

U.S. COMMISSION ON CIVIL RIGHTS

+ + + + +

COMMISSION MEETING

+ + + + +

FRIDAY,
JULY 18, 2003

+ + + + +

WASHINGTON, D.C.

+ + + + +

The Commission convened at 9:30 a.m. in Conference Room of the U.S. Civil Rights Commission, Room 540, 624 Ninth Street, N.W., Washington, D.C., Mary Frances Berry, Chairperson, presiding.

PRESENT:

- MARY FRANCES BERRY, CHAIRPERSON
- CRUZ REYNOSO, VICE CHAIRPERSON
- JENNIFER C. BRACERAS, COMMISSIONER (via Telephone)
- CHRISTOPHER EDLEY, JR., COMMISSIONER
- PETER N. KIRSANOW, COMMISSIONER (via Telephone)
- ELSIE M. MEEKS, COMMISSIONER
- RUSSELL G. REDENBAUGH, COMMISSIONER
- ABIGAIL THERNSTROM, COMMISSIONER (via Telephone)
- LESLIE R. JIN, STAFF DIRECTOR

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

STAFF PRESENT:

MANUEL ALBA
 KIMBERLEY ALTON
 JOHN BLAKLEY
 MARGARET BUTLER
 DEBRA CARR, ESQ., Deputy General Counsel
 KI-TAEK CHUN
 TERRI DICKERSON, Assistant Staff Director for
 Civil Rights Evaluation
 PAMELA DUNSTON
 LATRICE FOSHEE
 WANDA JOHNSON
 SOCK FOON MACDOUGAL
 TINALOUISE MARTIN
 MARC PENTINO
 KWANA ROYAL
 EILEEN RUDERT
 JOYCE SMITH, Parliamentarian
 ALEXANDER SUN
 DAWN SWEET
 DEBORAH VAGINS
 AUDREY WRIGHT
 TIFFANY WRIGHT
 MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

KRISTINA ARRIAGA
 LAURA BATIE
 JOY FREEMAN
 CHRISTOPHER JENNINGS
 KIMBERLY SCHULD
 MELISSA SHARP
 KRISHNA TOOLSIE

SUMMER INTERNS PRESENT:

HILLARY BROWNE
 DIEGO CHOJKIER
 ALINA NEVENTSEL
 SANG YOON PARK
 WINSTON SHAW
 ALISHEVA YUN

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

I-N-D-E-X

<u>AGENDA ITEMS</u>	<u>PAGE</u>
I. Approval of Agenda	4
II. Announcements	5
III. Staff Director's Report	9
IV. Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations? Volume III	11
V. A Quiet Crisis: Federal Funding and Unmet Needs In Indian Country	61
VI. Briefing on community Reinvestment: Challenges Credit Access and Capital Accumulation in Low Income and Minority Communities	66

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

(9:39 a.m.)

CHAIRPERSON BERRY: The meeting will come to order.

I. APPROVAL OF AGENDA

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

COMMISSIONER EDLEY: So moved.

COMMISSIONER REYNOSO: Second.

CHAIRPERSON BERRY: All in favor indicate by saying aye--

COMMISSIONER THERNSTROM: Wait, wait, wait, wait, wait. Can we move the items on which we are voting up, you know, front; that is? Would that be possible? I am trying to get out of town.

CHAIRPERSON BERRY: Would you have a problem right after the announcements and before the staff director's report?

COMMISSIONER THERNSTROM: Oh, after the staff director's report. That's fine. I don't want to be unreasonable.

CHAIRPERSON BERRY: Okay. It will be right after the staff director's report. Okay.

COMMISSIONER THERNSTROM: That's great.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Thank you so much.

2 CHAIRPERSON BERRY: I forgot what I was
3 doing. Oh. All in favor of approving the agenda
4 indicate by saying aye.

5 (Whereupon, there was a chorus of "ayes.")

6 CHAIRPERSON BERRY: Opposed?

7 (No response.)

8 CHAIRPERSON BERRY: So ordered. The
9 minutes of the June 20th meeting, next item. Could I
10 get a motion to approve?

11 VICE CHAIRMAN REYNOSO: So moved.

12 CHAIRPERSON BERRY: Has anybody got any
13 changes or anything to the minutes?

14 (No response.)

15 **II. ANNOUNCEMENTS**

16 CHAIRPERSON BERRY: Okay. The next item
17 on the agenda is announcements. As usual, I can't
18 find them. Here they are.

19 First of all, I would like to acknowledge
20 the death of Ms. Sylvia Tracy Amalfitano, who was a
21 great contributor to the cause of civil rights in the
22 State of Massachusetts. She became a Vice Chairperson
23 of the Commission's Massachusetts State Advisory
24 Committee.

25 She earned a reputation for bravery in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 violent, sometimes violent, desegregation years, all
2 those years in Boston, Massachusetts, which has been
3 well documented, between the opportunity to chair this
4 Commission and the Commission spent a lot of
5 resources.

6 She had her car vandalized, bricks thrown
7 through her window and all sorts of stuff happened to
8 her. And she served not only with the Civil Rights
9 Commission, but with the Boston police in neighborhood
10 crime watch programs. She was really present in the
11 civil rights, civic action community in Boston. And
12 we just wanted to note her contributions.

13 The other is Ms. Lucille Gunderson, who
14 volunteered and worked as an administrative assistant
15 in the cause of civil rights and was in all kinds of
16 good causes to change society, whether it was health
17 care or civil liberties or civil rights.

18 We have with the Commission some summer
19 interns, some new ones. If they are here, they can
20 stand up. Winston Shaw from the Phillips Academy --
21 wave if you are anywhere in here so people can see who
22 you are.

23 Diego Chojkier from Washington University
24 in St. Louis. Alisheva Yun, did I mispronounce his
25 name? Alisheva attends Montgomery High School.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 231-1133

www.nealrsgross.com

1 Hilary Brown from Howard University School of Law.
2 Welcome. Sonya Park from Korea University in Seoul.

3 Is there anybody I've missed?

4 STAFF DIRECTOR JIN: Yes, Alina.

5 CHAIRPERSON BERRY: Who? Alina Neventsels
6 from University of Windsor Law School. Where are
7 they, are they working, they must be working.

8 In case anybody didn't know it, there was
9 a Supreme Court decision involving diversity and
10 affirmative action on June 23rd. I'm sure everybody
11 knows that. So I don't need to tell you what they
12 said except that the powerful decisions were
13 consistent with the commission's longstanding policy
14 supporting diversity and equal educational opportunity
15 on these issues.

16 The other landmark decision that happened
17 was the *Lawrence v. Texas* case, where the court made a
18 revolutionary -- I shouldn't say revolutionary because
19 it wasn't a revolution -- a decision claiming
20 unconstitutional Texas' law regarding private and
21 consensual sex between adults of the same sex.

22 It is, of course, within the
23 administration of justice jurisdiction of this
24 committee that we consider such issues in this
25 environment, police arresting some people. It is seen

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-2701

1 according to the analysis by the pundits and the
2 experts, since this case that it is a landmark in its
3 broad constitutional rights to sexual privacy. And
4 there are a lot of issues left over, but it seems to
5 be everybody agrees it's a landmark decision.

6 There was a recently released report that
7 I hope you noted last week, and we should get a copy
8 of it and send it out to the commissioners, don't you
9 think, if we haven't already, by the Lewis Mumford
10 Center for Comparative Urban and Regional Research at
11 SUNY Law on how race counts for Hispanic Americans.
12 And it is very informative about the within group
13 differences within the Latino community and what the
14 social and economic implications and the
15 discrimination implications are for those.

16 I would like to read it myself. The Civil
17 Rights Act of 1964 was, of course, signed into law
18 July 2, 1964; one of the great landmarks in the
19 struggle for civil rights in this country. And the
20 Americans With Disabilities Act of 1990 was enacted by
21 Congress on July 26. That was a landmark that we
22 should note.

23 So those are the announcements that I
24 have. Does anyone else have an announcement that they
25 would like to make?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 (No response.)

2 **III. STAFF DIRECTOR'S REPORT**

3 CHAIRPERSON BERRY: The staff director's
4 report. Are there any questions anyone would like to
5 ask concerning the staff director's report?

6 COMMISSIONER THERNSTROM: * one question
7 about the educational count going to April for *

8 CHAIRPERSON BERRY: That is Commissioner
9 Thernstrom speaking. They asked me to remind
10 everybody to identify themselves when they speak.

11 COMMISSIONER THERNSTROM: Sorry.

12 CHAIRPERSON BERRY: And I forgot to do
13 that. So it's my fault.

14 Yes, Commissioner Thernstrom?

15 STAFF DIRECTOR JIN: (Interposing.)
16 Commissioner, * something that you sent me * expect
17 that the report will come out the early part of next
18 year.

19 COMMISSIONER THERNSTROM: I haven't sent
20 anything out, so I couldn't tell you *

21 STAFF DIRECTOR JIN: We're looking at the
22 possibility of having somebody effective examining the
23 Maryland and Virginia documents that the Commission
24 members may remember we had subpoenaed earlier.

25 COMMISSIONER THERNSTROM: You know, I --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 maybe nobody else is in agreement? I would be very
2 pleased if we were kept apprised of, you know, who is
3 working on a project. That would interest me a great
4 deal.

5 CHAIRPERSON BERRY: Commissioner
6 Thernstrom -- the Staff Director says he will do that
7 -- would you try to find some time in your schedule to
8 come and meet with the staff director and the staff to
9 talk about the education project?

10 COMMISSIONER THERNSTROM: I will be
11 delighted to do that, and if the Staff Director is in
12 town next week, I will be in town. At the end of next
13 week, I can easily come on Thursday or Friday.

14 CHAIRPERSON BERRY: Maybe you could just,
15 when you come, maybe you could just discuss with them
16 what you see as the issues and how you think they
17 should be addressed and then discuss it with them.
18 That would be interesting.

19 COMMISSIONER THERNSTROM: I would be really
20 happy to do that. If the staff director is available
21 when I come into town, that would be really great. I
22 would appreciate that.

23 STAFF DIRECTOR JIN: No problem.

24 COMMISSIONER THERNSTROM: All right.

25 CHAIRPERSON BERRY: Okay. Does anyone

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have any other questions on the staff director's
2 report?

3 (No response.)

4 **IV. TEN-YEAR CHECK-UP: HAVE FEDERAL AGENCIES**
5 **RESPONDED TO CIVIL RIGHTS RECOMMENDATIONS?:**

6 **VOLUME III**

7 CHAIRPERSON BERRY: Okay. Hearing none,
8 the next item on the agenda is the ten-year check-up,
9 "Have Federal Agencies Responded to Civil Rights
10 Recommendations?": Volume III, which is the statutory
11 report.

12 COMMISSIONER KIRSANOW: This is
13 Commissioner Kirsanow. Before we move on to that, I
14 did have one matter with respect to the staff
15 director. I think this is probably a more appropriate
16 place to put in a request or actually move that
17 consistent with what I think we agreed upon last April
18 that we have a hearing or briefing on the
19 ramifications of the Michigan decision. And those
20 ramifications can be either -- the scope of the
21 briefing could be either very narrow or very broad.

22 We can do further briefings or hearings.
23 And I would like to have some type of a briefing in
24 the very near future on the effects of the *Grutter*
25 case.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 CHAIRPERSON BERRY: When you say that you
2 would like it narrow, we can, of course, start with a
3 briefing. We don't really need to vote to do it. Can
4 you explain what you mean, for the staff's
5 information?

6 COMMISSIONER KIRSANOW: There are a whole
7 variety of issues that are raised, mainly by the
8 *Grutter* case, that I still think need to be addressed,
9 or at least examined carefully. Several of them *,
10 some got raised back in April or March the effect of
11 the Rowe (phonetic) decision on the determination of
12 what is a critical mass and who gets included in that
13 critical mass. Specifically, many colleges exclude
14 from the critical mass calculation the Asian-American
15 students and other minorities. That is just one
16 issue, also what is the determination of the plus
17 factor, how is that applied, and what, in fact, is the
18 plus.

19 The other thing -- and I am not
20 necessarily focused on one given issue, whatever the
21 staff director decides he wants the briefing on, I
22 would be very pleased to hear about it. But I think
23 we do need a briefing on the ramifications of the
24 Michigan decision.

25 CHAIRPERSON BERRY: Okay. And could you,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 324-4433

www.nealrgross.com

1 if you think of any issues that you want to make sure
2 they ask somebody to address, could you just let
3 someone know, send an e-mail or do something with the
4 staff director so he will know what you want covered
5 so that he can, to the extent possible, and anybody
6 else can do that, too. So that once you have figured
7 it out, he can make sure that somebody covers whatever
8 that is.

9 COMMISSIONER KIRSANOW: I would be happy
10 to do so.

11 CHAIRPERSON BERRY: Yes.

12 COMMISSIONER THERNSTROM: Well, what sort
13 of timing are we talking about?

14 CHAIRPERSON BERRY: Well, it's not going
15 to be in September. I can tell you that, and we don't
16 meet in August. We've got at least two months to
17 think about what other issues you want to have
18 covered.

19 COMMISSIONER THERNSTROM: Okay. That's
20 good.

21 CHAIRPERSON BERRY: Okay. We won't tie him
22 down any more than that, I mean the staff director.

23 COMMISSIONER THERNSTROM: I just wanted to
24 know if he was trying to do it in September.

25 CHAIRPERSON BERRY: He can't do it that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

www.nealrgross.com

1 fast. Can you?

2 STAFF DIRECTOR JIN: No.

3 CHAIRPERSON BERRY: No.

4 STAFF DIRECTOR JIN: September we are
5 going to have a briefing on Native American health
6 care.

7 COMMISSIONER THERNSTROM: Okay. That's
8 fine.

9 CHAIRPERSON BERRY: So now we will do the
10 ten-year check-up. We will hear from the staff
11 director.

12 STAFF DIRECTOR JIN: Yes, Madam Chair. As
13 the Commissioners know, one of the Commission's vital
14 functions each year is to do a report on how
15 effectively a federal agency is meeting its duty to
16 enforce civil rights laws. We saw comments that said
17 this is * responsibility, so we feel * mandated the
18 Commission complete at least one staff report a year.
19 This year our report examines the performance of four
20 federal agencies, the U.S. Department of Agriculture,
21 Interior, the Small Business Administration and EPA.
22 * has responded to the recommendation in our report on
23 the agencies and departments and that was a project
24 the Commissioners agreed to a number of years to talk
25 about at subsequent planning meetings.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

1 To introduce the report I would like to
2 introduce OCRE Director Terri Dickerson to provide one
3 of her famous Power Point presentations.

4 MS. DICKERSON: I don't know about that,
5 but * couple of times *

6 COMMISSIONER THERNSTROM: Can I ask a
7 question? * Can I get a sense of who is there.?

8 CHAIRPERSON BERRY: Yes, everybody is
9 here.

10 COMMISSIONER THERNSTROM: Everybody is
11 There. Okay.

12 CHAIRPERSON BERRY: You are on the phone,
13 and the rest of us are here, yes.

14 COMMISSIONER BRACERAS: Abbie I'm on the
15 phone. I'm not physically present.

16 CHAIRPERSON BERRY: Commissioner Kirsanow
17 is on the phone, too.

18 MS. DICKERSON: Thank you. I want to
19 especially acknowledge that this has all been a team
20 effort. The team has worked really hard. This is the
21 third of four reports coming out of OCRE this fiscal
22 year. The fourth is on the agenda today too, just a
23 bit of a commercial

24 .*: *

25 MS. DICKERSON: The team leader on this

1 project was Margaret Butler, a civil rights analyst.
2 Everyone in OCRE pretty much had a hand, but the core
3 team was really Manuel Alba, Monique Dennis-Elmore,
4 Sock-Foon McDougall, Wanda Johnson, and Eileen Rudert.
5 OGC, of course, reviewed the report for legal
6 sufficiency. And I also want to thank Dawn Sweet, the
7 agency's editor. She's a team member in every respect
8 on every project.

9 This is the third in a series of reports
10 that follow up on recommendations that the Commission
11 made in 16 enforcement reports between 1992 and 2000.

12 Just to refresh your memory this is Volume III.
13 Volumes I and II were delivered last year.

14 We summarized the ten years of
15 recommendations in Volume I. Out of this came kind of
16 a blueprint of sorts for civil rights enforcement. We
17 picked out the elements we found to be effective for
18 civil rights enforcement and practices such as
19 planning, prioritizing, and resource management that
20 seemed to help agencies max out on those elements.

21 Volume II was more like this year's volume
22 in that we looked at agencies themselves and how they
23 have responded to recommendations. Last year's study
24 reviewed the Departments of Justice, Labor, and
25 Transportation and the recommendations that have been

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

1 directed at both agencies. This year we looked at the
2 Departments of Agriculture, Interior, the
3 Environmental Protection Agency, and the Small
4 Business Administration.

5 And just to kind of run a commercial here,
6 of upcoming attractions, we are going to be looking at
7 the Departments of Education, Health and Human
8 Services, Housing and Urban Development, and the EEOC.

9 It's very important to hone in on how this
10 -- I'm sorry. This says "Do not touch the laptop,"
11 but I think that was not directed to me. I'm going to
12 use the laptop.

13 The purpose of this was really to assess
14 the extent to which some of the departments and
15 agencies implemented the recommendations contained in
16 past Commission reports. It differs markedly from
17 what we have done before because previously we looked
18 comprehensively at enforcement systems. For this, we
19 looked at the recommendations that we already made and
20 determined if the agencies had addressed them at all
21 and, if they had, with what success they addressed
22 them.

23 The methodology that we used was what we
24 normally do. We looked at policy planning and budget
25 documents. We reviewed annual reports. We looked at

1 civil rights implementation plans. We prepared
2 interrogatories, written interrogatories, on select
3 initiatives. And we reviewed the written responses
4 that we received from the agencies.

5 We conducted interviews with the necessary
6 civil rights staff when things were not elaborated
7 upon enough or where there weren't sufficient
8 responses in the interrogatories especially. And we
9 reviewed other reports and sources that we either got
10 from the agencies or other public information offices,
11 such as GAO reports, et cetera.

12 We, as I said, looked at the Departments
13 of Agriculture, Interior, the EPA, and the Small
14 Business Administration. All of the recommendations
15 came out of this report. We looked at all of these
16 agencies in this particular year because these are
17 agencies that have Title VI responsibilities, all of
18 which had recommendations directed to them in this
19 report entitled "Title VI Enforcement." And this was
20 with federally assisted programs, not federally
21 conducted programs. So all of the recommendations
22 would be within this scope.

23 Let's jump through some of the findings,
24 of course there are many more in the report but I am
25 going to focus on some of the main themes. In terms

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON D.C. 20005-3704

1 of the Department of Justice, we found that it hasn't
2 issued as final the joint Title VI regulations of all
3 22 agencies with Title VI responsibilities. The last
4 movement on this was in December 2000 when the draft
5 was published. This really affects all agencies in
6 this report. So we thought that it was necessary to
7 address this.

8 The Department of Justice, we said, should
9 publish final regulations immediately or, we had
10 recommended, by March 2004. There was some movement
11 on that in the year 2000, but it seems like it's kind
12 of lost momentum since. There hasn't been any
13 movement on this since there was some action taken in
14 the year 2000.

15 There are some agencies that are not
16 required to submit civil rights implementation plans,
17 but if they have civil rights responsibilities, we
18 really think they should. We think that all agencies
19 with civil rights responsibilities really should
20 submit a plan. If you don't make plans, you have
21 little chance of carrying them out.

22 The Department of Justice hasn't really
23 followed up. DOJ requires some federal agencies with
24 Title VI responsibilities to submit annual plans which
25 DOJ uses to evaluate their enforcement. Yet, they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 don't require it of all agencies.

2 COMMISSIONER EDLEY: Can you repeat that?

3 MS. DICKERSON: Okay. The DOJ requires
4 some agencies that have Title VI responsibilities to
5 submit an annual civil rights implementation plan to
6 evaluate their enforcement, but they don't require all
7 agencies with title VI responsibility to submit one.

