACEPT, which I don't know what that is, Superfund Advisory Committee. What is that?

MS. BRIGGUM: National Advisory Committee on Environment and Technology. It's an EPA federal advisory committee.

CHAIRPERSON BERRY: Oh, same one that Ms. --

MS. PARKS: Right.

MS. BRIGGUM: Same one Peggy chairs nowadays.

CHAIRPERSON BERRY: Right. Okay. The NACEPT Title 6, Implementation Advisory Committee and EPA's National Environmental Justice Advisory Committee, where she served as a member of the Waste and Facility Siting Subcommittee for six years. She has also been a staff member of the Keystone National Commission on Superfund and the President's Export Council.

All right. And then we have Mr. Richard Samp who is Chief Counsel of the Washington Legal Foundation, a well-known public interest law center, focusing on free enterprise and governmental regulation issues. I did not know this: He is a graduate of the University of Michigan Law School.

MR. SAMP: Yes.

CHAIRPERSON BERRY: What class are you?

MR. SAMP: Nineteen eighty.

CHAIRPERSON BERRY: Oh. You graduated after I did.

(Laughter.)

Mr. Samp filed an amicus brief with the Supreme Court for the Sandoval case, and he has done lots of other things too, but at least that.

You will each have five minutes to make an opening statement, and there's a clock right here so that you can sort of see when your time is up. We say generally the time parameters, and then we'll have questions from Counsel and then we'll have questions for you. And we thank you very much for coming.

Ms. Briggum, would you please proceed?

MS. BRIGGUM: , Thank you very much for the opportunity, and I apologize in advance for my voice. I have been the one coughing in the back, I apologize for that.

CHAIRPERSON BERRY: Oh.

(Laughter.)

MS. BRIGGUM: I'd like to take the opportunity today to share the perspectives I think are also shared by a number of businesses that recognize their obligations to be good neighbors and to try to work constructively with government, community members, advocates and others to make progress toward realizing environmental justice.

Business has been at the table for some time. The Business Network for Environmental Justice, of which I'm a member, was created in the mid-'90s to educate the business community on this issue and to share experiences on successful collaborations between business and communities in which they're located.

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Business has also been an important part of numerous stakeholder dialogues intended to form public policy on environmental justice, including the NACEPT, NEJAC, which is the Environmental Justice Advisory Committee, which, as I said, Peggy chairs, the Title 6 Implementation Advisory Committee and most recently Congressman Clyburn's National Environmental Policy Commission.

As an initial observation about businesses' approach to environmental justice, I think there is a core of companies who realize that achieving environmental justice is an important goal, and it's a component of efforts to implement sustainable business practices and good neighbor policies, like, for example, the chemical industry's Responsible Care Program.

Even a company seeking to be a good and responsible neighbor may find itself part of controversy involving environmental justice, however. And I think part of this is based on the fundamental challenge that's been mentioned by several of the panelists before me. Most environmental justice controversies begin with the unwanted juxtaposition of potentially polluting activity, whether from the private sector or activities conducted by the government, which occurs proximate to residents who are either low income or people of color.

The underlying source of this juxtaposition is in most cases the zoning process. Facility siting is controlled in the first instance by local land use authorities. These authorities' practices and procedures vary widely and can result

in unwanted juxtaposition of commercial or industrial and residential land uses. The zoning process determines whether commercial and industrial facilities will be clustered or dispersed throughout the community, where the activities are located and when exceptions or variances are allowed.

Community groups repeatedly describe their lack of access to and influence on these land use determinations. Until the zoning process incorporates principles of inclusion and environmental justice, disputes in individual communities will continue to arise and will often focus on the environmental permitting process because it represents a structured opportunity for the community to communicate its views.

But the permitting process is a highly ineffective mechanism to generally achieve environmental justice. At first blush, the permitting process appears to be a good opportunity for community residents to express and obtain a response for their views. Nearly all environmental permit programs have public involvement procedures, some more robust than others. The idea would be to use these opportunities for public dialogue to understand community members' concerns, appreciate the constraints under which the permit applicant operates and find consensus on the details of the proposed activity.

It's extraordinarily difficult to achieve environmental justice in this context of an individual facility permit, however, for a number of reasons. First of all,

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environmental justice almost always involves a very complex array of complicating factors that go beyond the permitting facility in question: The proximity of multiple sources of potential pollution or concern, impacts from facilities or activities that aren't even part of a permitting or environmental regulatory process at all, insufficient health care and insufficient knowledge of health conditions, inadequacy of other essential services, like convenient public transportation and other resources.

Second, there is a mismatch, and I don't mean that you shouldn't attempt to do it, but there's a mismatch between the kinds of timing and assurances that you need in order to do business planning and the time it takes to build trust and do a collaborative, problem-solving discussion with the community. And I see that I have far more to say than I have time to say.

Finally, I think it's very difficult within the context of a permitting process to revisit the adequacy of individual environmental obligations. It's very difficult to have the right people involved, the time and the expertise to determine how public health can truly be protected. And for this reason, I would say that there are better ways to approach this.

One is that I have been reading in the trade press that the Agency is increasingly interested in making environmental justice part of all of their environmental regulatory programs. They're looking within the individual statutes to find out exactly

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how environmental justice can be achieved. I think this is very promising.

There are two other efforts I'd like to mention briefly. One is Congressman Clyburn's National Environmental Policy Commission in which a stakeholder group came forth with consensus recommendations in a very extensive report that I've forwarded to the staff that I think directs us in many important ways towards improvements we could make in environmental justice.

Finally, EPA is the lead in organizing the Interagency Working Group of federal agencies conducting pilot projects, trying to develop on a local basis examples of how good discussions can lead to tangible environmental improvement and environmental justice. And I would commend that to you as well when EPA presents before you. And I apologize for going so quickly.

CHAIRPERSON BERRY: That's all right. We'll have lots of questions. Mr. Samp?

MR. SAMP: Thank you. I understand that the Commission has heard today from witnesses who have warned of the adverse health effects that an industrial facility can have on individuals living nearby. Those health issues merit serious consideration, and environmental laws always prohibit operation of facilities that pose unwanted risks to public health.

But we should treat these as health issues, not as civil rights issues. In the absence of evidence that planners are

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intentionally discriminating on the basis of race in the siting of industrial facilities, there is no reason to try to transform what are environmental issues into civil rights issues.

The so-called environmental justice movement is grounded in just such an ill-conceived effort to import civil rights laws into environmental laws. The working assumption of those in the movement is that they can never prove actionable, intentional racial discrimination in siting decisions, either because the evidence just isn't there or it's because it's too subtle to be demonstrated in a court of law. Thus the movement seeks to permit actions to be filed based on a claim that the impacted community has a racial composition that is different from the racial composition of non-impacted communities. Such a standard is wholly unworkable for reasons too numerous to enumerate in a brief statement.

It is worth noting, however, that under the proposed standards every industrial facility is challengeable on environmental justice grounds, because in all cases the enjoining community will have a racial makeup that differs significantly from the racial makeup of some other community. Whatever racial group is the largest within the impacted community will have a disparate impact claim.

Disparate impact litigation, whereby the plaintiff sues for an intentional discrimination -- excuse me, sues not for intentional discrimination but because a challenged policy has a

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disparate impact on a racial group, age group, sex, et cetera, has been largely confined to employment discrimination. It is important to note that a challenged employment policy is not illegal simply because it has a disparate impact; rather, there's no liability unless the court also determines that the policy does not have some significant business justification.

The standard generally has been understood to mean that an employment policy is acceptable even if it has a disparate impact if the employer can demonstrate that the policy leads to increased corporate profitability. While there can be good faith disagreements regarding whether an employer has demonstrated a tie to corporate profitability, the standard at least has the virtue of being generally understood. In contrast, no one has ever come up with an acceptable measure of when an industrial siting decision is acceptable despite having a disparate impact.

