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USDA CIVIL RIGHTS

HEARING

BEFORE THE

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

SEPTEMBER 12, 2000

Printed for the use of the
Committee on Agriculture, Nutrition, and Forestry

Available via the World Wide Web: http://www.agriculture.senate.gov

U.S. GOVERNMENT PRINTING OFFICE

70–527 PDF WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
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USDA CIVIL RIGHTS

TUESDAY, SEPTEMBER 12, 2000

U.S. SENATE,
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, DC.

The committee met, pursuant to notice, at 9 a.m., in room SR–328A, Russell Senate Office Building, Hon. Richard G. Lugar, chairman of the committee, presiding.

Present or submitting a statement: Senators Lugar, Cochran, Smith, Harkin, Conrad, Baucus, Lincoln, and Miller.

STATEMENT OF HON. RICHARD LUGAR, A U.S. SENATOR FROM INDIANA

The CHAIRMAN. This hearing of the Senate Agriculture Committee is called to order. The committee strives to continue its work this morning to help solve the problem of discrimination at the United States Department of Agriculture. We have held meetings with USDA officials and we have enlisted the help of the General Accounting Office. When I met with Secretary Glickman in October last year, I told him that this issue was of the utmost importance to me personally and I received his word that he was doing all he could to address the situation.

As part of this committee's oversight responsibility, we have consistently looked at the management of USDA programs and made suggestions on how to better manage the department's resources. The problem of systemic discrimination, however, does not lend itself easily to a management critique. The troubles at the USDA require more than a new computer system or a business process.

Many of these problems will be discussed today and they stem from personal behavior that is difficult to eliminate in a department of more than 100,000 employees. However, it is the duty of this committee to ensure that all laws and policies are strictly followed and that those who believe that they have been discriminated against receive appropriate and speedy resolution of their grievances.

In recent years, there has been an increasing number of class action lawsuits and administrative complaints against USDA alleging discrimination. These lawsuits and complaints are of two types: program complaints and employment discrimination complaints. The program complaints are those involving members of the public who are the participants in USDA programs. The second type involve employees of the department who believe they have been victims of some type of discrimination.

Today's hearing includes witnesses with information related to both of these types of discrimination. We will hear from Mr. John Boyd, President of the National Black Farmers Association; Mr. John Zippert, the Director of Operations for the Federation of Southern Cooperatives and chairman of the board of the Rural Coalition; Mr. Lawrence Lucas representing the USDA Coalition of Minority Employees; Mr. Harold Connor of Upper Marlboro, Maryland; Mr. Alexander Pires, an attorney in Washington, DC; and Ms. Juanita Carranza of Lambert, Montana.

Our second panel will include Mr. Paul Fiddick, the Assistant Secretary for Administration, USDA; Mr. Charlie Rawls, the USDA General Counsel; Ms. Rosalind Gray, the director at the USDA Office of Civil Rights.

On our first panel we will hear testimony from Mr. Roger Viadero, the USDA Inspector General, and from Mr. Bob Robertson of the U.S. General Accounting Office. As their testimony will indicate, this is a problem that has been thoroughly studied, and since 1997, the USDA Inspector General has performed at least eight reviews evaluating the department's efforts to solve the complex civil rights problems at the department.

The General Accounting Office has also studied the issue and both OIG and GAO made numerous recommendations to help solve the problems. The most troubling aspect of these reports is how few of these deficiencies identified by either OIG or GAO in previous reports are ever corrected. Despite these reports and repeated efforts by USDA officials, the problems persist. Effective managers are not being hired to solve the problems and employees are merely being shuffled from agency to agency in an appearance of problem solving and management revamping.

This missing link here seems to be one of accountability from the highest level of management to the county supervisor in the field who fails to adequately service an African American farmer's loan. Respect for the civil rights of all Americans is of paramount importance to me and all members of our committee. We are committed to doing all that we can to solve these problems at USDA. With this in mind, I would like our witnesses to focus on solutions to the problems and solutions that can bring accountability into the equation.

[The prepared statement of Senator Lugar can be found in the appendix on page 62.]

I want to before asking for the testimony of our witnesses to recognize that a new member of the committee is with us this morning, Governor Zell Miller of Georgia, now Senator Zell Miller of Georgia. He has been recently sworn in and has chosen to be a part of our group and we welcome him and are delighted that he is here at this hearing. Senator Miller, do you have any opening comment this morning?

STATEMENT OF HON. ZELL MILLER, A U.S. SENATOR FROM GEORGIA

Senator MILLER. I will be very brief, Mr. Chairman, but I do want to say how very appreciative I am for your courtesy in allowing me to participate on this very important hearing even before becoming officially a member of this committee. According to the

leadership staff, they should ratify that on the senate floor later today.

I do not have to tell you, of course, of the long history of Georgia members on this committee, going all the way back to the 1870's with Senator John Gordon and, of course, Chairman Herman Talmadge whose portrait hangs in this room. Of course, my predecessor, Senator Coverdell.

Agriculture is a huge industry in our state. It is the largest industry in our state. It accounts for one out of every six jobs and I am anxious to get started. This was my first choice of any committee to serve on. Senator Coverdell, I realize, had some big shoes that I will have to fill and although he was not from an agricultural area, he became a great student of agriculture and a real friend to the Georgia farmer and he will not soon be forgotten. I know that many members of this committee will miss his presence and I will try my best to fill those big shoes if I possibly can.

I appreciate the chairman's willingness to address this issue. It is a very timely issue in Georgia and I look forward to learning more about it. I look forward to serving on this committee with you.

The CHAIRMAN. Well, thank you very much, Senator Miller. We are really delighted that you are here and look forward to working with you. Let us recognize now Senator Thad Cochran for an opening committee.

STATEMENT OF HON. THAD COCHRAN, A U.S. SENATOR FROM MISSISSIPPI

Senator COCHRAN. Mr. Chairman, thank you very much for organizing this hearing. It is appropriate that we hear from those who have looked into some of these charges and allegations and complaints to give us an overview of what kind of situation exists at the department on this very important subject. Some of us have been concerned that we are seeing additional complaints brought now on this same subject, not only for minority farmers, African American farmers, but also those who claim to be discriminated against because of their economic class or their lack of understanding of the sophisticated rules and laws that govern farm programs.

To the extent that they have been disadvantaged, and that is an interesting point of view to be asserted in a court of law as a basis for a claim for damages, but a suit has been filed or is being filed in my state on that basis now and it will be interesting to hear from some of our witnesses on that subject, too. Are the rules and the laws being administered in a way or are they per se discriminatory for those who have a lack of understanding or sophistication no matter what their color is or race? This is an interesting thing that has arisen in our state now.

We have tried to make available through the Appropriations Committee funds for the department to administer the settlement of claims that have been brought. It will be interesting to hear if there are additional funds needed for those purposes. At this point, we are trying to resolve differences between the House and Senate agriculture appropriations bills. We are meeting with administration officials and I am not personally aware of any special need at this point for additional funds above and beyond what is in the

Senate passed bill, but that would be something that we would like to have in this record as well, if a witness could make that available to us.

Mr. Chairman, thank you very much for recognizing me and let me also congratulate the senator from Georgia on his selection of the Agriculture Committee. When I came to this committee, I remember Herman Talmadge was sitting in the chair Senator Lugar occupies now and he said and this is a unique committee. It is not a partisan committee. We do not have votes in this committee that are based on partisan considerations, but he had just been elected chairman on the basis of a partisan vote. He said it in a very convincing way and I believed him.

[Laughter.]

Senator COCHRAN. We welcome you, Senator.

The CHAIRMAN. Well, I believed him, too.

[Laughter.]

The CHAIRMAN. Without carrying this on unduly, Senator Talmadge sat about here. Senator Leahy and I sat close to where the camera is at the back door and the table was that long and one of your predecessors, Senator Cochran, Senator Eastland of Mississippi, sat just to the right of Senator Talmadge and both were enveloped in smoke so that they were not easily seen by those of us nor could they see us apparently.

[Laughter.]

The CHAIRMAN. Times have changed and one of the nice changes has just entered the room likewise and that is Senator Gordon Smith of Oregon. He has selected this committee and we are grateful that is the case and he will be joining us today for this hearing. As Senator Miller has pointed out, there has not been official confirmation of these appointments, but it will occur later in the day and there is important work to be done. Senator Smith, we welcome you to the committee. Do you have any opening comment this morning?

STATEMENT OF HON. GORDON SMITH, A U.S. SENATOR FROM OREGON

Senator SMITH. Just, Mr. Chairman, I will have a statement I would like to enter in the record and I would also just want to say what a privilege it is to be on your committee, the Agriculture Committee, and I can think of few industries closer to my own heart than agriculture and it remains a cornerstone of my state's economy and so if I can help those who make their living from the land by serving on this committee, if I can do that better, then I am thrilled to be here. I also express the concern of others here that when it comes to civil rights, that is another issue laid on top of a great industry. We got to make sure that it is enforced and people's rights are protected regardless of their race or their gender and so I am very pleased to be here this morning, sir.

[The prepared statement of Senator Smith can be found in the appendix on page 66.]

The CHAIRMAN. Thank you very much, Senator. Senator Conrad, do you have an opening comment?

STATEMENT OF HON. KENT CONRAD, A U.S. SENATOR FROM NORTH DAKOTA

Senator CONRAD. Just very briefly, Mr. Chairman. Thank you for holding this hearing. Obviously, the cases that involve American Indians have a major impact in my state and I also want to thank the chairman for accommodating my request that we have as a witness somebody who is deeply involved in the filing of that litigation. I appreciate that accommodation very much and I also want to welcome Senator Miller and Senator Smith to this committee. You will find that this is a collegial committee and one where members do seek to work together.

Obviously, there are regional differences. There are at times, although we hope not frequently, partisan differences, but most of all, this is a committee that does work together in a very productive way and we welcome you. We are glad you are here.

The CHAIRMAN. Thank you very much, Senator Conrad.

The CHAIRMAN. Now we would like to hear from the witnesses. Let me ask each of our witnesses in each of the three panels to attempt to summarize your comments in a 5-minute period, and I know this is difficult and the chair will try to be lenient so that you are not cutoff in mid-flight, but this will accommodate the possibility of raising questions by senators who are here and those that will be coming.

We will have to take a break at ten o'clock for a roll call vote which has been declared and we know that a hiatus will occur at that point. We will proceed as far as we can until then and then we will not be interrupted after that first roll call vote. I would like to call now upon Mr. Viadero first and then Mr. Robertson second for your testimony. Mr. Viadero.

STATEMENT OF ROGER VIADERO, INSPECTOR GENERAL, USDA, WASHINGTON, DC

ACCOMPANIED BY JAMES R. EBBITT, ASSISTANT INSPECTOR GENERAL, USDA

Mr. VIADERO. Good morning, Mr. Chairman, and members of the committee. I appreciate the opportunity to be here today to testify about our work on the department's processing of complaints of discrimination. With me today is Mr. James R. Ebbitt, Assistant Inspector General for Audit.

Mr. Chairman, I have prepared a statement which I would like to submit for the record and summarize here this morning.

The CHAIRMAN. It will be published in full in the record.

Mr. VIADERO. Thank you, sir. Over the past three and a half years, the Office of Inspector General has performed eight reviews of the department's processing of civil rights complaints, all at the direction of Secretary Dan Glickman. Our reviews were completed over seven phases and resulted in eight reports and two internal memoranda, all of which contained a total of 119 recommendations.

Our most recent reviews which constituted Phase VII of our report resulted in two reports issued simultaneously in March of this year. Both concerned the that Office of Civil Rights. One reported on the office's processing of complaints of discrimination in program benefits and the other on its processing of complaints in employment. The story these reports tell is one of a staff that is de-

moralized and inefficient and of a management that never got a firm hold on a system it inherited but that resisted recommendations for improvement.

For the Office of Civil Rights, this has been a continuing story throughout all seven phases of our work. Complaints were not adequately tracked, case files were poorly maintained, and managers were not held accountable for deadline overruns.

Open cases we reviewed dated back several years. Many of the problems we noted at the Office of Civil Rights during our most recent efforts were evident during the first review completed in February 1997. At that time, the Secretary had raised concerns about the integrity of the department's process for resolving discrimination complaints in farm programs. We found that the complaints system was in total disarray. Complaints were backlogged within the department and their status could not be determined. There were no controls to monitor and track complaints, no current regulations to standardize policy and operations, no effective leadership, and most of all no accountability.

Our foremost recommendation to the Secretary at that time was to centralize control over the complaints process so that no agency was allowed to resolve complaints against itself. In response, the Secretary created the Office of Civil Rights. This office took control of the Farm Service Agency's program complaint system as well as its backlog of 530 complaints.

Because there was no immediate action to clear this backlog, it continued to grow throughout 1997 and peaked at 1,088 complaints. This number came to be known as the original backlog of program complaints. While the office concentrated on reducing this backlog, it simultaneously created another volume of cases that exceeded the department's 180 day deadline for case resolution.

By March of 2000, the office had reduced the original backlog to 35 cases, but faced a new backlog of an additional 454 cases.

During our reviews of the Office of Civil Rights, it became clear that the office was not implementing critical recommendations we made. By our Phase V review, the office had not gained in efficiency and could not ensure that all complaints were being handled with due care. We concluded the office needed to transform its processing system completely and abandon component processing for case management processing.

Assigning staff to processing components such as intake or adjudication resulted in fragmented workloads. Assigning staff to the entire processing cycle for each case promised a more cohesive system. Managers at the Office of Civil Rights agreed with this assessment, but by the time of our Phase VII review, they had yet to implement the case management processing system. Our concerns about the unreliability of the office's data base also continued through Phase VII. By then the office was providing the Secretary with statistics we found inaccurate as well as misleading.

For example, these statistics suggested that the office processed a substantial number of complaints of employment discrimination made in the last three years. We found out these numbers—and that is shown on chart one, we found that these numbers included cases that other USDA agencies had processed.

[Chart.]

Mr. VIADERO. The numbers allowed the office to assume credit in 1999 for cases it did not work as well as cases that were backlogged from previous years. Its own performance was even more erratic. Chart two.

[Chart.]

Mr. VIADERO. Using the same flawed methodology, the office showed it had shortened its average processing time for employment complaints to 87 days. We found it actually took the office 222 days on average to process the complaints it accepted in 1999. We should also note that the so-called completion time of 222 days is based on only three cases. These three cases, the only ones the office both accepted and processed in 1999, were finally closed due to pending litigation and were never adjudicated by the Office of Civil Rights.

Our Phase VII review showed little progress by the Office of Civil Rights in achieving the efficiency it needs to ensure the integrity of the complaints processing system. Unless the office implements a management plan that addresses effective leadership, customer focus and process reengineering, we question whether future complaints of discrimination will receive due care.

In conclusion, Mr. Chairman, I would like to submit for the record a summary of the actions taken on the recommendations we made during our seven phases of reviews. I would like that submitted for the record, sir. Thank you, Mr. Chairman, for the opportunity to present these issues. I would be happy to answer any questions you or other members of the committee may have at this time.

The CHAIRMAN. Thank you very much, sir. The summary you have entered will be accepted in the record and published in full.

Mr. VIADERO. Thank you, sir.

[The prepared statement of Mr. Viadero can be found in the appendix on page 72.]

The CHAIRMAN. Mr. Robertson.

STATEMENT OF BOB ROBERTSON, ASSOCIATE DIRECTOR, GENERAL ACCOUNTING OFFICE, WASHINGTON, DC

ACCOMPANIED BY JERILYNN B. HOY, ASSISTANT DIRECTOR, RESOURCES, COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION, GENERAL ACCOUNTING OFFICE

Mr. ROBERTSON. Good morning, Mr. Chairman, members of the committee. Thank you for inviting us to be part of these important hearings on USDA's civil rights program. Our statement today is based on a report that we issued last year and I am very fortunate to have with me today Jeri Hoy, who was responsible for leading the work that supported that particular report. I better put these on. Who knows what words will come out of my mouth if I do not.

In fact, we reported that USDA was not processing civil rights complaints in a timely manner. We found that USDA had one of the worst records of the Federal agencies that we examined as far as the timely processing of employment complaints.

We identified four long-standing problems that were impeding USDA's efforts to improve timeliness. First, USDA's Office of Civil Rights had experienced constant management turnover and reorganizations. We pointed out that between October 1990 and January

1999, the Office of Civil Rights had eight different directors. That is almost averaging one new director each year. To add to this instability, the department's civil rights program had been reorganized three times between 1993 and 1999 resulting in numerous changes at the division and staff levels.

Second major problem we noted related to inadequate staff and managerial expertise. In 1997, the Civil Rights Action Team, which was a team of agency officials appointed by the Secretary to review civil rights issues, reported that USDA employees generally viewed the department's civil rights offices as a dumping ground for many staff who had settled their Equal Employment Opportunity complaints. This issue of inadequate staff expertise surfaced throughout the review and this is something we may want to come back to later.

The third problem cited in our report was the Office of Civil Rights lacked clear, up-to-date guidance and procedures to govern the receipt, handling and resolution of its program and employment complaints. Those types of procedures are particularly important in the type of environment that USDA's Office of Civil Rights was working in at that time which was constant change of management.

The guidance is fundamental to promoting department wide compliance with and standardization and effective enforcement of civil rights statutes.