8 And, as well, they are not reviewing
9 evidently or commenting on all of the implementation
10 plans that the agencies submit to them. We found one
11 instance in which they had provided feedback to an
12 agency, the Environmental Protection Agency, and it
13 seemed like the only reason that they provided the
14 feedback was because EPA asked for it. So it seems
15 like it's just kind of tacit approval: if they don't
16 say anything, the agencies are assuming "Okay. Well,
17 our plans are just fine."

18 COMMISSIONER THERNSTROM: Is this a
19 longstanding practice or is this something new?

20 MS. DICKERSON: I know it's been our
21 observation in our last several enforcement reports.
22 I can't really determine when it started.

23 CHAIRPERSON BERRY: We have been pointing
24 this out, for your information, Terri, we have been
25 pointing this out, the Commission has, in reports ever

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

(202) 334-4433

www.nealr.com

1 since I got on the Commission. And that's two hundred
2 years ago.

3 MS DICKERSON: This is not something that
4 is new.

5 CHAIRPERSON BERRY: Commissioner
6 Thernstrom, they finally did the reg redraft, which
7 was amazing because that had been recommended for God
8 only knows how long, by successive administrations.
9 It was a bipartisan failure, if that's your question.

10 COMMISSIONER THERNSTROM: Yes, that
11 answers it, there's been no change with this
12 administration.

13 MS. DICKERSON: Oh, no. This goes way
14 back. DOJ has the coordinating responsibilities for
15 all agencies relative to their civil rights
16 responsibilities. I mean, I could be wrong, but I'm
17 thinking it might have even come under the 1964 Civil
18 Rights Act and the first regulations that came out of
19 that act. And the civil rights implementation plans
20 were part of the regs and how they were going to
21 monitor agencies.

22 CHAIRPERSON BERRY: The 1970's were the
23 last time I recall that they did it.

24 MS. DICKERSON: And this was something
25 that we found last year, that none of the agencies had

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 received feedback from the Department of Justice on
2 their civil rights implementation plans.

3 So we recommended that DOJ require all
4 agencies that have civil rights responsibilities to
5 submit annual plans and that they provide feedback on
6 them about how they can improve the enforcement.
7 Looking at the plans, the agencies tend to use them
8 kind of as a planning tool, but I think they can get a
9 little bit more out of them.

10 Now, another recommendation is that the
11 commission needs to have more than 10 staff members
12 monitoring federal civil rights enforcement. This was
13 done on a more routine basis in terms of going over
14 and meeting with these staffs and going over their
15 civil rights implementation plans and finding out what
16 was being done, what they were planning. And our
17 office is now the one that does it.

18 Now, we have ten people in the office, but
19 some have complaints responsibilities and other
20 responsibilities. One is me. We are not able to
21 perform that ongoing monitoring function. So this is
22 why it seems like a worthwhile expenditure of time to
23 be able to assess how agencies are doing, really, with
24 respect to our recommendations.

25 In terms of the priority of civil rights,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

(202) 234-4433

www.nealr.com

1 we found a model program. In December of 1996, the
2 Environmental Protection Agency established a Title VI
3 task force. And one of their primary responsibilities
4 was to implement the commission's recommendations that
5 came out of this June 1996 report. So it really
6 succeeded in raising the priority of civil rights
7 within the agency.

8 And we recommended, therefore, that other
9 agencies, including the Departments of Agriculture,
10 Interior, Justice, Labor, and Transportation, as well
11 as the Small Business Administration that we have
12 already reviewed in this context, that they will look
13 at establishing task forces to implement the
14 recommendations.

15 It seems like the Environmental Protection
16 Agency more than the others really got a lot of
17 traction and a lot of momentum going and were very
18 successful in implementing a lot of the
19 recommendations and going even further.

20 Let's turn to the Department of
21 Agriculture. We looked at several offices within the
22 Department of Agriculture. We looked at the Office of
23 Civil Rights; the Farm Service Agency; the Food,
24 Nutrition, and Consumer Services Agency -- I'm sorry
25 -- Natural Resources Conservation Service.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Let's just jump in to OCR, Office of Civil
2 Rights. In 1994, USDA reorganized and streamlined
3 staffing throughout the main headquarters at USDA
4 agencies and field offices. The secretary established
5 the Office of Civil Rights Enforcement within the
6 Office of Administration.

7 Then in 1995, they disbanded OCRE and
8 divided the civil rights responsibilities between what
9 was the Office of Operations and the Policy Analysis
10 and Coordination Center.

11 A couple of years later, they consolidated
12 the civil rights functions under a new Office of Civil
13 Rights with complaints units for employment and
14 program delivery and increased the enforcement budget.

15 And then, coming out of 1997, in August of
16 1997, they established an office for outreach, which
17 was under the assistant secretary for administration,
18 and a Civil Rights Division within the Office of
19 General Counsel. So coming out of 1997, we have had
20 additional offices created with civil rights
21 responsibilities.

22 Some other significant dates in terms of
23 reorganizations: in 2002, Congress passed the Farm
24 Security and Rural Investment Act of 2002 and they
25 designated the position of Assistant Secretary for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Civil Rights.

2 And this year in April, as I'm sure
3 everyone knows, they swore in a new Assistant
4 Secretary for Civil Rights. This action seems to be
5 an expression that civil rights is going to be
6 elevated within the agency.

7 COMMISSIONER REDENBAUGH: Question?

8 MS. DICKERSON: Yes?

9 COMMISSIONER REDENBAUGH: What is the
10 significance of these changes in organizational
11 structure that are important and what do you think
12 about that.

13 MS. DICKERSON: Well, I think that it says
14 something about -- what we have found is the inability
15 to just kind of get going and keep momentum in some of
16 their initiatives and programs because it seems like
17 the civil rights' function kept being changed. The
18 reporting authority changed quite significantly in
19 several instances.

20 In some cases, that really even changed
21 how complaints were handled and investigated and by
22 which offices. It did have quite an effect. And all
23 of these changes, I think what we are seeing kind of
24 diluted some of the initiatives that they were trying
25 to get going at USDA.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER REDENBAUGH: So you think
2 that these organizational changes are a bad thing.

3 CHAIRPERSON BERRY: Yes?

4 COMMISSIONER EDLEY: I had a conversation,
5 during the Clinton Administration, both with Secretary
6 Mike Espy and with Secretary Dan Glickman, his
7 successor. And I know from their personal
8 perspectives, they were struggling, trying to figure
9 out how to graft civil rights sensibilities onto an
10 organization that was, shall we say, highly resistant
11 to thinking about this.

12 I had the sense in the conversations with
13 each of them that they were really struggling to
14 figure out what's the right formula. Is there a right
15 formula for elevating this mission and making it more
16 effective within USDA, which is a vast bureaucracy and
17 in many respects a highly decentralized bureaucracy.

18 And all of this is taking place against
19 the backdrop of black farmers' litigation and other
20 issues. So they have a sense of reeling under the
21 weight of genuine civil rights problems with an
22 organization that for decades has been resistant to
23 civil rights sensibilities. So what do we do?

24 I don't think that either of them -- well,
25 I know that neither of them was ever really satisfied

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

(202) 331-4433

www.nealrgross.com

1 that they could come up with the right way to change
2 the culture of the vast bureaucracy.

3 CHAIRPERSON BERRY: Vice Chair Reynoso?

4 VICE CHAIRPERSON REYNOSO: I have a
5 question. In your judgement with the new assistant
6 secretary for civil rights, will the other changes be
7 effective in changing the culture because in different
8 capacities, I have been observing the Department of
9 Agriculture now for nearly half a century. I'm not
10 sure it's changed much in that time in terms of civil
11 rights.

12 MS. DICKERSON: Well, in our findings --
13 we do have some findings associated with this. And we
14 did find that it has had a history of being complex
15 and very decentralized. The roles and duties of the
16 civil rights offices have been delegated, but they're
17 not very effective.

18 And it is the hope that with this new
19 assistant secretary for civil rights, that there will
20 be more focus and direction and I think basically an
21 elevation of civil rights within the agency so that it
22 is more coordinated. And that was part of our
23 findings.

24 CHAIRPERSON BERRY: In general, I agree
25 with all of the -- in answer to Commissioner

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 231-4433

www.nealrsgross.com

1 Redenbaugh's question, the Commission has over the
2 years always recommended that symbolically it is
3 important for the leadership of civil rights in an
4 agency to have access to the highest levels in the
5 agency as a matter of bureaucratic sensitivity since
6 those who are in the civil service notice such things,
7 like who reports to whom and who has got the window
8 office or whatever and that that's always important as
9 who gets to go to the Secretary's staff meetings. So
10 we have an opportunity for access.

11 Now, we all know, the Commission has
12 known, that title doesn't necessarily give you access
13 because if the Secretary doesn't like you, or for some
14 reason isn't interested in what you are doing, you can
15 forget about access. But the understanding was that
16 it signals to the organization that this is important,
17 and it signals to the organization that this person is
18 going to get access.

19 My understanding is -- I have worked with
20 university administrations, but I have not been in
21 for-profit organizations of the kind that Commissioner
22 Redenbaugh is used to dealing with. But my
23 understanding from people who do is that those things
24 are considerations in the private sector, too, like
25 who reports to whom and is this important or is that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 important. So I think that that probably, is where
2 this comes from.

3 COMMISSIONER THERNSTROM: What is the
4 delinquency in terms of filing reports; the
5 implementation of Title VI, for instance. You know,
6 when I think of Title I of the Elementary and
7 Secondary Education Act, I think over the years there
8 has been a series of reports filed. Yes. Well,
9 reports are filed *.

10 And so that what we're really * anyway as
11 even though we specifically delve into the law * that
12 there be a reporting process. You're really talking
13 about the culture of an agency. And it's a fairly
14 minor point whether they actually have the report and
15 stick it in a filing cabinet and cardboard boxes
16 eventually when they finally read them and they're on
17 paper.

18 CHAIRPERSON BERRY: I don't know about
19 that, Commissioner Thernstrom, having run several
20 education programs in the Carter Administration and
21 having had the staff be the recipient of all these
22 reports you talk about needing filing cabinets.
23 Whether they read them or not, the fact that you folks
24 up in Massachusetts or wherever, the states where you
25 had to submit the reports in the first place.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-2701

(202) 234-1133

www.nealr.com

1 Somebody had to focus on submitting them.

2 And in some cases, the secretaries did
3 read them, and in some cases they didn't. That is
4 what these all are, are the types of reports that we
5 as an agency in this case education have to submit to
6 Congress -- and every agency does, all the people.

7 And realize that they just put them in a
8 file cabinet and the hell with it, but the fact is
9 that these are all staff accountability measures.
10 They are all attempts, as I understand it, in policy
11 terms to try to get some accountability built into the
12 system.

13 And it doesn't always work because people
14 are people. But at least you tried. And you can't
15 really hit people over the head like you can't really
16 * money.

17 COMMISSIONER THERNSTROM: I understand
18 that, * It's just that I think the real issue is what
19 Cruz brought up, which is the culture of an agency.

20 CHAIRPERSON BERRY: Right. I think that's
21 right. And it's hard. Yes, Commissioner Redenbaugh,
22 you started all of this.

23 COMMISSIONER REDENBAUGH: I had nothing to
24 do with it.

25 (Laughter.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER REDENBAUGH: The* difficulty
2 that we have with this * report, which is -- let me
3 back up for a minute. You can't * need to move away
4 from * those things that can be easily measured, like
5 head count and budget. People are better *
6 observation, even though we're not organizational
7 design experts, the point that you were making, Madam
8 Chair, about opportunities for access. I think it's
9 important for us to be able to work in terms of
10 operations. But I still think we haven't yet been
11 able to get to the since * state *which seems to me*
12 or at least * more difficult task which is to measure
13 outputs or at least methods that are quantifiable *
14 And I would just put a line in the report that *

15 CHAIRPERSON BERRY: So if amending the
16 appointment of the Assistant Attorney General is a
17 signal of commitment, by the politicians, that they're
18 signaling at least that they're committed to trying to
19 change the culture?

20 COMMISSIONER REDENBAUGH: Yes.

21 MS. DICKERSON: Within the report, there is
22 a very detailed discussion. This dates from October
23 13, 1994 on pages 7 and 8, and it goes to April 6,
24 2003. It gets into a whole lot more of the subtext of
25 a lot of these changes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And within that, in 1996, the Commission
2 suggested that in the light of all of these changes,
3 Title VI enforcement may not receive adequate
4 attention. The staff thought there were too many
5 layers between our and the Secretary's office. And
6 they felt that they were, as a result, not being as
7 effective as they could be.

8 The Commission suggested that they rebuild
9 their Title VI program and implement immediately
10 several changes that would strengthen the program
11 including that they equate the priority of civil
12 rights in the agency. * Volume I of this series of
13 reports, the very first recommendation really gets
14 into the priority of civil rights within the agency as
15 expressed by its positioning relative to the top.

16 There was a core recommendation that there
17 seemed to be some connection between how effective an
18 agency was and how they were structured, at least how
19 they were perceived to be structured in terms of their
20 situation within the agency itself.

21 CHAIRPERSON BERRY: I think we've nailed
22 that one. Let's move on.

23 MS. DICKERSON: Okay. Moving on to the
24 other efforts to improve, the Office of Inspector
25 General issued eight reports in 1997 to 2000 about the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 weak civil rights enforcement at the USDA Office of
2 Civil Rights.

3 The Secretary formed work groups to
4 recommend improvements. And there was a civil rights
5 action team that was implemented at the time. They
6 were assigned to guide the implementation of the
7 recommendations. That team was in place between
8 December 1996 and March of 1998.

9 Also, significantly, since the last time
10 we reviewed the agency, they settled a class action
11 suit with African American farmers for racial
12 discrimination. That was in April of 1999.

13 Another significant event that occurred
14 since we last looked at them is that they first issued
15 a long-term improvement plan to increase staff,
16 streamline complaints, and standardize their operating
17 procedures. They began to implement the planned
18 improvements in January of 2000, and they're still
19 implementing those plans.

20 I'll go to our findings with regard to the
21 USDA. Here are just some of the findings. There are
22 many more in the report. The first one is they have
23 one of the most complex and decentralized civil rights
24 programs in federal government. The roles, duties,
25 and responsibilities are delegated but not effectively

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 coordinated.

2 We recommended that USDA officials should
3 consult past Commission reports and establish ongoing
4 liaisons with the Commission concerning
5 recommendations for improving civil rights
6 enforcement. In other words, there are resources
7 here. We certainly would be happy to confer with them
8 or if they need some elaboration on what we were
9 recommending at either then or now. And they should
10 also establish liaisons with the Environmental
11 Protection Agency to learn their best practices.

12 We also found that in its reorganizations,
13 USDA has tried to consolidate civil rights functions
14 into one office. All agencies civil rights legal
15 assistants are still not under the assistant secretary
16 for civil rights' supervision. So we are a bit
17 concerned about that. They are going to have to kind
18 of reach into another office to carry out outreach
19 responsibilities. And outreach really is a massive
20 part of Title VI.

21 USDA should study whether placing the
22 Office of Outreach and other offices that have civil
23 rights functions, right within the assistant
24 secretary's office. We think that if they did, they
25 could really enforce more effectively and quickly and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-1133

www.nealrsgross.com

1 implement changes that we are suggesting.

2 VICE CHAIRPERSON REYNOSO: Excuse me. I
3 just want to comment that I think that is a very
4 serious structural problem because I have found that
5 if you have a recommendation for improving civil
6 rights enforcement but didn't stop to * someone else
7 at the agency * about whether this should be done, the
8 process can fail anywhere along the line. I just very
9 much think that your recommendation is the proper one
10 to make, I think this is a really faulty
11 organizational structure.

12 MS. DICKERSON: Yes. In addition to that,
13 the outreach is not necessarily done by people who
14 have expertise in civil rights. I mean, they might
15 have expertise in other things, but if they really
16 understood Title VI, outreach could be enhanced.

17 VICE CHAIRPERSON REYNOSO: * on decisions
18 made by local committees established by the Department
19 of Agriculture that have little reporting processes to
20 the department or the * extreme decentralization
21 process, that I have to * of civil rights, it seems to
22 me that is not as effective.

23 CHAIRPERSON BERRY: It might make the
24 Assistant Secretary in a position where it's signaling
25 that he is really important and his job is, really

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 important. And that's good for the administration to
2 do. But then they might be undermining what they are
3 trying to do. But setting it up that way, they ought
4 to give some thought to what they need to do to put
5 under that person's span of control so that they can
6 really be successful.

7 COMMISSIONER MEEKS: Do you know if they
8 are making plans to align them?

9 MS. DICKERSON: Not at present.

10 CHAIRPERSON BERRY: They might if we
11 recommend that.

12 MS. DICKERSON: I hope I didn't
13 mischaracterize this at the beginning, so let me
14 clarify. This staff does put together their civil
15 rights implementation plans. What I am suggesting is
16 that after the plans go to the Department of Justice,
17 these agencies don't get feedback from the Department
18 of Justice. So I wasn't saying that they are
19 delinquent in submitting plans.

20 Another finding, USDA doesn't have a
21 budget line item for civil rights enforcement. OCR
22 cannot distinguish the budget for Title VI from that
23 for other civil rights statutes, for example,
24 expenditures associated with the internal employment
25 complaints and the Title VI expenditures. They all

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-1133

www.nealrsgross.com

1 come out of the same budget. And OCR couldn't tell us
2 how much of the budget went for one, as opposed to the
3 other.

4 This was a carryover from a recommendation
5 in 1996. So we recommended again that USDA should
6 establish budget line items and account separately for
7 headquarters and agency resources for civil rights
8 enforcement. It should track those resources and
9 expenditures separately for Title VI and other civil
10 rights statutes.

11 VICE CHAIRPERSON REYNOSO: What is
12 particularly important is the Supreme Court opinion
13 that you can't have private lawsuits in Title VI. So
14 it is important for the agencies to announce exactly
15 what they are doing with the resources * (10:25:13)

16 MS. DICKERSON: In terms of resources and
17 funding and staffing, we found that also although OCR
18 studied its staffing levels and justified its budget
19 requests for increases, Congress and the agency have
20 not honored many of those requests.

21 So we looked at the staffing scenarios
22 that they proposed and the justifications. And they
23 seemed to have merit, but they haven't gotten the
24 budget that they have requested as a result.

25 We recommended that Congress reconsider

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

(202) 234-4433

WWW.NEALR.GROSS.COM

1 these requests for additional money and resources so
2 that OCR can be more effective, especially because
3 they really have in our view succeeded in the
4 demonstration of the inadequacy of their resources to
5 carry out their work load.

6 In terms of planning, the OCR tracking
7 systems don't separate Title VI resources and
8 expenditures from those of other activities. The
9 goals and time lines were unrealistic because
10 expenditures weren't linked to accomplishments.

11 And what we recommended is that they
12 should upgrade their Title VI tracking capabilities
13 and strengthen the relationship between expenditures
14 and accomplishments and use that information to plan
15 reasonable goals and streamline procedures efficiently
16 so that they can meet those goals.

17 The policy guidance, their compliance
18 review guidance, we found to be very confusing about
19 the different types of reviews they perform. There
20 are different levels of reviews. There are internal,
21 and external reviews.

22 Unless you are an insider, it is very
23 difficult to navigate their guidance. And if you are
24 a recipient, it is hard to know whether you are in
25 compliance or out of compliance.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-2701

1 So we recommended that they immediately
2 need to clarify the differences in enforcement for
3 federally conducted versus federally assisted
4 programs.

5 They need to distinguish the types of
6 oversight reviews and clarify the meaning of "program
7 reviews" because the term "program" is used in
8 different ways to mean different things but within the
9 same guidance.

10 We found that they had developed a new
11 enforcement tool, which was civil rights impact
12 analyses. They perform analyses of proposed agency
13 actions before their implementation so that they can
14 eliminate any harmful civil rights effects.