Most of the measures seem to come down to a subjective decision regarding when a particular community has too many industrial facilities. But if that is the standard, then what is the point of establishing a rule that takes race into account? Why not simply create an EPA rule that establishes maximum pollution levels within a particular community regardless of its racial composition. Such a rule would be far easier to apply and would relieve the federal government of the burden of having to make the difficult determinations regarding how to measure disparate impact and when that impact is sufficient to

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trigger Title 6 scrutiny.

One final word about the Supreme Court's recent decision in *Alexander v. Sandoval* and the 3rd Circuit's South Camden decision, both of which cases the Washington Legal Foundation was involved in. Environmental justice activists have decried those decisions as a turning back of the civil rights clock and a denial to them of the right to enforce their Title 6 disparate impact rights in the environmental justice setting. They are wrong.

First, I am unaware of a single court decision that has awarded judgment to the plaintiffs under a Title 6 disparate impact analysis in the environmental justice setting. So the court's refusal to allow such suits to go forward is nothing new.

Secondly, while a number of federal agencies have had Title 6 disparate impact regulations on the books for many years, most have never been enforced, and their meaning has never been fleshed out.

Moreover, ever since the Supreme Court's *Guardians* decision 20 years ago, the validity of those regulations has been in serious doubt. *Guardians* suggested that because Title 6 itself does not prohibit policies that have disparate racial impact but rather only prohibits intentional discrimination, Congress may not have intended to permit agencies to adopt regulations that outlaw disparate impact. Accordingly, those who suggest that the recent Supreme Court and 3rd Circuit decisions represent a major sea

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change in the law simply do not know the law.

And for the reasons stated above, I do not believe that Congress should change the law in order to permit private suits to prevent federal fund recipients from adopting policies that have a disparate racial impact. Thank you.

CHAIRPERSON BERRY: Thank you very much. Questions, please, Ms. Parks?

MS. PARKS: Thank you, Madam Chair. Ms. Briggum, how does industry define environmental justice?

MS. BRIGGUM: I think that we have a very simple definition, which is it's the equal treatment and fair treatment of all people, regardless of race or income. I would hope that that's what's meant in environmental statutes when they say protect human health and the environment. It doesn't say of some people, it says of all people.

MS. PARKS: And what role does the industry have in supporting the principles of environmental justice?

MS. BRIGGUM: Well, I think we have some successes, and we also have a lot of work to do. It's not self-evident to ordinary business people how they can attain environmental justice. I think, increasingly, we realize we must, but I think there have to be two things: One, we rely on the community and are educated by the community in terms of their concerns and their experience and what we need to respond to; second, I think that the government can be enormously helpful in facilitating the kinds

of constructive dialogues that I think Peggy and others mentioned in the last panel. It begins with discussion. I think discussion, if it's facilitated well, can build some trust and understanding and eventually some practical problem-solving, and I think that's where the business community is best able to contribute.

MS. PARKS: As you might have heard in the previous panel where the community advocates were talking about the lack of community participation in light of this decision -- land use decisions and zoning and siting decisions, and how do you respond to that?

MS. BRIGGUM: I wish I had a solution. I've been at a number of public hearings in the past couple years, for example, discussing a particular set of facilities that have been of concern to communities, and when we looked at the zoning maps, it suddenly became rather obvious why we had the clustering we did-- that heavy industrial and light industrial use was in fact relegated by the municipal zoning maps to low income and people of color communities.

And the problem is that when you site a facility, you simply cannot violate the zoning law. That's the baseline. And then the question is can the environmental permitting process remedy that? It can make some progress perhaps, but I think ultimately until we have a better dialogue with local planning authorities about how that can be a more inclusive, representative

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process, we're not going to be very happy with the results.

MS. PARKS: I asked this question of the previous panel as well, but I just would like to know how can interests of business and that of community be balanced so that there's a win-win situation? Industry would argue that they're bringing economic benefits to these communities, and the communities will turn around and say, no, in fact, the employment continues to be very high -- unemployment, rather. Unemployment rate in these communities continue to remain very high and that they don't see any economic benefits in their community. Industries are going to have to go somewhere, and the communities do want economic development. So how could those interests be balanced so that those two things can be accomplished?

MS. BRIGGUM: That's a very good question. It's an odd one to ask someone from the waste industry, because we are never particularly wanted. We're an essential service, but we aren't seen as an attractive facility. And so we just don't get tax abatements, and in fact are expected to provide tangible benefits. We don't purport to be able to have a lot of employment. We try to hire the people in the area, and we do so, but there just aren't enough jobs, and so we're expected to provide additional benefits. And I heard these requests earlier, and they are in fact what is expected in many communities and what we supply, which are major contributions to schools and fees based on waste processes. And so we have that experience.

I think having a discussion during public participation in permitting, enforcement and other processes where you have the chance to talk about this, does sensitize the business community to the question of the benefits we are providing. Are we purchasing locally when we can? Are we responsible? But, ultimately, there are some really hard questions; we all need tires, for example. But there don't have to be very many tire plants in the United States, and I don't think we've confronted very well, the question of where they would be and who would decide.

MS. PARKS: Obviously, I mean if there is dialogue between the community as well as industry, things can be done. But the bottom line is how effective have you been in getting the communities involved in a lot of these decision making processes?

MS. BRIGGUM: I think it varies enormously. It depends on a lot of things. It depends upon the good faith and initiative of the business participants, because there are relatively few specific obligations, so that's a key. It depends a lot on the regulators and their sense of the obligation to be a facilitator and keep a balance in the discussions. It depends on getting through some of the challenges that community groups have in that they aren't earning the living by participating in these processes, and so you have to be responsive to their time constraints and to the amount of time it takes to get information.

So I would say you can make good faith efforts. It's key that

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someone is trying to facilitate that process, but we aren't quite there yet.

MS. PARKS: Thank you very much. This question is for you, Mr. Samp. You talked about disparate impact as not being a very good tool in solving a lot of these environmental justice problems. But the reality is that a lot of these poor communities as well as people of color communities are disadvantaged, and they don't have any other tools to resolve their issues. What do you recommend?

MR. SAMP: Well, we do have a permitting process in EPA, and if EPA believes or its state representatives believe that the addition of one additional site in the area is going to make a significant difference in health in that community, that is a reason to deny it. I don't think, however, you can really look upon it as an issue of fairness in the sense that everybody should have their cement plant, one per suburb, in the community or whatever, because really that's the whole point of a zoning law.

The whole point of a zoning law is to say that we really are better off having, to the extent possible, residential houses in one area and industrial facilities in another area. Well, then once you've designated your industrial area, not surprisingly, land is going to be cheaper there, and people who want the lowest cost housing because they can't afford housing elsewhere are going to be the ones living near there. So there's always going to be a certain amount of inherent unfairness. What

you need to worry about is health.

MS. PARKS: For one, EPA has been very slow in both advocates, and industry would argue that they've been very non-responsive and slow in their decision making process, and therefore it does not seem to be a very effective tool to resolve these issues.

And I think the second question I have is you were talking about LULU, which is locally undesirable land use. Under that theory, that seems to be ideal and it would work well if we were living in a true, free world of free economics. But, however, a lot of these individuals are disadvantaged, and they do not have the capability to make the same kind of complex cost and benefit analysis to decide for themselves whether they're going to allow these LULUs to come into their communities or to prevent them from coming into their communities.

MR. SAMP: In answer to your first question, I agree, the EPA has had a hopeless time trying to figure out what to do about environmental justice, and that's why we oppose it. I think that they ought to get rid of it, and that's not the solution I'm talking about. I'm talking about the regular permitting process, which looks at health effects and not racial justice issues.