Finally our report noted that poor working relationships and communications within the Office of Civil Rights and between that office and other USDA entities also hindered the timely processing of civil rights complaints. Now in addition to these four problems which tended to stall efforts to process complaints quickly, we also pointed out that the department was not consistently using alternative dispute resolution techniques such as mediation to address workplace and other disputes. Federal law and regulations encourage the use of these techniques in resolving Federal workplace disputes and it is a way of heading off disputes before they become formal complaints.

We made four recommendations to the Secretary of Agriculture to address the problems identified in our report. In commenting on the draft of the report, the Director of the Office of Civil Rights stated that the management weaknesses we cited were real and that our recommended changes were necessary. Further, she said that USDA was actively moving toward full adoption and implementation of these recommendations.

In preparation for this hearing, we reviewed the status of USDA's implementation of our recommendations. Although more than 19 months have passed since our report was issued, USDA has not fully implemented any of the four recommendations. USDA officials noted, however, that the agency has drafted a long-term improvement plan that is intended to systematically address the problems in the program. They expect to begin implementing the plan next month.

In conclusion, Mr. Chairman, our 1999 report found that USDA's civil rights program had a long way to go before it achieved the Secretary's stated goal of making USDA the civil rights leader in the Federal Government. In recent months, USDA has taken some

initial steps to address the department's chronic problems. Unfortunately, these plans will require long-term implementation including additional funding for hiring and training personnel. As a result, it appears as if the Secretary's goal, at least in the short term, remains illusive. That concludes my statement, Mr. Chairman, and I will be happy to take any questions.

The CHAIRMAN. Thank you very much, Mr. Robertson. Your statement, of course, will be published in full as the case of Mr. Viadero.

[The prepared statement of Mr. Robertson can be found in the appendix on page 114.]

Senator BAUCUS. Mr. Chairman.

The CHAIRMAN. Yes, Senator Baucus.

Senator BAUCUS. Might I just have a statement introduced in the record at this point?

The CHAIRMAN. Yes.

Senator BAUCUS. I have a hearing that starts at 9:30.

The CHAIRMAN. Please proceed.

STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA

Senator BAUCUS. I have a fairly long statement and it is pretty tough. It is tough because in my state in Montana there have been a lot of civil rights complaints and none of them have been resolved, none. I in my testimony, am going to give some of the same data that has already been given, but I just would like the department, those relevant in the department, to read my statement and to take it very seriously because in that statement I also ask that certain actions be taken including dates by when they believe some of these cases can be resolved.

I am also going to give the department a weekly report of discrimination charges that I receive and I tell you it is many. There are many on that list. I apologize to a Montana witness that I will be unable to hear her testimony, but she has traveled by train to come here to plead her case and I hope she does not have to come to Washington, DC again because the record is just abysmal. I hope we can get it resolved. Thank you.

The CHAIRMAN. Thank you, Senator Baucus. Your statement will be published in full at the beginning of the hearing with the opening comments of senators.

[The prepared statement of Senator Baucus can be found in the appendix on page 68.]

The CHAIRMAN. Now, I would like to ask all senators to restrain themselves likewise to five minutes in the question rounds. If there is need for a second round, we will do that, but the first time around, all of us try to stay within five minutes.

Mr. Robertson, clearly you and Mr. Viadero have painted a very bleak picture of the reorganization of USDA's efforts. I am just curious. In your agency you take a look at various other agencies of government from time to time, I suspect, with regard to civil rights matters. Why is the USDA situation such a difficult one, both in terms of the numbers of cases that are currently being filed and the lack of resolution of the cases or the retention of personnel to do this work or to follow though by the management?

In other words, is this a fair to middling situation in the Federal Government? Is it the bottom of the heap? What seemed to be the peculiar characteristics of this situation that we have not been able to grapple with?

Mr. ROBERTSON. Let me answer that question in two parts. Let us talk about some comparisons of USDA's record with other Federal agencies. We made those types of comparisons in our 1999 report and we have some preliminary information to update that. In that 1999 report, we looked at data from EEOC in terms of various performance indicators of processing employment complaints in a timely process.

We looked at the percentage of cases that USDA or OCR investigated that were done within the stated 180 day EEOC timeframe. We found that USDA had one of the worst if not the worst records of the agencies that we looked at in regard to meeting that particular timeframe. That was by the way for 1997 statistics which were the most current available at the time we did our work. We updated that 1999 information in preparation for the hearings with some preliminary information from EEOC and basically found that in regard to that particular measure, the situation has not changed. They are still missing the mark, I believe, in about 99 percent of the—almost 100 percent of the cases in terms of conducting investigations within the 180 day timeframe.

We also in the older report, in the 1999 report, looked at another performance measure again for processing employment complaints. That measure was basically the time it took to resolve complaints that did not involve EEOC hearings. Again USDA, based on 1997, EEOC data was on the bottom of the pile. The preliminary information for 1999 indicates that there has been some improvement, but USDA is still far above the EEOC set standards and far above the government wide averages. That is the first part of the question on how the USDA is doing in regard to other agencies as far as employment complaints go.

In regard to the why what makes USDA different, why are they where they are—that is much more difficult question to answer. We have had, as you have pointed out, several years of people going in and looking at this program and finding all sorts of problems, having all sorts of suggested fixes, including the CRAT report came out in early 1997, I believe, with 90 some odd recommendations. Roger and his crew have come up with a number of reports with recommendations for fixes. We have come up with a report with recommendations for fixes.

Obviously this program is not lacking for fixes or suggested fixes for these problems. If I were king for the day and I were to say this is what you need to focus on, I would focus on something that both the OIG and GAO and the CRAT report have highlighted—that is upgrading the level and quality of the skills and experience and expertise in the Office of Civil Rights. If you get the right people in the right positions with the right skills, they are going to identify the problems and take the appropriate actions to mitigate them.

The CHAIRMAN. Let me just ask in other agencies where similar problems have occurred, is this the way they solve it? In other words, they found new people, upgraded the whole status of the

movement and proceeded on as opposed to us hearing testimony that we are not getting very good people in this agency? In fact, there seems to be a deterioration in morale, a turnover of people.

You know we have committee oversight hearings on this situation annually. I can remember almost one a year each time that I have been chairman and we come up with many of the same problems, maybe compounded in terms of greater numbers. We are oversight people. We cannot reach in as philosopher kings any more than you can to wrench out the agency. I am frustrated as to how to be effective. Given these annual hearings, the expositions, they are terrible. Why the embarrassment I would think to the Secretary, the people managing the department, would be profound. The changes have not occurred.

This is why I wonder if there is something extraordinarily different about USDA? Simply overwhelmed by the nature of the work that occurs in agriculture or some other factor that we have not examined?

Mr. ROBERTSON. I believe that there are lessons that can be learned by looking at how other Federal agencies do their business and, in fact, sometime this fall the EEOC is coming out or one of its task forces is coming out with a report that basically is a lessons learned, a best practices type report. That could be a starting point for USDA to look at to see how it could address some of its problems.

Ms. HOY. Can I add something? Actually the Postal Service is one agency that we have heard cited as a turnaround agency, where they had a lot of serious problems, and what they did was to start using alternative dispute resolution in a very consistent way and what that allowed them to do was to resolve workplace disputes before they became formal complaints. They have been using outside mediators, mediators from outside of the Postal Service, for the last four or five years apparently and the program has been very successful in reducing the number of formal EEO complaints.

The CHAIRMAN. There is constructive relief if you move in those directions?

Ms. HOY. Yes.

The CHAIRMAN. Senator Conrad.

Senator CONRAD. Thank you, Mr. Chairman. How many staff are there in the Office of Civil Rights in USDA?

Mr. ROBERTSON. I can give you ball park. When we did our report, there are roughly 120 people. That has increased slightly since that time and the budget was somewhere in the neighborhood of 13 million.

Senator CONRAD. How many cases do they have annually? Is that fairly reflective up here? Looks to be roughly in the range 750 to 950 a year?

Mr. ROBERTSON. In terms of the caseload for employment complaints, I can talk about the number that they had on hand at the end of fiscal year 1999, which was 1,680, roughly 1,700.

Senator CONRAD. That would be the current backlog?

Mr. ROBERTSON. That would be the number that were——

Senator CONRAD. Were pending?

Mr. ROBERTSON. Right.

Senator CONRAD. 1,700 at the end of 1999?

Mr. ROBERTSON. Right.

Senator CONRAD. I am interested in how many cases are brought a year? It looks to me up on your own chart here that you are looking on a yearly basis between 750 and 950. Would that be a correct conclusion from that chart?

Mr. VIADERO. Senator, that is not GAO's chart. That is the IG's chart and Mr. Ebbitt would be happy to answer that for you. Thanks.

Mr. EBBITT. Senator, that was the status for those years. The flaw in that particular chart on the left was what the Office of Civil Rights reported.

Senator CONRAD. Right.

Mr. EBBITT. What that reflects is cases essentially filed, not necessarily accepted. You have to draw that distinction because a filed case is not always accepted. Sometimes there is not enough information provided. The cases on the chart on the right is what we believe is what really happened in those particular years.

Senator CONRAD. I see. I see. Something less than?

Mr. EBBITT. That is correct.

Senator CONRAD. OK.

Mr. EBBITT. Also, Senator, this reflects program cases, not employee cases.

Senator CONRAD. Now, that is the next question I have. How many of these cases—how many of these——

Mr. EBBITT. I need to correct that. That is employee cases.

Senator CONRAD. Oh, that is employee cases.

Mr. EBBITT. Yes.

Senator CONRAD. That was my next question. How many of these, what percentage of these cases are employee cases? How much of these cases are program cases?

Mr. EBBITT. Again, Senator, I have just been corrected. These are all employee cases that are reflected here.

Senator CONRAD. That does not tell us program cases?

Mr. EBBITT. Those charts do not.

Senator CONRAD. When you gave me the number of 1,700 pending at the end of 1999, did that include employee cases and cases that involved programs?

Mr. EBBITT. No, that was a figure that I gave——

Senator CONRAD. That is just employee?

Mr. EBBITT. That was a figure that I gave and that was for employees.

Senator CONRAD. Employees. Can you tell me how many of those are within the department itself? Are these all within the department itself?

Mr. EBBITT. Yes, these are USDA employment complaints, according to CR data that is.

Senator CONRAD. This is truly extraordinary and they cannot resolve those with 180 days. All of these cases that are reflected on these charts involve employees within USDA itself. Has anybody got what the number of program cases are?

Mr. EBBITT. As of December 1, 1999, Senator, we counted 897 on the program side.

Senator CONRAD. That were pending?

Mr. EBBITT. That is correct.

Senator CONRAD. That was in addition to 35 that were still left over?

Mr. EBBITT. Thirty-three of the 35 have also been cleaned up as of March.

Senator CONRAD. Mr. Chairman, could I just offer I read something interesting in the paper this morning about what has been done within the District of Columbia by the new mayor. He has reached an agreement with about 90 percent, 80 or 90 percent of the middle managers, that they would get a pay raise in exchange for giving up their appeal rights in terms of termination. Anybody could be removed for cause or because they were not performing in some way on two weeks notice, and I tell you I know this is controversial and some will consider it something that threatens employees.

I tell you, part of the problem here is it is very hard within the Federal Government to remove people who are not performing, to change managers when people are not performing. I wonder if this is not a case where it would be a good experiment to see if we could not in USDA in this office do something along the lines of what the mayor and this city has done? You know my experience as a manager has been when things are not working well, there is one reason. It is the people involved.

Every time I had a management problem when I ran a large state agency I found it was because I had the wrong person in the wrong slot. It did not mean they were not a good person. Sometimes it just meant they just were not prepared for the job that they had. Phase VII, Phase VII, the Inspector General has told us here and nothing much is happening. I personally believe we are going to have to go to some new approach if we are going to solve this problem.

The CHAIRMAN. I thank the senator. Senator Cochran.

Senator COCHRAN. Mr. Chairman, my questions are going to go to the program discrimination issue and I wonder in the testimony from our first two witnesses, have the program discrimination cases not been resolved just like the employment cases have not been resolved? Are those numbers about the same?

Mr. EBBITT. Senator, as I was indicating, our last count of program cases is around 897. In our testimony, when we started this process in November 1997, the backlog at that time was 1,088. That is the so-called original backlog. Now that has been essentially worked down. They are very close to resolving or having dealt with most of those cases. Part of the problem in handling those cases then was the fact that you have more coming in and so the new ones as they were coming in, they were not being handled in a timely fashion because all the energies were being directed toward all those old ones. Roughly right now 897 is the number on the program side.

Senator COCHRAN. Was there any effort made in your review of the GAO review to determine the adequacy of the remedy that is available for a program discrimination? What is your assessment of that?

Mr. EBBITT. Senator, we in—let me see which phase, I get my phases mixed up. In one of our reports we looked specifically at set-

tlements, and was one of the charges made against the department is that once the settlement has been agreed to by the department and the complainant, then the settlement action was not always carried out. We found a mixed bag, if you will, in that particular arena. We did find evidence that settlements had been achieved and that actions were being carried forward. We did find some delays in carrying that agreed to process to fruition in some instances, but the real issue there was there were not that many settlement cases. A lot of cases just hadn't reached the end of the process.

Senator COCHRAN. What about GAO? Did you undertake an assessment of that?

Mr. ROBERTSON. Yes. Our work looked primarily at the timeliness of the process itself, but I would like to go back to your earlier part of your question and some of your questions on the statistics and just make a comment. In preparing for this hearing, we tried to get some statistics that would give us an indication, a flavor of whether the timeliness of processing the program complaints, in particular the program complaints, had improved or, just exactly what the status was. While it seems that OCR has statistics, I am not comfortable in using those statistics right now to give you a flavor of what the progress has been and the OIG would be in the same boat.

Again, it is an important thing to remember that the statistics that we are talking about here are kind of iffy at best and that is unfortunate.

Senator COCHRAN. Was any conclusion reached by either investigative agency about whether the law ought to be changed or improved in any way that governs the handling of these cases? Is there something that we as a legislative committee should consider in terms of amendment to current law on this subject, the program complaint side I am addressing again?

Mr. VIADERO. Senator Cochran, I would like to answer your question and also get back to what Senator Conrad mentioned. You know as a manager, it is accountability. It is timeliness. It is not only doing the right things but doing things that are right and we find an absence of all of this in the operation of this office.

Senator COCHRAN. What about the GAO on that subject?

Mr. ROBERTSON. We have no recommendations directed to legislative changes.

Senator COCHRAN. One thing I have heard just from people who have reported to me some personal experiences in dealing with the department is the complexity of the complaint process. Is this something that in your view ought to be considered or addressed by the Congress or is there an adequate process, it is just the administration of the process that has broken down?

Ms. HOY. My thoughts are that it is primarily the administration of the process. I was thinking of the question that Chairman Lugar asked earlier about why are things so bad at USDA and it just strikes me that there are some agencies have poor personnel, others have poor systems, others have poor data, but with USDA it is across the board and that is why. That is the problem. It is just pervasive problems in almost every single area and it is hard to know where to start.

Senator COCHRAN. My last question is provision for payment of attorney's fees; is this taken care of in the law adequately? Do attorneys get their fee from the settlement itself or is this paid over and above the reimbursement to a successful complainant? I wonder what the contingent fee basis. You know we had a lawyer down home and we said what is his contingent fee? What does that mean? He said, well, if he loses, he does not get anything. If he wins, you do not get anything.

[Laughter.]

Senator COCHRAN. I am just curious. I want to be sure that is not the situation here with these cases.

Mr. VIADERO. It is my understanding, Senator, that it is both ways. We have instances of both the contingent fee basis and a fixed fee basis.

Senator COCHRAN. Thank you.

The CHAIRMAN. Thank you very much. Senator Miller.

Senator MILLER. I do not have any questions.

The CHAIRMAN. Senator Smith.

Senator SMITH. Mr. Chairman, I in preparation of this hearing, we contacted our staff in Oregon to find out what complaints they are having and talked to the local chapter of the NAACP, and if there is a positive note, at least in Oregon this is not a glaring problem, but as I contrast that with Mr. Viadero's statement, and I want to read it for emphasis:

Throughout the seven phases of review the Office of Civil Rights has been a portrait of a dysfunctional agency. Its staff has remained demoralized through three major reorganizations. Management's attempts to improve the working environment have been perfunctory and its attitude toward accountability have been unenthusiastic. The case files were in no better condition in March 2000 than they were in February 1997.

I guess do we need to start over? It sounds like you have got the wrong people and maybe also the wrong systems. That is what I am reading, Mr. Viadero.

Mr. VIADERO. We are not taking exception to any of that, Senator. We also would like to add we have all of this on our web site, all seven phases which would include Phase III which is 18 linear inches and is county by county throughout the United States on their civil rights statistics. I would like to add, though, when we walked in the first time, we found, by chance some files that were laying in a file drawer for years. Nobody ever looked at them. We actually had to construct an inventory of case files. There were files and there were papers in these files from Mr. Smith, Mr. Cochran, Mr. Lugar, Mr. Conrad, Mr. Miller right across the board in one file. The files had never been properly maintained.