15 So what that means is if there is a new
16 policy or new initiative that is under consideration
17 by the USDA, then they will analyze that initiative
18 for civil rights impact. And we thought that that
19 was, good, yes?

20 COMMISSIONER REDENBAUGH: Who is "they"?

21 MS. DICKERSON: The Office of Civil Rights.

22 COMMISSIONER REDENBAUGH: This is the new
23 assistant secretary?

24 MS. DICKERSON: The staff that reports to
25 him, yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 COMMISSIONER REDENBAUGH: Okay.

2 MS. DICKERSON: Although USDA requires
3 civil rights impact analyses before a program change
4 we recommended they also, should conduct ongoing,
5 cyclical analyses to identify any harmful effects
6 evidenced after implementation.

7 So right now what they do is preceding any
8 policy change, they analyze the initiative for civil
9 rights impact, but they don't go back to see if there
10 was something that they maybe overlooked in their
11 initial analysis. And we thought they should do some
12 ongoing and follow-up analyses in the same way. That
13 was our recommendation.

14 In terms of technical assistance, they
15 don't have the resources to assign each agency a desk
16 officer to provide technical assistance. Nine desk
17 officers are assigned to serve all USDA agencies. And
18 some desk officers serve as many as five agencies.

19 We recommended that they should allocate
20 additional staff so that each USDA agency has a
21 full-time desk officer providing technical assistance.

22 Again, this resonates with our findings and
23 recommendations out of 1996.

24 We found in terms of complaints processing
25 that OCR can't determine the number of Title VI

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 complaints that it processes. And, furthermore, the
2 complaints aren't consistently processed, and the
3 processing takes too long. There is a large backlog
4 of open complaints. This finding resonates with other
5 government reports, including GAO. We recommended
6 that OCR should separately track Title VI complaints
7 and establish procedures in order to give a quick,
8 consistent, appropriate response so that backlogs
9 don't reach unacceptable levels, or to eliminate the
10 backlog.

11 The compliance reviews. Several years
12 passed without OCR conducting any compliance reviews
13 at all. And we recommended that they should conduct
14 regular and systematic oversight overviews of USDA
15 agencies and their civil rights compliance. They
16 should select the components to review both
17 strategically and systematically so they can ensure
18 there is comprehensive coverage.

19 In terms of compliance reviews, we also
20 found that USDA agencies don't systematically collect
21 participation eligibility statistics for their
22 programs. They don't really know who in the
23 prospective population is qualified and eligible that
24 isn't already participating in these programs.

25 So we recommended that they should collect

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that data and perform analyses and compare them with
2 the rest of applicant pools and determine whether
3 their outreach is reaching eligible populations.

4 Staff training. We found that the
5 training addresses general topics like cultural
6 diversity and program accessibility, but that it has
7 little or no content in Title VI enforcement.

8 And we recommended specific topics that
9 should be covered in a Title VI training program, like
10 outreach, policy guidance, complaints processing,
11 compliance reviews, data collection and analysis, and
12 civil rights impact analysis. While it's good to have
13 cultural diversity as part of the training material it
14 should not be in place of, the nuts and bolts, meat
15 and potatoes, Title VI enforcement material.

16 We found evidence of some coordination at
17 OCR and a number of formal agreements which delineate
18 responsibilities with other USDA agencies for
19 processing complaints but not enough. They should
20 establish more MOUs and other -- memoranda of
21 understanding, that is -- and make sure that they are
22 making determinations on complaints that ensure a
23 complete and comprehensive and consistent and really
24 expedient complaint-processing result within the
25 agency.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-2701

1 In terms of the Farm Services Agency, we
2 found that despite the Commissions's 1996
3 recommendations, each state -- at the time in 1996, we
4 said that each state should have a full-time civil
5 rights director, but now only one state has a
6 full-time civil rights director. We recommended that
7 FSA should require each of the 50 states have a
8 full-time civil rights specialist, based on our 1996
9 recommendations.

10 In terms of the staffing with regard to
11 the Farm Services Agency, we felt that they couldn't
12 provide information on staff training expenditures
13 because the Financial Management Division tracks, and
14 monitors its budget.

15 We recommended that they should have the
16 authority to submit and control their own budget for
17 enforcement programs so that they can track
18 expenditures, themselves, and not another office, not
19 the budget office.

20 CHAIRPERSON BERRY: How long do you think
21 your presentation will be?

22 MS. DICKERSON: I am going to run through -
23 -

24 CHAIRPERSON BERRY: No. I'm only asking.
25 If you don't know, just say you don't know.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. DICKERSON: I definitely can shorten
2 it, if --

3 CHAIRPERSON BERRY: No, I understand, but
4 how long do you think?

5 MS. DICKERSON: Possibly another ten
6 minutes.

7 CHAIRPERSON BERRY: Oh, go ahead, then.
8 Go right ahead. I was going to take a 15, but --

9 MS. DICKERSON: I think I will work faster
10 through some of the Farm Services Agency.

11 CHAIRPERSON BERRY: They have similar
12 problems as to --

13 MS. DICKERSON: I can possibly skip the
14 Department of Agriculture and maybe get into another
15 agency. Why don't I do that.

16 COMMISSIONER REDENBAUGH: Before you do
17 that, though, I had a question on the Department of
18 Agriculture, if I may.

19 MS. DICKERSON: Yes?

20 COMMISSIONER REDENBAUGH: At least to the
21 issue of the volume of complaints, which I understand
22 it's down, and your recommendation, the report has
23 about that or interpretation can have about that, I
24 wanted to ask about the department's rebuttal to that
25 interpretation.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. DICKERSON: Okay.

2 COMMISSIONER REDENBAUGH: Is it
3 sufficiently confusing?

4 MS. DICKERSON: I'll put them up there,
5 the rebuttal of that, right now. We asked for
6 information and documents to verify what we have in
7 our report, and we accepting their affected agency
8 review without having received any other sources or
9 really kind of in conflict with even a report another
10 government report.

11 We couldn't find anything that kind of
12 verifies what was in the affected agency review. It
13 seemed to go against the other evidence that we had.
14 And generally we looked at a number of sources and, as
15 well, we would ask the agency to produce the report
16 that indicates there was -- in the letter. And we
17 weren't able to get that verification. So that's --

18 COMMISSIONER REDENBAUGH: Was there a
19 decline or --

20 MS. DICKERSON: Well, I don't think that I
21 would use the word "decline," but I think that they
22 may have considered this presenting something offered
23 in the letter that they sent us as their way of
24 providing the information of --

25 CHAIRPERSON BERRY: What's the conflict?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 What's the conflict?

2 MS. DICKERSON: We were really indicating
3 that there was a longer tracking time as well as a
4 more significant backlog than the affected agency
5 review letter indicated that they thought they had.

6 CHAIRPERSON BERRY: And your documentation
7 for that was another report, a government report? They
8 made a report.

9 MS. DICKERSON: Well, we asked for it. In
10 this process of review and in the interrogatories, we
11 asked them to produce the reports which would indicate
12 what their complaint backlog was. Working with that
13 evidence that we got from the agency as well as what
14 was in another government report, it really was --

15 CHAIRPERSON BERRY: Alex, please, you are
16 disrupting us. Yes. Go ahead.

17 MS. DICKERSON: We could not -- put those
18 pieces of information together. And it was very
19 different from what the agency was asking us to change
20 the numbers to in their letter.

21 CHAIRPERSON BERRY: And what was their
22 evidence to support changing the numbers?

23 MS. DICKERSON: It was just the person who
24 wrote the letter. He didn't cite a source.

25 CHAIRPERSON BERRY: Okay. All right.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrsgross.com

1 COMMISSIONER REDENBAUGH: It didn't claim
2 in the letter, which I have no problem with, but there
3 was a change in the concept from what the old
4 measurement was relevant given the new process.

5 MS. DICKERSON: Yes. They did not
6 elaborate on what that new process is. And if it is
7 to determine that a complaint is complete at an
8 earlier point, I don't know that we would necessarily
9 accept that number. They didn't really elaborate on
10 exactly how that processing time is reduced I could
11 read the reference in the letter I can't really find
12 it. It's a 14-page letter, but --

13 COMMISSIONER REDENBAUGH: * (10:38:45)

14 MS. DICKERSON: I am sorry. But, as I
15 recall, there was an indication that they changed the
16 way that they processed complaints but not an
17 elaboration on what the complaints process now
18 entails. We would have --

19 CHAIRPERSON BERRY: Is it unusual for
20 agencies to object to the way you characterize what
21 they do as a criticism? Is that unusual?

22 MS. DICKERSON: Very often, trust me.

23 CHAIRPERSON BERRY: Oh, okay.

24 MS. DICKERSON: As well, their letter that
25 you're referencing says that the GAO report, which is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 one of the ones we relied on, cited as evidence that
2 processing times and actually reflect a difference of
3 opinion over how the agency defines processing time.

4 So, again, since it was really kind of in
5 that very gray area and not elaborated upon in terms
6 of what their processing time consists of. Whether
7 they cut steps off in determining whether a complaint
8 is backlogged or not, when it is in the mail, or when,
9 it's in their mind they've resolved it, (10:39:55) or
10 is it when the agency has sent it from point A to
11 point B?

12 There are a lot of things that could have
13 determined that, but since they weren't really
14 specific in that, we weren't inclined to accept that
15 the backlog was, therefore, reduced and the processing
16 time was shorter.

17 CHAIRPERSON BERRY: Okay.

18 COMMISSIONER EDLEY: So the methodology
19 that you used is generally consistent with the
20 approach the GAO has taken?

21 MS. DICKERSON: I don't know that I would
22 say we used that as a model or anything, but I think
23 it probably would be more arrived at in terms of when
24 we felt like a complaint was completely answered.

25 COMMISSIONER EDLEY: Okay.

1 MS. DICKERSON: And sometimes there may be
2 a tendency of an agency to think of it as complete at
3 a different point, an earlier point.

4 CHAIRPERSON BERRY: Yes?

5 COMMISSIONER EDLEY: Madam Chair, since
6 we're leaving the USDA I just wanted to ask her to
7 comment that I thought the recommendations regarding
8 the Food and Nutrition Service, Food, Nutrition, and
9 Consumer Services, whatever it is called now. The
10 impact is critical. I mean, this is a huge operation,
11 they've got food stamps, WIC and so forth, and the
12 notion that they have so little capacity to ensure
13 that the way in which nutrition programs are run by
14 the states is affected, is kind of frightening.

15 So I just want to commend the staff for
16 highlighting the decision to revisit their strategy
17 for dealing with *.

18 COMMISSIONER BRACERAS: Excuse me. This
19 is Jennifer Braceras.

20 CHAIRPERSON BERRY: Yes?

21 COMMISSIONER BRACERAS: * I'm wondering *
22 or if that's not convenient, I'm happy to give a proxy
23 vote to another commissioner.

24 CHAIRPERSON BERRY: We don't accept
25 proxies, but, Commissioner, Terri said she is going to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON D.C. 20005-3701

1 be finished in a little bit. * Okay?

2 COMMISSIONER BRACERAS: *

3 CHAIRPERSON BERRY: Yes.

4 MS. DICKERSON: Turning to the Department
5 of Interior, the office for EEO is part of the Office
6 of Policy Management and Budget. However, OEO staff
7 should oversee policy management and budget. Again,
8 there is too much distance between the assistant
9 secretary and the civil rights programs. So the
10 status of civil rights ought to be elevated within
11 that office by placing it on a par with other DOJ
12 offices that report directly to the front office.

13 We also found * within DOI something that
14 came up earlier. There just seems to be kind of a
15 culture of lots of movement, lots of policy changes,
16 lots of shifts and not very much enforcement. I don't
17 mean to express this in such a nutshell, but in the
18 interests of time, I will just say that.

19 One other observation in terms of
20 Interior, because they don't allocate separate funds
21 for OEO, the director has to justify every single
22 office need. So we recommended that DOI needs to
23 track Title VI and other civil rights resources and
24 expenditures and allocate funds for civil rights
25 separately.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

www.nealrsgross.com

1 I'm going to fast forward to the
2 Environmental Protection Agency. We found that within
3 the EPA, the OCR directly reports to the EPA
4 administrator. External and internal civil rights
5 functions are separated. And we recommended that the
6 Commission commend EPA for elevating the stature and
7 accountability of its civil rights office.

8 We also found that the external compliance
9 program doesn't have its own budget, but it will,
10 beginning in 2004. They lack an electronic database
11 for tracking expenditures. And these points are
12 reflected in of the recommendations.

13 I guess that was it.

14 VICE CHAIRPERSON REYNOSO: That's it?

15 MS. DICKERSON: Yes.

16 VICE CHAIRPERSON REYNOSO: Let me ask, are
17 there any questions, based not only on the
18 presentation, but on the new report?

19 No?

20 I do want to comment again on the
21 Department of Agriculture, because they have such far-
22 flung programs very often administered by other
23 entities, that it seems to me that because * it
24 particularly needs more hands-on type of oversight to
25 make sure that the other federal agencies are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

www.nealr.com

1 enforcing the civil rights obligations. Some have a
2 greater need than some of the other agencies, yet
3 continue to place a lesser importance on it.

4 So, again, I think the recommendations are
5 all good, but they are not new what the
6 recommendations are, because you are just responding
7 to past recommendations. But they are going to have a
8 real job, I think, if they're going to truly implement
9 the type of policy established by Congress.

10 MS. DICKERSON: If we have a second, maybe
11 I could just get into the affected agency review just
12 a little bit and what the comments were. I'm just
13 going to summarize them here.

14 VICE CHAIRPERSON REYNOSO: Let's take two
15 or three minutes to do that.

16 MS. DICKERSON: Okay.

17 VICE CHAIRPERSON REYNOSO: Then the Chair
18 will join us.

19 MS. DICKERSON: All right. I didn't
20 really say very much about the Small Business
21 Administration either. I will say that we found a
22 conformation problems we noted in earlier reports
23 because they are not able to separate their Title VI
24 and VII expenditures. And that was one of the main
25 problems that we found with their program. As well,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

www.nealrgross.com

1 they have requested and provided justification for*
2 and justified their additional staffing, but they have
3 not received the increases that they thought that they
4 needed in order to be effective.

5 For the effected agency review, we
6 received -- there were a number of comments that we
7 received from each agency. Sixty-eight comments from
8 OCR, 11 from the Farm Services Agency, and 71 from the
9 Food and Nutrition Service and 17 from the
10 Conservation Service. And this tracked whether the
11 nature of the comments made; whether they were
12 editorial or whether they were classification and
13 elaboration or collection and update. In many cases,
14 they were printing act typos and things of that
15 nature.

16 I also pointed out earlier we might not
17 have made an agency's change. In large measure, we
18 might not have accepted something that was a
19 description of future plans. They might have given us
20 descriptions of things that they had planned to do,
21 but had not yet implemented, so we would not have
22 changed the report based on what they are planning to
23 do.

24 Additionally, in the case of one agency,
25 there were additions that were just adding unnecessary

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

www.nealrsgross.com

1 details that really weren't pertinent to the
2 discussion and didn't change the findings and
3 recommendations at all. So while it's a lot of
4 interesting, as it is extraneous, we would not add it
5 to the information. I know the Commission remembers
6 that when I first got here they told me to stop doing
7 the reports that are this thick, and to start doing
8 ones that are this thick. Also, if there were
9 comments that were unsupported or disputed by the
10 documents that we received, or exceeded the scope,
11 those would be other reasons why we didn't respond.

12 CHAIRPERSON BERRY: Okay, in view of that,
13 we should try to get on with the vote so that those
14 commissioners who have time constraints will be able
15 to get to their meetings.

16 COMMISSIONER EDLEY: I move the adoption
17 of the report.

18 VICE CHAIRPERSON REYNOSO: Second.

19 CHAIRPERSON BERRY: All right. Is there
20 any further discussion?

21 COMMISSIONER REDENBAUGH: I would say that
22 I am trying to understand Terri's presentation about
23 the recommendations with the Ag Department I found
24 instructive and useful and * I'm a little confused
25 about the report, but I think that can be dealt with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

www.nealrgross.com

1 in an editorial or we might even have the staff
2 director draft this. So I think this applicant would
3 understand * serious, but as I said earlier, that I
4 want us to move our reports that point to where we're
5 managing outcomes rather * but I think that
6 recommending the organizational design and process
7 changes was a good start in that direction.

8 CHAIRPERSON BERRY: Okay. Thank you.

9 COMMISSIONER EDLEY: Could I just make a
10 point that I am very sympathetic with Commissioner
11 Redenbaugh's point about looking to outcomes and
12 effects. For example, there are some very critical
13 budget recommendations here that, but as a former
14 budgeteer, I know how much is involved in terms of
15 resources. I just wonder if they can handle this. I
16 think it would be a good thing if, over time if
17 possible, for this Commission to find help from
18 outside, perhaps the National Academy of Sciences.

19 So to get back to this question of how do
20 you measure outcomes in more effective ways, I am very
21 sympathetic to an effort to do that. Without
22 developing that kind of science of program evaluation
23 in the civil rights arena, I think we are wasting the
24 technology available to us.

25 So I am sympathetic with Commissioner

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

WWW.NEALRGROSS.COM

1 Redenbaugh. Perhaps we can design some long-term
2 agenda to get into some of these blind areas to which
3 he keeps referring us.

4 CHAIRPERSON BERRY: And Commissioner
5 Redenbaugh, as well as you, he has said that we are
6 willing to visit with the staff. In fact, he sent
7 some things to all of us about getting new outputs to
8 work to try to come up with some type of metric, or
9 whatever it is. So I think that's a great idea.

10 COMMISSIONER KIRSANOW: Madam Chair, I
11 just want to understand what Chris and Commissioner
12 Redenbaugh had just indicated. I think that Terri and
13 whoever else was involved in the production of this
14 report did a splendid job given the direction that
15 they've been given.

16 I do have concerns with respect to the
17 outputs also. I think that Commissioner Edley has
18 proposed a way of looking at that that might be
19 useful.

20 CHAIRPERSON BERRY: Okay. Commissioner
21 Meeks?

22 COMMISSIONER THERNSTROM: Yes.
23 Commissioner Thernstrom here --

24 CHAIRPERSON BERRY: Just a moment,
25 Commissioner Thernstrom. I had already recognized

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

www.nealrgross.com

1 Commissioner Meeks.

2 COMMISSIONER MEEKS: This goes along with
3 those same comments, but I would just want to hear
4 what your next review of USDA would be, since they
5 just confirmed the Assistant Secretary of Civil
6 Rights. And I just wondered if there's some way we
7 can continue follow-up with them because it seems like
8 a key time that they can align the Office of Civil
9 Rights.

10 MS. DICKERSON: It's not among our
11 assignments due 2005, but that always would be up to
12 you.

13 COMMISSIONER MEEKS: To me, that is one of
14 the key recommendations coming out of this report, is
15 that opportunity.

16 CHAIRPERSON BERRY: All right. Okay. Are
17 we ready for the vote --

18 COMMISSIONER THERNSTROM: *

19 CHAIRPERSON BERRY: Yes, Commissioner
20 Thernstrom? I'm sorry. Commissioner Thernstrom, you
21 are recognized.

22 COMMISSIONER THERNSTROM: It brings me back
23 to the question. I mean, I think we ought to look
24 into issuing a * support. The reason is the staff *
25 reason that he left his job is * is expressly because

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

WWW.NEALRSGROSS.COM

1 they helped * misguided candidate the * he got in in
2 1966, and he said, in effect, "Ask how well these kids
3 can read. Don't tell me how much money you can spend.
4 That would be an innovative question that was never
5 properly addressed in the follow-up report.

6 CHAIRPERSON BERRY: Okay --

7 STAFF DIRECTOR JIN: Excuse me, Madame
8 Chair?

9 CHAIRPERSON BERRY: Yes, Commissioner
10 Braceras?

11 COMMISSIONER BRACERAS: Yes, I guess I want
12 to respond to some of the comments that were made, but
13 I'd just like to state for the record that I agree
14 with the staff that it should be drafted * customers,
15 but again, but I don't see an add-in * And for that
16 reason, I'd like a short statement to be published
17 with the report, mainly for the purpose of getting my
18 concerns into the public domain consistent with what
19 we did in the last one and consistent with my vote on
20 line two. So that * under line three, simply to
21 register my concern with the way the report has been
22 given.