On to your second question, I agree with you that that is a problem that very often people and communities don't really know what the tradeoffs involved are, and I would like to see state regulators be more directly involved in those kind of

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issues. But I do think that the example of the waste industry is a very good one, because as we've been hearing, nobody wants a dump in their community, and they don't supply a whole lot of jobs, so they're not really economically attractive.

And so what you do is you provide a way that all communities can keep a dump out unless their price is met, and then an awful lot of communities get new schools and they get other benefits by virtue of being willing to take the kind of facility that other people are not willing to take. And so long as you have some sort of state supervision that makes sure that people aren't trading away their health in order to get a few economic benefits, then I think the system is workable.

I certainly think, for example, that American Indians in this country would be much better off if they got economic benefits in return, say, for having a couple of waste management facilities in their reservations rather than having casinos opening up.

MS. BRIGGUM: Since you mentioned the waste industry, I should respond. I think there are several things. One is it's absolutely critical that there be baseline environmental protections that assure that there are no health or environmental impacts from any facility, and certainly including ours. And continuous improvement in that regard I think is in our interest.

Second, I don't think -- I wouldn't characterize them as dumps.

(Laughter.)

Nor did I say that we don't provide good, high-paying jobs and long-term benefits. I won't add in the record, but you would, I think, be pleased to hear how well compensated and respected and proud our labor force is, because we may only have 50,000 jobs, but they're very important ones.

And, finally, your last point was -- oh, I know, it's one that distressed me the most.

MR. SAMP: Native Americans.

MS. BRIGGUM: Oh, Native Americans. As a matter of fact, in my tenure at Waste Management, we talked to a number of tribes, the tribal government and the members of tribes, about whether or not this was a wanted activity, because we had some feelers, and we found that, no, we just didn't find that there were circumstances in which we felt that the entire Native American community felt that this was an appropriate practice with regard to sacred sites and their view of the land. And we didn't go forward, and I think actually in a quiet way that was a useful public dialogue, because we were educated about what their values were and we were not part of the economic development that was wanted, and we totally agreed.

MR. SAMP: And I agree that that should be their choice, and if that's their choice, that's fine.

MS. PARKS: I have no further questions.

CHAIRPERSON BERRY: I wonder if this time -- I think

I'll ask the questions first if that's all right with my colleagues. I don't think I've asked any questions. Maybe I have.

First of all, I think I misunderstood something that you said, Mr. Samp, so I want to make sure I got it right. I wrote down that you said that -- you were talking about disparate impact and the Title 7 situation, and you said that something like, "All that does is shift the burden of proof and that providing a significant business justification by the defendant would be outcome determinative. And that if they could show corporate profitability, that would be enough," something like that. Did I get that wrong?

MR. SAMP: Obviously, I've oversimplified the law, but that's generally my understanding, yes.

CHAIRPERSON BERRY: So that if an employer decided to hire only men as waiters because they thought it was more profitable and they could show that they had been making enormous profits when someone claims sex discrimination under Title 7, once they shifted the burden and their business justification was profitability, they could win, is that your argument?

MR. SAMP: No. I'm sorry if I misunderstood.

CHAIRPERSON BERRY: I misunderstood you.

MR. SAMP: I'm referring to disparate impact litigation. There's basically two kinds. There's intentional discrimination and there's disparate impact. If there is a policy

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of intentionally discriminating against women, that's an entirely different ball game.

CHAIRPERSON BERRY: No, no, no, no, no. My hypothetical isn't intentional discrimination.

MR. SAMP: Okay. If there was a policy that said that you had to -- a waiter had to be able to carry a tray that weighed at least 50 pounds and not spill it and you could statistically show that even though that's, on its face, neutralized to sex, on the other hand 98 percent of men could pass it but only 22 percent of women could pass it, that would be disparate impact, and then the question would become, could they come up with some sort of business justification for that policy, and that's when disparate impact analysis comes in, yes.

CHAIRPERSON BERRY: Okay. But I understood you to say that all they had to do was show up. They were making a profit.

MR. SAMP: Yes. And generally that's what business justification means is they have a business reason for doing what they're doing; in other words, they're trying to improve profits.

And if you could show that the only way to improve profits and there isn't a good alternative is to require this rule that every waiter be able to carry a 50-pound tray, then that would be sufficient to win the case.

CHAIRPERSON BERRY: But the reason why they won was not because they made a profit but because they could show that

they needed to have male waiters to carry the 50 pounds or whatever you said.

MR. SAMP: No, and I'm sorry. I didn't mean to say that they had to be male waiters. They just had to be anybody who could do this.

CHAIRPERSON BERRY: All right. I just wanted to make sure I understood what you were saying.

MR. SAMP: I apologize for any misunderstanding.

CHAIRPERSON BERRY: The second point -- did I get it right that time? I think I understand.

VICE CHAIRPERSON REYNOSO: With this clarification. I was just going to clarify that even under the rulings they still couldn't say, "only men." They can say, "Only those who can carry 50 pounds."

CHAIRPERSON BERRY: Absolutely.

VICE CHAIRPERSON REYNOSO: But you clarified that. Thank you.

CHAIRPERSON BERRY: Then I wanted to ask Ms. Briggum, and then I'd come back to you, would you believe that a standard which simply said that there's a maximum pollution rule for industry and then you can put anything anywhere you want so long as no one exceeds the maximum pollution level issued by the government, would be a satisfactory outcome to resolving these issues?

MS. BRIGGUM: It certainly has the charm of

simplicity. I'm not sure it improves the game in terms of the difficulties of assuring protection. You would have to determine how do you identify the area? What would the radius be? How do you calculate emissions? How do you deal with the terrible system of reporting many have mentioned so far? We have a TRI database that includes, what, 15 percent of all emissions to the environment. I just don't think we're at a place where we could pretend that we could implement this concept in a way that had integrity.

CHAIRPERSON BERRY: Okay. I just wondered whether there was a simple way to do this. Also, why does industry have an interest, no one has said explicitly, in trying to address the issues of environmental justice? For what reason does a corporation identify as one of its priorities addressing these issues?

MS. BRIGGUM: I'm happy to field that. I don't think that there are very many responsible businesses in this day and age that don't feel that they are members of the community, they live there and work there, they have an impact on the community, and that's their responsibility, to be citizens of that community.

I think that the history of development and land use and a lot of factors in the United States have brought us to a time when it's easier to accomplish that goal than -- it's not as easy as you would like, but I think that companies are no different than individuals. They have to assure the protection of

their neighbors. They have to be responsive to their views. And that's their license to operate, that they are responsible members, they comply with the law, and they are considerate of the concerns of those who join them in the community.

CHAIRPERSON BERRY: Is it your impression then, your associations in the business world that most people in these corporations believe -- who are responsible for knowing such things, believe that there are some environmental justice issues?

MS. BRIGGUM: Oh, absolutely. That's why we have a Business Network for Environmental Justice, because the membership, which is I think 120 companies and most of the major trade associations in the U.S., believe that this is an important issue, that it has to be addressed. We feel very strongly that public participation is vital, a dialogue with communities has to be improved. And so I think there is a large core of business that recognizes the importance of this issue. That's why you see business participants who are willing and eager to serve on things like advisory groups that discuss these issues. And the states, for example, as well, I should mention them.

CHAIRPERSON BERRY: What about government? Do the people in your associations and the business community and people who serve on these advisory committees over the years, is there a general impression that state, local and the national government agencies that are responsible for enforcement on these issues have enforced the law in a way that made sense and done so aggressively

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or would one describe it as being in fits and starts or one describe it as rocky or one describe it as slow steady progress? How would you -- the folks you talk to and listen to describe what government -- I mean any government agency? So when we talk to the government people we have some idea of how people feel about them.