We have a picture of their automated filing system. It was a mobile filing system. They had a push cart from a Safeway store. The files were in total disarray. Now this is not a civil rights function. This is a basic management function of an office. I know that Mr. Conrad is a kindred spirit in accounting and you just do not run books and records this way. It is not a way to run a business and this is a business like anything else and it has to be accountable or we find bad business practices, if you will, and lack of accountability.

Senator SMITH. Can you correct me if I am wrong if I am misunderstanding the condition in the Pacific Northwest. Is there a problem there?

Mr. VIADERO. Not that we are aware of.

Senator SMITH. Have you located where the problems are most egregious? Is there an area of the country? Have you pinpointed it? Is it in Washington, DC? Is it in the Northeast? Is it the Midwest? Where are the problems the most egregious?

Mr. VIADERO. When I got back to our sampling in Phase II, and we did four certain areas, geographic areas of the country, such as Oklahoma because of its Native American concentration, such as San Joaquin County, California for having the only county with Asian farmer concentration. We did the greater Southwest basically from California right into your state, Senator Cochran, Mississippi, looking for Hispanics, of course, the Old Dominion, the greater South with its on the historically black farms.

Senator SMITH. Are you finding that where there are problems are they more personnel or are they more systems? Are they systemic problems or are they personnel problems?

Mr. VIADERO. We found no examples of systemic discrimination in any of our reviews.

Senator SMITH. Is it just personnel who just do not give a rip about civil rights?

Mr. VIADERO. Well, it is important to note that the county system, the county executive who is hired by thr county committee who in turn is elected by local farmers, how are you going to have discrimination if the farmers in the country are voting for the leader of the county. That is why we say it is not systemic. By the way, these people are not federal employees. They are quasi-government employees and they are outside the normal books and records of the department, if you will, and not subject to the merit systems that we have within the civil service.

Senator SMITH. Ms. Hoy mentioned that the Postal Service was an agency in difficulty and is the model you are pursuing to fix USDA; is that accurate or are there other agencies in the government that are really good examples of the enforcement of civil rights laws that we ought to be looking at here for USDA?

Mr. ROBERTSON. I think Jeri was alluding to the fact that there are some other Federal agencies that had some success particularly with alternative dispute resolution and Veterans Administration was one of those. I believe the Air Force is another.

Senator SMITH. Thank you, Mr. Chairman.

The CHAIRMAN. Let me just followup a little bit on Senator Smith's question, and that is in the testimony that I see down here on county committees, problems and elections, a suggestion is that in the spirit of the Voting Rights Act, county committee procedures are seriously flawed. Voting participation averaged ten to 15 percent of eligible voters, only 5 percent participating in one South Carolina county. Up to 25 percent of the ballots disqualified because they were not filled out correctly and so forth.

Now, Mr. Viadero, you are saying many of these discrimination complaints arise from decisions of these county committees; is that correct?

Mr. VIADERO. That is my understanding, sir, yes.

The CHAIRMAN. That in trying to parse this situation a little bit, we have USDA down here in Washington with civil service people, merit and so forth, and we have USDA out in the field in various ways. As you point out, you have sort of a democratic system here which county committees are elected and, therefore, the voting procedures or how people come on to those committees or how people are kept out of the committees comes into play, I suspect. This may be a more complex situation then in trying to evaluate, getting back to Senator Conrad's suggestion that as in the case of the mayor of Washington, DC, you take some stringent action so that people can be fired and removed and move out of the picture.

What we are seeing here, I suspect, is the question at the grassroots in many cases in which people have been elected quite apart from these folks down at USDA in the civil service or many of us around this table. Now how do you begin to deal with all of that?

Mr. VIADERO. Well, this will reference now back to Senator Smith's question so far as what we see on a systemic basis. Let me give you an example of how this system works. Mr. Lugar, since you are the chairman here, we are going to make you the CED, and Mr. Cochran is his outreach coordinator, and Mr. Cochran—I am sorry—Mr. Conrad as a farmer. Well, the chairman likes Mr. Conrad. OK. Mr. Cochran, the outreach——

Senator CONRAD. You got a good start.

[Laughter.]

Mr. VIADERO. I need help wherever I can get it. Mr. Cochran, the outreach coordinator, will call Mr. Conrad up and say, Mr. Conrad, the final date for filing these applications is a week from today. Now, Mr. Smith, Mr. Lugar is sort of neutral on you. Mr. Cochran just does not call you. You have been given your packet with the dates on it. That is the type of impetus that we see. Now can you say that that is systemic, that that is intentional? I dare say you could not. We have not been able to find it.

That is probably the most egregious thing/example of what we found and that is very simplistic. Again, to quote a great guy, my son, "it ain't rocket science," and he is a rocket scientist. It is the best I can give you.

The CHAIRMAN. Senator Conrad.

Senator CONRAD. Mr. Chairman and those who are here as witnesses, I go back to every time as an administrator I encountered a problem like this, it went right to the question of the people that I had in the positions of responsibility. I found systemic problems. It is amazing how they get resolved when you have the right people in the right positions because they figure out how to change the system to make it work. You know I have been told we heard this morning that this office has been used as a dumping ground. That is the reputation of this office. That disgruntled employees have been moved into these positions and now we got a situation where the job is not getting done.

Now the evidence is overwhelming. The job is not being performed. I do not want to be harsh, but, when you have gone through seven phases of review and nothing is happening to fix it, somebody has got to be held accountable. As a manager, I would hold the people who are in positions of responsibility accountable. They are the ones who have the obligation to produce results and

they have failed, and they have failed miserably and there can no longer be any question about it. I would advocate that we get new leadership and they have the power to get people in positions of responsibility who do the job. That is, an obligation we have as an oversight committee. We cannot be the administrators obviously. We should send a clear message that this is it.

Now we have all the reviews that we need to have. There is a failure. The people who are there in positions of responsibility ought to be held accountable. That is not being unfair. That is not being harsh. That is setting standards and setting goals and holding people accountable.

Could I just close with a question to Mr. Viadero? What would you do in this circumstance? If you had the power to try to clean up this mess, what would you do? What are the two or three steps that you would take immediately?

Mr. VIADERO. Well, some of the steps have been taken in the very recent past by Assistant Secretary for Administration Fiddick whom you are going to hear from on the next panel. He appointed a fellow by the name of David Winningham as Deputy Director for Civil Rights, as the title is called, in the Office of Civil Rights, and Mr. Winningham, much to his credit, has gone in and established some basic management controls and met with people and is getting this backlog down. I do not think we can say scrap the system, scrap the people. Again, it is a people issue. OK. Mr. Winningham appears to have the right mix, if you will, of people skills and management skills and also the support of the Assistant Secretary.

Senator CONRAD. Does he have the ability to move out people who just are not performing? You know sometimes you just have people who are not performing and does he have the ability to remove people who are not performing?

Mr. VIADERO. I am assuming that Mr. Fiddick would support him if that is the final decision that they make.

The CHAIRMAN. Thank you very much. Are there other questions of this panel by senators? If not, we thank you very much for your testimony and we hope that the next panel will have some satisfying answers and then we will have a third panel of witnesses that we have already mentioned. The chair would like to mention also that there will not be vote at 10 a.m., and so that is gratuitous so that we can proceed without interruption.

The CHAIRMAN. We now have Mr. Paul Fiddick, the USDA Assistant Secretary for Administration, accompanied by Ms. Rosalind Gray, Director of the Office of Civil Rights, and Mr. David Winningham, Chief Operating Office of the Office of Civil Rights; and Mr. Charles R. Rawls, USDA General Counsel.

We welcome the next panel and I will ask you to testify in the order that I introduced you, first of all, Mr. Fiddick and Mr. Rawls. Please try to summarize your comments in five minutes more or less, and then we will have more extended conversation as questions come from senators. Mr. Fiddick.

STATEMENT OF PAUL FIDDICK, USDA ASSISTANT SECRETARY FOR ADMINISTRATION, WASHINGTON, DC

ACCOMPANIED BY ROSALIND GRAY, DIRECTOR, OFFICE OF CIVIL RIGHTS, AND DAVID WINNINGHAM, CHIEF OPERATING OFFICER, OFFICE OF CIVIL RIGHTS

Mr. FIDDICK. Thank you, Chairman Lugar. We have a longer consolidated statement for Ms. Gray, Mr. Rawls and myself that I would like to have entered into the record.

The CHAIRMAN. It will be made part of the record in full.

Mr. FIDDICK. Thank you, sir. Good morning, Mr. Chairman, members of the committee. Thank you for inviting me before your committee today. It was almost exactly a year ago that I appeared before this committee for my confirmation hearing. I was sworn in as Assistant Secretary for Administration on November 16 of last year. Although new to the department, I have become well acquainted with USDA's troubled civil rights history. The Secretary and I believe that we are making some progress addressing the circumstances that give rise to complaints, on the one hand, and in processing the complaints we receive, on the other.

Nevertheless, we are humbled by the task that remains. Beginning with our Secretary, we strive to hear the message that employees and customers are sending us. The Secretary, those of us here, and administrators of our USDA agencies have maintained an ongoing dialog with groups and individuals representing employees, customers and other stakeholders. We have honestly endeavored to maintain an open door policy.

Last year, we received 1,261 program discrimination complaints. We are projecting about 650 complaints in fiscal year 2000. In fact, we will receive fewer program and employment complaints this year than any year since 1997. Let me be clear. Acts of discrimination and the complaints they represent are an anathema and unacceptable to USDA in any number.

Over the past five years, USDA has closed an average of about 750 EEO complaints a year. Those are employment complaints. This is more than all but three other cabinet agencies. Unfortunately, we have been receiving an average of about 850 EEO complaints a year for the same period. The time it takes us to process complaints is inexcusably long. If justice delayed is justice denied, then we are not doing justice by our customers and employees. Now here is what we are doing about it.

Mr. Chairman, as you may remember from my confirmation hearing, I am new to government. I spent more than 25 years of my career in private industry, most of that time in top management. When I arrived at USDA, Secretary Glickman instructed me to use my business experience to develop an enduring solution to the operational end of our civil rights problems. I approached this assignment as I would a business problem, one where an operating unit was not performing up to expectations. I recommended and the Secretary approved a plan to create a new position in the Office of Civil Rights that I borrowed from the private sector, that of chief operating officer.

This divides Civil Rights into two distinct areas. One, complaints processing and administration headed by the COO, a career senior executive; and two, the policy, regulatory and legislative functions

led by the senior political official. The latter role is filled by our Civil Rights Director, seated on my left, Rosalind Gray. In April I named David Winningham, a 28 year USDA employee with an extensive management background, to the new COO position. He is seated on my right. Both of these positions report directly to me as Assistant Secretary.

The past five months, we have set about developing a long-term improvement plan, a zero-based approach to determining the staff and time resources necessary to fundamentally and permanently improve our civil rights operations. The plan is a comprehensive collaborative work that includes efficiency studies and benchmarking to the best practices of other Federal agencies.

The draft management plan was delivered in August and to the extent of our resources the finished plan will be rolled out in the next 30 days. Secretary Glickman has made it abundantly clear that in the area of civil rights, the status quo is simply unacceptable. We are using all of our intellect and our energies to solve these historic problems in a way that will survive beyond this administration and that will provide responsible social justice for USDA employees and the public today and in the future. Thank you, sir.

[The prepared statement of Mr. Fiddick can be found in the appendix on page 124.]

The CHAIRMAN. Thank you very much, Mr. Fiddick. Mr. Rawls.

STATEMENT OF CHARLES R. RAWLS, GENERAL COUNSEL, USDA, WASHINGTON, DC

Mr. RAWLS. Good morning, Mr. Chairman. I am pleased to be here this morning. During the 2-years since this committee recommended my confirmation as general counsel, I have spent a considerable amount of my time, probably the majority of my time, working on civil rights issues, helping the Secretary carry out his mission, his vision to address and improve civil rights at the department. I certainly share his strong commitment to civil rights for all employees and program participants and I believe as the Secretary does that USDA can and should become the civil rights leader in the Federal Government. Obviously, from what you have heard this morning, we have a long way to go.

My office acts as the Secretary's legal staff. We advise the Secretary and agency personnel on the full range of legal issues. Our lawyers provide assistance on everything from procurement to regulatory process, a statutory interpretation, any number of things. We do represent the Secretary in some legal proceedings, provide legal opinions for the department, that sort of thing, but USDA is represented in the Federal courts, of course, by the Department of Justice.

Of note to the committee, as recommended by the Civil Rights Action Team, the CRAT report, our office did establish a special division devoted to Civil Rights. It is staffed with a small but experienced and talented group of lawyers who are working very hard on a broad range of legal matters associated with civil rights. This effort was greatly supported by the Secretary and, of course, the Congress. Senator Cochran did provide some additional funding to staff the office which is very difficult, as this committee knows in this

time of tight discretionary budgets, but I would want all of you to know that the Civil Rights Division is staffed by individuals with outstanding records, excellent credentials and impressive experience.

They are working very hard to see that our civil rights laws and policies are carried out in an effective and efficient manner at USDA. We accept our responsibility seriously and with enthusiasm with respect to civil rights, but our duties are not easy. We often must raise difficult questions. We take unpopular positions. We make hard decisions which quite often put us at odds with someone, either within the department or outside of USDA, but the requirements of the law, fundamental elements of fairness and a concern for the due process rights of all concerned will continue to guide our every action.

Our statement discusses briefly the settlement of the Pigford class action and I will just touch on that for a moment. This was a class action brought on behalf of African American farmers throughout the country. It is indeed an historic settlement because it offers the promise of resolution and closure to so many who have felt that they were wronged for so long.

As a staff member in the House of Representatives during the 1980's, I became keenly aware of many of the complaints of discrimination at USDA by African American farmers. These complaints were deeply felt but difficult to prove. Many of the complaints were not meaningfully addressed or were certainly not addressed in a manner that reassured the complainant that his or her case had really been heard or decided on the merits. In conjunction with efforts by the Congress to waive the statute of limitations, it did make a settlement of this case possible. I believe that on balance the settlement provides a workable solution to some very difficult problems which had to be resolved in a legal forum which presents its own difficulties.

It will provide an opportunity that many felt that they never had to be fairly heard. Under Track A of the settlement, some 20,000 individuals will have their claim reviewed by an objective neutral third party. Far about 18,000 claims have been adjudicated. 11,000 or a little better than 60 percent have been successful for the claimants. The Track B arbitrations handled under this settlement are under the exclusive jurisdiction of the Department of Justice and they are handling those cases.

We are now working very hard with the court, the court appointed monitor, the Department of Justice, the plaintiff lawyers, to see that the settlement is implemented in a fair, efficient and timely manner. It has been a challenge, I will tell you. The number of class members turned out to be much, much greater than expected. Simply establishing the process and dealing with the class of this size has been a monumental effort for everyone.

We will continue to see this as a challenge. We will rise to meet that challenge and find ways to implement the settlement in a fair way and in a way that is helpful and fair to the claimants to the maximum extent possible. Mr. Chairman, many employees and managers at USDA do share the Secretary's commitment to civil rights, as I do. Some are still insensitive to what improving civil rights means and that remains one of the challenges for the future.

Some very good things are happening as discussed in our statement.

In the last five years, the Farm Service Agency has increased its lending to African American farmers by 67 percent. It has also worked hard to improve the diversity composition of its county committees. The department has focused new attention on small farms, farm workers and the disabled. Our food safety message, for example, is going out in four languages now besides English, to 183 African American newspapers. After much give and take, the Forest Service working with the Department of Justice and USDA lawyers has settled a class action brought by a group of women in one of its regions. A number of agencies are doing much better outreach and undertaking cooperative efforts with minority groups including Native Americans.

Does USDA yet have a long way to go with improving civil rights? The answer is yes. One thing we have learned is that civil rights, which many times translates into the more easily understood concepts of good customer service and good employee relations, requires constant attention and improvement. Mr. Chairman, I am happy to answer any questions at the appropriate time.

The CHAIRMAN. Thank you very much. Mr. Fiddick, let me just ask for the benefit of all of us trying to understand the kinds of cases that are here—we have heard the statistics about the numbers and in the last panel I suggested some of the problems may come at the county committee level. Even Mr. Rawls has suggested that the diversity of county committees has been one of the objectives, but are there any typical groups of cases? Are largely these cases employees who have been discharged who feel that they have been unfairly treated or employees who did not receive promotions who felt that they had been unfairly treated? I am just trying to get some idea of who is filing these hundreds of cases and why there seems to be such an incidence of this at USDA in comparison with other agencies?

Mr. FIDDICK. Well, with your permission, sir, I would like to ask Ms. Gray to answer that question as the director of our Office of Civil Rights since early in 1998. She has had a great deal more experience with that firsthand than I have.

The CHAIRMAN. Right.

Ms. GRAY. Thank you. On the program side, the majority of the complaints are filed by minority persons, African American males, women, some Hispanic, some couples and also couples because the woman was handling the business at the time. The complaints usually are against—most of them are against Farm Service Agency, and what they are about are generally the denial of an application for an operating loan or for ownership loan or for the denial of restructuring of financing, when the person thought he or she were eligible for it, and in the case of disaster payments, frequently the essence of the complaint relates to the refusal to provide an application. On the program side, that would include the majority of our cases.