23 CHAIRPERSON BERRY: Okay.

24 COMMISSIONER THERNSTROM: And after I -- as
25 I told you, I am going to propose * the same reason,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

www.nealrsgross.com

1 join Jennifer Braceras on this. And, again, at the
2 same time expressing my appreciation for the work that
3 was put in.

4 CHAIRPERSON BERRY: Okay. All right.
5 Questions?

6 CHAIRPERSON BERRY: Thank you. All of
7 those in favor indicate by saying aye.

8 (Whereupon, there was a chorus of "ayes.")

9 CHAIRPERSON BERRY: Opposed?

10 (Whereupon, there was a chorus of "nays.")

11 CHAIRPERSON BERRY: Okay. The vote was --
12 what was it? Five to three.

13 COMMISSIONER THERNSTROM: Five to three *

14 COMMISSIONER BRACERAS: I would like to
15 write a dissent. What's the time frame for a
16 dissent?

17 CHAIRPERSON BERRY: *

18 STAFF DIRECTOR JIN: Madam Chair, I would
19 like to call for a fairly short amount of time because
20 the staff * and that will get it out to the printers
21 and get it on the street by September. So seven days,
22 or if it seems like now that's not sufficient, maybe
23 ten days.

24 COMMISSIONER BRACERAS: Ten days would be
25 fine.

1 CHAIRPERSON BERRY: So ten days? The
2 28th? We really appreciate that because we do have a
3 time constraint on this one. Yes, Vice-Chair?

4 VICE CHAIRPERSON REYNOSO: I want to file
5 just a very quick response to these concerns, but I
6 can do it in 24 hours.

7 CHAIRPERSON BERRY: Twenty-four hours.
8 Well ?

9 COMMISSIONER BRACERAS: What's the
10 procedure for that? Do you do fax and then respond to
11 the fax? Because if that's the case, there will be a
12 tit for tat case going on.

13 CHAIRPERSON BERRY: No, no. Well, you see,
14 * he might want to do a different statement, but if he
15 does, he'll have to do it within the time constraint.

16 COMMISSIONER BRACERAS: Okay. But here is
17 my concern: he is obviously free to write whatever he
18 wants, but it should be submitted contemporaneously.
19 ___?

20 CHAIRPERSON BERRY: Anyone who submits
21 anything will submit it within the ten-day time
22 constraint, and will not be privy to the other
23 people's writings. We don't have time to go back and
24 forth forever writing exchanges on this stuff. We've
25 never done that. So we're not going to start now.

1 Okay. Did everybody hear that? Good.

2 Thank you, Terri, and thank the staff. We
3 very much appreciate what you have done.

4 **VI: A QUIET CRISIS: FEDERAL FUNDING AND UNMET**
5 **NEEDS IN INDIAN COUNTRY**

6 The next item on the agenda is A Quiet
7 Crisis: Federal Funding of Unmet Needs in Indian
8 Country --

9 COMMISSIONER THERNSTROM: I have to get
10 off the phone now.

11 CHAIRPERSON BERRY: Okay.

12 COMMISSIONER THERNSTROM: Thank you, I
13 appreciate it; I do have to run.

14 CHAIRPERSON BERRY: We're sorry you are.
15 Is someone else getting off?

16 COMMISSIONER THERNSTROM: I believe
17 Commissioner Braceras is getting off.

18 CHAIRPERSON BERRY: Commissioner
19 Thernstrom, thank you very much.

20 COMMISSIONER THERNSTROM: Thank you.

21 CHAIRPERSON BERRY: I hope you catch your
22 plane.

23 COMMISSIONER THERNSTROM: Thank you.

24 CHAIRPERSON BERRY: Staff director, do you
25 have anything to say here before Commissioner Meeks

1 makes her comment? Is that okay?

2 STAFF DIRECTOR JIN: That's okay. That's
3 okay.

4 CHAIRPERSON BERRY: Commissioner Meeks,
5 please.

6 COMMISSIONER MEEKS: Yes. I want to thank
7 the staff for this report. I am just so impressed
8 with the quality and the depth. I met with a party of
9 American Indians. I told them it was going to be on
10 the Web site yesterday. So they read it with great
11 interest. And I just want to say a couple of things
12 that they said, and I agree with them completely. And
13 I'll save my comments and actually say what I could
14 note from them.

15 According to them, they think it's the
16 most comprehensive look at the state of Indian Country
17 funding and commitment levels of need on a broad scale
18 that they have seen in the last decade. And they
19 wanted to draw special attention to the areas of
20 infrastructure that they say that all available * will
21 go towards building new schools and houses, but
22 without water service, electrical grids, and
23 communication systems, that they are practically
24 valueless. And then the tribal *, that was especially
25 important to them. That was mentioned.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

4222 RHODE ISLAND AVE. N.W.

1 And tribal priority allocations.
2 Increased funding in tribal priority allocations gives
3 tribes means which have no other discretionary funding
4 the opportunity to pursue other priorities.

5 And they also wanted us to * actions of
6 the executive agencies that they would like to
7 encourage the Commission to turn an eye to Congress as
8 well, but the legislative branch lies outside the
9 scope of the Commission's authority. The
10 appropriations process is twofold and the decision on
11 funding amounts rests on the shoulders of elected
12 officials, just as much as the executive agencies.
13 So, regardless of the Commission's ability to directly
14 influence legislative change, implementing these
15 recommendations will create an environment that will
16 seize Congressional attention.

17 So we are developing * submitting this
18 report or writing this report * . The only other
19 editorial thing that I would like to say is I would
20 really like to see an executive summary attached to
21 this because it is getting reviewed by a very wide
22 audience. And an executive summary would be really in
23 order.

24 CHAIRPERSON BERRY: Okay. Thank you.

25 Does anyone else have any comment,

1 suggestions about the Indian country report? Yes,
2 Commissioner Redenbaugh?

3 COMMISSIONER REDENBAUGH: Yes. I think
4 its a good and long overdue report to * I am pleased
5 that in September we continue with our briefing. As a
6 Commission, we have neglected this topic far too long.

7 Here's another example where we must get through to
8 something besides measuring just the money, because
9 the money spent is *, but doesn't seem to produce any
10 results. Or not enough results.

11 So I hope that in future * investigations
12 we can explore what else is needed in addition to
13 resources. Or at least what's missing.

14 So that's what I would say about it. Measuring the
15 money isn't enough; it's where we stop with this one.

16 CHAIRPERSON BERRY: Absolutely. Okay, can I
17 get a motion to approve this report?

18 COMMISSIONER MEEKS: So moved.

19 (Motion made off-microphone)

20 COMMISSIONERS REYNOSO AND REDENBAUGH:
21 second.

22 CHAIRPERSON BERRY: Questions? All those
23 in favor indicate by saying "Aye."

24 (Chorus of ayes.)

25 CHAIRPERSON BERRY: Opposed?

1 COMMISSIONER BRACERAS: I'd like to
2 abstain. This is Braceras.

3 CHAIRPERSON BERRY: Okay.

4 COMMISSIONER KIRSANOW: I abstain also.

5 CHAIRPERSON BERRY: Kirsanow and Braceras
6 abstain.

7 COMMISSIONER KIRSANOW: For the reasons I
8 mentioned earlier.

9 CHAIRPERSON BERRY: The report passes,
10 then, with two abstentions. And Terri and the staff,
11 let me thank you again for the wonderful work that you
12 do, and we really appreciate it. We appreciate your
13 staff. I'll have to come up with another way to show
14 my appreciation, but this is about all I can do. And
15 thank you very much.

16 STAFF DIRECTOR JIN: I have a couple of
17 matters, actually, just to wrap up. * which is the *
18 time that you need it. * You did a great job; I don't
19 know how many times you've done it, but the first time
20 *; an extraordinary job. *have an understanding on
21 many reports.

22 Like Terri said before, from Regional
23 Programs Unit, Dawn Sweet contributed much of the work
24 that very few people see, but people upstairs do, and
25 those who work with her see her every day. She's an

1 extraordinary staffer. I don't get used to the fact
2 that the * the staff and thank someone I like ? Terri,
3 and I know you all have seen the work Terri does, but
4 I just wanted to publicly acknowledge the leadership
5 she has provided to all of these projects. Her
6 contribution has been extraordinary in every phase, so
7 I want to thank the staff.

8 CHAIRPERSON BERRY: All right, thank you.

9 COMMISSIONER BRACERAS: This is
10 Commissioner Braceras leaving.

11 CHAIRPERSON BERRY: Commissioner Braceras,
12 thank you. We will now, after Terri Dickerson
13 Superstar, move on to the briefing that we have
14 scheduled for today, and we're right on schedule.

15 **VI. BRIEFING ON COMMUNITY REINVESTMENT CHALLENGES:**

16 **CREDIT ACCESS AND CAPITAL ACCUMULATION ON LOW**

17 **INCOME AND MINORITY COMMUNITIES**

18 As you know, we are going to have a
19 briefing on community reinvestment and banks,
20 specifically an examination of institutional structure
21 and policy changes facing low-income and minority
22 communities in assessing credit and accumulating
23 capital, providing traditionally disadvantaged
24 communities the chance to generate sustainable
25 economic * .

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 * of ensuring that everyone is provided in
2 every city an opportunity for access to education,
3 jobs, and improved standards of living. This will *
4 of economic development issues impacting civil rights,
5 such as our report on * reporting disparities. *
6 attention to American communities * confident * from
7 discrimination. We had the New York hearing in the
8 report.

9 Today we will hear about various credit
10 and capital access structures * by low-income and by
11 communities, such as equal access to lending,
12 predatory lending practices and insurance. We will
13 also review our community reinvestment ads in the
14 Federal Reserve Board under that legislation and
15 promoting community responses by lending institutions
16 when reviewing applications for bank * acquisitions.

17 We have a number of panelists, and I would ask
18 you to please come forward and tell our people how
19 grateful you are, and that you were willing to come.
20 I see Mr. Wayne Angell back there. The rest of you, I
21 recognize him, only because he has testified before.
22 Let me just say a few thank yous, and then I will
23 start introducing our panelists.

24 Our first speaker will be Mr. Mark C. Yeung,
25 Senior Banking Fellow at the Greenline Institute. He

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 will give background information on the Community
2 Reinvestment Act and an overview of other issues
3 related to unequal access to banking services. Then
4 we will have Professor Gregory Squires, who is
5 Chairperson of the Sociology Department at Columbia
6 College of the George Washington University, who will
7 talk to us about predatory lending practices *, and
8 then Dr. Wayne Angell, from Angell Economics and
9 former Board Member of the the Federal Reserve,
10 talking about an analysis of the Community
11 Reinvestment Act. * .

12 I might say that Mr. Angell is a * but I
13 can remember. I can tell you everything he said.

14 Finally, we will have Sandra Braunstein,
15 Senior Associate Director of the Consumer and
16 Community Division of the Federal Reserve System, who
17 will discuss the role of the Federal Reserve in the
18 Community Reinvestment Act in promoting credit
19 responsibility by lending institutions when reviewing
20 the applications for banking mergers and acquisitions.

21 We thank you all for coming to this event
22 today, and we welcome your presentations. We are
23 going to begin with Mr. Yeung. Mr. Yeung, please
24 proceed.

25 MR. YEUNG: Thank you. Can you hear me?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrsgross.com

1 CHAIRPERSON BERRY: Yes, I can. Can
2 everybody else hear him? I guess so.

3 MR. YEUNG: On behalf of the Greenlining
4 Institute, I would like to thank the U.S. Commission
5 on Civil Rights for taking the leadership in helping
6 to address the gap that exists between minority and
7 White communities in terms of bank lending, investment
8 and service.

9 My name is Mark Yeung and I am here today
10 representing the Greenlining Institute. The
11 Greenlining Institute is a multiethnic public policy
12 organization whose thirty-nine civil rights, church
13 and minority business member organizations include
14 First AME Church, Hermandad Mexicana National and the
15 National Council of Asian American Business
16 Associations.

17 All of Greenlining's coalition members
18 applaud this hearing as a historical and hopeful
19 moment for the advancement opportunities of America's
20 100 million minorities. Last month, the Supreme
21 Court, in a bold decision upheld the principles of
22 affirmative action, declaring that we are not yet a
23 colorblind society. This decision is consistent with
24 President Bush's commitment to diversity and closing
25 the homeownership gap between minorities and whites.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Despite the President's commitment to
2 diversity, the policies of federal regulators
3 including the Federal Reserve have continued to remain
4 race blind. This is unfortunate, since the Federal
5 Reserve's colorblind policies can inadvertently aid
6 and encourage unintentional discriminations. These
7 discriminations are further encouraged by the Federal
8 Reserve's policy of awarding "outstanding" CRA ratings
9 to financial institutions that have ignored
10 underserved minority communities.

11 These policies of the Federal Reserve, the
12 nation's most powerful quasi-governmental agency, have
13 never been scrutinized and these unintentional
14 discriminations and civil rights violations have
15 largely gone undiscussed. Today, this Commission can
16 take direct action by offering observations and
17 recommendations to reverse a history of unintentional
18 discriminations, some of which Greenlining would like
19 to share.

20 We believe our observations and
21 recommendations are fully consistent with President
22 Bush's commitment to ending the homeownership gap and
23 the laudable objectives of financial literacy and
24 moving the unbanked into banking once shared by
25 Chairman Greenspan.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 Finally, we believe that our observations
2 and recommendations are consistent with the June U.S.
3 Supreme Court decision involving the University of
4 Michigan and affirmative action, stating that we are
5 not yet ready to be a colorblind society. Race still
6 matters.

7 Currently, banks and other financial
8 institutions make an estimated less than one percent
9 of their small business loans to African American,
10 Latino or Asian American-owned businesses. Major
11 financial institutions such as Union Bank of
12 California believe they could do much more effective
13 outreach and lending to underserved minority
14 communities if they could collect small business
15 lending by race. However, the Federal Reserve's 1973
16 Regulation B prohibits the collection and maintenance
17 of any small business lending by race and ethnicity.

18 This short-sighted colorblind policy
19 directly contradicts the recommendations of former
20 Secretary of the Treasury Rubin and Chairman
21 Greenspan's own staff members.

22 In order to advance homeownership
23 opportunities for minorities, Congress specifically
24 gave the Federal Reserve authority to collect home
25 lending data by race. The Federal Reserve should

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 advocate for the same authority regarding small
2 business lending, especially since minority-owned
3 businesses are the fastest growing segment of the
4 American economy.

5 Currently, 74% of white Americans own
6 their own homes, compared to 47% for African Americans
7 and Latinos.

8 In 2001, Representative Barbara Lee,
9 working with community groups including Greenlining,
10 asked the Federal Reserve to investigate banks' home
11 lending records. Specifically, Representative Lee
12 asked why the Federal Reserve was giving financial
13 institutions a CRA exam score of "outstanding" when
14 those financial institutions gave less than one
15 percent of their home loans to African Americans. To
16 date, the Federal Reserve has yet to effectively
17 respond to Representative Lee's inquiry.

18 Whatever the response, we hope that the
19 Federal Reserve will not continue to reward, with its
20 most prestigious rating, financial institutions that
21 fail to serve minority communities.

22 In 1992, the Federal Reserve conducted two
23 studies showing a positive correlation between the
24 diversity of bank management and fair lending and
25 diversity of bank management and the safety and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 soundness of a company. Despite these findings, the
2 Federal Reserve and other regulators still do not
3 gather data on the diversity of bank management during
4 CRA exams and mergers and acquisitions. Consequently,
5 the Federal Reserve provides no incentive for banks to
6 promote diversity.

7 We ask the Commission and the Federal
8 Reserve to look into this matter, since it directly
9 impacts the advancement opportunities of low-income
10 and minority communities.

11 On a related topic, we further urge the
12 Federal Reserve to follow the recommendations of its
13 study regarding its own diversity. The Federal
14 Reserve sets an example for banks to follow. Yet,
15 just 3% of the Federal Reserve's employees are Latino
16 and less than 1%, two out of 235, of the Federal
17 Reserve's economists are Latino. This lack of
18 diversity at the Federal Reserve sets a bad example
19 for banks and may adversely affect the ability of the
20 Federal Reserve to service all communities, including
21 minority communities.

22 Chairman Greenspan has been a leader and
23 champion of financial literacy and moving the nation's
24 fifty-six million unbanked into banking. The tragedy,
25 despite his best intentions, is that he has ignored

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

(202) 234-1433

WWW.NEALR.GROSS.COM

1 the crucial role of bilingual services in promoting
2 financial literacy and moving the unbanked into
3 banking. For example, you cannot move Spanish-
4 speaking populations into banking or promote financial
5 literary without bilingual literature, signs and
6 personnel.

7 In the Rabobank case, Greenlining
8 demonstrated via two uncontested studies that Valley
9 Imperial Bank, VIB, lacked the ability to serve the
10 Spanish-speaking population of Imperial Valley,
11 California where nearly three-fourths of the community
12 is Latino. Competitor banks such as Bank of America,
13 Wells Fargo, Washington Mutual and Union Bank of
14 California operating in the same community
15 demonstrated a substantially better ability to service
16 the Spanish-speaking population, with bilingual
17 literature, signs and staff.

18 Ignoring the needs of the community, the
19 Federal Reserve has never raised questions about the
20 ability of VIB to provide bilingual service. In fact,
21 the regulators gave Rabobank an "outstanding" rating
22 in its latest CRA exam. "Outstanding" for lending and
23 for service to all communities.

24 This rating is absurd since two
25 uncontested studies by the Greenlining Institute shows

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 Rabobank lacked bilingual literature, signs and staff
2 to provide service in the established language of the
3 community.

4 As the Supreme Court recently stated in
5 the University of Michigan case, we are not yet ready
6 for a colorblind society. On behalf of the
7 Greenlining Institute and its thirty-nine coalition
8 members, we would like to urge this Commission to make
9 specific findings linking racial data as essential to
10 promoting home loans, small business loans, service to
11 minority and low-income communities and in closing the
12 home ownership gap that President Bush is so concerned
13 about. We urge you to use this Commission's prestige
14 and other resources to promote the advancement
15 opportunities of America's 100 million minorities.

16 One, speak out in various forms to
17 encourage workforce diversity as essential to ending
18 discrimination in lending and service by banks. One
19 example is to examine the diversity of regulatory
20 bodies that supervise banks, since it both directly
21 and indirectly impacts banking services.

22 Second, Chairman Greenspan's goals of
23 financial literacy and moving the unbanked into
24 banking are laudatory objectives. However, financial
25 literacy among the poor and unbanked cannot be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON D.C. 20005-3701

1 achieved without full bilingual services and the
2 Federal Reserve might consider following the examples
3 of Bank of America, Union Bank of California and
4 Washington Mutual, all of whom provide full bilingual
5 services.

6 Third, colorblind policies don't work
7 while discrimination and disparities in opportunity
8 still exist. We know this is true of the home
9 ownership gap that President Bush is committed to
10 ending. We would know this to be true of the small
11 business gap for certain if the necessary data were
12 available.

13 Colorblind policies or refusing to gather
14 racial data clearly discourages some of the most
15 effective ways to eliminate unintentional
16 discrimination. This Commission can uncover these
17 discriminations and close the gap of financial service
18 between minorities and whites. We encourage you to
19 use your bully pulpit.

20 Greenlining will also be raising these
21 issues on August 14th, when we meet with Chairman
22 Greenspan, whom we respect and meet with semiannually
23 and was a keynote speaker at our 2002 annual economic
24 summit.

25 Thank you for your time.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON BERRY: All right. Thank you
2 very much. There will be some questions for you.