MS. BRIGGUM: I'd say a work in progress. I think there are an infinite variety of experiences. One of the things that I think is very telling, for example, in Congressman Clyburn's National Environmental Policy Commission, the head of the environmental commissioners of the states was a key member of that group, talking about how his members could contribute to better environmental justice. And I think they're coming to the table. And like the business community, we're being educated by community groups that come forward.

And I should also say that you must give a tribute to those groups in that the states and the businesses that are most often referenced more often come to the table and try to change and improve. And so I don't think we can pretend that we are doing this voluntarily because we are the source of. I think it's because we've learned, we've seen our activities in a different light, and it's a dialogue that I think is improving our performance.

CHAIRPERSON BERRY: Mr. Samp, the last question for you: How would you describe the relationship, either

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philosophically or otherwise or practically, between the goals of your legal agenda on environmental justice issues and that of the business community, as described by Ms. Briggum?

MR. SAMP: I don't think our goals are significantly different. We don't intend to speak on behalf of the business community.

CHAIRPERSON BERRY: I understand that,, but I'm --

MR. SAMP: My understanding is that there are many within the business community who do, like Ms. Briggum suggests, care very deeply about fairness to all communities. I do think, however, there is a significant sentiment within the business community that what they really want is certainty. They really want to simply know that when they make a decision to build somewhere they're not later going to get sued and be told that they can't. And I think that perhaps the South Camden case that we've talked about before is a good example of that, where a company had many, many community meetings, thought they were doing the right thing, got all the proper permits that they needed from the New Jersey Department of Environmental Protection, spent \$50 million building a cement factory, and then at the last minute was told, "Sorry, we're going to issue an injunction against operation of this plant, because we think that there are some unexplored environmental justice issues."

When I speak to people in the business community, and this is certainly a sentiment I share, their biggest concern is,

"Just please tell us in advance what we need to do to both comply with civil rights laws and environmental laws, and we will do it, but we want to build somewhere, so just tell us what we can do."

CHAIRPERSON BERRY: Well, maybe I misunderstood, because I thought that in your opening statement you were not supportive of the idea that there was something called environmental justice as a goal, which was a conglomeration of civil rights and environmental issues to pursue, that there were environmental issues, unless I heard totally wrong. And there are civil rights, but that there are health issues and there are civil rights issues.

MR. SAMP: My criticism of the environmental justice movement is not its agenda of fairness; I think that's great. My criticism is the lack of definition. Nobody really knows exactly what environmental justice means, so that instead it becomes every local community that doesn't want something in their community can use it as their banner. And I don't believe that that is a helpful way to go forward.

CHAIRPERSON BERRY: And, finally, Ms. Briggum, do you believe that most of the people you associate with in business don't know what environmental justice is and that they're confused about what people mean when they say that?

MS. BRIGGUM: No. I don't think it's necessary to have a precise and narrow definition of environmental justice. I think one of the commissioners -- or one of the earlier presenters

said that. I think that environmental justice has been an evolving concept that as it first emerged there was a relatively narrow subset of facilities that were discussed in terms of environmental justice. And as people looked at it, they said, "Well, wait a second. There are other activities that have the same dynamic, where you have unwanted land uses. You have facilities that are perceived to have too much power."

So I think that it's kind of a sign of the richness of the environmental justice movement that it includes a lot of factors, because it seems to me the power of the movement is we're talking about those factors, and it's not a problem if something seems only loosely associated. It's only a problem is it's not genuine, if someone's using it as a cover for a very different agenda, but that's not my experience with the people I've worked with on the environmental justice movement.

CHAIRPERSON BERRY: Thank you. Are there any other questions? Yes, Vice Chair?

VICE CHAIRPERSON REYNOSO: In terms of your last statement that you're more concerned about certainty, I was going to -- I had the same understanding as our Chair did of your previous statement. So I was going to ask you this hypothetical, but let me see if I can answer it for you. I was going to ask you this: Assume there's a community where ten percent of the population is black, 90 percent white, and every environmentally adverse siting and manufacturing plant and freeway and so on found

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itself in the black community, and none found itself in the white community. Aside from the Constitution, statutes, regulations, would you consider that a problem for our society?

MR. SAMP: I think fairness is always an issue that I'm concerned with. And to the extent that there is an understanding that the way a particular city is administered isn't fair, that is always going to be a problem. And I guess, perhaps, some of my statements here today are colored by the fact that I'm a lawyer and I think of courts.

VICE CHAIRPERSON REYNOSO: Right.

MR. SAMP: And I see nothing wrong with people in a low-income minority community organizing and raising what they think are these basic fairness issues and going to city hall and going to all the bureaucrats and letting them know that. I am just opposed to the idea of allowing someone to file a lawsuit and saying, "We should be able to get an injunction, because this isn't fair."

VICE CHAIRPERSON REYNOSO: Okay. In light of what you had said later, I had assumed that your answer would be as it was. In that regard then, you heard the testimony of some of the community representatives about their concern that things aren't working right, in part because of local politics, folk get elected on a majority, ten percent probably can't swing an election. You will end up with five out of five supervisors or commissioners in that county being elected by white people, perhaps not caring

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politically much about what happens to black folk. Democracy is good but it has its weaknesses, as we know, and so they were suggesting that we have a mechanism for true involvement of the community in the process.

I mentioned the experience of the California Public Utilities Commission in having provisos to help even fund community groups so they can hire their own experts and so on and go before the local commissioners to make their presentation, because all of us would be sympathetic with the notion that once a decision is made it ought not to be second guessed from a point of view of a company that's going to invest \$50 million.

But most of the concern that I heard preceded to that, it went to the decision making process. Do you agree with them that that's a problem? If so, what suggestions might you have to better effectuate the involvement of those concerned communities in the decision making process?

MR. SAMP: I have heard enough of these complaints to make me realize that perhaps at least some of them are valid, and to the extent that EPA can play a role supervising the various state administrators so that there can be some sort of uniformity, I think EPA can play an effective role there.

The difficulty is, of course, there are certain facilities that nobody wants, and whoever gets to end up holding the Old Maid is going to think it was unfair. One issue that I have been involved with is the siting of a high-level radioactive

nuclear waste dump, and this has been going on for 20 years, and I think most people think a decision is overdue, but I'll bet you could not find a single person in the State of Nevada who thinks it's fair that they ended up being the losers on that.

VICE CHAIRPERSON REYNOSO: Including their elected officials, right? Thank you, Madam Chair.

CHAIRPERSON BERRY: Okay. All right. If there are no other questions, we want to thank this panel for being with us. You're excused. Someone will -- the staff will escort you through our sign-out procedures. You've been very useful, and we thank you very much.

MR. SAMP: Thank you very much.

MS. BRIGGUM: Thank you very much.

Public Forum - Open Session

CHAIRPERSON BERRY: We are now going to have an open session, which is the -- I've been given a list of persons who wish to speak in the open session. We're going to start it and continue through the time that it is scheduled for so that if there are other people who want to speak, they can.

We will hear testimony from concerned persons. Can someone take those signs away for the people who are -- we have several individuals who would like to speak. They have previously signed up and had a brief screening with the staff. They've been called on a first come, first serve basis. And the record for this hearing will remain open for 30 days, during which anyone who

wants to submit a written statement can do so.

We ask that everyone limit their comments to three minutes, and we are going to ask the following persons to come forward, and we'll pull up enough chairs so that everyone can sit down after -- but first you should stand up so I can swear you in.

Olga Pomar who is from the Community Organization for Rights and Empowerment, Camden Legal Services. We've been hearing a lot about Camden. Drew Claxton, Citizens for Equal Environmental Protection. Where is Drew Claxton? Are you Drew Claxton? Okay.