On the employee side——

The CHAIRMAN. Let me just ask here, Ms. Gray, these would appear to be fairly open and shut cases, would they not, in terms of fact? Either you got the application or you did not get the applica-

tion or you qualified for the loan and their criteria or you did not? In other words, what we are hearing is these cases take months, maybe even a year, to resolve, which, of course, does mean justice denied if it was an emergency loan or a disaster payment at the time, but maybe I am mischaracterizing and making too simple what is much more complex.

Ms. GRAY. It is relatively simple, but we do not process in the short or reasonable period of time quite frankly. There is no other way to say that. It is not simple because usually there are two sides of the story and then there is also the truth, which involves not only doing a field investigation and talking to the complainant, but it also requires a very extensive review of the record and the application for the particular benefit.

Part of our problem in the Office of Civil Rights is that we do not always have the skills to review the farm application package to process in a timely fashion so, yes, it is simple, but it is not quite simple and there are many programs in the Farm Service Agency, and we are not always quick in our review and we do try to be careful.

We also have a number of housing complaints and generally the housing complaints are about the denial of the loan for purchase of a house or some housing facility. That is the easy side. The difficult side is certainly the employee side. We have every range of complaint that you can imagine would happen in the workplace. We have sexual harassment complaints. We have certainly racial discrimination, Hispanic, African American, some Native American. We have complaints about discrimination and promotions and training. You name it. If it is an aspect of the employee relationship, there is a complaint about it.

The CHAIRMAN. Once again why so much of this at USDA as opposed to other agencies?

Ms. GRAY. Well, the number of complaints at USDA based on the number of employees is not that much different than many agencies. USDA is slower in processing its employee complaints than most agencies. Our agency that has the largest number of complaints is certainly the Forest Service and the working situation for the employees in the Forest Service, some of them in isolated camp, certainly give rise to the complaints. That, then again, makes it more complicated for us to bring about the appropriate investigation because some of the employees are in isolated camps.

I think that for Farm Service where we have county employees, again, the local culture contributes very heavily to the workplace and what goes on in a county community is reflected in the workplace and that gives rise to a number of complaints. We are because we are so large and spread throughout the country a department that very much reflects our customers and to the extent that there is discrimination, and there is discrimination in these counties and in these workplaces, we get complaints about them.

The CHAIRMAN. Mr. Fiddick, is one possible alleviation of your problem a group of skilled personnel who are conversant with complex agricultural programs or those who can go to the site and say this person is qualified for the loan or this person is not? In other words, just trying to break through the clutter of all this, what sort

of people do you need, what type of authority for them to go to the site and get on with it?

Mr. FIDDICK. No, I believe you are entirely right, Senator, that there is a certain skills deficit that has been documented in the Office of Civil Rights. We did not know exactly how many persons that represented, whether those persons were incapable or whether they were simply playing out a position. As a part of the long-term improvement plan, the management plan that has been drafted, one essential element of that is to take a skills inventory of the personnel we have on board currently and what the organization needs to meet its requirements. We will conform one to the other in an appropriate way.

The CHAIRMAN. Let me mention that Senator Charles Robb of Virginia has given a statement that I will make a part of the record. He has been deeply interested in this issue for a long time, and Senator Robb has asked two questions, one to Mr. Fiddick and one to Mr. Rawls, that I will submit to you so that you might give written responses for our record if you would. He has been in contact, as I understand with both of you or your offices as recently as July 11, and so I mention that as background for his inquiry in terms of followup.

[The prepared statement of Senator Robb can be found in the appendix on page 234.]

The CHAIRMAN. Senator Conrad.

Senator CONRAD. Thank you, Mr. Chairman. Thank the witnesses as well. Mr. Fiddick, we certainly have high regard for you and your background and it sounds to me as though you have got a plan to improve things. I have certainly heard very good things about Mr. Winningham and your background and the level of intensity you bring to trying to fix these problems.

Mr. FIDDICK. Thank you, sir.

Senator CONRAD. Can you tell us what you see as the major hurdles to be jumped here? You know as I was saying earlier, every time I have had a management problem, and this sounds to me like a management problem, I have generally found it is people. I have got the wrong people in the wrong slots. It does not mean they are not good people. Just sometimes you got the wrong people in the wrong slots. Sometimes you got people who just do not have the right attitude. They are not can-do people. You know they got a million reasons why something cannot be done.

I remember very well one time I had a serious problem in a major part of my department and after listening for about eight months to all the reasons things could not be done, I realized I just had a guy with the wrong attitude. I got him out of there and I got somebody with the right attitude and it is amazing how all the problems got cleaned up very quickly.

As you diagnose it, Mr. Fiddick, what is the primary problem or problems and how soon can they be resolved? Is there something that we can do that would help you and then I would have the same question for Mr. Winningham?

Mr. FIDDICK. I agree with your premise that there are few things in business or government that cannot be solved with the right management put in the right position empowered to act. I agree to some degree with what the previous witness from the GAO said

that the problems in the Civil Rights Office have been systems and process and people and more or less all of the above. The hurdle that we have, the height of the hurdle is all of the work that needs to be done. That is the bad news. The good news is that it can be done with the right management in the right place and I believe that we have begun to make those strides. You fix the problem a day at a time and a hire at a time and the new structure we have in the Civil Rights Office with Rosalind handling policy and regulatory and David handling operations is a good one.

We will bring on board before the end of the month a Deputy Director for Employment, which is an important position in our operation, and the person that we have hired is a career civil rights professional in that job. As the IG and the GAO has correctly reported, there has been a tremendous amount of turnover in this office since it was reconstituted in 1997. I do not know that anyone is to blame for that, but it certainly has been to the detriment of the efficiency of the office and the customers of the office. We can begin to fix that with each new hire and are.

Senator CONRAD. Mr. Winningham, what would be your response to that?

Mr. WINNINGHAM. My response is that the Office of Civil Rights came together very fast under a great number of adversities. The staff has never been pulled together in a coherent manner. The skills are lacking in certain areas such as programs which when you are looking at farm loan programs or rural housing or the various programs which complaints are filed against, having the rights skills and knowledge to be able to evaluate the issues that are associated with those complaints, we just do not have that.

We have a system where the files are not well put together and so we all have to look at our processes, we have to look at our skills mix, we have to look at the levels of authority and we have to look at the amount of resources. We also did a time study to take a look at how long it takes for each process of the complaint process to perform and we found that we are lacking in several areas. It is a comprehensive amount of things that must be done if we are to get out of this and the one that is big on top of all of this is the inventory of complaints that we have. My view is that we have to put together a project that would eliminate the inventory of complaints that we have right now as well as the new complaints coming through the system during that period. That when we get through it, we would be even. In my mind, that is significant if we are ever going to get our arms around this.

Senator CONRAD. You know it sounds to me as if you have got a backlog here that has got to be addressed and obviously you got the program side, you got the employee side. Is part of the solution here using alternative dispute resolution, to use mediation to try to get through these cases more quickly?

Mr. WINNINGHAM. That is not going to be the solution for what we have except by the time it gets to us, we are under the 180 day clock that is ticking where we have to take it through the due process. ADR is best before you ever get to that point. There are cases when you are getting into the resolution initiative that would lend themselves to ADR while it is in the formal complaint process.

Senator CONRAD. Can I ask Mr. Rawls just a question? That is you have got now class action suit that involved the black farmers, the Pigford case. You have got resolution there. You have got the Keepseagle case that involves Native Americans. Are these cases largely the same kind of cases in your view? Are they different kinds of cases? Are you treating them the same or are you treating them differently? If you are treating them differently, why?

Mr. RAWLS. Senator, I am going to disappoint you and give you a very bureaucratic answer, but it is really the only one I can give you, which is that Keepseagle is in active litigation being handled by the Department of Justice. You know motions have been filed. I really cannot discuss that case beyond that. I would offer to talk with the Department of Justice and visit with you or your staff about it, but I really do not think it is appropriate to try to make comparisons or otherwise talk about the case in this forum.

Senator CONRAD. I would like the opportunity to talk to you about it and Justice Department as well on those fundamental questions that I have asked here. How are they viewed? Are they viewed as largely similar or in some way different? I can just tell you that within the Native American community, there is a perception at least that there is differential treatment going on here and that is a great concern within the Native American community. I thank the chairman.

The CHAIRMAN. Thank you, Senator Conrad. Senator Lincoln.

Senator LINCOLN. Thank you, Mr. Chairman, certainly for holding this hearing which is very important to my constituents in Arkansas and, if I may, I would just like to make a few comments before I ask questions since I was tardy, and I apologize for that.

The CHAIRMAN. Please do.

STATEMENT OF HON. BLANCHE LINCOLN, A U.S. SENATOR FROM ARKANSAS

Senator LINCOLN. As the youngest woman in the history of our country to serve in the U.S. Senate, I certainly understand how important it is that the principles of equality and opportunity apply to all Americans. I found myself in the same position that many of the complainants have in your cases.

I feel that Congress definitely has a duty to ensure that discrimination does not prevent anyone from realizing their full potential or their dream and I believe that is why we are here today. I also believe that government assistance should be equally available to all citizens of this country and it is unbelievably disturbing to me that we even have a reason to hold this hearing, but I appreciate the previous panel of witnesses and certainly your willingness to be here.

There are certainly several allegations, as Senator Conrad brings up other issues and other cases, problems that we all be discussing today and in further discussions, but there is one in particular, the Pigford v. Glickman case, the class action suit, otherwise known as the black farmers case, that has caused great frustration to a number of my constituents in Arkansas. In 1998, I contacted by letter Secretary Glickman and President Clinton and the administration to handle this case as expeditiously and as fairly as possible.

I could certainly foresee the problems that were brewing. I was very delighted when Ms. Gray came to my office to visit with me during this year's session to talk about some of the frustrations that had escalated in Arkansas and the concerns that we had. However, I am extremely concerned about the claims approval process that was established by the consent decree that was signed by USDA and the lawyers representing the black farmers. I certainly recognize that some of that is out of your hands at this point. I also find that to be a bureaucratic answer as well in many ways.

I understand that that decree the Department of Justice is the official government entity presiding over that case. They have also been required to contract all claims reviews out to private organizations, which I have had a difficult time in understanding and in getting in contact with. The private entity reviews data that is collected by USDA to determine whether a claim is potentially valid. These private entities have control over that. Once a black farmer's claim has been designated as potentially valid, it is then referred to a second private entity which approves or dismisses this claim. I am assuming that I am representing the process correctly.

I have kind of filtered through as much of it as I can. The system was immediately overwhelmed by an unexpected number of claims, as you all have mentioned earlier. Attorneys for the black farmers had estimated that around 400 claims would be filed and instead more than 20,000 black farmers have logged discrimination claims with the court established claims evaluator. As a result, I am hearing that claims have been delayed and often handled without proper consideration, a lot of what everyone else in this room has been hearing and certainly you have as well.

I have heard from many farmers who feel their valid claims have been denied while others have been approved even though the two complainants' histories are very similar, side by side individuals living next door to one another, who have almost identical situations.

The court appointed monitor in this case, Randi Roth, opened an office in Memphis, Tennessee, which we were pleased because it would be in close proximity to the many cases that we had in Arkansas and to allow easier access to the black farmers. Yet I am still receiving complaints that many farmers cannot even get someone with authority over their claims to return their phone calls. To me that is inexcusable. Arkansas farmers often refer to USDA as a bureaucrat's endless bureaucracy and that is why it is so disheartening for us to get a bureaucratic answer. I certainly look forward to working with you all, but I do have a great deal of questions in terms of how my constituents are being handled.

Perhaps you can give me some idea or indication the approved number of 1,152 claims in this particular case, in the Track A claims, how many of those have been paid? I am also getting the reaction that they are getting a judgment but they are not getting paid. In your opinion, what can be done to expedite the review process for these claims approvals or their dismissals? Do you have recommendations for those independent entities that are out there handling this? From your management standpoint, is there a better

way that the private entities could be handling this and a better way for you all to work with them?

Mr. FIDDICK. I think that General Counsel Rawls probably can best field this question.

Mr. RAWLS. Well, I will say a few things. Pieces of the process are working quite well, but I would reiterate what I said earlier, which you alluded to, with 20,000 claims this has been a monumental undertaking. Specifically, to some of your questions, the third party adjudications, the review of the actual claim on its merits, under the settlement, was a very important aspect of the settlement, to move that out of the government, out of the department.

Senator LINCOLN. Right.

Mr. RAWLS. Hopefully instill some confidence in the claimants that, as I said earlier, they got heard one time. Maybe they do not prevail, but they got heard. Those adjudications, while they took quite awhile to set up this whole system, they have gone pretty well. In fact, they have done about 18,000 of those adjudications. Now where some of the——

Senator LINCOLN. How much of the approved ones have been paid?

Mr. RAWLS. Well, that is where I am getting to. That is where some of the frustration is. We have had about 11,000 cases approved. 7,000 of those have actually been paid. There is a group of claims that are in the process that are in the queue at the Department of Justice to be paid from the judgment fund.

Senator LINCOLN. A little over half. Because you are almost at 1,200 there in terms of the approved. These are just in Arkansas for me, my numbers.

Mr. RAWLS. OK. Obviously I do not have the Arkansas numbers in front of me, but class wide, 11,000 have been approved and 7,000 have been paid.

Senator LINCOLN. OK. I am sorry. The nationwide numbers are so close to Arkansas, I thought you were referring directly to Arkansas because ours are 1,100. Thank you.

Mr. RAWLS. Right. I can see why that is confusing. The payment system itself took a while to set up. The judgment fund apparently normally deals with very large, a small number of very large payments. This is a very large number of payments and frankly they were overwhelmed at the beginning of this, but that seems to be getting straightened out and those payments are being made now within 90 days.

Senator LINCOLN. Within 90 days?

Mr. RAWLS. Yes.

Senator LINCOLN. The backlog, do you anticipate within 90 days that backlog would be taken care of?

Mr. RAWLS. Well——

[Laughter.]

Mr. RAWLS. I cannot say that. What I am saying is that they are endeavoring to make 90 days from the date of the adjudication.

Senator LINCOLN. You feel confident that the system that is now in place is equipped to deal with both the backlog and those that are being adjudicated at this point?

Mr. RAWLS. I do. I believe the system is working. I am frustrated that——

Senator LINCOLN. Can I write my constituents and say in 90 days they can see it?

Mr. RAWLS. From the date of their decision, yes.

Senator LINCOLN. Mr. Chairman, may I ask one last question? Ms. Gray, you made the point in terms of percentages. Do we know where the agency, the Department of Agriculture ranks in terms of percentage of minorities in that agency?

Ms. GRAY. We certainly have the statistics for each of the protected classes. We would have statistics for African Americans, for Hispanics, and I would say that for most categories, the department is pretty close to—for African Americans, it is pretty close to if not slightly above civilian labor work force—for African Americans—below on Hispanic, below on Native Americans, and below on Asian Americans, slightly above on women in terms of the civilian labor force numbers, which is the way we track that.

Senator LINCOLN. You did make the comment that in terms of the number of cases that you had that it was not outrageous in terms of the percentage of minorities——

Ms. GRAY. Right.

Senator LINCOLN [continuing]. That you have in the agency.

Ms. GRAY. The employment complaints themselves——

Senator LINCOLN. Right.

Ms. GRAY [continuing]. We are about fourth or fifth in terms of the percentages. We are about at one percent and there are about four or five agencies that are below us and the rest are certainly above that, but about one percent of the total employee population.

Senator LINCOLN. Of USDA?

Ms. GRAY. Of USDA.

Senator LINCOLN. OK. Thank you. Thank you, Mr. Chairman. I apologize for running over.

The CHAIRMAN. Well, thank you very much, Senator Lincoln. Thank you for the historical note that you are the youngest woman elected to the Senate. That is an important point.

I would like to recognize now the distinguished ranking member of our committee, Senator Harkin of Iowa. He has been deeply interested in this issue and in a bipartisan way we have held these hearings, and as I pointed out almost annually, trying to come to some benchmarks and some solutions. I would like to recognize the senator for his opening comment or questions he may have of the witnesses.

STATEMENT OF HON. TOM HARKIN, A U.S. SENATOR FROM IOWA, RANKING MEMBER, COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY.

Senator HARKIN. Thank you very much, Mr. Chairman. I apologize for being late and I hope none of you take that as any indication of a lack of interest in this issue by me. As our chairman said, he and I both have had a long-standing not only interest but working bipartisanly to try to get this department moved and changed around so that we can not only handle the cases but try to find out why we got so many of them. Mr. Chairman, I thank you for holding this important hearing.

For far too long a positive record at USDA has been marred by a deep-rooted and far-reaching tolerance of racism, hostile work en-

vironments and discriminatory treatment of minority farmers. I do want to give credit to this administration and particularly to Secretary Glickman for the action he has taken. In December 1996, he appointed the Civil Rights Action Team. In March 1997, the Office of Civil Rights was created to address the employment and program complaints at USDA. He has taken some positive steps.

The administration also, as we know, reached a settlement in the class action suit by African American farmers concerning discrimination in lending and benefit programs. There has been some increased lending to minority farmers and a higher percentage of minority employees at USDA, all good indications of moving in the right direction.

That is the good news—despite those improvements, USDA's Inspector General and GAO have found continuing problems in the operation of USDA's Office of Civil Rights and even more troubling a failure to address the IG and GAO recommendations. The IG noted that no significant changes in processing complaints had been made since the last review. I do not know if you have covered that in my absence or not, but I would like to ask you about that.