3 Dr. Squires, we would like to hear from
4 you next.

5 DR. SQUIRES: I was advised that I would
6 have ten minutes on insurance, and ten minutes on
7 predatory lending. Is that correct?

8 CHAIRPERSON BERRY: That's right.

9 DR. SQUIRES: The first thing I'd like to
10 do is put an advertisement up there that appeared in
11 the *National Underwriter* last summer. This is
12 actually an ad by the Lexington Insurance Company on
13 claims liability practices, and, as you can see, it
14 says, "He's arrogant, duplicitous and lazy, and when
15 he sues you for discrimination, he'll be wealthy,
16 too."

17 I just want to point out what this ad does
18 not say. It does not say he's dishonest. It does not
19 say he's incompetent. It doesn't say he's unable to
20 do the job. The copy writers for this ad, I assume,
21 they carefully chose the words that they chose. They
22 intentionally chose to use the words "duplicitous and
23 lazy."

24 * anti-Semitic, and anti-black racist
25 stereotypes that were used in the discussion. I would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 argue that this represents just one more brazen
2 attempt to use a racist appeal to appeal to fears
3 about racism and discrimination in this * that are
4 presumed to be trivial discrimination complaints for
5 the purposes of benefitting the insurance company.

6 In 1988, the sales manager for the
7 American Family Insurance Company told one of his
8 agents, "You write too many blacks; you need to find
9 job-holding, premium-paying white people." Just in
10 case this agent didn't get the message in a
11 conversation that was tape-recorded, the sales manager
12 sent him a written memo that said, and I quote, "Quit
13 writing all those blacks."

14 Now, this type of examples are not as
15 pervasive in the insurance industry today as they were
16 15 years ago. But as I will say in a few minutes, the
17 problems of disparate treatment of blacks in the
18 property insurance industry continue.

19 And they are severe; they are critical,
20 because as I think you well know, if you can't get
21 your insurance policy, you can't get your mortgage.
22 In the absence of a mortgage, most people can't afford
23 to buy a house.

24 Like the * of the American Family case
25 that followed the litigation of that quote, no

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 insurance, no loan, no loan, no house. Lack of
2 insurance thus makes housing unavailable. Lack of
3 insurance makes housing unavailable.

4 Now, perhaps the best piece of evidence
5 that racial discrimination persists in the property
6 insurance industry ? there's a rather dry report
7 issued by the National Association of Insurance
8 Commissioners, which has been active * debate. They
9 did issue a report about six or seven years ago, where
10 they looked at the distribution of insurance policies
11 in 32 metropolitan areas in 25 states, and found that
12 the racial composition of neighborhoods remain
13 statistically significantly associated with the number
14 of policies and with the price of those policies, even
15 after controlling * and other measures of risk.

16 Now recently, several fair housing groups
17 have done testing to look at how this plays out *. It
18 describes some examples of the disparate treatment
19 that has been found in a range of testing. The fair
20 housing group came up with some additional things but
21 sometimes you can't read it.

22 What the fair housing people found is that
23 where they've done their testing, white testers or
24 residents from white areas are generally welcomed as
25 customers and quickly signed up, whereas the minority

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 testers or the people from the minority neighborhoods
2 frequently does not get the insurance policy. If they
3 do, they're told that they need to do more inspecting.

4 They cannot sign the * particularly if the person
5 has overspent.

6 Generally, you would call the insurance
7 agent and they would say, "We're going to cover you
8 over the phone. You're good for 60 days, forget the
9 formal application process, and then the company will
10 have you covered * substandard company or some other
11 inferior product *.

12 Different terms and conditions can be
13 offered. Often they have to counsel them*. If
14 there's a problem with the application, the white
15 testers would often work with them to find some
16 compensating factor in the application so he could
17 help get that application *. * black testers would not
18 be offered similar assistance.

19 There are different * they can often be
20 asked to provided to provide Social Security numbers
21 presumably so they can check the credit rating. They
22 are told things like * policies for first-time
23 homeowners or other kinds of subterfuge than not
24 wanting to do business. And sometimes they will
25 differentially apply their own company's underwriting

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 guidelines.

2 There is also a very disparate impact,
3 which is perhaps more problematic in the insurance
4 industry. Many commercial underwriting guidelines
5 have a clear and disparate impact on minority
6 communities. Common underwriting guidelines * a
7 company does not want to insure a home that was built
8 before 1970, was built in 1950, was more than 50 years
9 of age, or does not want to insure a home that is
10 valued at less than \$100,000, in some cases even much
11 higher than that.

12 So racial minorities disproportionately
13 live in homes that are older than *. And then one of
14 my favorites is the * where the argument is that if
15 your home would cost a lot more to replace than it
16 would to sell on the market, it would cost \$150,00 to
17 replace your home and you could only sell it for
18 100,000, you are going to burn it down and collect the
19 insurance money. We know that that happens.

20 Agents' locations are a problem. We know
21 that -- I'd bet if you took any city and looked at the
22 Yellow Pages over the last 20 or 30 years and looked
23 at the location of the agents, you'll find that the
24 number of agents has been disappearing from central
25 cities at a much faster rate than the population or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the economy is.

2 Agents are growing dramatically more
3 quickly in the suburbs. This has an adverse impact
4 because agents tend to do business in the
5 neighborhoods where they live. Agents are licensed in
6 the state, but that's not really what they do.

7 And the final item up on the screen there
8 is the current hot topic today, which is credit
9 scoring. Many state insurance commissioners have
10 limited use of credit scoring, others are considering
11 this. Many consumer groups are advocating that credit
12 scoring be eliminated altogether, primarily because of
13 the disparate impact. Racial minorities are more
14 likely to have lower income, more credit problems,
15 more likely to discover mistakes that are not of their
16 making on their credit report.

17 The insurance industry claims that credit
18 scores accurately predict risk; they don't know why,
19 but they surmise that it's because if you're careless
20 with your money, you're going to be careless with your
21 house. But that is the hot issue today.

22 Having said this, it appears that
23 redlining is not a brand new issue. It's been around
24 for a while. State insurance commissioners have been
25 ignoring this issue ever since it has been brought up.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 We have seen since 1995, there have been
2 administrative complaints filed, in one case a jury
3 verdict found against a company, against the nation's
4 leading insurers. State Farm, Allstate, Farmers',
5 which are the three largest; and then American Family,
6 Nationwide and Liberty, which are three of the ten
7 largest; so six of the ten largest insurers have
8 negotiated fair housing settlements.

9 Each settlement is a little different, but
10 these are the major pieces vis-a-vis * compensation
11 for the * and other victims, and the companies agree
12 to open up their agencies within the neighborhoods
13 that they have previously redlined, to advertise in
14 those neighborhoods. In two cases that I am aware of,
15 Nationwide and American Family, provided seven million
16 dollars for reinvestment to help first-time home
17 buyers find one, and to help current homeowners
18 maintain their home. And vis-a-vis * companies were
19 contacting the fair housing group to see if their
20 agreements had the desired impact and often they would
21 provide compensation for the services of these
22 entities.

23 Now I need to back to the praxis for a
24 minute. There's one that I forgot to mention to you
25 that I just learned about last summer. * told me that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON D.C. 20005-3704

1 an insurance agent had told her that one of the
2 companies that he worked for routinely asked the agent
3 if the kids in the neighborhood played hockey or
4 basketball. And my immediately reaction was that this
5 was the first anti-Canadian bias I had encountered.

6 It seems to me the logical first step is
7 to have * of the insurance industry. I should say
8 that the insurers today claim that they do a lot in
9 the way of reinvestment. And they are. There are
10 lots of programs, lots of collaboratives, lots of
11 individual companies. I describe the elements in the
12 paper that I gave you.

13 The question is whether *. And I don't
14 think you can possibly know without some kind of
15 systematic data collection * to tell us what is going
16 on. This is an issue that has been debated for 30
17 years. In 1995, actually, the House passed a *. It
18 didn't go anywhere. One of my favorite explanations
19 for * back in 1979 * U.S. Commission on Civil Rights.

20 One of the reasons opposed to disclosure
21 of insurance * was an inaccurate, incomplete
22 disclosure would lead to incorrect improvements, to
23 which I said, "We have a choice. We have got
24 inaccurate, incomplete disclosure, and we've got
25 complete and accurate disclosure." It seemed to me

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 those are the choices. We chose to go without any
2 disclosure.

3 About two years ago, Tom Dorr, a
4 congressman from Milwaukee, and * from Chicago
5 introduced the CRA Modernization Act, which would
6 provide * disclosure, would provide CRA-type
7 requirements, and would require insurers to be
8 responsive to their entire service area. And if it
9 failed to do so, they would be prohibited from merging
10 with the bank * mortgages on the home * proposal to
11 try to * the investment community.

12 And the last item that was * is offering a
13 regulation to clarify the opposition to fair housing
14 rights within the housing insurance industry. HUD
15 attempted to do this in the late '70s, early '80s,
16 they attempted to do it again in the mid '90s. * we
17 spent two years getting nowhere. * clarify what kinds
18 of practices are covered and define * disparate impact
19 and disparate treatment standards. * insurance is
20 state-regulated * to understand what is consistent
21 with the Fair Housing Act.

22 With that, I'd like to shift gears I guess
23 from * down to predatory lending.

24 CHAIRPERSON BERRY: Please.

25 DR. SQUIRES: Some of you will disagree

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 with me on this -- I'm sure nobody disagrees with
2 anything else that's been said -- but I think the *
3 the Community Reinvestment Act has had the intended
4 effect. A higher percentage of mortgage loans are
5 going to low-income and minority communities and
6 borrowers. Lenders who are covered by the CRA are
7 doing a bit better of a job of reaching these markets.
8 Lenders who are involved in CRA agreements are
9 increasing their share of loans to these communities.

10 I am basing this decision on research done
11 by the Federal Reserve Board, * housing study at
12 Harvard, Treasury Department, * as it used to be. *
13 the Federal Reserve, and they're going to greener
14 pastures, I think.

15 So think there's some evidence that it's
16 working. But it's clear in recent years that some of
17 that progress we've seen in the CRA has been
18 undermined by the growing presence of predatory
19 lending. We don't have an official definition of
20 predatory lending. We don't have a good data set on
21 predatory lending, but we do know quite a bit about
22 sub-prime lending.

23 Not all sub-prime lending is predatory. A
24 lot, if not most, sub-prime lending is actually good,
25 it's what we want so people who have high risk can get

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

(202) 234-4433

WWW.NEALRGROSS.COM

1 a loan, rather than no loan at all. But we do know
2 that almost all predatory loans are sub-prime. And
3 we've seen a dramatic increase in sub-prime lending.
4 In the last eight or nine years, we've seen sub-prime
5 lending, sub-prime share of home purchase loans going
6 from one percent to about thirteen percent. And you
7 see a growing *. Blacks are three times as likely as
8 whites to finance homes through sub-prime loans.
9 Residents of black areas are five times as likely to
10 finance homes with sub-prime loans. Sub-prime buyers
11 are eight times as likely to default, but *

12 Now, what are predatory practices? *
13 twelve pages of predatory practices. And it seems to
14 me these are the types of things we see most often.
15 First off, higher interest rates and fees than can be
16 justified by the risks. High balloon payments for
17 borrowers that have been making monthly payments for
18 several years will find themselves with a large
19 payment that they obviously can't afford to pay.

20 Requiring * credit life insurance, which
21 is * into the loan, which increases the interest rate
22 and makes the cost of the loan much higher than the
23 average price of a loan. Insurance-based homeowner's
24 insurance, where the mortgage lender basically decides
25 who you are going to have your insurance policy with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON D.C. 20005-3704

1 and what * with your money. High prepayment * which
2 traps people into the predatory loan once they get it.
3 Financing fees for services that are not provided.
4 Loan flipping to keep * one loan after another,
5 getting deeper and deeper in debt, and loans based on
6 the value of the property, rather than the borrower's
7 ability to pay. It protects the lender but traps the
8 borrower.

9 There's been lots of reasons for the rise
10 of predatory lending, but I would argue there are two
11 main sets of explanations for this. One is the
12 tremendous growth of the economy. * equally
13 distributed, concentrates wealth *.

14 The second problem is a series of several
15 changes within the financial services industry. We
16 all know about the * statistics. I am going to focus
17 for a minute on the kinds of * changes that I am
18 talking about.

19 We have seen a investments at
20 institutions, or at least conventional financial
21 services from urban areas for several years. Between
22 1975 and 1995, the number of banking offices in low-
23 income areas declined by 21 percent while growing by
24 29 percent overall. The number of check-cashers
25 between the mid '80s and mid '90s grew from 2100 to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON D.C. 20005-3701

1 5500. And we know that they're heavily concentrated
2 in certain neighborhoods, leading *Business Week* to
3 describe this as a two-tiered marketing system that
4 has emerged in financial services.

5 We also know that many different types of
6 entities may get involved in mortgage lending.
7 Depository institutions, which not too long ago had
8 more than half of all mortgage loans that are covered
9 by the CRA, now have about a third of all mortgage
10 loans as independent mortgage banks and insurance
11 companies and others not covered by the CRA have
12 entered the market. So CRA is declining in terms of
13 the percentage of the market that it covers.

14 I said a moment ago that conventional
15 institutions are leaving central cities. Well, they
16 have withdrawn conventional services, but they are not
17 necessarily leaving. What is happening is large banks
18 are contracting with or buying check-cashing
19 operations, or payday lenders, and are working with
20 predatory lenders as subsidiaries in central cities.

21 For example, Wells Fargo, I just noticed
22 today -- my daughter lives in California, has her
23 account with Wells Fargo -- very recently provided 700
24 million to three check-cashing chains that are clearly
25 engaged in predatory lending around the country. And

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrsgross.com

1 Wall Street is a major investor as the sub-prime and
2 predatory loans become securitized and become
3 profitable investments for many people.

4 So what do we do? I would like to suggest
5 three directions for change. One, we can apply the
6 CRA to non-depository institutions. Short of that, we
7 could at least apply the CRA to the affiliates and
8 subsidiaries of depositories that are currently
9 covered by the CRA, but these affiliates and
10 subsidiaries are not covered unless the bank decides
11 voluntarily that it wants them to be covered. So, in
12 other words, if the subsidiaries *. If they don't,
13 they won't.

14 It seems to me, at a minimum, those
15 institutions should be covered. And it seems to me
16 that the CRA * should look at the presence of
17 predatory lending and if there is evidence of
18 predatory lending, that ought to * weigh negatively in
19 the CRA assessment.

20 I remember when I was on the Consumer
21 Advisory Council a few years ago somebody from Chase
22 Manhattan Bank saying that they have a CRA credit
23 because they had opened up a lot of check cashers in
24 neighborhoods in New York. They felt that if other
25 people aren't serving them, they could serve them.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Some of us on the Council thought that was precisely
2 what the CRA was supposed to prevent. And if you
3 didn't want lenders to be able to pull out of the
4 community and then go back and buy a check casher, and
5 get CRA credit to do so, on top of that. I guess a
6 new definition of *..

7 The second direction would be to allow
8 anti-predatory lending legislation. About half a
9 dozen cities and a half a dozen states have done this.

10 There are three or four bills that I am aware of in
11 Congress, one of them submitted by Congressman Ney,
12 that this Commission I think wants to strongly reject.

13 It's a federal bill that would weaken existing
14 protections, it would override standards of lending *
15 and others have introduced more aggressive
16 legislation.

17 But there are things happening at the
18 state level, starting with North Carolina, and I think
19 there are some positive * impact of the North Carolina
20 law that we can talk about later if you want.

21 And the third recommendation is to expand
22 financial literacy programs and rescue programs that
23 many lenders and community organizations are working
24 on right now, where they take * on predatory loans and
25 work with them so they can move them into less

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 predatory financial situations. And I just like that.

2 It seems to me the proverbial dream of
3 homeownership has become a real nightmare for a lot of
4 people who are losing their homes and their life
5 savings because they are being captured and trapped by
6 predatory lenders. I'm not suggesting that anybody *.

7 And, with that, I'm done.

8 CHAIRPERSON BERRY: Okay. Thank you, Dr.
9 Squires. Any questions?

10 (No response.)

11 CHAIRPERSON BERRY: Now, as I understand
12 it, Dr. Wayne Angell is going to give us his reaction
13 to the CRA experience as well as a broad macroeconomic
14 focus on community reinvestment. Is that correct?

15 DR. ANGELL: Chairman Berry, I will do as
16 you suggest.

17 CHAIRPERSON BERRY: We appreciate it very
18 much. Please proceed.

19 DR. ANGELL: Thank you very much. It is a
20 delight for me to once again appear before the Civil
21 Rights Commission. And I was not sure * years ago
22 that I would be asked back. So I am delighted to be
23 back here.

24 As one who has devoted many years in
25 theorizing about and observing individual and business

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 response to regulatory requirements in 1989 I expected
2 that the Congressional enhancements of the CRA and the
3 Financial Institutions Responsible Reporting Act would
4 elicit the following changes.

5 First, many commercial banks, including
6 most of the large banks I thought would further modify
7 their policies and behavior to generally comply with
8 the purposes of the Community Reinvestment Act.
9 Commercial banks seeking Federal Reserve Board
10 approval of new bank offices and new activities would
11 feel compelled to review policies and procedures.

12 The bank safety concerns from 1989 through
13 1992 at the Board of Governors and among commercial
14 banks were likely to reduce the chance of dramatic CRA
15 related lending growth. The new requirements would
16 elicit new steps into the water rather than wholesale
17 changes.

18 Long term progress in serving
19 disadvantaged communities and individuals subject to
20 adverse discrimination would depend on whether or not
21 CRA related lending were likely to be profitable.
22 Servicing economically underserved individuals and
23 localities were likely to encounter higher originating
24 and servicing costs per dollar of loans, higher
25 percentage credit losses, and a tendency to higher

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 pricing.

2 It seemed likely that some banks would
3 find a niche in CRA-related lending that would be
4 profitable, even though they faced the disadvantage of
5 not being able to price the lending in proportion to
6 the risk. Other banks might find they had generally
7 overestimated costs and credit losses.

8 The tentative conclusions coming from the
9 study undertaken by the Federal Reserve Board of
10 Governors in response to the Gramm-Leach-Bliley Act of
11 1999 are not surprising. For instance, fifteen
12 percent of CRA-related home purchase and refinancing
13 lending were labeled "unprofitable" or "marginally
14 unprofitable" as compared to only two percent of
15 overall home purchase and refinancing lending. Only
16 50 percent of CRA related home purchase and
17 refinancing lending were related as profitable as
18 compared to 70 percent overall.

19 Our 25 years of experience with the
20 Community Reinvestment Act suggests the following:
21 notwithstanding that too many banks only reluctantly
22 complied with the purposes of the CRA and some failed
23 to meet the spirit of the Act, overall CRA-related
24 lending has increased about as rapidly as could be
25 safely accomplished.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Going forward, the public purposes that
2 fostered the CRA are more likely to be realized by a
3 new kind of emphasis on remedying the wealth disparity
4 between citizens previously disadvantaged by adverse
5 discriminatory practices in education, hiring, firing
6 and lending.

7 Minorities who received loans to purchase
8 houses they would otherwise not have received,
9 including those who encountered payment difficulties
10 benefitted by learning directly about household wealth
11 creation.

12 I would not suggest that non-business
13 consumer credit extended under the act was of the same
14 wealth generation benefit as were loans to purchase
15 and refinance houses. Borrowing money to buy a car or
16 durable consumer good is undoubtedly an obstacle to
17 household wealth formation.

18 I would suggest that the Commission on
19 Civil Rights would do well to move its focus forward
20 to consider public policy changes that will enable
21 individuals encumbered by past discriminatory
22 practices to advance under policies that will increase
23 economic growth and thereby employment opportunities.

24 During the 1980's, tax rate reductions and
25 sound monetary policy improved economic incentives

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON D.C. 20005-3704

1 that put the dismal days of stagflation behind us.
2 Improved economic incentives increased the demand for
3 both capital and labor while increased defense
4 spending, general government spending and entitlement
5 spending put upward pressure on resource prices, rate
6 of return and interest rates.