Rodney Davis from Arbor Hill Environmental Justice Corporation. You're going to have to stand back up. Colandus "Kelly" Francis from the NAACP Camden County Branch, Jerome Balter from the Lawyers Committee for Civil Rights, and Adrien Bouturrira from the Center for Health, Environment and Justice. Once we get you up here, we're going to have everybody stand up and get sworn in first.

Okay. Could you please raise your right hand? Do you swear or affirm that you will testify truthfully to the best of your ability?

(Public participants sworn.)

CHAIRPERSON BERRY: Thank you very much. Please be seated.

First we will hear from Ms. Olga Pomar, and, please, there's a clock here to time your remarks, and please try to stay within the time limit if at all possible. Please proceed.

MS. POMAR: Thank you. I serve as counsel to South Camden citizens, and I'm one of the attorneys that brought the case that has been discussed here today, South Camden Citizens in Action v. The New Jersey Department of Environmental Protection. There are two basic points that I think our case clearly demonstrates that I would like to share with the Commission. The first is how severe the harm is that's faced by communities like Waterfront South in Camden, and second, how limited the legal handles or the legal avenues are for addressing this problem.

In terms of the situation in Waterfront South, I can't tell you that much in three minutes, but let me just run through a few facts about Camden City and Waterfront South. Camden City is an impoverished city in a wealthy suburban county.

Over 90 percent of Camden City residents are persons of color. Camden has traditionally served as a dumping ground for the unwanted polluting facilities that the rest of the county does not want in their backyards. Waterfront South is one area in the City of Camden that's in a predominantly industrial area and that is even particularly more devastated than the rest of the City in terms of the level of the environmental contamination.

If you can picture an area half a mile wide, a mile long, and in this area we have a large trash-to-steam incinerator that not only serves all of Camden County but is now bringing in garbage from as far away as New York City. We have a regional sewage treatment plant serving 35 municipalities all over suburban

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Camden County. We have a cogeneration plant; we have about four scrap metals facilities, several places that wreck cars, car junkyards. We have not one but two Superfund sites that have still not been cleaned up, we have active businesses, including chemical companies, food processing companies. We have port operations that involve transfers, like petroleum coke from barges onto trucks that ship it out. We have a lot of industrial truck traffic.

Saint Lawrence Cement decided to bring a cement grinding facility into this community, and this community was powerless to resist its efforts, and it succeeded in getting approvals from the DEP. The DEP used only environmental Clean Air Act standards in reviewing this permit. It did not want to consider the demographics of this community or what's already here or how this is going to impact the health of the residents. The health of the residents is obviously poor. There are a lot of people who suffer from asthma and respiratory ailments. Saint Lawrence's primary pollutant is very fine particulate matter, which is dangerous for people with asthma.

We needed to bring this litigation, because that was the only way that we could stop this project from going forward. Mr. Gerrard told you the procedural history of our case, so I luckily don't have to repeat it, but where we are left is that we may be the only case to obtain a ruling that the Department of Environmental Protection violated Title VI regulations by the

failure to consider these civil rights implications, and yet we are powerless to enforce that ruling because the 3rd Circuit just told us that we have no private right of action, either directly under the Title VI regulations or under 1983.

CHAIRPERSON BERRY: I understand.

MS. POMAR: So we're in the predicament that we know our clients are suffering from this very real harm, but there are no easy, available legal remedies.

And if I may just make one short other point. People have spoken about public participation and how important that is, and one of the commissioners said, "You know, maybe litigation is not the best avenue for resolving these disputes." And I'm not suggesting that litigation is always appropriate or that it should be the only remedy, but litigation is what we have to give politically powerless communities bargaining power, an ability to sit at the table. If they don't have the threat of being able to take a company to court, then they have no remedy in the judicial system.

You've also heard how the EPA has not been enforcing Title VI. Public participation can bring people to the table and talk, but if in the end the permitting agency says to you, "Well, we have no choice but to grant this permit," then the public participation becomes meaningless.

CHAIRPERSON BERRY: All right. Thank you very much.

Ms. Drew Claxton.

MS. CLAXTON: Yes. Hi. I'm Drew Claxton, and I want to thank you for having me here. I'm here today representing Citizens for Equal Environmental Protection, and we represent environmental justice communities in the Hudson Valley region. I'm here today to speak about Westchester County in general and specifically about the disparities that exist in the response of Westchester County and its watershed communities to New York City's more stringent requirements to protect its drinking water.

This map is a map of environmental loading of regional facilities, basically county facilities and hazardous material waste sites in Westchester County. Westchester County is a fairly wealthy county, as most people know, and because of that, they often -- people often forget that there are minority communities, such as Peekskill, Ossining, Yonkers and Mt. Vernon.

I myself am from Peekskill, and Peekskill, Ossining and Yonkers are majority/minority communities.

In 1997, Westchester County and ten of its watershed communities signed the memorandum of agreement with the Department of Environmental Protection to protect New York City's drinking water supply. For more than 20 years, and increasingly over the last ten years, Westchester's watershed communities have polluted this drinking water. The new Croton reservoir is considered -- categorized as impaired due to excessive phosphorous loading. Eighty-seven percent of this loading comes from storm water runoff alone from prior development, and the DEC has acknowledged that

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less than 13 percent of its impairment is due to sewage treatment in the watershed.

Since 1997, Westchester County and the watershed communities have all but ignored the major source of the Crotons impairment, storm water runoff. Instead they have collaborated, come together, the watershed communities have created the Northern Westchester Watershed Committee with the County Executive Office, and instead they have spent much of this time conducting studies of and planning for the diversion of raw sewage from high-income, predominantly non-minority watershed communities to three low-income, high-minority communities: The City of Peekskill, the Village of Ossining and the City of Yonkers, all EJ communities and all which have been excluded from the planning process.

Peekskill, Ossining and Yonkers are not watershed communities. They have not polluted the Croton Watershed, nor have they been responsible for enforcing watershed protection prior to or after the 1997 memorandum of agreement. They have not been responsible for enforcing municipal code violations, such as leaking septic systems or for maintaining municipal or private waste water treatment plants. However, Westchester County is planning to relieve the watershed communities of their responsibilities by shifting that responsibility to EJ communities.

Peekskill, Ossining and Yonkers have been excluded from the watershed planning process that will ultimately impact

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our communities. We are not watershed communities and therefore are not party to the 1997 memorandum of agreement. We have not been asked to come to the table of the Committee, of the Watershed Committee. We have not been asked for our input. However, the County Executive's Office has hired an engineer to study sewage diversion to the EJ communities.

The Northern Westchester Watershed Committee has met regularly to plan for sewage diversion to these communities, and this month they will approve the appropriation of funds received from NYC DEP, the paying for sewage diversion to these communities. And in fact Yorktown town supervisor, Linda Cooper, has stated publicly, quote, "We haven't spoken with Peekskill on this issue. They are welcome to come to the meeting, but they have no say," end of quote.

CHAIRPERSON BERRY: You have to finish, please, Ms. Claxton.

MS. CLAXTON: Okay. Sewage diversion, while we have been left out of the process, will have disparate impacts on the people of Peekskill, Ossining and Yonkers. We have a far greater population density in Peekskill, Ossining and Yonkers. For example, Yorktown will close its sewage treatment plant, a municipal treatment plant and ship its raw sewage to Peekskill. They have 847 people per square mile; we have 4,437 per square mile.

We are a town of four square miles, and as shown on

the map we proximate three nuclear power generators that service a broad region, a garbage incinerator that services all of Westchester County, an ash pit and landfill that also services the entire County, and a waste --

CHAIRPERSON BERRY: Ms. Claxton, you have to finish up. You are two minutes over your time. .