I believe this is unacceptable, totally unacceptable. It is essential that USDA improve the process of handling complaints as called for by both the USDA Inspector General and the GAO. Even beyond that, what I just said, USDA must get to the root of the problem. The message has to come through loud and clear at USDA discrimination is unacceptable in any form, place or time. Now what I keep hearing is that the number of complaints at USDA completely overwhelms the system for investigating them. The Secretary has called for more outside help to come in to handle the complaints.

The question ought to be why are you getting so many complaints in the first place, not do we need to hire more people to process the complaints? What is the root of the problem, my friends? The answer is not just to hire more people to process more complaints. Why are you getting so many? That is the root of the problem and I do not see you getting to that. I do not see USDA getting to the root of that problem.

The bad actors have to be held accountable at the root of this thing, not just at the end of it, but at the root of it. Again, I do not know. I look in vain. I do not know. Can you fire anybody? Does anybody ever get fired at the Department of Agriculture?

[Laughter and applause.]

Senator HARKIN. You know? This goes on and on and on and on. You get more and more complaints and the system sort of bogs down. Then when the IG and the GAO make their recommendations, we come back a year or so later and we find out that no process changes have been made. That is what they say. Now maybe you have got a different story, but that is what they are telling me.

Now, last—I do not want to lay all the blame on the Department of Agriculture—Congress must also do its part. Mr. Chairman, I believe we can start by fully funding the Outreach for Socially Disadvantaged Farmers Program, which provides grants to eligible community-based organizations to provide education and other agriculturally related services to socially disadvantaged farmers and ranchers. Congress authorized $10 million for this program in the

1990 farm bill, but has refused year after year to fund the administration's request for that amount.

For 2001, both the House and Senate have approved only $3 million for this valuable program. It should be fully funded before this session of Congress ends and we should fund it through the Ag appropriations bill. It is not in your bailiwick, Mr. Chairman. It is in the appropriations bill, but it ought to be fully funded. It ought to be funded at the $10 million level. It is called the Outreach for Socially Disadvantaged Farmers Program. Congress has got to do its part on this also. Mr. Chairman, thank you again for having this very vitally important hearing.

[The prepared statement of Senator Harkin can be found in the appendix on page 64.]

Again, if I had one question I would ask of Mr. Fiddick, I would just ask the question that I just alluded to and that is the IG office and the GAO recommendations have noted that no significant changes in processing complaints have been made since the last review. Now have you already addressed before I got here?

Mr. FIDDICK. I hope we have.

Senator HARKIN. Well, try it again.

[Laughter and applause.]

Mr. FIDDICK. I will be happy to. The IG's field work ended coincident with the end of fiscal year 1999. All of the figures that you saw in the report were more or less current as of September 30 of last year. Since that time, well, I arrived on the scene in November of last year, and since that time we have made some organizational changes in the office of Civil Rights. We do that, we understand, at our peril because there have been a number of organizational changes, persistent organizational changes in that office, that have not worked to the benefit of the office. We think that we have arrived at a solution in this case that will work because we have divided the policy functions from the operational functions, invested the operational functions in a career executive, which has been the exception and not the rule, and will be particularly important in the coming months as one administration goes out and another administration goes in.

If I could give you one individual answer to that question that would give you some encouragement going forward, it is the effect of instituting and inserting a career officer at a high level in the process at this particular time.

Senator HARKIN. That person is there?

Mr. FIDDICK. David Winningham.

Senator HARKIN. That is you, Mr. Winningham, chief operating officer. How long have you been on board?

Mr. WINNINGHAM. I have been over there since April.

Senator HARKIN. Where did you come from?

Mr. WINNINGHAM. I came from FSA.

[Laughter.]

Senator HARKIN. Well, I do not know what that outburst was about.

Mr. WINNINGHAM. I am sorry. I apologize to you. Farm Service Agency. I was civil rights director in the Farm Service Agency since 1997.

Senator HARKIN. Since 1997?

Mr. WINNINGHAM. Right.

Senator HARKIN. Are you saying to me that the fact that there has been no significant changes in processing complaints, that only goes back to last September? That is what you are telling me. We are looking at less than a year. Is that what you are saying to me?

Ms. GRAY. Let us take it back——

Senator HARKIN. When was the last review?

Mr. FIDDICK. In March of this year.

Ms. GRAY. The last review in March was the employment review. The reviews actually started much earlier, that going back to 1996 when they identified the backlog of complaints, which had the 1,088 cases for program, and, in fact, all of those cases have been resolved except for three. In September 1998, Secretary Glickman convened an Early Resolution Task Force which was able to resolve all but 35 of those cases so that was an initiative that was conducted. It certainly was recommended by the IG and it certainly was part of one of the management decisions that the IG has accepted.

There have been through the various phases of investigations for program complaints—keeping in mind that the first IG investigation on employment only happened last year—certainly the resolution of more than 50 percent of the management decisions that they have made. You certainly will be getting copies of those for your record, I am sure. I do not think it is accurate. I have a letter from the IG's office as of August 31, which certainly records by number the recommendations and the management decisions that have been reached as a result of the investigations into the Civil Rights Office. To say that nothing has been done is not accurate.

On the employment investigation that was just completed this spring, we have reached management decision on more than half of the 21 recommendations in that report and the recommendations that have not been accepted, it is because the things were put on hold as the department completed the management plan. The management plan will certainly change the responses that were submitted. To say that there has been no progress or to say that there has not been agreement with the Office of Inspector General on the recommendations that they made is not correct. We will certainly be happy to submit the letters from that office to you for your consideration.

Senator HARKIN. Thank you. I may have some followup later, Mr. Chairman, but I see my time has run out.

The CHAIRMAN. Thank you very much, Senator Harkin. We appreciate very much your responses today. Obviously, you have heard the Inspector General and GAO to begin with. You have attempted to give at least as much optimism to the situation as you could, but clearly the underlying problems—Senator Harkin has mentioned them again—as we talked about them earlier, the high number of these cases, the reason for this number of disputes, is still not clear to any of us, perhaps not to you. Maybe it is something that you will never have an answer to. You do the best you can to institute procedures so that justice occurs in a fairly short period of time.

We will continue to be in touch with you. We would like to have, Ms. Gray, the comments that you just made or at least the findings

from the attempt to meet with the OIG recommendations or the reasons why these have not been instituted. Certainly his charges were very severe, namely the 119 recommendations and no progress. You are saying, in essence, management plans are about to be instituted incorporating some of these or you put some things on hold institutionally. This may be understandable, but, on the other hand, what appears to be the case is not much movement even given the critiques that seem to come annually and that is disturbing to most of us in this panel. Yes.

Ms. GRAY. It is disturbing, but we have resolved thousands of cases and the fact of the matter is that a thousand new ones have been filed.

The CHAIRMAN. This begs the question of why?

Ms. GRAY. Why? Because there is some discrimination and certainly the perception of discrimination at USDA. That is the situation. To address that, the Secretary certainly made several new initiatives in June. One was the accountability policy, to hold employees and managers responsible for discrimination, not only where there was an official finding of discrimination but also where there was a settlement of a case, because there was the perception that some managers were settling cases to avoid being disciplined. We have set up procedures to track the settlements as well as the findings and the settlement agreements are automatically forwarded to the Office of Personnel for them to take appropriate disciplinary action.

Senator HARKIN. Mr. Chairman, if I might just ask—I do not know the answer to this question. How does this number of complaints at USDA, civil rights complaints, compare with complaints say at HUD or at VA or at HHS? I would to know how this—is there any kind of comparison on this?

Mr. FIDDICK. There is as a matter of fact, Senator, and I believe that we can find that information for you. The source is the Equal Employment Opportunity Commission Report in 1998, which tracks employment complaints which is in their jurisdiction.

Senator HARKIN. Employment complaints.

Mr. FIDDICK. In that year, Agriculture had a number of complaints equal to 1.0 percent of its total work force and I have how the other cabinet offices ranked. Those which have a rate that would be more than Agriculture are Labor, Education, HUD and Transportation. Those that have a rate less than Agriculture would be all the rest. The 1-percent incidence——

Senator HARKIN. Excuse me. What did you say?

Senator LINCOLN. There is five that had more.

Mr. FIDDICK. There are four that had more.

Senator HARKIN. Four had more.

Mr. FIDDICK. Agriculture would rank five of the 14 other cabinet agencies.

Senator HARKIN. This is employment discrimination.

Mr. FIDDICK. That is correct.

Senator HARKIN. That is internally. We are talking about program.

Mr. FIDDICK. Right.

Senator HARKIN. These are not just employment cases you are getting. These are program complaints; right?

Ms. GRAY. That is correct.

Mr. FIDDICK. Yes.

Senator HARKIN. That is what I am interested in. Let us talk about the apples and apples. I am saying how does this compare? HUD has programs. HHS has programs that reach out to communities. What kind of complaints are they getting on civil rights complaints on their program applications and their program outreach programs compared to USDA, not employment, not employment?

Mr. FIDDICK. We do not have those figures.

Senator HARKIN. I do not either.

Mr. FIDDICK. We will try to find them for you.

Senator HARKIN. I do not either. That is why I asked you.

Mr. FIDDICK. It is much easier with EEOC because you have a central reporting agency. I would say, though, that there are many opportunities for USDA to discriminate because we have millions of transactions with customers. Our current loan portfolio is 214,000 farm loans. We originated 38,000 farm loans last year. We had 60,000 rural housing transactions. The denominator in the equation we are talking about is very large both for employment and for program activity.

Senator HARKIN. Well, I got to believe under HUD with all the Section 8 vouchers they have got and things out there, they are going to have about as many as you. I would just off the top of my head think it.

Mr. FIDDICK. We will look into it.

The CHAIRMAN. Just adding to that, Senator Harkin, it was also mentioned that the Forest Service has a good number of complaints and this, of course, is totally outside the loan business, an interesting part, and shows the far-flung aspect of USDA's activities. Well, we thank you very much for coming.

Senator HARKIN. Thank you.

The CHAIRMAN. We would like to recognize now a panel composed of Mr. John Boyd, President of the National Black Farmers Association; Mr. John Zippert, Director of Operations, Federation of Southern Cooperatives, and chairman of the board of the Rural Coalition; Mr. Lawrence Lucas, USDA Coalition of Minority Employees; Mr. Harold Connor, Upper Marlboro, Maryland; Ms. Juanita Carranza, Lambert, Montana; and Mr. Alexander Pires, Conlon, Frantz, Phelan & Pires, Washington, DC

Gentlemen, we thank you for coming this morning. I will ask each one of you, as we have the other panelists, to try to summarize your comments in a 5-minute period, more or less, and then that will offer opportunities for senators to engage in questions and colloquy with you. I will ask you to testify in the order that I introduced you and that, first of all, would be Mr. Boyd.

STATEMENT OF JOHN BOYD, PRESIDENT, NATIONAL BLACK FARMERS ASSOCIATION, BASKERVILLE, VIRGINIA

Mr. BOYD. Good morning, Mr. Chairman. I would like to thank you for hosting this hearing, this long overdue hearing, I might add, and also I would like to thank Senator Harkin and my good friend, Senator Charles Robb from Virginia, who worked long and hard on this issue, who introduced the statute of limitations waiver for African American farmers.

Again, my name is John Boyd, president and founder of the National Black Farmers Association, and it gives me good pleasure to be here this morning to talk to you for a few minutes about the problems that have existed for decades. It is our belief that our actions taken or not taken by the U.S. Government over the past century have systemically deteriorated rural America and African American farmers and other socially disadvantaged farmers across the country.

At critical times when our farmers needed government the most, they failed to come through for them. For that reason, I wish to thank this committee for taking a look at this issue this morning and I hope that my statements here today will be beneficial to everyone here as it relates to the plight of the black farmers.

The National Black Farmers Association has been working hard and long on the issue of black farmers from protesting, using our historic mule struggle, to gain the attention of the media over this issue, and again I would like to acknowledge the Clinton administration for at least taking a look at this issue and meeting with us on December 17, 1997, so we would like to thank the Clinton administration. To me, USDA is still known as the last plantation. I have personally named it an overflowing cesspool of filth that needs pumping and cleaning and disinfecting.

In the early 1900's, there were more than one million black farmers in this country. Today that number has declined to less than 18,000 black farmers. The National Black Farmers Association believes that must of this decline is directly attributed to the actions and inactions of the United States Department of Agriculture officials.

As I listened to the Inspector General this morning, it turned my stomach to hear our very own Inspector General admit to such egregious acts, numbers and boxes of unprocessed files that lingered in the Office of Civil Rights for decades. I remind you of the legal example such as loaded handguns in the United States Department of Agriculture office where African American farmers came in and was greeted by a loaded handgun, only to no prevail when no one was fired for this egregious act.

These are some things that we hope that this committee will take a strong look at and deal with, Mr. Chairman. In an atmosphere in many parts of the country where USDA officials gave millions of dollars in gifts to their friends and farming families while thousands of African American farmers was left without help, seven years ago, I personally faced some discriminatory acts by the United States Department of Agriculture. As I sat in my farm house by candlelight during the dead of winter, it became very clear to me. My lights had been turned off. Federal officers were knocking at my door threatening to confiscate my equipment. Foreclosure signs were being posted on my property. Stress had destroyed my family. There was no money. All of this at no fault of my own.

Through these type of actions and others has wiped out thousands of black farmers across this country, and we have to do something to deal with this kind of issues. I realize that I was not alone. Many other black farmers had lost their farms through egregious discrimination acts, mostly by the United States Department

of Agriculture, and this has been the worst nightmare for a lot of people across this country.

As these acts of discrimination continue with the United States Department of Agriculture, our government distances itself from cores and values on which this country had been founded. During the Reagan administration, America's top decisionmakers dismantled the Office of Civil Rights within the United States Department of Agriculture. This resulted in thousands of discrimination claims simply being thrown away or stored in boxes standing as high as ten cubic square feet per the Civil Rights Action Team report that was listed in 1997.

Black and other economic disadvantaged farmers have been and continue to be denied access through financial and programmatic resources readily available to others throughout our society. Mr. Chairman, I report to you today that our American dream is still being denied. Too many African American and socially disadvantaged farmers have just not received justice and it is still just a dream for them.

One of our first leaders to recognize this problem was Congresswoman Maxine Waters on the House side and she worked long and hard along with other Members of Congress to address this issue. With thousands and thousands of farmers yet to be compensated from this settlement, this appears to be an example of a hollow promise and again America failing black Americans like it did in the 1800's promising the 40 acres and a mule to those who had been wronged.

Again we are here today to say that we have to make that promise fulfilled. The class action did not provide any injunctive relief—a court appointed monitor who simply does not have the power to overturn decisions for farmers who supposedly prevailed in the class action lawsuit, lawyers who refuse to continue to represent them because they have not been paid either through the consent decree. Mr. Chairman, we have some serious problems with the class action lawsuit. There is a number—I see my time has run out—but there is a number of recommendations that I would like to submit for the record and I hope that this committee will take a long, hard look at those issues.

I would just like to close by talking about the county committee system. This county committee system, Mr. Chairman, makes up a racial makeup of 8,000 white males, 28 blacks and two females, which promotes racial disparity, sexism, and there has to be something—there is a law within the department that they can terminate people that are on a county committee. It is just simply not being done. Again I hope that this committee will take a long, hard look at a issue that has plagued this country for decades. Let this not be another listening session, but let this be a hearing that will be a long and fruitful harvest. Thank you very much.

The CHAIRMAN. Thank you very much, Mr. Boyd.

[The prepared statement of Mr. Boyd can be found in the appendix on page 138.]

The CHAIRMAN. Mr. Zippert.

STATEMENT OF JOHN ZIPPERT, DIRECTOR OF OPERATIONS, FEDERATION OF SOUTHERN COOPERATIVES, AND CHAIRMAN OF THE BOARD, THE RURAL COALITION, EPES, ALABAMA

Mr. ZIPPERT. Yes. My name is John Zippert and I am the Director of Program Operations for the Federation of Southern Cooperatives in Epes, Alabama, and I am also the chair of the board of the Rural Coalition, which is a national organization of community-based groups dealing with these issues, including the Inter-Tribal Agriculture Council, Hmong farmers in California, Latino farmers across the Southwest. I am here in both capacities and personally I have been working on this problem for 35 years, starting in 1965 as a worker/volunteer worker for the Congress of Racial Equality in St. Landry Parish, Louisiana, where I participated with the farmers there in an ASCS election and these were farmers who had not yet voted in a real election because of the passage of the 1965 Civil Rights Act.

I have a long history of working on this problem and it is a serious problem; and it is a problem, as you have heard this morning, that USDA has not fully addressed and we submitted 40 pages of testimony. We have been working on this for years. We will submit more. I am going to talk about the Pigford part for the end, but let me say that we are very concerned that top managers and people within the agencies of USDA are not being held accountable for the behavior of their subordinates.

There is a people problem there. As Senator Harkin asked, they have great difficulty in firing people who want to do the wrong thing; they appear to be more successful in getting rid of people and reorganizing people who want to do the right thing, and this is something that Congress ought to take another closer look at. I also support your statement and we have been strong supporters of the Section 2501 program of outreach for the socially disadvantaged farmers. Really if you look at the $10 million that should have gone into that problem, we have a deficit now since 1990 of 60 or $70 million that was never appropriated for a program that could do something about these problems and could reach out to people and give them information about all the programs of USDA, not just the loan program, the forestry programs, the crop insurance programs, the export programs and so on.