7 In the late 1980s the Congress of the
8 United States turned the corner on Federal spending by
9 adopting "pay as you go" philosophy that was
10 implemented by a new Republican Congress and a
11 fiscally centrist Democrat President. As a result of
12 the restraint on government spending resources were
13 effectively released to the private sector. The stock
14 market led the way to a new era of capital goods use
15 and record employment growth. Rising labor
16 productivity fostered rising real wages and an
17 acceleration of employment opportunities.

18 Employment conditions improved so rapidly
19 that public policy was prompted to replace an old
20 counter-productive welfare system for work incentives.

21 It worked for all segments of our population and
22 workers including workers and unemployed workers in
23 our most disadvantaged minorities.

24 Then as record Federal revenues responded to
25 rapid economic growth and to the rise in household

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 wealth brought on by soaring stock prices and a long
2 upward move in house prices a view emerged that the
3 prosperity depended on paying off the Federal debt.
4 In the four quarters ending in the second quarter of
5 2000 Federal individual income tax receipts grew at
6 exactly twice the rate as personal income; 11.4
7 percent growth, while personal income registered a 5.7
8 percent.

9 Failure to reduce Federal income tax rates
10 to offset the surge in taxable income resulted in
11 goods sector employment peaking in July of 2000. The
12 attached charts depict the path of goods sector
13 employment during the 35 months of decline in goods
14 sector employment and the 28 months of decline in non-
15 farm employment.

16 Chairman Berry, I would just want to point
17 out that this development is really most, most
18 unfortunate. Now, for the first time since the 1930s,
19 you have goods-producing employers reduce their
20 employment 35 months. And over that 35 months we now
21 have employment and the staffing * employment in
22 goods-producing jobs is now 2.7 percent below the peak
23 that was achieved in July of 2000.

24 CHAIRPERSON BERRY: Wow.

25 DR. ANGELL: So that is why I have such a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 strong feeling about how necessary it is that the
2 market system economy moderate the growth of our
3 individual income tax receipts. It's so important
4 that even though we often think that the amount of
5 people spending and shopping is related to their
6 income, we have many studies that show that high-
7 income people have reduced their spending dramatically
8 in 2000 as high-income jobs began to decline.

9 The following policy changes, I believe,
10 would restore modest employment growth. Now I did not
11 mean, Chairman Berry, that I say that modest
12 employment growth. I just want you to understand that
13 I believe *.

14 CHAIRPERSON BERRY: I see.

15 DR. ANGELL: ? modest employment growth.

16 CHAIRPERSON BERRY: You wouldn't be
17 unhappy if it were higher?

18 DR. ANGELL: Not only would I not be
19 unhappy, but Chairman Berry, I and other members of
20 the * believe that economic * ultimately has to be
21 judged by the improvement of the * of the American
22 people. * and I do not know of anything that is more
23 of an obstacle particularly in the area of mortgage, *
24 this bit of * to use legislation to lift up these
25 communities. So no, I am not satisfied with modern *

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON D.C. 20005-3704

1 but * if it did not do what I am suggesting here, *.

2 CHAIRPERSON BERRY: Okay.

3 DR. ANGELL: The following policy choices
4 would restore modest employment growth by encouraging
5 a growth in output at a rate above the 4 to 5 percent
6 growth rate of labor productivity:

7 First, keep the cap on Federal individual
8 income and corporate income tax rates at or below 35
9 percent.

10 Two, keep the double taxation of corporate
11 income paid out in dividends or capital gains by stock
12 buy-backs at the 45 percent rate stemming from a
13 corporate tax rate of 35 percent and a dividend /
14 capital gains individual tax rate of 15 percent.
15 Prior to the recent tax rate changes to double tax
16 rate was 60 percent.

17 Reduce the growth rate of Federal
18 expenditures by re-implementing the "paygo" rules
19 adopted in the 1990s. Federal spending needs a
20 special restraint as the Federal government does not
21 have the borrowing restraint experience by state and
22 local governments. To the extent that the private
23 sector grows more rapidly than the federal sector,
24 economic resources are continually released to fuel
25 economic growth.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

WWW.NEALRSGROSS.COM

1 Fairness to the elderly and retired as
2 well as to retirement plans suggests that interest
3 rates may be too low, as well as being too high. When
4 * high interest rates it doesn't take a lot of insight
5 to know that high interest rates * and that there is a
6 *. But I just want to point out that in all fairness,
7 the Federal Reserve today, I mean it *, taking
8 additional steps to reduce the target * unfair result
9 for a lot of people that are holding a lot of money
10 market funds and money market accounts. Now, I * to
11 people holding money market funds and because it might
12 be that there are individuals that are hoarding that
13 kind of money and * being willing to take risks that
14 this contributes to our * economic growth.

15 The current level of interest rates should
16 remind us that Federal deficits only reduce economic
17 growth when those deficits crowd out business and
18 household borrowing. * quite often say this Federal
19 borrowing, this Federal deficit is still too low. We
20 are not going to have this borrowing * what do you
21 mean? *

22 When we decided to pay down the Federal
23 debt, we decided to pay our household debt at a fast
24 enough rate to offset the paydown of the Federal debt.
25 We decided to pay business debt at a faster rate.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 Nominal GDP in the U.S. and other market
 2 system economies grows at approximately the same rate
 3 the * does. And never * if anyone decides to pay down
 4 the debt, it means that other government * have the *
 5 household debt has to grow faster by increasing
 6 spending. And that's how you end up having this
 7 issue, because our household debt goes too high. *
 8 that when people set out to do one thing, that they
 9 think is desirable, they end up doing something else.

10 So the idea of paying down the national
 11 debt produced an opposite result assumption that
 12 caused the Federal Reserve to do this.

13 I see Russell Redenbaugh is a Commissioner
 14 here, and I know of his past interest in the
 15 investment community, and I am very confident that
 16 *. the job *. I have no interest whatsoever than
 17 seeing to it that other * other than myself *. * but
 18 I * opportunities and * the 1994 * rising * * want to
 19 see us get that too.

20 CHAIRPERSON BERRY: And Dr. Angell, what
 21 we're going to do here is we're going to ask you to
 22 introduce the last * in the questions because * time
 23 constraint.

24 DR. ANGELL: I'm very appreciative of
 25 that.

1 CHAIRPERSON BERRY: And we appreciate what
2 you outlined.

3 DR. ANGELL: Chairman Berry, I often *
4 (Laughter.)

5 DR. ANGELL: * enthusiasm * hasn't been *
6 for 29 years. I still have not felt that * great
7 opportunity *

8 The last item * shows is a * that *
9 without them, this is the *. And I *

10 CHAIRPERSON BERRY: I understand that.

11 DR. ANGELL: So that's why I would like to
12 see I want you to know that there's no way in the
13 world that * but I just don't * in the rest of the
14 world.

15 And I want to point out that * value added
16 tax system and * adopted a value added tax * export
17 goods are taxed by the U.S. government based on this
18 tax. And then U.S. exported off-loads * is available
19 * value added tax * and * by United Airlines, the
20 value of the value added tax is *, as it is no cost *
21 government of *, government *.

22 CHAIRPERSON BERRY: Right.

23 DR. ANGELL: So my suggestion that we just
24 must * tax system, * income tax system * because the *
25 is not *.

1 * value added subsidy *

2 CHAIRPERSON BERRY: Okay, well, thank you
3 very much and we'll be back to you with some
4 questions.

5 Now we'll hear from Sandra Braunstein from
6 the Consumer Affairs -- Community Affairs from the
7 Division of the Federal Reserve. Please proceed.

8 MS. SANDRA BRAUNSTEIN: Thank you very
9 much. And first of all, I'd just like to thank you,
10 Madam Chair and Commissioners for inviting us here
11 today. We're pleased to be here to share information
12 about a * low and moderate income and under served
13 populations.

14 The Federal Reserve Board and the Federal
15 Reserve system has a new approach to these issues and
16 it's discussed in full detail in the progress report
17 that I submitted prior to this meeting. And I'm not
18 going to go through all the facts. I just want to
19 give you a broad brush and then I'll be willing to
20 entertain questions.

21 Basically, I made mention of the approach
22 that involves the regulatory process, the supervisory
23 process which includes examinations for the Community
24 Reinvestment Act. We have a complaints process, an
25 applications process, a community affairs program, a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

(202) 234-4433

www.nealr.com

1 consumer protection program and we conduct research.

2 Just to touch briefly on each of these,
3 under our regulatory responsibilities, the Federal
4 Reserve regulates many consumer protection statutes.
5 And * like truth in lending, truth in saving, privacy,
6 equal credit opportunity act, * disclosure act. We
7 also have some regulation rating responsibilities for
8 the Community Reinvestment Act. The statute is a
9 little different from the others because these
10 responsibilities also extend to other regulatory
11 agencies, not just The Federal Reserve.

12 And in addressing consumer protection
13 regulations, we always have to be mindful of several
14 things. One is to remain true to the statute as it
15 was amended. We also have to be mindful of consumers'
16 need for protections and remember, we're also trying
17 to balance that with concern for undue industry favor.

18 In our supervisory responsibilities, the
19 main issue that the Commissioner invited us here today
20 is CRR. So I'd like to talk a minute or so about
21 that. And the Community Reinvestment Act which came
22 about in 1977 was based on the very wrongful premise
23 that insurance petitions have a continuing and
24 affirmative obligation to engage in community
25 reinvestment. And with this in mind, Congress enacted

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

(202) 331-4433

www.nealr.com

1 CRR. And CRR, some people -- it's very, when you read
2 it technically, it actually doesn't require notes. It
3 really is a law that was enacted to require regulatory
4 agency action. And it basically requires that the
5 federal banking regulatory agencies a sense of being
6 selected and moving the credit needs of the entire
7 communities, including low and moderate income
8 neighborhoods consistent with the safe and sound
9 operation of the bank.

10 Now in order to implement this, the
11 banking agencies must conduct examinations of both
12 banks and agencies that they supervise. In the case
13 of the Federal Reserve System, the Federal Reserve
14 Board delegates the examination process of state
15 member banks and state chartered banks which are the
16 banks that we supervise and we gave the responsibility
17 of the examinations to the 12 Federal Reserve banks
18 that are all over the country.

19 In 1995 in response to a Directive from
20 President Clinton, the banking regulatory agencies
21 revised the CRR regulations. And these are the
22 regulations under which we currently operate. And
23 under these regulations, the examiners assess an
24 institution's performance in the assessment area that
25 is designated by the bank as its safest market.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

(202) 234-4433

www.nealr.com

1 We also make that assessment of the
2 institution's performance in the context of economic,
3 competitive and other environmental factors that would
4 contribute to the bank's ability to engage in
5 community reinvestment activities.

6 The examinations that we conduct result in
7 the preparation of a credit performance report, a
8 performance evaluation and also a rater. And one
9 thing that's interesting that Congress mandated the
10 rating system which was not something that the
11 regulatory agencies came up with and the statutorily
12 mandated ratings: outstanding, satisfactory, needs to
13 improve, substantial noncompliance.

14 When we revised the regulations in 1995,
15 we made separate examination procedures for large
16 banks and small banks and other kinds of things and
17 basically * are those institutions over \$250 million
18 or greater and all * petitions that are submitted with
19 assets greater than \$1 billion. And for these large
20 institutions, there are three different tests that are
21 done during the evaluation. The examiners make up the
22 expense lending, the services and the investments.

23 For smaller banks which are those under
24 \$250 million there is a new * in the books and there
25 the examiners will rip up consumer complaints *, they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 rip out the deposit ratios, look inside and outside
2 the bank's assessment area and they do review the *.

3 For institutions that aren't satisfactory,
4 under the small bank test, if they wish to get a
5 higher rating, they can request the examiner to permit
6 investments and services, but that's not done on a
7 routine basis.

8 Now there's other variations on this
9 methodology which are discussed in the policy paper
10 but I'll leave those details.

11 I want to touch on the consumer complaints
12 program because this is a very important part of what
13 we do. And we respond to consumer complaints and the
14 wide range of financial services issues. We
15 investigate complaints against the member banks. We
16 rate a lot of other agencies including State Attorneys
17 General's office, banking commissioners in terms of
18 addressing the complaints.

19 Consumer complaints also are a very good
20 resource for us into what issues are out there and it
21 also helps the examiners when they get asked to
22 conduct examinations, if there have been complaints
23 filed against the bank to investigate those areas
24 during the examination process.

25 Many * the commissioners express interest

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is our applications process. The Federal Reserve
2 application process entails considering the banks
3 record of moving credit needs and banking needs of the
4 communities it's chartered to serve * the
5 applications. * seeking to expand * operations
6 through acquisition, merger, or branching activities
7 must be * Federal Reserve.

8 And in processing these applications, the
9 Federal Reserve takes into account the effects of the
10 acquisition in key areas such as competition, the
11 community, the financial and managerial resources and
12 the future prospects of the bank holding company and
13 the subsidiaries.

14 In looking at convenience and needs, the *
15 must look at the *, most recent exam and look at their
16 compliance with other consumer protection statutes and
17 also we get comments on many applications and these
18 public comments that we receive are often referred to
19 as * or application *.

20 And * consideration during this
21 application process. And even under certain
22 circumstances, and this is under the Board's
23 discretion, when it is deemed necessary to complete
24 the record needed to make a decision in the
25 application, the Board will hold a public meeting on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

(202) 234-4433

www.nealrgross.com

1 an application to allow for any * to supplement the
2 written comments that were given.

3 Another one of our efforts to * the needs
4 of * community is a community affairs program. And a
5 community affairs program was originally established
6 actually to assist us in meeting the community
7 reinvestment obligations. It's evolved a bit over the
8 years and it really supports the economic goal
9 objectives of the Federal Reserve by promoting
10 community development and better access to credit.
11 And basically, as I'm sure, * can tell you, is that *
12 is good information. And one of the things our
13 community affairs program does is help to supply
14 information and undertake markets to help facilitate
15 the operation of those markets.

16 We facilitate public-private partnerships
17 into communities, conduct * outreach; educational and
18 technical assistance activities to help financial
19 institutions, to community based organizations,
20 government entities and the public understand and
21 adjust financial service needs affecting low, moderate
22 income persons and communities.

23 We have worked with a number of
24 organizations. We publish newsletters and other kinds
25 of publications and issues. We sponsor conferences

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and seminars and we conduct research on community
2 development topics.

3 One of the principal projects we are
4 engaged in right now on a national basis has to do
5 with financial education and in fact, Chairman
6 Greenspan, who you may know doesn't really go in for
7 public appearances except for when he's summoned to
8 Congress to testify. Chairman Greenspan made a public
9 service announcement which is being broadcast on TV
10 and on radio in both English and Spanish on the
11 importance of *. It's something that * to promote
12 those objectives.

13 The last thing I wanted to discuss is we
14 also have very active consumer education and research
15 components to the Federal Reserve. And we have
16 produced just a slew of reports on consumer education
17 topics for consumers and * entities under various
18 consumer protection regulations that govern credit and
19 deposit transactions. And the kinds of topics
20 included are things like home equity lines of credit,
21 mortgage shopping tips, leasing agreements, credit
22 card protection laws and these public portions are
23 available in hard copy as well as on the web and most
24 of them have been translated into Spanish.

25 We also conduct a lot of research banking

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

(202) 234-4433

www.nealrsgross.com

1 communities, consumer behavior, CEO performance and we
2 sponsor a research conference every two years that is
3 focused solely on community development issues and
4 it's become kind of a namesake for a lot of people and
5 part of this was to try to not only --we want to be
6 the ones to produce research, but we want to encourage
7 others to produce research on community development
8 issues so by having this research conference and
9 putting out a crop of papers ahead of time, we are
10 hoping that we are able to help promote some of that
11 research.

12 We also have Internet research on
13 community development activities that is run by the
14 Chicago * and we have a lot of things up there that
15 relate to this research.

16 In conclusion, this whole area is a very
17 important topic to discuss and the Board feels
18 strongly about this and we, as a system, as a Federal
19 Reserve system devote significant resources to
20 activities to promote * to low and moderate income
21 people and services and we have active participation -
22 - our presidents, our chairmen, from top to bottom we
23 are working on these issues.

24 CHAIRPERSON BERRY: Okay, I want to thank
25 you for that. Before I recognize Commissioner Edley,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrsgross.com

1 I don't know if Commissioner Meeks, do you have --.

2 COMMISSIONER MEEKS: I also have to leave
3 very soon. I do want to say that I do appreciate the
4 thoughts, interest and involvement in consumer
5 financial literacy. * people involved * leaders *
6 across the country. They picked up the cost for it
7 and that's very helpful.

8 And in the issue on predatory lending and
9 I think we're not talking a lot about that. I mean,
10 Indian Country is affected by the predatory lending
11 more than any -- as much as any other minority
12 community. The CDFR * financial institutions really
13 got involved and covered the gap and now we find that
14 most of the CDFR's are really happy to educate and
15 compete with the predatory lenders because sometimes
16 the CDFR's aren't as limited. Predatory lenders are
17 extremely creative about how they can make money. And
18 I think that's an area of interest that the Commission
19 needs to look at more fully.

20 CHAIRPERSON BERRY: Commissioner Edley?

21 COMMISSIONER EDLEY: I'll be brief. *
22 What are we not doing well?

23 (Laughter.)

24 MS. BRAUNSTEIN: Well, I don't know what
25 you're saying about not doing this or that well. I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 think that there's always room for improvement in any
2 one of us and I think we are possibly striving to
3 improve our examination process, our application
4 process and I think that there's room for improvement
5 there.

6 One of the things that's going on now,
7 actually, to talk about that is that the CRA
8 regulations are currently under review. As I
9 mentioned before in 1995 and at that time * look at
10 them again in 2002. We are in the midst of that
11 revision right now and that's one of the things we're
12 working on together. It's * are there other ways we
13 can improve the * process and all those things that
14 need to be changed.

15 * process now.

16 COMMISSIONER EDLEY: Can you quantify, in
17 approximate terms the frequency with which a charter
18 or major application is denied or a modification is
19 required as a consequence of CRA analysis?

20 MS. BRAUNSTEIN: Yes, I can tell you that
21 first of all, applications for mergers and
22 acquisitions are rarely, if ever denied on any
23 grounds. I mean they're just not. Usually what
24 happens in the applications process is when a bank *
25 says they're going to do that, the final * there

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 identifies right off the bat and sometimes the
2 financial institutions go away or they ditch them
3 before they actually formally submit an application.
4 So in that sense the things that worked out from *
5 demands. Given that, * and denials over the years, I
6 think there have been six denials on the basis of CRA
7 grants.

8 COMMISSIONER EDLEY: In what time period?
9 Since the Act?

10 MS. BRAUNSTEIN: Since the Act, the first
11 denial was back in -- I think something like 1989 or
12 1990, something like that.

13 COMMISSIONER EDLEY: Has the Federal
14 Reserve taken a policy position with respect to the --
15 I know it's outside your purview -- but with respect
16 to the extension of CRA or CRA-like requirements to
17 small business? Is this really outside your purview?
18 Small business --.

19 MS. BRAUNSTEIN: Well, CRA does * .

20 COMMISSIONER EDLEY: * depository
21 activities -- and I think this goes to the question of
22 extension to affiliates of depository institutions.

23 MS. BRAUNSTEIN: The primary regulator of
24 affiliates to * which I think is what you're
25 referring to, is actually the FTC.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 COMMISSIONER EDLEY: The FTC?

2 MS. BRAUNSTEIN: We have taken the
3 position that we have not, on a regular basis,
4 examined these affiliates. If there's some reason
5 that we have found on a piece by piece basis that
6 there was a reason to look at something the new
7 petitioner * and we have done that a few times.