MS. CLAXTON: Okay. Thank you. And a waste water treatment center that services the Town of Cortland and a small portion of Yorktown. We are home to a recycling business and transfer station and contain some of the densest private industrial use in Upper Westchester. Peekskill is also affected from the Bowline gas burning plant in Havestraw and a coal-burning plant in Thompkins Cove.

CHAIRPERSON BERRY: Ms. Claxton --

MS. CLAXTON: I am done.

CHAIRPERSON BERRY: -- you're finished.

MS. CLAXTON: Thank you.

CHAIRPERSON BERRY: Mr. Davis.

MR. DAVIS: Yes, ma'am. Thank you. My name is Rodney Davis. I'm the Executive Director of the Arbor Hill Environmental Justice Corporation.

CHAIRPERSON BERRY: Excuse me. And if you want to submit that whole statement for the record, you can.

MS. CLAXTON: Thank you.

CHAIRPERSON BERRY: Any of you can. Go right ahead,

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Mr. Davis.

MR. DAVIS: Yes, ma'am. Rodney Davis, Executive Director of the Arbor Hill Environmental Justice Corporation. We are based in Albany, New York, and we represent the Greater Capital District Area when it comes to issues dealing with environmental justice.

I wanted to share with you a couple of stories, but I'll be very brief since we have the three-minute time limit. I'll move on to a case study involving the City of Albany, New York and its receipt of funds from the U.S. Department of Housing and Urban Development, specifically the Lead Abatement Program.

As Dr. Bullard mentioned earlier this morning, lead abatement in housing is a serious problem. The intent of the HUDs program with regard to lead abatement is -- the intent is good but as performed by the City of Albany, New York, it has very serious flaws.

The City of Albany has a bad habit of using their socioeconomic statistics of low-income and minority communities to bring a large amount of federal money, but when this money and funding is entrusted to the city administrators they place residents' health in peril, in general, but specifically young children in their developing years.

I think you would be interested to know that the overwhelming majority of city administrators and lead abatement contractors that perform this lead abatement do not have the

proper credentials. They are supposed to receive through an EPA-certified training course and interim certificate for six months, whether that be for a lead abatement supervisor, lead abatement worker, et cetera. After the expiration of that interim certificate, they're supposed to go to EPA for third party testing. And the majority of the city administrators and the lead abatement contractors do not have this very important certification from EPA.

Additionally, no soil testing is conducted by the City of Albany's lead program as required by the Code of Federal Regulation. Soil testing is being conducted in Boston, Massachusetts, as referenced by Professor Hynes earlier today, and I have spoken with lead outreach workers in Boston, Massachusetts.

They are performing lead soil sampling and remediating problems where they exist. The City of Albany was initially funded at the amount of \$2 million initially for two years, and ironically they have just been refunded at the amount of \$3 million.

My specific recommendations and any influence that you could help in this matter would be to ensure that funding recipients of U.S. Department of Housing and Urban Development lead abatement funds comply with the Code of Federal Regulations.

More funding also for EPA's Lead Enforcement Office, specifically inspectors and auditors responsible for monitoring the Lead Abatement Program.

And with your permission, I'd like to have this

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document entered into the record. It is a FOIA request that we sent to the Department of Housing and Urban Development, and we asked for expedited processing on our FOIA request, and we were denied, because, quote, "Your request for expedited processing does not show a compelling need. Therefore, your request has been denied," unquote.

CHAIRPERSON BERRY: Without objection, so ordered.

MR. DAVIS: Thank you.

CHAIRPERSON BERRY: Thank you very much. Mr. Colandus "Kelly" Francis please.

MR. FRANCIS: Good evening, Madam Chair and commissioners, staff. I'm currently serving as President of the Camden County Branch of the NAACP. We are headquartered in the City of Camden and have been there since 1941 and in continuous operation in the City of Camden and the surrounding communities.

Also, I also serve on the Community Development Corporation in the City of Camden, called Parkside Business and Community and Partnership, and we rehab vacant, abandoned homes for resale as affordable housing to low- and moderate-income homeowners.

I've been in Camden for the past 53 years, and I have seen -- been there when Camden was at its greatest, as far as one of the most industrialized cities probably in the country, only nine square miles but a tremendous amount of industrial ratables at one time. And, of course, now it is the second poorest city in

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the United States and the poorest city in the State of New Jersey.

So I have seen it at its greatest, and I have seen it at its most depressed state.

And I've seen the exploitation of the city by industry, by the state. The state has come in and taken over the prime waterfront land. Almost the entire waterfront that we share with Philadelphia is controlled by the State of New Jersey. They put a prison on the waterfront, on prime land, they've put a university, Rutgers University baseball stadium, which is leased to profit-making semi-pro baseball team, and we have the state aquarium. We also have an entertainment center that can seat 25,000 people during the summer and fall months.

And we have the South Jersey Port which occupies 250 acres along the waterfront, which is also a state entity, and that's where the Saint Lawrence Cement Plant is located. So as a result, the City of Camden does not get any direct taxes, not one penny in direct taxes from Saint Lawrence Cement Company. This is something I think -- I haven't heard that mentioned today. So they just lease that land on South Jersey Port -- from the South Jersey Port and that money, in turn, goes to the State of New Jersey. All the revenue is state revenue monies.

And there are only like 15 jobs. They say there are 15 jobs in that facility, and I doubt if only maybe three or four of them are Camden City residents, and I don't expect them to be there very long.

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But those are some of the things we have to deal with. We have very valuable land, but it's being misused. It is not being used to produce jobs, what poor people need. The most important thing they need is jobs, and it's being used for state purposes or additional housing, which is the last thing that a depressed city needs. It does not need any additional residents or housing. It needs industry, commercial development that will produce ratables and jobs for the City of Camden.

CHAIRPERSON BERRY: Okay. Thank you very much, Mr. Francis. Mr. Jerome Balter, please.

MR. BALTER: Thank you, Madam Chairman. I work as an attorney for the Public Interest Law Center in Philadelphia. We are co-counsel with Ms. Pomar on the Camden case, and it was us who brought the original case on environmental justice in Chester, Pennsylvania. Ms. Pomar told you something about the high impact of the pollution facilities in Camden. Let me tell you about the impact of pollution facilities in Chester.

When we brought the lawsuit in the space of ten years leading up to that lawsuit, the State of Pennsylvania had issued seven permits for waste facilities, either treatment or disposal, in the entire county in which Chester resides. Of those seven, two were for facilities in white communities outside of Chester; five were facilities inside of Chester. The two facilities outside of Chester totaled 2,000 tons a year; the five inside Chester were two million tons a year, a disparity of 1,000 to one.

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We also did a survey of the public health and compared the public health of the people in the City of Chester, 75 percent black, to the people in the rest of the county, 90 percent white. And it was the kind of statistics that you can imagine. With respect to mortality, the rate was 40 percent higher in the City of Chester. With respect to infant mortality, 100 percent higher. With respect to low baby birth weight, 100 percent higher. Now, those are the disparities.

Now, I was amazed just a few minutes ago when Mr. Samp from the Washington Legal Foundation told this Committee that he recognized that if you did something about the health, and EPA never talks about health, never talks about health, if you did something about health, he could understand that. We will submit to you today a proposal -- a counter proposal to the EPA's proposal in which the determination of civil rights is on the basis of the health of the community. That's predictable, it's transparent, everybody knows what it is, and we're talking about health, and this is a proposal for health. And you don't have to do high jumps in order to find out whether your community is in a position to take facilities or not take facilities. Thank you very much.

CHAIRPERSON BERRY: Thank you very much. We will look forward to looking at it.

MR. BALTER: May I submit it?

CHAIRPERSON BERRY: Yes, please, without objection.