Let me also say on a very particular thing that we have been working on for years which is CRAT Recommendation No. 28. This was to create a registry of minority farmers so we could tell where they were and make sure assistance was given to them so that the disastrous reduction and loss of black-owned land would not continue. Here was a simple recommendation. FSA/USDA agencies agreed this would be done. We went through all kind of hurdles with OMB. I have a letter from Mr. Fiddick six months ago saying this is his top priority and yet today there still is no registry and there seems to be a dispute between the agencies of USDA on what funds can be used to actually implement and do this program. Something is wrong. Even the best intentions go awry and we have heard of records and so on here. They just do not seem to really put their mind on things and get it together and carry it out.

Now let me say about Pigford v. Glickman, and I had to tear myself away from my office. We have lines of farmers at all of the Federation's offices in the South today waiting to make sure that they can be included because there is a September 15 deadline for late filing. Because there was not adequate outreach and information at the beginning of this case, that not everybody who should have been in it knew about it and is in it. On page eight, nine and ten of the statement that we have given, we have some detailed concerns about this suit, and of the 20,488 Track A people—this is as of August 15—there may be a few more now—18,000 have been adjudicated. 10,931 have been approved, but only 6,600 of them have been paid, 60 percent. Here we are a year and a half since the settlement, two farming seasons and only a third of the people in the class have actually received a check and been paid.

Now of some of the people who have been determined by third party people that they were discriminated against, the government intends to ask the monitor to reconsider some of those people and I really think Congress ought to ask the Department of Justice to drop those reconsiderations. That if a third party found discrimination, all the things you have heard here, the government ought not challenge those third-party decisions.

In addition, we have 7,000 people out there who are seeking our help and the help of some of the other people you will hear from on this panel to make a reconsideration of their case, and some thought ought to be given that everybody who is in this class ought to get this settlement and we are going to work hard to see that those 7,000 people get their reconsideration.

Now, there is a lot that can be said here. One other thing is that although you have heard that third parties have dealt with this, FSA has had a flying task force of people to get evidence and information to challenge people's complaints of discrimination. They have had time and people to do that, but they have not had the people to send people a check. I have one farmer—I am going to finish with this. I have one farmer who gave me a letter which he received after waiting for his check for 90 days in which he is written by the settlement people that it is going to take longer because they have had too many people to participate in the case. I just feel if we can have a flying task force of FSA to find reason not to pay people, we ought to have a flying task force or somebody to help pay the people who have been judged to have been discriminated against and the farmer told me that this was the strangest, and he said that this letter—he described this letter as chicken excrement. He said this was the most chicken excrement letter he had ever got from the government.

[Laughter.]

Senator HARKIN. Do we have a copy of that? Did you put that in here?

Mr. ZIPPERT. I will put it in. I want to probably cross the person's name, but I will put it in.

The CHAIRMAN. Thank you very much, Mr. Zippert.

[The prepared statement of Mr. Zippert can be found in the appendix on page 141.]

The CHAIRMAN. Mr. Lucas.

STATEMENT OF LAWRENCE LUCAS, USDA COALITION OF MINORITY EMPLOYEES, WASHINGTON, DC

Mr. LUCAS. Thank you, Mr. Chair, and this honorable committee for taking the time out of your busy schedule to deal with the issue of not only the farmer but for the first time one of the things that has been missing in this whole dialog about the Department of Agriculture, which only a few of the media have addressed, and that is the problem of the racism and sexism and the hostile work environment that is not only perpetrated against farmers but against its own employees.

I would like to enter into the record my prepared statement as well as some attachments in support of that.

The CHAIRMAN. It will be published in full as will all of the statements of the witnesses.

Mr. LUCAS. Thank you. This organization, the Coalition of Minority Employees, started in 1994, but it does not represent just the concerns of African Americans. It just so happened that its president is black, but we represent the concerns of Asians, Hispanics, people of color, persons of disability, and all those people that fall under Title VI as well as Title VII. I would also like to say that the Honorable Chuck Robb and Albert Wynn have been in the forefront of not only dealing with the issues of the discrimination and the dysfunctional civil rights system in USDA, but he also deals with the systemic and the in-depth problem and used Mr. Harkin's aides to get to the breadth of the problem as it relates to employees.

You are not going to be able, as I said at the fairness hearing on behalf of the black farmers, you are not going to settle the problem of the U.S. Department of Agriculture unless you do what you have said and many of your colleagues—I think Mr. Harkin said it—that the one problem that they have not done, they have not fired people and not held those managers accountable for all the pain and suffering that is inflicted not only on employees but on customers throughout this United States.

In the Forest Service, in Montana, for example, we have examples, and the Forest Service will tell you that there was not a woman thrown down the steps. They will tell you that there was not a woman who lost her fetus because of hostile work environment. They will also tell you that there are no acts of nooses being held and portrayed on government buildings. They will say that the "N" word is not being used. They will say they treat all people of all religions, Jews, Asians, Arabs fairly.

They do not deal with those issues fairly on a broad base at USDA. The problem, Mr. Chair, is the problem that the Department of Agriculture and their recommendations that I heard even from the Office of General Counsel laying the problem on only on civil rights employees is wrong. The initial complaint that comes from discrimination does not come from the employee in the Civil Rights office. It is because of that culture, all those isms, the bigotry that is perpetrated at the ground level. It is wrong for OIG and anyone else who comes to you to say that the problem in Agriculture is the problem of the employees in Civil Rights. That is just one of the problems and believe me it is dismal.

However, what is very important that the problem starts at the ground level by employees who do not treat their employees with dignity and respect and they feel the same way about its customers. Now let me say one thing about the Office of General Counsel that made recommendations to you today. That same Office of General Counsel tells you that we have got a problem and we are straightening it out, but it was that same general counsel that told the American public, this president and this committee that there was no discrimination against black farmers. There is a contradiction here.

Now they also tell you that the Office of Civil Rights under Mr. Winningham is going to be correct. Senator Harkin kind of touched it. How can the individual that has been overseeing civil rights and the demise of employees in FSA, the Farm Service Agency, and farmers now going to take on the responsibility of seeing that employees and farmers are treated fairly? That is a hypocrisy and they lay that at your feet and want you to believe it.

The employees of the U.S. Department of Agriculture and the people I represent, the Hispanics, the Asians, now they will say why is it that we have a 10-percent increase in complaints if everything is being fixed? They will say, OK, we have resolved 13 complaints and fired people, but not one of those complaints of persons being fired have discriminated against a black farmer and we are paying over a billion dollars and no one being held accountable for farmer complaints and they tell you that the situation is fixed. They do not hold anybody accountable for discrimination against black farmers, but they also do not hold anybody accountable for discriminating against employees.

Now they will tell you now that gives me a great deal of pain. They tell you that all the fixes are in place and I tell you that they are not. Until we get to the problem and make sure that people who are around the Secretary, who tells the Secretary that everything is all right, and has advised him poorly including the Office of General Counsel, we need to do something about firing people. You have people at the U.S. Department of Agriculture running the Office of Administration and Civil Rights, but you also have the real problem at the ground. Until you begin to make sure those individuals who are the ones who are discriminating found guilty of discrimination are punished is the problem.

I will close by saying this. There is a structural problem at USDA. They will tell you that everything is fine. You cannot have the Assistant Secretary for Administration overseeing civil rights and overseeing the Office of Human Resources. That has been proven a no-no by the Civil Rights Commission. They have been advised by the EEOC, but yet and still they will come to you and say we have got the fix. I say to you that the structure of civil rights, you need an assistant secretary responsible for civil rights who answers directly to the Secretary or the Deputy Secretary.

Those people in civil rights cannot answer to the same person who handles the office of human resources that is supposed to hold people accountable because it does not work in government. I am saying that there is a structure in USDA which they tell you, Mr. Chair, that is fine. I am saying the structure is fixed and I say what they are saying to you is that the problem is in the Civil

Rights Office. I say the problem is all the sexism and racism, bigotry and hostility that the employees at the Department of Agriculture that administrator after administrator, president after president, secretary after secretary has allowed to go on, and I would hope that this committee would not be fooled by the program that they offer for you. You have got to hold people accountable at every level and fire those people for discriminating against the American citizens as well as very competent and hardworking employees at the U.S. Department of Agriculture. Thank you.

The CHAIRMAN. Thank you very much, Mr. Lucas.

[Applause.]

[The prepared statement of Mr. Lucas can be found in the appendix on page 188.]

The CHAIRMAN. Ms. Carranza, we welcome you. As Senator Baucus mentioned earlier today, you have spent two days on a train to get here.

Ms. CARRANZA. Yes, I did.

The CHAIRMAN. We appreciate that perseverance and we look forward to your testimony.

STATEMENT OF JUANITA CARRANZA, LAMBERT, MONTANA

Ms. CARRANZA. Thank you, Senator. As you said, I did spend two days on the train and so you might as well shut your little light off because I am going to read my written testimony.

[Laughter.]

Ms. CARRANZA. My 89-year old mother made that trip with me and it was 48 hours. Thanks to Amtrak. First of all, I would like to thank you for the opportunity to appear before you and address the civil rights resolution process at the United States Department of Agriculture. I will have no statistics to testify about because numerical figures do not tell what the reality is about. The fact is that in the delivery of its federally mandated farm programs, the United States Department of Agriculture has like the Bridgestone/Firestone Corporation a broken, defective and deadly product that must be recalled.

If a recall is not in order at USDA, what other reason can one give why certain farmers and ranchers are selectively chosen to be denied services at the FmHA/FSA county office level when Federal law states that no one, and I quote, "shall be treated differently"?

If a recall is not in order at USDA, why is the pattern of discrimination that begins at the county office level continued and enforced by entrenched FmHA/FSA state office officials regardless of what Congress mandates?

If a recall is not in order at USDA, why is the mandatory in-house appeals system, one that ultimately reiterates the original death sentence, begun at the county office for the targeted family farmers and ranchers foolish enough to believe that there can be justice in that mortally flawed charade?

If a recall is not in order at USDA, why do regional USDA Offices of General Counsel combine forces with the Department of Justice not just to remove farmers and ranchers from their land but go for the jugular effect? Then the selected farmers and ranch families are left penniless, humiliated and beaten with not one shred of human dignity left and in some cases self-inflicted death

is an easier solution than the tortuous process delivered from those two government entities.

If a recall is not in order at USDA, why has the civil rights resolution process been such a dismal bumbling farce? On November 13, 1998, Secretary of Agriculture Glickman spoke of resolving the discrimination fiasco as USDA. He quoted Dr. Martin Luther King, and I quote: "An unaddressed injustice at any time is an injustice for all time." The Secretary should be reminded of what Dr. King instinctively knew, that it is the speaker's actions that validate the spoken word, not just the pacifying rhetoric.

Let the Secretary and his civil rights team tell Joann Martens of Wolf Point, Montana, who filed a civil rights complaint in 1993 because she was denied the same servicing actions that were only given to her ex-husband and was then told by the county office supervisor, that women do not belong in farming and is still waiting for her case to be resolved, that USDA really does believe in justice.

Let the Secretary and his civil rights team tell Sharon Mavity of Sidney, Montana, who filed a civil rights complaint in 1997 when she tried and failed to save her fourth generation family ranch for her and her sons because she was denied the loan servicing that was instead given to a selected young white male and is still waiting for her case to be resolved, that USDA really does believe in justice.

Let the Secretary and his civil rights team tell Rosemary Love of Harlem, Montana, who filed a civil rights complaint in 1997 and whose 36 year marriage ended 3 months ago because of the strain of fighting FmHA/FSA for 17 years and is still waiting for her case to be resolved, that USDA really does believe in justice.

Let the Secretary and his civil rights team tell Jacky Shiplet of Livingston, Montana, who filed a civil rights complaint in 1996 after she was denied loan servicing by FmHA/FSA, but young white males did receive loan servicing, and who has had to choose between food or medicine for her disabled husband, that USDA really does believe in justice.

Let the Secretary and his civil rights team tell Dolly Stone of Browning, Montana, who last week had to stare down a sheriff's foreclosure sale on her ranch despite USDA's own moratorium on foreclosures for class members of the Keepseagle v. Glickman class action, that USDA really does believe in justice.

Let the Secretary and his civil rights team tell Margaret Carranza, my 89-year old mother, who experienced the deliberate pattern of insufficient and repeated late funding from FmHA/FSA that is meant to drive certain farmers and ranchers into insolvency and bankruptcy, that the USDA really does believe in justice. The USDA in-house appeals process deliberately failed her by failing to make FmHA/FSA adhere to the regulations and rules that are supposed to regulate farm programs.

The USDA civil rights process failed her at the time of the discrimination complaint partly because it had been dismantled by the Reagan/Bush administrations.

I have to tell you that I am missing part of my testimony. Do you have it? Thank you. I apologize. I will begin again the last paragraph. Let the Secretary and his civil rights team tell Mar-

garet Carranza, my 89-year old mother, who experienced the deliberate pattern of insufficient and repeated late funding from FmHA/FSA meant to drive certain farmers and ranchers into insolvency and bankruptcy, that USDA really does believe in justice.

The USDA in-house appeals process deliberately failed her by failing to make FmHA/FSA adhere to the regulations and rules that are supposed to regulate farm programs. The USDA civil rights process failed her at the time of the discrimination complaint because it had been dismantled by the Reagan/Bush administrations in 1993.

The Chapter 12 bankruptcy process failed her because the tentacles of FSA reached into that system as well. The state FSA office furious that a discrimination complaint had been filed refused to let the family operation into the Chapter 12 protection unless they signed a drop dead agreement that signed away the discrimination complaint and all of their rights under due process guaranteed to them by law.

Our congressional delegation failed her because when letters were written asking for their intervention, FmHA/FSA state and national officials responded denouncing her operation as the guilty party. Even elected representatives, like the general public, can also be guilty of believing that only government knows best and that the government is always right until it is too late, too late to stop an overzealous Assistant U.S. Attorney from declaring that she is aware of Secretary Glickman's moratorium against foreclosures on open USDA civil rights complaints, but she is going to bring the full force of the Federal Government down upon the Carranza women and make an example of them, and she did.

The personal property was seized by the U.S. marshals and sold at public auction even though Dr. Jeremy Wu of USDA's Office of Civil Rights kept assuring the Carranza's that the sale would be stopped. When it was not, he would not return repeated phone calls.

Personal family effects, baptismal records, family ranch records, family heirlooms are still on their former property because the same Assistant U.S. Attorney said, and I quote, she would "have the FBI on their heads so fast it will make their heads spin" if they attempted to retrieve their possessions from their former property now owned by FSA's predetermined buyer.

The USDA Office of Civil Rights has failed Margaret Carranza miserably as well because they not only failed to protect her rights in the foreclosure process, but they have failed to honor her rights as a human being, the same rights that our country was founded upon, and I quote, "that all men are created equal, that they are endowed by their creator with certain inalienable rights, and that among these are life, liberty and the pursuit of happiness."

I ask you today is seven years long enough for Margaret Carranza to wait for the justice that the Secretary pontificated about in 1998? What about the other women from Montana that I mentioned earlier? What about all the other farmers and ranchers, men and women, that this out of control FSA system has been allowed to selectively remove from farming and ranching? Senators, this is not an exaggerated unsubstantiated testimony that a Fed-

eral system you are responsible for is defective and that it must be fixed.

What you have heard is the reality of our lived experience and no buck passing, denials, or stonewalling is going to make it go away because we the people upon whom the injustice was committed are not going to go away until the system is fixed. Change not just for us but for all of those who will be a target the next time someone walks into a USDA office and wants their land, too. Thank you.

The CHAIRMAN. Thank you very much, Ms. Carranza.

[The prepared statement of Ms. Carranza can be found in the appendix on page 212.]

The CHAIRMAN. Mr. Connor.

STATEMENT OF HAROLD CONNOR, UPPER MARLBORO, MARYLAND

ACCOMPANIED BY JOSEPH D. GEBHARDT, ESQ.

Mr. CONNOR. Good morning. My name is Harold Connor and I would like to thank the committee for giving me an opportunity to appear this morning. I have a longer statement, a longer written statement, and I would like to request that it be included in the record.

The CHAIRMAN. It will be published in full.

Mr. CONNOR. Thank you very much, and I will try to make my comments brief. As I said, my name is Harold Connor. I am an employee of the Farm Service Agency. I am currently the Deputy Director of the FSA Price Support Division here in Washington, DC, and we handle a number of programs including the Market Assistance Loan Program, the Loan Deficiency Payment Program, Small Hog Operation Payment Operation Program, and our programs provided more than $15 worth of financial assistance to the nation's farmers on 1999 crops.

I began my career with FSA in 1971 while still in college and graduated from the University of Missouri and was hired as the first black county executive director for FSA in the state of Missouri, came to Washington in 1983, and within a few years after I got to Washington, I encountered my first significant racial discrimination within FSA. I filed a complaint but then after talking with some of my colleagues, both black and white colleagues, they mentioned that most people who filed complaints are marked, and in the future they have a very difficult time either obtaining promotions or they also would face some retaliation. I dropped that complaint.