8 COMMISSIONER EDLEY: But how do you deal
9 with the situation that was described in which a
10 depository institution might effectively spin off some
11 of these activities in a given community. It sounds
12 as though that would be a device for -- let's just
13 take an egregious case. A depository institution
14 withdraws from some activity in a minority community
15 or a low income community, but then continues
16 practicing through a check cashing operation or
17 something else that doesn't fall directly within your
18 regulatory --

19 MS. BRAUNSTEIN: * We require some sort
20 of ?- .

21 COMMISSIONER EDLEY: They've got out from
22 under CRA scrutiny of their activity in that minority
23 community.

24 MS. BRAUNSTEIN: But CRA is not statutory
25 * depository institution. If it's not a depository

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 institution, it's not covered by CRA and that's not
2 regulation, but actually statutory.

3 *FDIC depository institutions are covered
4 by CRA.

5 CHAIRPERSON BERRY: That's a loophole.

6 COMMISSIONER EDLEY: * made institutions
7 despite low lending rates to low income communities.
8 How many have come to pass?

9 MS. BRAUNSTEIN: Well, there are several
10 things that would happen with that. Some of the
11 information that is put out in the CRA process is
12 proprietary. So the public is not privy to
13 everything. There also needs to be taken into account
14 that ?- the bank is evaluated in a context of some
15 environmental factors, as well as * factors and some
16 banks choose to be agricultural banks, wholesale banks
17 and they don't necessarily do high value * with
18 consumers on a retail basis. And we take those
19 factors into account and we look at their activities.

20 COMMISSIONER EDLEY: Two more quick things,
21 if I might. With regard to the regulations on the
22 Fair Housing Act and applying those to insurance
23 activities, why did you fail -- what's the hang up
24 there? Was it political, bureaucratic, were there
25 people concerned about this? How did it primarily *?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON D.C. 20005-3704

1 The industry maintains that because of a *, the
2 Federal * does not apply.

3 MS. BRAUNSTEIN: Right.

4 COMMISSIONER EDLEY: --The one appeals * to
5 that effect * 1984 or something. There have been two
6 appeals cases since then that have explicitly rejected
7 not as being * and there is a memorandum that * makes
8 available written by Republican and Democratic
9 Administrations as serving to help identify the
10 insurance * one line rule for Housing Amendments Act
11 of 1988 citing specifically the discrimination that
12 happened was unlikely.

13 * So there is that * item and I suppose *
14 but I think * those of us who have advocated this kind
15 of action didn't have the same clout as those who * .
16 And then there's the * of 1994.

17 MS. BRAUNSTEIN: Right.

18 COMMISSIONER EDLEY: *

19 MS. BRAUNSTEIN *: This is part of a long
20 standing debate, I guess, about the inappropriate
21 federal role in insurance regulation generally which
22 is traditionally a view of state regulation and I
23 guess the question is whether or not the anti-
24 discrimination context will and ought to be viewed as
25 a matter of principle and politics as a justification

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

(202) 234-4433

www.nealr.com

1 for a larger federal waiving as seen historically in
2 the insurance industry.

3 *: The industry has traditionally fought
4 against state regulation. But when it came to needing
5 backstop of terrorism coverage, they were quick to
6 come.

7 *: That is not true.

8 *: ? threat levels to preserve state
9 infrastructure *. But they still insist it's a blow
10 out and now some of the * are beginning to rethink the
11 reason the states regulate and see the benefits * to
12 be able to buy one legislative body instead of having
13 to buy 50. In addition to that, federal regulations
14 are being * view deregulation and *that the American
15 Insurance Association is looking at quite favorably.
16 So we do see that even from the industry's perspective
17 there is more of an interest in thinking about how the
18 federal government can be of assistance.

19 But when it comes to consumer issues, the
20 focus *.

21 CHAIRPERSON BERRY: It's amazing how the
22 19th century, before the Civil War, decision, of the
23 insurance being state regulated would still be
24 standing up all this time.

25 We keep * them, and there's absolutely no

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

(202) 234-4433

WWW.NEALRGROSS.COM

1 reason for that anybody can imagine and the historical
2 circumstances were such that it was an anomaly. But I
3 don't want to get too into that.

4 Go ahead, Christopher, you have another
5 one?

6 COMMISSIONER EDLEY: Do we know to what
7 extent the growth in minority ownership rates has
8 taken place in the subprime sector rather than the
9 main sector, just as an empirical matter. Do we know
10 the answer to that?

11 DR. SQUIRES: I think there are some
12 figures on this. I don't think I can give you a
13 precise number on that. I am not sure whether it's
14 available, but it may well be. HUD has a list of
15 subprime lenders.

16 COMMISSIONER EDLEY: I think you gave us
17 the growth in subprime lending and I'm just trying to
18 figure out are there data about the modest progress in
19 terms of the disparities in home ownership rates. I'm
20 just trying to figure out to what extent the growth in
21 subprime lending explains --

22 DR. SQUIRES: My guess is that the *
23 Reinvestment College may have some information along
24 those lines.

25 CHAIRPERSON BERRY: Why don't we try to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 get that?

2 DR. SQUIRES: They've done more research
3 on this. Or the National Consumers Legal --

4 CHAIRPERSON BERRY: * would know answer to
5 that. Is that the kind of stuff that * ?

6 COMMISSIONER EDLEY: Dr. Squires you
7 mentioned some settlements on the --

8 DR. SQUIRES: Insurance side.

9 COMMISSIONER EDLEY: -- insurance side.
10 What is the cause of action in those cases? Is it
11 sort of a 1991 suits, or is it --

12 DR. SQUIRES: Well, some of them have been
13 brought under state law, like in the State of Ohio and
14 in the State of Virginia. But some of them are being
15 brought under the Fair Housing Act, and I know the
16 American Family case in Wisconsin was -- I think it
17 was both state and federal because the Justice
18 Department intervened in that.

19 COMMISSIONER EDLEY: Interesting.

20 DR. SQUIRES: And the Ohio Department of
21 Civil Rights did an administrative action against
22 Farmers' under that state's civil rights statute.

23 COMMISSIONER EDLEY: *.

24 CHAIRPERSON BERRY: I had a whole bunch of
25 questions, but I'll let you go up next, if you want

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to, Vice Chair.

2 VICE CHAIRPERSON REYNOSO: Let me just ask
3 a couple of questions.

4 Mr. Yeung, I know that you folks have
5 filed a number of these complaints * and the Federal
6 Reserve Board. And I just wondered what your reaction
7 was to the filing of a response by the Board on the
8 institute that you filed *.

9 MR. YEUNG: I believe you * in cases
10 *Spanish-speaking and a bilingual issue. And, you
11 know, as I just stated in my testimony we had done two
12 studies on the VIB * to service the Spanish-speaking
13 population in Imperial Valley. And to date the
14 studies have not been *.

15 VICE CHAIRPERSON REYNOSO: I think you're
16 raising some issues * response by the agency if they
17 say, "We don't consider that," or *, because of
18 evidence that we have that's not public we still think
19 they ought to have an outstanding category. What's
20 been their response?

21 MR. YEUNG: * We haven't heard from them.

22 CHAIRPERSON BERRY: No response?

23 MR. YEUNG: No response.

24 MS. BRAUNSTEIN: Well, the letter that
25 you're referring to about the institution examination,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 we just received last week. So it still does have to
2 be responded. So it's not that we -- we don't * what
3 we got to everyone.

4 And then, consumer complaints. Maybe I
5 just need to clarify it. When I talk about our
6 complaints process, that's where consumers file
7 complaints against specific financial institutions --
8 you know, their checking account, their credit cards,
9 their -- but what we've gotten from Greenlining is a
10 series of letters *.

11 VICE CHAIRPERSON REYNOSO: * complaints *
12 procedure to do that chronologically?

13 MS. BRAUNSTEIN: Absolutely.

14 VICE CHAIRPERSON REYNOSO: And all of
15 that?

16 MS. BRAUNSTEIN: Absolutely.

17 VICE CHAIRPERSON REYNOSO: With respect to
18 your testimony and establishing an agenda, I just
19 wonder if it's time for establishing an outstanding
20 example, particularly in terms of CRA, of *. Do you
21 have a list or a *?

22 MS. BRAUNSTEIN: I can tell you generally
23 what we look at. It's not -- one of the problems with
24 CRA ever since it was enacted. It's that it never
25 addressed the big question of how much is enough.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 VICE CHAIRPERSON REYNOSO: Yes.

2 MS. BRAUNSTEIN: It has always been
3 somewhat subjective although we tried to make it
4 objective. And just interestingly, when we did this
5 in 1995, we actually tried to quantify a few things.
6 We tried to fit in a number objective for the profit
7 ratio and, you know, a few other things. And we got
8 them to come *.

9 It was the financial -- not just the
10 financial institutions, but even the community side
11 was *. The earned credit allocation that was not the
12 intent of CRA. It was just -- we just got excoriated
13 about it, and we went back to not actually quantifying
14 things.

15 But in terms of what we looked at to
16 determine the outstanding rating, we look at the
17 distribution of lenders geographically. That was the
18 * of that. It deals with *. We look at Census
19 tracts, we look up -- first of all, if there's
20 somebody lending, look at their *, if there's * data
21 available, we would look at that distribution to
22 evaluate.

23 We also would look at the distribution we
24 * for * borrower. We do mapping of small business
25 needs and other major products also. And we'd look at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

(202) 234-4433

www.nealr.com

1 those and sure that low and moderate income Census
2 tracts are being served, as well as higher income
3 Census tracts.

4 We also get at the fair lending aspects
5 through the Fair Lending * that's been conducted. And
6 the analysis of race and gender and those types of
7 variables are done through Regulation B, through Fair
8 Lending, through ECOA and the Fair Housing Act. But
9 that rating will come into play in the CRA rating, and
10 they have to have a good rating there in order to get
11 an outstanding CRA.

12 VICE CHAIRPERSON REYNOSO: So you did --
13 you do look at the performance of services to
14 minorities; ethnic minorities, racial minorities, and
15 so on.

16 MS. BRAUNSTEIN: Yes, we do. We look at
17 that through Fair Lending. That's not CRA.

18 CHAIRPERSON BERRY: Someone is whistling
19 something. All right. Go ahead.

20 Here are the questions; I have some for
21 all of you. Ms. Braunstein, I'll just start with you,
22 since we're already asking you questions. You
23 described an enormous amount of responsibility for the
24 Office, with CRA as one of the responsibilities. How
25 much staff is devoted to the CRA function?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. BRAUNSTEIN: That's a really good
2 question. At the Board, we have approximately 90
3 people in the Division of Consumer and Community
4 Affairs, and that includes our * to the regulatory
5 banking people who work on things like CRA
6 regulations. It includes the complaints people, it
7 includes the examining supervisors.

8 But the real CRA * branch, as I've said,
9 is delegated out to *. And they are * examiners. And
10 that examination -- I really don't have that with me,
11 the size of that, but that's fairly low.

12 VICE CHAIRPERSON REYNOSO: I'm sorry.
13 What?

14 MS. BRAUNSTEIN: Several hundred
15 examiners. So we're talking systems; we're really
16 talking -- the Board does policy and has oversight
17 over the Reserve Bank, but the actual examinations
18 themselves are carried out by examiners that are out
19 in *

20 CHAIRPERSON BERRY: Could you give us that
21 data? Could you get it for us?

22 MS. BRAUNSTEIN: Oh, we could -- yes.

23 CHAIRPERSON BERRY: If you could you
24 provide that. The other thing, I have forgotten how
25 many banks there are, how many banks there were.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 Anybody know?

2 MS. BRAUNSTEIN: The * about a thousand;
3 the ones we supervise.

4 STAFF DIRECTOR JIN: But * has about three
5 thousand? Four thousand?

6 MS. BRAUNSTEIN: Something like that. I
7 think Federal banks now --

8 CHAIRPERSON BERRY: I'm just trying to get
9 a ratio.

10 MS. BRAUNSTEIN: I believe it's around
11 14,000.

12 CHAIRPERSON BERRY: Does that sound right?
13 14,000 or so?

14 MS. BRAUNSTEIN: Yes, I would think it's
15 about 14,000. I will try and get the information and
16 *. Yes, I mean, it's somewhere between thirteen and
17 fifteen thousand, I think. And systems are
18 approximately about 900 to 1,000.

19 CHAIRPERSON BERRY: Okay. Well when you
20 actually get the data about the examiners, could you
21 also submit data on the numbers *. And if you know
22 thousands, generally, I'm trying to get some idea of
23 the workforce as compared to the amount of work*.

24 The other thing I wanted to ask,
25 Regulation B, which was referred to as *. Regulation

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 B, which effectively raised the bar on data collection
2 -- which office is responsible for modifications under
3 Regulation B? Is that within your purview?

4 MS. BRAUNSTEIN: Yes.

5 CHAIRPERSON BERRY: And so I'm just trying
6 to find out, if the Commission decides it wants to,
7 consistent with the policy of the * Act, which is, of
8 course, to support CRA, non-discrimination, and to
9 support data collection as a way of finding out facts,
10 if we decided we wanted to address concerns about
11 Regulation B, where would we address those?

12 Now, let me ? it's to your office, right?

13 MS. BRAUNSTEIN: Yes.

14 CHAIRPERSON BERRY: Okay. The other
15 question I wanted to ask is --

16 VICE CHAIRPERSON REYNOSO: Is the
17 representation correct that the Regulation B --

18 CHAIRPERSON BERRY: Prohibits.

19 VICE CHAIRPERSON REYNOSO: -- prohibits
20 the collection of data by race and ethnicity?

21 MS. BRAUNSTEIN: Yes.

22 VICE CHAIRPERSON REYNOSO: Why?

23 MS. BRAUNSTEIN: Why? Because in
24 Regulation B, when the Equal Credit Opportunity Act
25 was enacted, it was -- the idea was to have a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

(202) 234-4433

www.nealrsgross.com

1 colorblind society that asking your race in the credit
2 application, bore no relation to your ability to repay
3 that debt.

4 CHAIRPERSON BERRY: In other words, it was
5 some nonsense. * systematic Commission reports of
6 rules that * search.

7 MS. BRAUNSTEIN: It's --

8 CHAIRPERSON BERRY: I just want to make
9 sure people are clear on that. Are we talking about
10 Regulation B loans other than housing loans or *.

11 COMMISSIONER EDLEY: There's no policy --
12 the federal government has no policy * with the *
13 data. And neither with respect to Reg B and ECOA.
14 And the explanation for that policy difference is
15 what?

16 MS. BRAUNSTEIN: Well, I wasn't around
17 when it was enacted, but *. And * in terms of the
18 District was the idea that -- that especially in the
19 days it was enacted, race was a factor. Oftentimes
20 discrimination played into people not getting credit,
21 and the idea was to *. So this was * available to the
22 public decision.

23 CHAIRPERSON BERRY: That's regulatory, not
24 statutory.

25 MS. BRAUNSTEIN: Well, that's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 questionable.

2 CHAIRPERSON BERRY: The statute, I don't
3 think it's questionable. * always the statute --

4 MS. BRAUNSTEIN: Well, we think it's
5 questionable because there are different opinions on
6 that.

7 CHAIRPERSON BERRY: If there are different
8 opinions then it must be possible that it doesn't.
9 Which document are you talking about?

10 MS. BRAUNSTEIN: ECOA.

11 CHAIRPERSON BERRY: I don't think ECOA
12 says anything about data collection, but I may be
13 wrong.

14 DR. SQUIRES: Your *, so, to me collection
15 of --

16 MS. BRAUNSTEIN: Only for tracking
17 purposes.

18 DR. SQUIRES: Right. And it's not
19 publicly available, but language cannot correct that
20 data. It --

21 MS. BRAUNSTEIN: Only for discrimination
22 testing within the institutions.

23 CHAIRPERSON BERRY: Lenders may collect the
24 data. Do they submit it to the Fed?

25 MS. BRAUNSTEIN: No they don't. It's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 useful internal discrimination testimony.

2 CHAIRPERSON BERRY: So, in other words, if
3 we wish to take up with the Fed this issue of data
4 collection, it is ripe for taking up and discussion?

5 MS. BRAUNSTEIN: Well, I will tell you
6 that this decision in Reg B was just made, not that
7 many months ago. And, I mean, you're right, yes, you
8 can -- you're welcome to send letters in. But I don't
9 know that the Board members are going to want to be
10 opening in that discussion at this time.

11 CHAIRPERSON BERRY: Well, we --

12 VICE CHAIRPERSON REYNOSO: This is a new
13 -- new regulation?

14 MS. BRAUNSTEIN: Well, it's not a new
15 regulation, but in a sense it is a modification made
16 to the regulation.

17 VICE CHAIRPERSON REYNOSO: I just want to
18 find out that -- years ago, I was * in California *
19 and we were concerned about local city and county
20 property used for lending, and so on. But we
21 recommended at that time, at least the section * that
22 data. So that would be taken into account in a
23 decision * happened *.

24 There are ways of getting figures on what
25 has happened that can be part of the decision-making

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

(202) 234-4433

www.nealrgross.com

1 process. But I just wondered if that --

2 CHAIRPERSON BERRY: Well, I'm told that
3 the * statute doesn't prohibit it. It's a matter of
4 the regulation. But we will take up this issue, and
5 consistent with the policies we have, I think that we
6 may wish to visit it with the Federal Reserve Board,
7 because I don't understand how we can tell whether
8 you're serving people, or whether you're *, black
9 communities are being served or people who want loans
10 are being served, or what the bank is doing, if you
11 have no idea about what the data are.

12 I mean, you have to know what data is --
13 and what data do you collect? Not you personally.
14 What data does the Fed collect to make sure that all
15 banks * that you are, in fact, getting the results
16 that one might --

17 MS. BRAUNSTEIN: Obviously * that we have.
18 We also collect data, one thing is that the CRA
19 revisions in 1995 mandated that banks do submit data
20 on small business lending and community development
21 loans. But it's not race-based.

22 CHAIRPERSON BERRY: Okay.

23 MS. BRAUNSTEIN: But it is data on the
24 location of loans. We also collect data during our *.
25 As I said, we do require a * form on geographic

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 locations and then map them. So obviously not on
2 small business loans, but *.

3 COMMISSIONER EDLEY: So what kind of a *
4 locations.

5 MS. BRAUNSTEIN: Right.

6 CHAIRPERSON BERRY: So let us be clear
7 what I'm asking you. I'm not asking generally what
8 data you collect, but what data do you collect that
9 tells you whether, in fact, you are serving
10 communities of color? If you don't have any data that
11 tells you who these people are and who is being served
12 and who isn't, how do you know whether you're
13 achieving your responsibility? Not you personally.
14 Again, this is not --

15 MS. BRAUNSTEIN: No, I understand. Well,
16 I think that the way we tried to do that is * look at
17 that as a demographic *, where they're collecting
18 information reflecting where they're making their
19 loans.

20 COMMISSIONER EDLEY: Why bother to take
21 out Census data on the demography of communities? The
22 way you're looking at the Census, I see that you go
23 behind that and look at the demography, the racial
24 demography of the community, because you have it in
25 your mind that it's valuable to know whether or not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 racial and ethnic minorities are being effectively
2 served.

3 But if you do see that that's an important
4 thing to look at, then why not develop the data fields
5 that are going to allow me to get at that directly,
6 rather than going in through the back door trying to
7 correlate the geo * with the Census data.

8 CHAIRPERSON BERRY: Well, she's not
9 disagreeing with you. It's a policy matter that I'm
10 sure you didn't decide. But --

11 MS. BRAUNSTEIN: Yes, it was a decision of
12 the Board.

13 CHAIRPERSON BERRY: You didn't decide
14 that.

15 COMMISSIONER EDLEY: Yes.

16 MS. BRAUNSTEIN: Me personally, no.

17 (Laughter.)

18 CHAIRPERSON BERRY: We're going to be
19 pursuing this issue and taking it up. You may want to
20 inform your superiors when you go back that we will be
21 taking up this issue with them, and we will fully
22 inform ourselves after some staff work, so that we'll
23 know what the facts are. But it does sound like one
24 of those Ward Connolly things out there in California.

25 Okay. If you don't know -- what did you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 say? -- don't ask, don't tell.