Mr. Adrien Bouturrira? Did I pronounce your name right? If I didn't, tell me how to pronounce it.

MR. BOUTURRIRA: Yes, ma'am.

CHAIRPERSON BERRY: Okay.

MR. BOUTURRIRA: Good evening. I was going to symbolically do my presentation in Spanish and challenge the Commission to provide a translator, but --

(Laughter.)

CHAIRPERSON BERRY: If you do it slowly, it will be okay.

MR. BOUTURRIRA: Well, just to bring a point home, which is the point of my presentation, which is the additional burden that Spanish-speaking communities have when dealing with environmental justice issues. And the lack of recognition by state, local and federal agencies to the needs of Spanish-speaking communities in order to gain access.

We're talking about participation. As if it wasn't bad enough that participation doesn't always deliver the goods for the community, we have a situation in most of our Spanish-speaking communities where that participation is not -- even minimal participation is not possible by what sometimes appears to be a systematic process of marginalization of Spanish-speaking communities in the United States.

I, therefore, submit a suggestion to the Commission that this in some form or another gets addressed and presented

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particularly as it pertains to the EPA and as it pertains to possible ways that stronger laws can be implemented particularly to include a certain mandate at a federal level which recognizes the crisis in the right-to-know laws, in particular as it pertains to Spanish-speaking communities. We are in a definite crisis in this area.

We have a situation, for instance -- as a community organizer; we have a situation in the City of Detroit where there is a siting of a public school over a contaminated site. The population of that community is 90 percent Latino Hispanic, first generation immigrants primarily, and every single public hearing pertaining to the siting of that school has been carried out in English without any outreach whatsoever in Spanish in that community, and that can be documented. I believe that we are in a huge crisis. The United States has no official language.

It is long overdue that we recognize the needs of what is a huge population, and this is without even going into the border communities. If we start to talk about the crisis of what's happening along the border as it relates to issues pertaining to NAFTA and as it pertains to issues, cross-border issues, if we're going to talk about that and the implications on civil rights along those parameters and that geographic location, we are talking about a monumental crisis.

There is no public participation. There is not even the option to publicly participate, and there is no access to key

information. What is being produced by the EPA in terms of educational materials is minimal, and it's never aimed at truly informing the community as to what's going on in the health of their community. Thank you very much.

CHAIRPERSON BERRY: Thank you very much. I have one question I wanted to ask Ms. Pomar. And I only ask it because in the earlier panel your case was discussed. And as I understood the earlier discussion, it was that the request for the injunction came long after all the processes had been finished and the person that spent all this money at the company to build the cement plant and then as Johnny-come-lately here comes somebody asking for an injunction. Is that the correct characterization, and are we talking about the same case?

MS. POMAR: I am so glad you asked that question. The reason that Saint Lawrence ended up in the predicament that it was in is because it chose to build this \$50 million facility without ever having gotten approvals from DEP. It was building the facility while the permit review was pending and while DEP hadn't even decided whether it was going to hold a public hearing.

Saint Lawrence knew there was community opposition from Day One, because my clients were very vocal about opposing the facility. They utilized every usual procedure that community groups can utilize -- letters, petitions, and meetings. And the fact of the matter was that Saint Lawrence was 80 percent finished with construction by the time DEP finally issued the permit.

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CHAIRPERSON BERRY: Okay.

MS. POMAR: So that is why they ended up sort of -- they made the investment because they chose to take that risk, which they're allowed to do under New Jersey law.

CHAIRPERSON BERRY: I see. Is that -- you are in Camden, so --

MR. FRANCIS: Yes, that's correct. As a matter of fact, I as President of the NAACP branch and also involved in the neighborhood organization as a trustee, the Parkside Group, I knew nothing about it until I read about it in the paper that it was 90 percent complete. They just included -- they handpicked some folks from the immediate neighborhood and met with them. And I -- well, I live in the Parkside area. None of the people in the Parkside area were involved. And I, like I said, I as President of the NAACP had no knowledge of it until I read in the paper that it was 90 percent complete.

CHAIRPERSON BERRY: And so what you're confounded by now is the Sandoval decision --

MR. FRANCIS: Correct.

CHAIRPERSON BERRY: -- and then the Court of Appeals saying that you don't have a private right of action. That basically is where it stands.

MS. POMAR: Yes. Well, we filed for en banc review but as I'm sure you're aware that's not very easy to get. So we are really left in this predicament where we do have a ruling that

the DEP's permitting procedures violate civil rights, but what can we do with that ruling?

To expect the EPA to enforce it is unrealistic for two reasons -- one, that the EPA enforcement of Title 6 complaints has been so inadequate, and, two, because EPA Administrator Christy Whitman was Governor of New Jersey when this happened. She personally approved the Saint Lawrence Cement coming to Camden --

CHAIRPERSON BERRY: I see.

MS. POMAR: -- and came to the groundbreaking. So it could be particularly ironic --

CHAIRPERSON BERRY: Well, maybe we'll ask questions about it --

MS. POMAR: -- to have her enforce this ruling.

CHAIRPERSON BERRY: Well, this would be good questions to ask EPA when they appear before us.

I want to thank the panel for coming and thank you for your comments. And you may be excused.

Before we adjourn -- well, we'll adjourn this hearing, and we go back to the one that we recessed; is that right? Were we finished?

PARTICIPANT: We're finished.

CHAIRPERSON BERRY: Without objection, this concludes our hearing for today. The hearing will reconvene on February 8, 2002 after our Commission meeting to take testimony from

government officials who enforce the laws and regulations on environmental justice and other concerns with the topic. Commissioners, before you go, we appreciate the attendance and participation of all who were here today. This hearing is adjourned.

We recessed the earlier hearing, you may recall, the documents hearing, and it -- could the commissioners bear with me for just a minute, please. There is one witness -- please, if you could hold on. There is one witness, who traveled all the way from South Carolina to get here to speak to us in this record, and she just finally got here, and I wondered if we could give her three minutes.

Okay. Ms. Virginia Thompson, you may come up, and I defer my announcement that there was an adjournment until after you're heard. What? Virginia Townsend. Ms. Townsend, yes. She's with the Community Organization for Rights and Empowerment, CORE. Did I say it right?

MS. TOWNSEND: Yes, you did.

CHAIRPERSON BERRY: Okay. And we'll wait till you have a seat.

MS. TOWNSEND: I'm sorry I just got to the meeting, but I think I was misinformed as to the time.

COMMISSIONER WILSON: We like your hat.

MS. TOWNSEND: Pardon me?

COMMISSIONER WILSON: I said we like your hat.

MS. TOWNSEND: Thank you.

CHAIRPERSON BERRY: You can put it on the other chair; nobody else is going to sit there.

MS. TOWNSEND: Okay.

CHAIRPERSON BERRY: That's all right. We've finished except for you.

MS. TOWNSEND: Okay.

CHAIRPERSON BERRY: We decided to wait and let you speak.

MS. TOWNSEND: Well, I thank you for that.

CHAIRPERSON BERRY: So you just go right ahead. You're supposed to get three minutes, though, and submit anything you have for the record.

MS. TOWNSEND: Okay. I've already done that.

COMMISSIONER WILSON: You have to put your microphone on.

CHAIRPERSON BERRY: So we can hear you. So we can record you, that's what we're doing.

MS. TOWNSEND: Okay. Anywhere?

CHAIRPERSON BERRY: Just anywhere you want to. Just stick it on there somewhere.

MS. TOWNSEND: Okay.

CHAIRPERSON BERRY: Oh, I have to swear you in. Could you stand up and raise your right hand? Do you swear or affirm that you will testify truthfully to the best of your

abilities?

MS. TOWNSEND: I do.

CHAIRPERSON BERRY: Okay. Thank you. Please be seated. And you may please proceed to speak to us.