Things did not get any better on the job and within a couple of years I filed another complaint, carried that through to a settlement, and once I did finally come to settlement, but before I did reach a settlement, I had had severe and permanent damage to my health and my marriage. In 1976, I applied for a position as Director of the Audits and Investigations Group with the Farm Service Agency, and I thought I was well qualified for the position, had 12 years of experience, some seven and a half years as a county executive director, and I had also handled audits as a program specialist in Washington, DC

The white selecting official selected a lesser qualified white for the position so I filed an EEO complaint under the *Herron v. Glickman* class action complaint that was brought against FSA by middle managers, grades 12, 13 and 14, African American managers in Washington. On December 14, 1999, I received a finding of discrimination from an EEOC judge and within a couple days after that, a representative of USDA falsely told *The Washington Post* that even though I received a favorable determination that I had already been promoted, which really kind of irritated me pretty much because we had not even come to any kind of decision.

The EEOC judge recommended that because I had been discriminated against, that I be promoted to a grade 15 position that was either in my current position or a position that was similar to the position that I had applied for. The position that I had applied for and been unfairly denied has since been abolished so that was not available. They also determined that I should receive back pay, back to June 9th of 1996, and $10,000 in compensatory damages.

The Office of Civil Rights turned the enforcement of these provisions back over to the Farm Service Agency, and they even gave Farm Service Agency the option of offering me whatever position they wanted to offer. What FSA offered me was a position that was especially created as assistant to a Schedule C political appointee and with no supervisory responsibility and no management responsibility and no major program responsibility.

This did not fall in line with what the EEOC judge had decided that I should have because it was not substantially equivalent to the position I had applied for or the position that I was in. I turned that offer down and filed a noncompliance complaint with the USDA Office of Civil Rights. They did not bother to respond to my complaints, so I filed a complaint through my attorneys with the Office of Federal Operations with EEOC. I am confident that I am going to win my appeal there, but the problem with that is that it normally takes about two years for that complaint process to carry out so in the next two years I am going to have additional damage to my health waiting for a determination to be made.

I do not believe that the Office of Civil Rights should ever have turned the enforcement of its rules over to FSA because they were the agency that had discriminated against me. The Office of Civil Rights takes a stance that seems to be trying to favor the agency that is involved in the discriminatory activity.

They either take action or inaction depending on what is going to support management's position. For instance, a friend of mine, who is also in the *Herron v. Glickman* complaint, had a complaint of reprisal that was never investigated and there was no record, and yet the Office of Civil Rights decided to dismiss that case because it would be advantageous to management. By the Office of Civil Rights pro-management stance, it encourages those within the agency who are interested in retaliation.

I have a particular case that or particular situation that I wanted to mention. We, within the Price Support Division, were trying to get some automated functions out to allow producers to request loan deficiency payments from home without making a trip to the office, and it would be totally automated to where they did not just have to key it in and print off an application and then send it in.

Rather, it would be automated to the point where they could key it in, it can be processed, and we can issue the payment to them through electronic funds transfer.

However, the division that we had to go through to get these processes put in place has just completely stymied us from day one. As a matter of fact, at one time the director of that division, acting director, informed his key people not to talk to myself, my immediate supervisor, who is also an African American, or the chief of our Automation Branch, Mr. George Stickels, who served up here as a congressional fellow for a period of time. This same person whom we have to go through to get automated functions put out raised a question at a manager's meeting as to what can be done about people who file multiple EEO complaints, and there are some more things that are in the record that we submitted.

The main issue that I had today is that even though a representative of the Department said that I had already been promoted, I have not been promoted. This is some nine months after the determination was made. I have not been promoted. I also have not even received any back pay. As a matter of fact, the agency has not even begun to process my back pay. When I submitted an e-mail to the Human Resources Division asking about the status of my back pay, I was referred to an OGC attorney and that attorney said that they would not answer any of my questions. If I had any questions about this particular case, I would have to contact them through my attorney.

With this hearing today, I would just like leave some recommendations of what the Department could do to help the Office of Civil Rights to kind of take a more active role and a more positive role in solving some of these employee complaints. The Office of Civil Rights should be more involved in the negotiation process when we are trying to negotiate settlements. They should have full power and authority to see that any orders that it sends down to agencies are fully carried out and properly carried out, and the Office of Civil Rights should also take a more active role in keeping the statistics on race and promotion in a format that could be useable in EEOC cases.

As a matter of fact, the EEOC judge who heard our particular case said that the documentated statistics on race and promotion that were submitted by FSA were very unreliable and left much to be desired. Again, I would like to thank the committee for allowing me to have a few minutes and if possible I would like to have my attorney maybe say a couple of things.

[The prepared statement of Mr. Connor can be found in the appendix on page 216.]

The CHAIRMAN. Well, Mr. Connor, let me just ask—I will grant your wish, but it will need to be a brief comment because we need to proceed on to the next witness and to questions as I announced earlier.

Mr. CONNOR. Yes, sir.

The CHAIRMAN. We have permitted you and other witnesses to speak much more than the 5-minutes because you have a very important case to make, but please I will allow your attorney to make a comment, but be very brief if you can.

Mr. GEBHARDT. Thank you, Senator, and Senator Harkin. My name is Joseph D. Gebhardt, and I have been Mr. Connor's attorney for several years now, and I was the lead attorney and still am in the *Herron v. Glickman* class action on behalf of the middle management black employees at FSA.

One thing that we have found in the case that really you should know about is that the Office of Civil Rights is sending its staff people to depositions in EEOC cases to defend management. They are acting as pseudo lawyers. Some of them are lawyers, and OCR is actually sending staff people to represent and defend managers at their depositions in these EEOC cases. When you wonder what those 120 employees are really doing, that is something that is going on.

Now, Charles Rawls also told you that the OGC attorneys who are in the Civil Rights Division, he said it is a small and experienced group of people, that they work on a variety of civil rights issues and they give civil rights advice. What they really do is they defend management in the EEOC hearings. That is what the OGC civil rights lawyers do probably 90 percent or 100 percent of their time. Every time we have a case at the EEOC, they are there representing management. In fact, the OGC lawyer told the EEOC judge that Harold Connor was not discriminated against.

Well, the judge saw through the smoke and all that and ruled that there was discrimination, but that is what OGC's Civil Rights Division lawyers are doing. Mr. Rawls told you that they are experienced—they are a small group and they are not experienced. One of the lawyers we worked against in the *Herron* case had graduated from law school one year before.

You have heard about this mismatch of skills in the Office of Civil Rights today. I will give you a good example. The former Environmental Justice Coordinator for USDA Central Office, Dr. Velma Charles-Shannon, they competed their position. They just put it up for bid because they transferred it out of departmental administration and the civil rights arena over to the Forest Service area. She had to compete for her job. Fair enough. She had a doctorate in toxicology and had some civil rights familiarity. She is a black woman, very high stature, had held a lot of responsible jobs in government before.

They gave her job to a white woman who did not have any qualifications like that and who had applied for the job and had been interviewed over the phone; they just gave her job to a white person. Well, what did they do with Dr. Velma Charles-Shannon? They made her an employment complaints specialist in Civil Rights. It is not that they are putting garbage employees in there. They are creating the skills mismatch in order to promote discrimination.

Mr. Connor just told you about the back pay issue, that they have had nine months to get ready to pay his back pay. We gave them the calculations—what—about six months ago for him and Dr. Cliff Herron, who is in the audience, another discriminated against FSA employee, as found by EEOC and USDA. They have not paid Cliff Herron's back pay either. We have asked them to send us the calculations when they get the calculations done. They

are not doing it. There is no interest in civil rights enforcement at USDA.

Secretary Glickman's spokesman, Andy Solomon, lied in *The Washington Post* and said Harold Connor and Cliff Herron had already been promoted. We have let Secretary Glickman know that. We let the USDA/OGC lawyers know it. They have not taken any corrective steps. This goes to the top and that is all I have to say.

The CHAIRMAN. Thank you very much. Mr. Pires.

STATEMENT OF ALEXANDER PIRES, CONLON, FRANTZ, PHELAN & PIRES, WASHINGTON, DC

Mr. PIRES. Thank you very much. My name is Alex Pires. I represent farmers for a living and I wanted to talk about three things: the black farmers, the Native American farmers, and the Hispanic, women and Asian farmers. I started the black farmers case. I wrote the complaint. I started with the three original black farmers, Tim Pigford, Lloyd Shaffer and George Hall.

The black farmers case was just a modest attempt to make changes at USDA. It was not intended to do anything more than that. My hope when we started was to get two or 3,000 black farmers hearings. You have heard today everybody testify about it. In the end there will be maybe 25,000. I need to tell you how crazy it is out there. Last week the Poorman Douglas Company, which handles the phone calls, got 127,000 phone calls. Yesterday, they got over 20,000 phone calls from black farmers complaining. My office everyday my phone system completely overloads—everyday. I have 13 lawyers. We are getting four to 500 pieces of mail and faxes a day on the black farmers case. The case is actually getting bigger.

I did not come here to talk about that. I came here to talk about the problem. USDA, you are complaining to the wrong people. It is not the people in Washington that are the cause of the problem, in my opinion. It is at the local and state level. It is a very racist organization. It is white men running everything. All the local county committees are white males. How do they stay in power? You can only vote if you are a farmer in the program. You only get in the program if you get a loan. You only get a loan if you get approved. You only get approved if the people in power decide to give you a loan. It is self-perpetuating.

In the history of this country, there has never been a black dominated county committee even in black counties. There has never been a Hispanic dominated committee even in Hispanic counties. Women are even more powerless. White males run the show. In the South, the local county offices fill out the forms for white people. Minorities do not get services. It is very simple. I have been doing this for 20 years. I have represented more farmers than anybody in the country. I see it everyday. I have been to more county hearings than anyone. That is what I do. The racism exists at the local level.

Native Americans it is even worse. They get no services. It is a national disgrace. I am in the middle of that case I filed also called Keepseagle. The government is fighting the case. It is worse than the black farmers case. The Native Americans have been treated worse, if that is possible. They never get servicing. They never get

attention. They never get loans. They will not settle with us. I understand that. They will not talk to you. Senator Conrad asked questions about it, as did others. I understand that. I am a big boy. It is litigation. In the end, we will prevail, but it will be bigger. We will be back in front of you and you will find out the Native American case will probably have 40 to 50,000 claims.

The third problem is Hispanics, women and Asians. They are totally powerless. They are out of the program. When a woman walks in to a local county office, she has very little chance of getting good servicing. It is not these people in Washington. It is people at the local level. You do need to think about changing the system. The election process does not work well. White men will always be in power. You need to have a different system to get minorities in power at the local level. The state system, it does not work either.

On the positive side, we have learned two things in the Pigford case. You can have private enterprise process cases. You can take the best part of the government, which is its money, and match it with the best part of the private sector, which is its processing, and we have done almost 20,000 cases in a year and a half. We can do a lot better job. What we have learned is that black farmers had a lot to say about the system and it has been good for everybody.

It is very easy to complain about a lot of things. Have there been delays in getting checks? Yes. The judgment fund where the money comes from is overworked. The people in Washington have been intellectually honest about the settlement of the case. They have worked hard. We meet constantly about it. I do not think it is a case of bad faith there. Could we do better? Sure. We now have 46 retired judges writing decisions, 11 arbitrators issuing arbitration decisions. The monitor's office has ten people. Like I said, I have 13, 14 full-time people working on it. I have another hundred lawyers that I brought in. The vast majority, by the way, are black.

I could do a better job in the American Indian case if I could get it resolved. I need help from Congress. They need to help us get the government to the table and get started on all these cases. Native Americans have 25 years of stories to tell. We might as well get started and start telling them. There is no sense in acting like it is not there. It is almost impossible as a Native American to get a loan. I do not care whether you are in North Dakota, South Dakota, Montana.

I spend all my time on the road. It is very, very hard because if Mr. Harkin comes into my office and sits down, I have two choices. I can sit down and help him fill out the forms and work with you, ask you questions, help you help me help you by asking you to fill out the form with me together. You and I work together. I can qualify you. If I do not want to qualify you because you are a Native American or I do not particularly care for you because you are a woman, you are never ever going to get approved. That is how the system works at the local level. If I do not want Mr. Harkin to get a loan, you, sir, will never get a loan. If I want you to get a loan, I do not care how many problems you have had, I can qualify you. That is basically how it works.

Finally, these people here, all of them who I know, have worked very hard. These are very controversial cases. I am in the middle now with a whole mess of people trying to work on the reparations

matter and I find that it is not my fault, for example, that I am a white person. I would prefer actually for what I do for a living if I was a black person, but I am not. I cannot say anything more about that other than it makes it more difficult.

The black farmer is a wonderful and loving person. They have persevered through what no human being would normally do, much like a war. Because of John and others, they are making progress. It is difficult. There are fights constantly everyday, everyday. The Native American case, though, is actually worse, and I would ask you in your hearts to think about that. It is a national disgrace, not the problem these people behind me, at the local levels, and we need to do something about it.

It is just money. It is just money that is needed to process these. Yes, there will be a billion dollars in the black farmers case. My gosh, that is nothing. We have given out over $100 billion in subsidies in the farm program in the last 15 years. What is a billion dollars? It is not that much money.

Finally, when you help us solve the Native American case, think about the women and the Asians and the Hispanics. We have until October 20 something to file the last case. We are working on the last case to file which involves them. It is very complicated. I know people do not like lawyers. I do not much like them myself. We have no other choice right now. I do not see the legislative solution for what we are doing and I do not see anyone else coming forward so we have these cases. I do thank you very much, though, for taking the time, and I will answer whatever questions about any of the three cases. Thank you.

The CHAIRMAN. Thank you very much, Mr. Pires.

[The prepared statment of Mr. Pires can be found in the appendix on page 229.]

The CHAIRMAN. Let me begin by asking you a question. If I heard you right, one solution, and this oversimplifies it, but sort of work with me, you would literally contract out the process that is now occurring in the civil rights function in USDA perhaps to private lawyers? Is that a possibility?

Mr. PIRES. No. You have the right thought. In the black farmers case, the way we got 20,000 cases processed was to give it to private enterprise, retired judges and give them very short deadlines. In the Native American case, you are going to need that. You are never going to be able to go back to the government system and get it done. It is also wrong. You are not going to be able to get people to rule upon someone that they discriminated against. It is naturally inconsistent.

You are going to have to do that with Hispanics, women and Asians also. In the bigger picture, the best thing that you could do to help farmers, to help American farmers, is to change the election system at the local level, to take the white male and take his power from him. I can give you two thoughts for what it is worth and you are far smarter than I. One is let people put their name in to be nominated in any county. 15 people come forward and then select, give the power to who you want to select so they can pick women, they can pick Asians, they can pick Hispanics. If it is a black county, in Green County, Alabama, and it is 71 percent black, why do we have five white people? Makes no sense to me.

My gosh, what are we doing? Why could you not set up a new system, a new system for elections to take the power away from the white males. That would overnight make everybody's job up here better. We are yelling at the wrong people. By the time the problems get here, they are completely out of control, Senator.

The CHAIRMAN. Well, just following through that idea, clearly in the 71 percent black county you mentioned, if everyone was eligible to vote and did vote——

Mr. PIRES. They are not, sir, because they do not have loans. That is the key. There are 71 percent of the people who are black, but the farmers who are in the program, the black farmers are probably only 30 percent, the white folks get all the loans. White folks have 70 percent of the votes. They vote the white people in and they just perpetuate the system. The election system does not work. It is self-perpetuating.

You know how they give out loans in the South? White people get it first who are members of the committee. Their sons get it next. The seed guy, the implement dealer, the John Deere dealer, the white structure, all owned by white people first. After the money has been pretty much taken care of, they look to blacks next and they look to women last. Hispanics, if there are some. Now in the big four out West, in Texas, Colorado, California where Hispanics have more of a stick, they do a little bit better. Essentially white people take care of white males first. The election system does not remedy it.

The CHAIRMAN. All right. Let us say we change the franchise so that everybody voted, not just those who have loans, for example, now then what happens?

Mr. PIRES. It would be great. It would be great. It would be wonderful.

The CHAIRMAN. This is, without trying to force at least a conclusion, this is a legislative recommendation that you would make?

Mr. PIRES. Well, me—these people know more about it—that is what I would do. I would love to get the white male and put him in his place. I am getting to hate white men.

The CHAIRMAN. Mr. Boyd.

Mr. BOYD. Mr. Chairman, to reiterate on some of the things that Mr. Pires is talking about, half the problem is there are African Americans on these committees, but they cannot vote. In other words, they are sitting in the county. They are minority advisors to the committee that have no voting privileges and I cannot believe that we are sitting here in the year 2000 that we have committees, Federal committees that exist that deprive certain groups of people the ability to vote. That is one aspect of it.

The county committee system was designed to steal land. It was a legal way to steal land from poor African American farmers and other socially disadvantaged farmers where the county committee people, and these are—Mr. Pires, you are right—the most powerful people, powerful white farmers in the communities that get together and say, OK, I am going to get Mr. Boyd's farm at a third of what it costs, and what they done was I had a county committee person come by my house. It was not advertised in the newspaper. He said, Mr. Boyd, I know you are in trouble, I am going to give

you a chance to get out, come live on my farm if you sign these documents.