2 Let me just say, I have another couple of
3 questions, if I can read my own writing. One is about
4 bilingual services.

5 MS. BRAUNSTEIN: Yes.

6 MR. YEUNG: If I may just direct the
7 Commission's attention to a letter written from the *
8 California regarding the amendments to Reg B. Just to
9 supplement sort of the limitedness of the scope of
10 these amendments to adequately, you know, collect the
11 data on race. And we have our testing papers,
12 submitted into the Commission's written testimony --

13 CHAIRPERSON BERRY: Right.

14 MR. YEUNG: I'm talking about the Vice
15 President of Union Bank.

16 CHAIRPERSON BERRY: Yes. The bank is
17 complaining because they can't collect the data, in
18 order to do their jobs effectively.

19 On bilingual matters, you talked, Ms.
20 Braunstein, about all of the things that you are
21 translating into Spanish, and you gave us a long
22 laundry list. But I understand that there is no
23 requirement that banks provide bilingual services. Is
24 that correct or not?

25 MS. BRAUNSTEIN: That is correct. There

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 are no specific requirements.

2 CHAIRPERSON BERRY: And that the
3 regulators have decided not to do that. I mean, not
4 to require it, although many banks do it.

5 So let me ask Dr. Angell, who is a great
6 free marketeer, and believes in it, as we all do. I
7 won't ask you questions about your macroeconomic
8 views, because I think the proof in the pudding will
9 be * on those. We've already had the tax cuts and all
10 the rest of that, and the dividend checks and so on.
11 So we will either get great job growth, or modest job
12 growth, or goods-producing jobs and the like, and we
13 will all be able to see whether we in fact get those.
14 And that would be great if we did.

15 But as I understand from listening to you
16 before, and reading what you say, and listening to *,
17 people behave or businesses behave in order to
18 maximize profit. Is that correct? And you can kind
19 of --

20 DR. ANGELL: Well that's * but there are
21 people out there who are * that would get better rates
22 if *.

23 CHAIRPERSON BERRY: Okay. So why would
24 banks, or why would lenders, unless they think that
25 the customer has no information and doesn't know any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

(202) 234-4433

www.nealr.com

1 better, why would lenders charge perfectly valid
2 borrowers who have all the credentials and are
3 creditworthy subprime rates when they are eligible for
4 prime rates? Is that just to make money? Well,
5 they're assuming they don't know any better, so
6 they'll make money.

7 And, secondly -- I have two questions.
8 Why wouldn't a bank provide bilingual services, or why
9 wouldn't the Fed require them to, to communities who
10 are bilinguals * might not have the profits? I mean,
11 I don't understand this. Could you explain it to me,
12 please?

13 DR. ANGELL: There can always be some
14 individuals in an organization who went too far in
15 regards to saying, if this is classified as subprime,
16 then the interest rate is higher, and believe that
17 that is fulfilling their purpose. And another reason,
18 we would hope, in a market system society, that there
19 would not be just the one institution, but there would
20 be other institutions. And it is the reduction of *
21 to classify some loans that time will not * that debt
22 around, and you can verify *.

23 So a lot of this can be found * everyone
24 has the * to act in a pure and gracious way is * has
25 been done * of the *. And that's why -- that's why

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the Federal Reserve and other regulatory agencies will
2 be looking to see whether they can * structure that.

3 Now, in regards to the bilingual question,
4 it seems to me that my experience with this is, quite
5 often perhaps, Spanish messages are written *
6 business. Now obviously this growth of bilingualism,
7 I presume is proper *. That is, I have * bilingual *
8 is *. If the Spanish community has a chance to
9 respond to *, in Spanish, then I presume that that's
10 that.

11 Now, I presume also that if there are
12 people who get -- English-speaking people ? get
13 irritated by having to listen to just less than 45
14 seconds of Spanish in order to do business, then they
15 might select a way to *.

16 CHAIRPERSON BERRY: Okay. Now, so, Mr.
17 Yeung, then why hasn't this market-driven approach
18 solved the problem that you're writing to the Fed
19 about? I mean, if people don't like the fact that
20 this bank doesn't offer bilingual services, or if the
21 bank doesn't, why don't you just go to another bank
22 that does, and then the Fed doesn't have to do
23 anything about it?

24 And if they don't like, Dr. Squires,
25 having subprime rates, why don't they just go to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-2701

1 next bank in the neighborhood and get a loan from
2 them? Could you please -- can you both respond,
3 please?

4 MR. YEUNG: Sure. I think the answer is
5 part of the update, in some communities, there is just
6 that one choice in terms of banking, and we saw that
7 in Imperial Valley. We did have *, and people have,
8 you know, sort of a lack of access to transportation
9 anyhow to get to the different branches.

10 So, I mean, we're talking about sort of a
11 population that doesn't necessarily have a lot of
12 access to sort of, you know, do comparisons, and what
13 not, and they just sort of go to the first place
14 that's in the neighborhood. And if that branch is not
15 providing the necessary services, then it almost seems
16 like they have nowhere else to turn to.

17 CHAIRPERSON BERRY: Okay.

18 DR. ANGELL: I would follow up by saying
19 that if the subprime designation is not *, getting
20 that subprime loan, it seems to me is better than
21 being rejected for the loan, because getting a
22 subprime loan is not a permanent position. And so
23 that subprime loan provides the opportunity for the
24 borrower to demonstrate prime by paying back most of
25 it, and thereby be * to the bank.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 Now, you do have * to understand that
2 subprime designation is not a lifetime event.

3 CHAIRPERSON BERRY: *

4 MR. YEUNG: that they * understand. * at
5 one point and they told me, "You're going to get ten
6 point zero percent interest." I said, "That sounds
7 fine." Then, they set up a computer and say, "Sorry,
8 the computer says 16 percent." So I said, "Sorry,
9 that's too much for me." I'm not going * 16 percent.
10 Everybody * initially. * I don't know why the bank is
11 telling me that's the only thing I can get.

12 This notion that the borrower gets,
13 actually it's --.

14 DR. ANGELL: Unless you concede that the
15 average * debt and consumer price * about five percent
16 * you have to average *. And so naturally, then, a
17 monetary system where the standard and the *. And so
18 what the * is that if we need to have some
19 modification, I would think, as a *, that I know
20 there's people who borrow on credit cards and then go
21 under water, and thereby the rest of the people get
22 stuck with higher credit card borrowing rates.

23 CHAIRPERSON BERRY: Commissioner Edley?

24 COMMISSIONER EDLEY: But before you get
25 into that * --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 (Laughter.)

2 -- I think what you're responding to is,
3 among other things, the statement that * 30 to 50
4 percent of subprime housing mortgage lending, if the
5 borrowers should qualify for conventional prime rates.

6 Now, the owners of this kind of bank have, certainly,
7 a self-interest in the * might be analyzing, so let's
8 stipulate that some of that may be going on.

9 It certainly goes to the presence of at
10 least two factors: a) a lack of competitive forces of
11 the sort that Dr. Angell describes, a lack of
12 competitive forces that would drive out the
13 opportunity for lenders to exploit consumers with
14 uneconomic mortgage packages and products.

15 And then, secondly, just some of, perhaps
16 your reaction on uneconomic home loan *,
17 discrimination of the sort that this agency needs you
18 folks * studies; in lending, in automobile sales, and
19 so forth, where the prices that are quoted to minority
20 and women consumers are above those quoted to white
21 male consumers, even at some risk to the seller of
22 being unable to consummate the deal, that there would
23 just be the inclination of, this is the neighborhood
24 that I'm selling in, these are the consumers that I'm
25 selling to, and I just attract more of these kinds of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

(202) 234-4433

www.nealrsgross.com

1 customers.

2 CHAIRPERSON BERRY: Well, you know what?

3 COMMISSIONER EDLEY: It's a non-economic
4 judgment.

5 CHAIRPERSON BERRY: But Commissioner, just
6 a minute if I could, to reinforce what you just said.

7 COMMISSIONER EDLEY: That's why we have
8 the Commission. That's why we have * because the
9 markets don't.

10 CHAIRPERSON BERRY: Right. But maybe we
11 should get some of these lenders in here, because you
12 all here are experts on business loans and bonding
13 economic development. And the head of the largest
14 banking company in this country testified under oath
15 that they charged minority construction firms higher
16 bonding rates than the rates for people who were
17 risky. I forget what he called them, half-credit,
18 something, bonding. And they charged them more money.

19 And when we asked that, he hustled, and he
20 talked to his staff, and he did all of these things,
21 and he came back and said, "Well, we don't know that.

22 We know that our track record shows that they * time.

23 They did a wonderful job sorting. So how *. And we
24 don't know if they know, but we also charge them the
25 highest rates. It is just something we have been

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 doing ever since we've been in business, and they
2 continue to do it."

3 And the effect of that was when these
4 construction firms got ready to compete, and sent out
5 their bids, they had charged more, because they had to
6 account for their product without it, which was -- it
7 put them at a competitive disadvantage, and they were
8 having some problems getting these jobs.

9 And in this case, it may be okay to say
10 that somebody gets a subprime rate, and then later on
11 they can work their way into the ? but when they're
12 getting the subprime rate, they're getting less money
13 in their own pockets to do other things with, because
14 they're paying a higher rate all the while they when
15 could be paying in order to get housing, and they're
16 going to * educational system here that Ms. Braunstein
17 works on.

18 You talked about the education and the
19 information. Do you * people *? Do you * subprime
20 issue, and about how this issue * they should be
21 looking out for and be aware that this happens?

22 MS. BRAUNSTEIN: Yes, we have * and
23 organizations again. We have been involved in a lot
24 of programs out in communities on predatory lending,
25 on subprime lending in terms of knowing what to look

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 for. We have been involved in quite a bit of that.

2 CHAIRPERSON BERRY: Are you doing enough?

3 MS. BRAUNSTEIN: Well, I mean, you can
4 always do more. You're just raising access. Yes,
5 these are *.

6 CHAIRPERSON BERRY: Dr. Angell?

7 DR. ANGELL: What I would like to remind
8 the Commission is, that there are * other lenders is
9 categorizing someone as subprime when they are indeed
10 prime. That would be a very horrible --

11 CHAIRPERSON BERRY: *

12 DR. ANGELL: ? and I'm telling you that
13 that's a horrible, * If there are institutions that
14 are serving them that way, and making that kind of
15 profit, then that would go a long way to --

16 COMMISSIONER EDLEY: Dr. Angell, that's the
17 theory.

18 DR. ANGELL: The numbers, that --

19 COMMISSIONER EDLEY: The * gets belied by
20 the 30 to 50 percent data offered by someone in the
21 Fed. That's exactly what I'm suggesting is that if
22 the * would shift with the market risk, if the
23 competitive pressures would in fact * all of these
24 communities in which the subprime lending is taking
25 place. If the consumer is the backdrop, then I would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 not want to see * out of the * do the shopping, and so
2 forth.

3 But the data --

4 DR. ANGELL: No, the data * under the
5 Gramm-Bliley-Leach * by the staff, and the Federal
6 Reserve study shows there's no profitability. * gets
7 better and better when you're talking about *, and the
8 * of this debate * they would be *. And it's like, my
9 goodness, these are *. But if it was on there*, it's
10 -- it's *. So if it's not viable, then there are not
11 these -- there's not that profitability.

12 CHAIRPERSON BERRY: These 15 percent were
13 the subprime lenders or not. *.

14 MS. BRAUNSTEIN: The study that Governor
15 Angell is referring to was our CRA-covered
16 institutions. And from what we know, these are the
17 predatory lenders, which is not the * of an
18 institution.

19 CHAIRPERSON BERRY: Okay. So they're
20 not --

21 MS. BRAUNSTEIN: Yes, they are not a
22 depository. They're a lending affiliate.

23 CHAIRPERSON BERRY: Okay. That reinforces
24 the point.

25 Yes, Commissioner Redenbaugh.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrsgross.com

1 COMMISSIONER REDENBAUGH: Thanks. I think
2 * even been more complicated than it seems.

3 (Laughter.)

4 My question to you is, as one who
5 understands the *, and understands the economy in such
6 a way that it is personal investment decisions causing
7 them to * on those investments * very high rate of
8 return, which is now *. Okay?

9 * these days is * is understood how to *
10 making investments. And * that would be *? * You
11 know, if you adjust * than they used to. And I think
12 that this * to see if there is this * your suggestion
13 is * and * unreasonably high rates of return on those
14 kinds of economic activity.

15 I mean, I think -- and this is what I'd
16 like * -- that the * eliminate the problems that we
17 all * have, and do have, with predatory lending is to
18 enforce the amount on predatory lending. That is,
19 what is it we have to do to make sure there are more
20 lenders out there making those * and * driving down
21 each other's prices and rates of return?

22 COMMISSIONER EDLEY: More check-cashing
23 operations.

24 COMMISSIONER REDENBAUGH: Yes. *. *, but
25 that it's *.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 CHAIRPERSON BERRY: Financially.

2 COMMISSIONER REDENBAUGH: Financially, or
3 in an economic sense. This is * check cashing.

4 DR. ANGELL: I know a *, and * helped *
5 family business *. And the * thing about it was that
6 in spite of * effects in the *, the *. I thought it
7 was very commendable *.

8 COMMISSIONER EDLEY: Some of the argument
9 is *. In other words, I'm going to stipulate that it
10 is economically rational and non-discriminatory to
11 charge a risk premium. But the risk is * in terms of
12 investment. Rather than being a risk, that is simply
13 a perception of risk, and it *.

14 So to the extent that the * of --

15 CHAIRPERSON BERRY: Well, first of all, it
16 may not be * of risk * and prejudice. Would you add
17 also to your definition, your stipulation, * that it
18 is a * decision made because a particular community is
19 seen as captive and underserved, and it's not because
20 there is prejudice, they just know that that's the
21 place that they can go because they don't have anybody
22 else *.

23 COMMISSIONER EDLEY: That's a third case.

24 CHAIRPERSON BERRY: Right.

25 COMMISSIONER EDLEY: That's a third case

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 in which it's not simply about charging a rationally *
2 risk premium, it's that I'm exploiting the market *,
3 because of the * competitive pressures --

4 CHAIRPERSON BERRY: Right.

5 COMMISSIONER EDLEY: -- to drive up the
6 margin, to * the margin. I agree. And there may be
7 lots of reasons why that competitive pressure doesn't
8 exist, including * values that * in that community.
9 It may be that consumers aren't aware that they could
10 shop around to get a lower price.

11 CHAIRPERSON BERRY: *.

12 COMMISSIONER EDLEY: * and other things of
13 that sort that aren't discrimination. I agree with
14 that, but whether the case is *, as you've described,
15 Mary, * is perceived risk. It seems to me both of
16 those are predicates for regulatory action, because
17 the market isn't working.

18 CHAIRPERSON BERRY: Right.

19 COMMISSIONER REDENBAUGH: I would disagree
20 because there was a researcher at Princeton * who
21 should decide if the rate being charged is sufficient?
22 * the market *.

23 CHAIRPERSON BERRY: But, Russell, would
24 you agree that if the decision is based on the factor,
25 among the ones Christopher identified of race

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 discrimination, then there ought to be some regulation
2 to prohibit that. If that *.

3 COMMISSIONER REDENBAUGH: That's
4 different.

5 CHAIRPERSON BERRY: Yes, the *.

6 COMMISSIONER REDENBAUGH: *.

7 CHAIRPERSON BERRY: * discriminate *.

8 COMMISSIONER REDENBAUGH: That's right.
9 But I think that's a different --

10 CHAIRPERSON BERRY: But you would agree,
11 then, that idea is *.

12 *: * because that's not a data problem.
13 That's not a data collection problem. * I think the
14 magnitude of that aspect of the problem, the magnitude
15 to which discrimination is contributing to the setting
16 and the enforcement of the risk premiums, unless I
17 have data to analyze the comparison.

18 What they * is they're going back and
19 they're reengineering the * made by the lenders, and
20 they're seeing what's the evidence about the credit
21 risk associated with this loan. And they're seeing
22 that the evidence is that this borrower should have
23 had access to a conventional market product. * they
24 didn't.

25 COMMISSIONER REDENBAUGH: That's a huge *.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrsgross.com

1 CHAIRPERSON BERRY: Right, which they have
2 identified.

3 COMMISSIONER REDENBAUGH: Here.

4 CHAIRPERSON BERRY: And somebody ought to
5 be in there.

6 COMMISSIONER REDENBAUGH: *.

7 CHAIRPERSON BERRY: Yes.

8 (Laughter.)

9 MS. BRAUNSTEIN: Yes. I just wanted to
10 say that one of the other things I think that needs to
11 be factored in when you're talking about addressing
12 the issues of predatory lending is that what we have
13 identified * on this -- this is in the data, but we
14 did find * of * regulations, which is the *.

15 And from what we've seen, there are people
16 that generally argue that these big scenarios of being
17 victimized are that people are claiming they've been
18 *. And it's more than just markets that *. I mean,
19 it's * who generally are desperate for funds quickly.

20 A lot of times we find it's people who
21 have medical bills that need to be paid like
22 immediately, because they have somebody collecting and
23 calling them all the time, threatening them. It's *
24 and older people. A lot of it is senior citizens who
25 may have *. And it's that *, it's the * people.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And so, I mean, there's a whole aspect of
2 this, and it's there -- there are a lot of people who
3 are predatory lending. It's not a matter of people
4 going into loan offices. It's the fact that the
5 creditors are out in the neighborhood putting flyers *
6 in the city, and I think they hang the flyers *.

7 I mean, I * all the time when I go home.
8 I read them * in D.C. And so -- so, anyway, if
9 there's *, then you *, and especially if you happen to
10 get somebody who is vulnerable, who happens to need
11 money, *, and * is that often times these lenders
12 really * those people, and especially you get somebody
13 who might be isolated due to illness or may be elderly
14 or homebound, someone comes in and makes them tea and
15 cookies, and they have *, you know.

16 And there's those kinds of things * that
17 fall into this as * of the * market *. I just want to
18 * very difficult in terms of consumer *. And we work
19 with a lot of * organizations around the country, and
20 we talk to them about the * the need for counseling.

21 It is that * people *, and one is you can
22 have * the time to necessarily go and have somebody
23 look at their paperwork and say *. And then what
24 happens on the other side, flip side, is * the loan *.
25 * a decision about the *. Sometimes it's too late.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

(202) 234-4433

www.nealrgross.com

1 Then they * the local sheriff is going to
2 come and get them and foreclose on their house,
3 instead of * when you first have to * be late with a
4 payment, because * they got into this bad loan. So
5 it's that * that's going on out there.

6 CHAIRPERSON BERRY: Well, we want to thank
7 all of you for * a very educational *. Did you want
8 to say something *?

9 DR. ANGELL: You made reference to
10 something that I * to respond to, and that is that the
11 * with regard to these *. I do want the Commission to
12 understand that in my view * that we are * under * in
13 regards to the severity of *. It is more of a long-
14 run * than it is a * reaction event. And so * of the
15 *, and that *. But I do not * that if we have not
16 done * at this time, it would be even worse.

17 CHAIRPERSON BERRY: Oh, my gosh. Wow,
18 that's *.

19 DR. ANGELL: *.

20 CHAIRPERSON BERRY: * my hearing. I will
21 * to the data collection issue *. As soon as we have
22 briefed ourselves on this *, we will go back to the
23 agency to discuss this issue of data collection, and
24 to see if, you know, we can resolve *.

25 * the only way you can talk about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3704

1 discrimination issues is if you focus on that and not
2 on the other market issues, and we do need some data
3 in order to try to, you know, get some kind of fix on
4 that. So we will get back to you on that.

5 We very much appreciate your coming. This
6 has been very informative. Thank you.

7 *: Thank you very much.

8 CHAIRPERSON BERRY: *. Anybody second
9 that?

10 *: Second.

11 CHAIRPERSON BERRY: It's non-debatable.
12 Thank you.

13 (Whereupon, at 1:16 p.m., the proceedings
14 in the foregoing matter were adjourned.)

15

16

17

18

19

20

21

22

23

24

25