MS. TOWNSEND: I'm from Hollyhill, South Carolina. It's a small town in the County of Orangeburg in the State of South Carolina. Boyer is a tiny section in Hollyhill that is located approximately one-half miles to five miles northeast and northwest of the industrialized territory. The northeast homes are what is considered to be a downwind direction from two of the plants and is an area consisting of the original 88 petitioners who protested against South Carolina DHIC's permit that allowed one of the plants to expand. That would cause an increased pollution in the area.

I brought an appendix to have given out, but since I'm late here let me go on without the appendix, but I will be referring to it as I speak. Our story starts in the early 1980s with the Boyer neighborhood complaining about the amounts of emissions which consisted of visual smoke, dust and fiber that saturated the atmosphere in the area nearest to the cement and fiber board plants. South Carolina DHIC was eventually informed of the problems, so they came, took samples, identified the matter as a mixture of dust, fiber and cement, but no further action was taken and no solution was offered.

The residents of Boyer continued to complain to the

local plants and even sought advice from an attorney. Several people from the neighborhood worked in the industrial site at the time and feared losing their jobs. Piles of fiber, cement, dust and little specs of soot on cars, clothes and outdoor furniture settled constantly. Community members started to suffer with severe health problems, such as sinus, allergies, skins rashes, throat irritations, runny nose, hoarseness, thyroid complications and a host of other illnesses.

Whereas the 1980s were a decade of complaining, the 1990s were a decade of dying. Residents began to question the source of the deaths. Cancer was cited as a major killer. According to the U.S. Census, from 1995 to 1996, Orangeburg County's population decreased by 77. About 369 people live in Boyer compared to 38,000 living in the entire county, yet the community records have proven that more than 15 of the 77 died in the Boyer community, mostly of cancer or heart problems.

The cement plant closest to our community came in 1966, and studies have proven that 30 years of existence near toxic air-releasing facilities poses a severe threat to the health of residents and an end to longevity. With these thoughts -- you said I could have some water, let me have this. I just walked in and I am sorry.

COMMISSIONER MEEKS: Press down on the top of that.

MS. TOWNSEND: Okay. Thank you. A petition was filed by the community and an appealed followed. The community

members spent months in court explaining that no one had been accused of any illegal activities. Our goal was to have an investigation performed to determine the true quality of the air we breathe when the total toxic chemical releases are counted from an umbrella perspective instead of monitoring each facility as a separate unity. Each plant was measured -- their emissions were measured by DHIC in its lonesome, whereas we breathe that air collectively. So we were asking that they combine in an umbrella-type form and collect all of the amount of emissions together. But they did not do that.

South Carolina DHIC maintained that the quality was good as far as air was concerned and no investigation was necessary. The court concluded that no court preparational time was necessary for the community to present in court and that we had submitted insufficient evidence. Therefore, they could not do anything for us, because the burden of proof was on the community.

However, it was very hard for us to prove that they were doing anything wrong when we could not get the statistical information, which DHIC denied giving us.

There are three plants in the Boyer community who are presently seeking a permit application. We already have four plants, a multitude of trucks and other types of transportation that's servicing the plants. And because of this, we feel that we're in grave danger. Not only that, they're already planning to do something called an inland port, and it's going to be in the

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general area where we live. And if that happens, then we feel that with all the deaths and the sicknesses now that we are experiencing, that that amount will increase even more. And because the other plants are already asking to expand with all of that piled together, then our community will not be able to accept that amount and continue to live. The only reason those applications have not been granted, the permits haven't, is because our community requested a public hearing, and because of that everything is on hold. It's pending as of now.

Now, I do have some facts. I'm trying to skate through this, because I'm rushed, because everybody's already ready to leave, but --

CHAIRPERSON BERRY: We will put it in the record.

MS. TOWNSEND: You will?

CHAIRPERSON BERRY: So don't worry about that. Yes. We'll put all you have in the record.

MS. TOWNSEND: Okay. All right. Good. Then let me just sort of sift through this, because I did take the time out to do a very thorough report as to what was going on in our community, and it is all written in the record.

CHAIRPERSON BERRY: Why don't you do this: Why don't you tell us -- we'll put the description in the record, and we get a sense of it from what you've said, so why don't you tell us what you think should be done or what we might do or the governor might do or somebody might do?

MS. TOWNSEND: That's what I'm not 100 percent sure of.

CHAIRPERSON BERRY: Okay.

MS. TOWNSEND: I know that because the plants play such a large role in financing our state, we feel that the government there are basically more so against us more so than the plants are. So we know that we can't do anything about it, because we've already tried, and we do feel that we're being violated, because our property values are decreasing, our people are dying, everything in our community is affected. If you were to -- this is a little bit better now, but there was a time when if you went out and pulled the leaf greens off of the bush, it would be white. To tell you the truth, what was so sad about it is that I did not even know why it was white. I kind of got the feeling it was natural. We had been exposed to it all our lives, so what we would do is just wipe the greens off and eat them. Now, in later years, which really happened in the last two years --

I guess you would call it ignorance, but when you've not been exposed, then you've not been exposed; you just don't know.

And the last two years, we've been battling this, because when we found out because of all the deaths, we have eight people in -- I have eight people in my family within calling reach of me, vocal calling reach, that died in one year -- eight people.

We have children that's on pumps, we have children with different

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kinds of skin rashes that no one can explain. Most of the doctors in our community will say -- they will tell you behind closed doors that, "Yes, these cement plants are causing problems," but they won't come out openly and say that, because they have contracts as well with the plants.

CHAIRPERSON BERRY: Well, why don't we do this then:

We'll take the record -- put it in the record and we'll ask the staff to look at the information about that community, and we will figure out, when we have the government before us next time, we're going to have government officials from the environmental agencies, we will ask them about your community, to follow-up on what's there. And then somebody will get back in touch with you.

So why don't we do that for you? So that your coming here was worthwhile, so don't think it wasn't worthwhile. And we will put all of that into the record, okay? All right. Well, thank you very much for coming, Ms. Townsend.

COMMISSIONER MEEKS: Thank you very much.

MS. TOWNSEND: Although I'm disappointed that I didn't get the chance to really tell you about this, I thank you --

CHAIRPERSON BERRY: Well, we understand and --

CHAIRPERSON BERRY: -- so very much for accepting me, and I also thank you for giving me the opportunity to be here. And thank you very much.

CHAIRPERSON BERRY: Thank you very much. And so now

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what we will do -- thank you, and it's all right for you to talk to the staff member and leave. This concludes the hearing. The hearing will reconvene on February 8. I'm repeating what I said before.

(Whereupon, at 4:41 p.m., the Environmental Justice hearing was concluded and the Public Documents Hearing was resumed.)

CHAIRPERSON BERRY: But before we leave, colleagues, earlier we recessed the hearing for documents, because the people from Virginia, the State of Virginia were not here.

Counsel tells me that what happened is the people came and they went to the hotel where we were going to have the hearing, documents hearing, which was scheduled to be in a hotel before we moved it back here. And someone from the staff was supposed to be up there in case they made a mistake and went to the wrong place. But apparently the staff member left before they got there, so they didn't know where to go. So they went back to Virginia. So they're non-compliance with the subpoena is not their fault, and they say that they will abide by it. So why don't we, if there's no objection, simply say that if we need to renew it, we will. But we will accept their promises that they will -- is that all right, Counsel?

MS. CARR: That's fine, Madam Chairman.

CHAIRPERSON BERRY: That they will comply. And with that, we then will adjourn the first hearing of the day, and with

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that, we're completely adjourned from all matters before us, without objection. Thank you very much.

(Whereupon, at 4:43 p.m. the Documents hearing was concluded.)

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