He had my paperwork coming to my farm talking about selling my farm out. I had a few choice words for him, but I am running for office and I cannot say them today.

The CHAIRMAN. I understand. Mr. Zippert.

Mr. ZIPPERT. There are a number of things, some of which Mr. Pires has pointed out, but actually technically everyone in the county who has a farm interest can vote in this election. However, the procedure under which you register to vote is not clear and the procedures under which people get ballots and the procedures on which ballots are counted, all of this has been, is really a scandal that needs to be looked at, and that is the problem.

For instance, in some counties, the husband and wife each get a ballot if they are white, but black people, only the husband gets a ballot. This is based upon this whole cultural process that has been described here or racist process, depending on what you want to call it, and this is what goes on and then we have a chart, a detailed chart, in the report we submitted to you following page 32 which goes into some of the statistics that the Rural Coalition was able to get from FSA about these elections. We have a FOIA that they have yet to respond to. You might want to ask them about responding to that.

The CHAIRMAN. What is your request?

Mr. ZIPPERT. Well, we requested information about the results of these elections and participation in these elections, number of ballots that were invalidated and reasons for it, and we have not gotten a response, and it sort of comes—Mr. Pires has described in simpler terms, but there are complexities in this and specifics in this and if you know the system, there are ways in which you can manipulate it to have the result that Mr. Pires describes and we have tried—the Rural Coalition suggested a voter registration form. It was initially adopted and then it was dropped. We have been talking to them for years about some kind of a proportional representation system. If we cannot get people elected, then the people who are appointed ought to have the right to vote.

We have the situation where when the community nominates a black candidate that they want, the committee puts three other blacks on the ballot to dilute the black vote. There are all kinds of ways they have manipulated this system and it really deserves a hearing of its own with the people in USDA who are in charge of this because they have allowed this to go on.

The CHAIRMAN. Let me ask for just a pause. Unfortunately a roll call vote has been called. I did not realize that was occurring and we are in the final minutes of it. I will return if you can stay and I would like to continue the hearing at that point. If you want to continue, Senator Harkin, please proceed.

Senator HARKIN. I just want to say I have got another thing I have got to go to right after this vote and I do not know how much longer we are going to be on this vote, but I just want to thank you all for being here and I will try to return, but I really do think we are going to have to look at the selection process that you are talking about and try to restructure this. It almost seems like we need almost like a voting rights act for agriculture, a modern-day

voting rights act that will be not just sit back but actually will be proactive, actually go out and do some things like that. I hope I can get back, but if not I want to thank you all very much and you have made great suggestions. We will followup on that.

[Recess.]

The CHAIRMAN. The hearing is resumed. Did you have further comments, Mr. Lucas, with regard to we were discussing the voting situation with regard to county committees, and I do not know whether Senator Harkin pursued that further or whether you have a comment on that?

Mr. LUCAS. I agree with my colleagues on the panel, especially with John Boyd saying that we have gone through a civil rights struggle and you still have people, African Americans, who supposedly are on a committee, that cannot vote. That is appalling as we move into the 21st century. That the comments and the breadth of my colleague to my left talking about the whole voting process. I would have to add that the problem does not just rest with the county committees. We have people in Washington and political people in Washington, some of them, some of your former colleagues who are now working at the Department of Agriculture, who are beginning to act like the culture, the plantation mentality that has existed in the department so long has now come to the Department of Agriculture and they are beginning to act just like those people who are doing all this harm.

I think that if the programs were still administered properly, once the complaints rise up and those that do get through the system, They are people in Washington in some of these offices, and by the way some of those people look like me. It is not just a situation where we are putting it on all white males. We have Hispanics and blacks in very high positions in the USDA and they are in some of these offices around the country who are also taking part in that discrimination. I do not want to make it seem like you let the political appointees around the Secretary and some of the assistant secretaries in the administration, administrators and managers off the hook.

I think the problem is you cannot put a band-aid on a cancer and that is what you are doing if you only deal with one piece of it. You have got to hold these people accountable and fire these people for discriminating and ruin the lives of so many American citizens, both in the Department of Agriculture and outside.

The CHAIRMAN. All right. Now, we have discussed at least the three parts of the program, and there may be more in the class action suits—Mr. Pires had discussed and offered some counsel on that—the problems of discrimination in the field with regard to program discrimination, and you are now raising an important point that you raised in your testimony originally that the problem may lie with the management of the department.

You know let us just take a look at that for a moment. Sort of start with the Secretary, the assistant secretaries, other people. Many of these persons are appointed by the president of the United States depending upon which administration comes and is confirmed by this committee. Is the problem at that level or is the problem at levels below the political appointees, that is persons who have some status through the civil service who proceed on

really through several administrations, or how can you give us advice as to where we look?

Mr. LUCAS. To be very short, I notice that Mr. Boyd will probably have some comments on that, too. What you have is the Office of General Counsel who told the American public that there was no discrimination of black farmers are also saying in the case of the employees, and you got over 15, almost 18 class actions of employees. They, too, are saying the same thing they said about the black farmer case. This committee should order the Office of General Counsel, i.e., Charlie Rawls, to cease quoting from Rule 23 and being a barrier to settlement of these complaints.

I think we could have settled the black farmer complaint at a much lower level than $1 billion if the U.S. Department of Agriculture Office of General Counsel would have listened to the attorneys and to the farmers. These cases were brought to them early on, but they would not listen—Mr. Pires, John Boyd, Pigford—and what you have is a culture within the Department of Agriculture and some of these people are political appointees, i.e., the Office of General Counsel, or i.e., the Director of Civil Rights, and now you have Mr. Winningham overseeing some of the same cases that he was reviewing when he was at Farm Service Agency. That is also a conflict of interest but they will tell you that he is the best person qualified.

I would say to you that you have got to get to the problem holistically and you have got to order the Office of General Counsel to stop interfering with the policy of this Secretary who says he wants the complaint settled, but once it leaves his lips, it goes into a deep hole and the Office of General Counsel and the Office of Civil Rights and certain people who work there are seeing to it that these class actions of women, Hispanics and Asians are not resolved. You should demand and the American taxpayer demand that they come to the table and settle these complaints and not have a similar situation that we had with the case of the black farmers. It is arrogance. It is indifference and Mr. Chair, you have the power to change it.

The CHAIRMAN. Well, perhaps, but let me just try to delineate what these powers are. We have oversight hearings. We are having one now and we have the ability to offer legislation. That is our prerogative here in the Congress if it is signed by the president and if we have it through two houses. Ultimately there are people appointed by the president and members of the cabinet, subcabinet, they are confirmed by our committee and we try to ask questions of them, and the gentleman now who is handling the thing, Mr. Fiddick, came before the committee, as he pointed out, a year ago and seemed to us, at least at that point, to be a person that might make some headway in the system. That may or may not be the case.

At least that is the sort of judgment that we have an opportunity to make. We do not manage the department. We try to help the department by illuminating these problems and you have been helpful in that respect today. I am just trying to come to grips with the levels. Is the Secretary empowered to change the council or at what level really is somebody in charge at the department?

Mr. LUCAS. Let me say this. The effort of former Secretary Espy to change the department and get to the culture with the employees and the farmers was admirable. The effort of this Secretary and the effort of this president who sent people down to the Department of Agriculture to solve this problem, and some of them are political appointees, have not served this president and this Secretary and this nation well. It is time——

The CHAIRMAN. Then perhaps they should remove them. Is that their——

Mr. LUCAS. I think it is time to make some changes at the very top. You need to not have Mr. Fiddick overseeing civil rights because there is a conflict of interest. The Office of General Counsel should cease to be a barrier and all the reports that you had before this settlement, OGC was considered hostile to civil rights, especially to the black farmer situation. I do not see any change in that to this day. That is why you have increase of class actions by Hispanics, Asians, disabled, because you have an indifferent management that spends all its time and its effort supporting people in the courts and at these hearings with the taxpayers' money by sending OGC lawyers to protect them against us. They have made in so many words, Mr. Chair, turned good, decent American citizens into advocates and that should not be.

The CHAIRMAN. Mr. Boyd.

Mr. BOYD. Mr. Chairman, that if you look at Secretary Glickman as the overall view, he has tried. I agree with Lawrence that he had some inside people that are ill advising him on a lot of issues, Lawrence, as well, but where we really need to take a strong look at, Mr. Chairman, is the leadership within the Farm Service Agency as it relates to farmers, all farmers, whether you are talking about Hispanic farmers, Mr. Pires or the Indians or the black farmers. The gut and the root of the problem lies within Farm Service Agency. Why do we have a settlement of a billion dollars where we have not taken a strong look at the leadership of the agency that basically caused this discrimination?

That is Farm Service Agency and if this committee would take a strong look at the leadership, possibly bring us some new leadership in Farm Service Agency, and then take a strong look at the local leadership just like Mr. Pires talked about, if someone has 15 or 20 complaints on them down in Mecklenburg or Brunswick County, Virginia, where a man was found sleeping when he was supposed to take application. He said the atmospheric pressure made him go to sleep on CBS 60 Minutes, this kind of nonsense, if we take a look at those people and hold those kind of people accountable, Mr. Chairman, I do not think it will take long for that information to trickle down through the system.

You know bad news travels fast. If we made a few heads roll—I am going to go ahead and say the right terminology—I think that you will see a big difference in Farm Service Agency.

The CHAIRMAN. Ms. Carranza.

Ms. CARRANZA. I would like to reiterate the same thing. I would be the last person to defend Rosalind Gray. I have to say that I do not believe Ms. Gray caused the discrimination nor anybody in the Office of Civil Rights. They have been faulty in resolving this, but the big stumbling block from what I have seen in the Montana

cases is the Regional Office of General Counsel and Mr. Rawls himself and the focus cannot be lost here that it is FSA from not the county committee but the county supervisor is the person who establishes what is going to happen and he is FSA.

The county committee is just a bunch of dumb farmers in my county, like myself, but they take their direction from that person and that person, the county supervisor, takes his direction from the state office, and those two entities are protecting their ass. There is no other way of saying it, and there is a regulation that was passed by the Secretary's Office on June 30 of this year that said that when a USDA employee was found guilty of discrimination after a settlement had been reached, that those persons would be punished and that is what is stopping our cases from being resolved because once those settlements are finalized, those people's heads are going to roll and they are protecting themselves.

The CHAIRMAN. Mr. Zippert.

Mr. ZIPPERT. I would just support the idea that some close look needs to be taken at the middle management levels, the state office level and the county level of the Farm Services Agency, because that is where a lot of the problem is and a lot of the decisions about credit and acreage and in relation to these committees. I would mention to you that this morning we had a presentation from the Inspector General and he was not aware of the things that we have brought out here about the problems in the democratic—he called it a democratic system and he was very proud of it. We need to go back and talk with the Inspector General about the standards on which he is judging this and maybe bring to his attention—I do not know if he stayed for the rest of the hearing—but we need to bring to his attention some of the other things that was said in this hearing.

I think there is blame to go around here, that there are other people. You know if the person who oversees the process like that does not understand that they are in a lot of places in the South and probably places in Indian country, that there are problems with the way these committees work, then the whole premise on which he is examining the program may be wrong. I would say that we need to look at that. We need to look at FSA. We might need to look at FSA in comparison to some other groups like NRCS, maybe Foreign Agriculture Service, some others, who may be doing better and see where the problems are in that regard.

If they really want to do an intensive internal look, I am not saying—there are probably complaints everywhere, but there are probably more complaints in FSA than anywhere else.

The CHAIRMAN. Mr. Zippert, I just want to express appreciation to you. You have made reference to it and I would acknowledge the statistical data with regard to the elections, the procedures and what have you, which are very important illumination of this hearing and we will make certain that the Secretary, the Inspector General, and others have all of that testimony so that everyone at least is instructed as we have been by your testimony. Mr. Pires.

Mr. PIRES. Just a couple of things. I am trying to put myself in your shoes, if I may, to see what would be most helpful to you. There are just a couple of things that are very interesting about USDA and it is pure power. It is the second biggest Federal agen-

cy, but it is bigger in a different way. It is not raw dollars. It has a presence everywhere like the post office. We had until very recently 3,000 county offices. There is less now, maybe 2,500, but in agricultural America, USDA has a big presence everywhere. It has sometimes in some counties two offices, let alone one.

There is a mind-set, and the mind-set that has been established, as I mentioned earlier, is that white males rule, but there is another mind-set, and that is when you go into the office, the mind-set that should be present is this is my government, I am coming in, I need a loan to farm. Farming is based upon borrowing in the spring, paying back after harvest in the fall unless you have a winter crop. This is still very much an agricultural country. USDA has tremendous lending ability. It is really one of the largest lenders in the world, but it is even deeper than that, Senator, because they give disaster programs, disaster loans. You are constantly trying to reach in there and look around the country, find out who is in trouble, come up with a disaster program, whether it is Indiana, this year, or Georgia. You know what you have to do every year.

What about everybody else who is not a white male? Women—you need to understand women are completely out of the system. To be a woman and go into a county office and think you are going to be serviced is a pipe dream. You are not going to get serviced because they are not attune to that. Hispanics, who are becoming an ever-increasing part of our population, particularly in the big four, California, Texas, Colorado, New Mexico, and they get very, very poor service. They are conditioned to be careful to go in to not to be as aggressive as the white male is.

I can tell you in most parts of the South and the Midwest, white people are so used to service, they come in and they say how are you doing on my application? Their applications are filled out by the staff. How am I doing? How is my application coming? How am I doing this year? They expect the white structure to service them. It is very rare that a Hispanic person or a woman or a Native American ever walk into an office and say how is my application? Know what he would get or she would get? They would get an answer have a seat and I will get to you, and maybe they will and maybe they will not.

I think for you, Mr. Chairman, the election process is one area and the second is if there was a little bit more of an oversight process where the Senate knew this year—for example, you asked a very good question, in terms of programs, how does USDA do against other programs as a percentage of complaints? Nobody knows. They only know EEOC. Nobody knows about programs.

Second, nobody knows what happens to Hispanics, Native Americans, white women when they walk in. Nobody pays attention to it. It is not a statistic that is—yet Hispanics are going to end up being 20 percent of our population. We need help statistically. We need help.

The CHAIRMAN. Yes, Mr. Boyd.

Mr. BOYD. Mr. Chairman, I am going to have to leave in a minute. I wanted to make these last closing statements. Down in the same county I was talking about, the individual was sleeping in the office, there were certain days that African American farmers only could come in the office and get service.

Mr. PIRES. Black Thursday.

Mr. BOYD. That was on—that is right.

Mr. PIRES. It is called Black Thursdays.

Mr. BOYD. On Thursday, that was the only day you can come into the office. If a white farmer came in before you, he would see you and speak with him first. He would open the door while he discussed my personal business very loudly. Overall if we can bring some dignity and respect to the United States Department of Agriculture where it can treat its customers with dignity and respect, I do not think that would be asking too much.

Certainly we found a way to disburse $8 billion in disaster relief last year, that we can find a way to disburse one or $1.5 billion to a group of needy people that desperately need that money. They are sitting at home right now waiting. They are sitting here now watching this hearing, wondering what is going to come out of this hearing. Will I get some results? Will I receive my check? A lot of these farmers have letters that say you will receive your check in 90 days. 90 days has come and gone twice and they have not received their checks.

If the committee could look into it and ask the Justice Department to look into it as well, to find out what can be done to speed up the payment process for these much needed farmers, these are some things that we can do now and I hope that this committee will take those things into consideration and I hope that they will listen to the other distinguished members of this panel and come out of this hearing with some resolutions. Thank you, Mr. Chairman, for giving me the opportunity to speak with you this afternoon. Thank you very much.

The CHAIRMAN. Thank you for your testimony. We will raise the payment question with the department.

Mr. BOYD. OK.

The CHAIRMAN. As well as many other questions.

Mr. BOYD. Sure.

The CHAIRMAN. In specific answer to your request.

Mr. BOYD. Thank you.

The CHAIRMAN. Mr. Lucas.

Mr. LUCAS. Senator Lugar, as I heard the Office of Inspector General rave about how well things are going under the new leadership, I bring to mind three individual incidents which falls in the house of the Assistant Secretary for Administration and under Mr. Winningham. Very recently I was told before coming to these hearings that a woman in the state of Delaware filed a complaint of a housing complaint and was processed—was supposed to be processed under the administration, under new leadership of Mr. Winningham. This lady lost her property last week because the U.S. Department of Agriculture in this administration that you heard people raving about did not process her complaint as they do farmers.

Let me give you two examples which falls in the house of the Assistant Secretary for Administration. I am questioning the accountability at the top and that is what you were asking. Here we have people, an Assistant Secretary for Administration, who you know and have worked with, called a jungle bunny and a wonder monkey by a group of white employees after the work hour, but yet and

still the Office of Administration is not going to hold those individuals accountable. Under the same house when it comes to accountability, just recently a high level official told an Asian at an Asian meeting that if you suffer the glass ceiling, and Asians suffer from the glass ceiling at USDA at the GS–13 level, that person was told go and find another job.

Now what I am saying to you is that we have a problem with leadership as it relates to civil rights and this, what you heard this morning, trying to put it all on the employee, it is a cultural and systemic problem and some of the people that have been given the job recently to do that job has not done it well. If we are going to hold the people in the Office of Civil Rights accountable, we need to hold Mr. Fiddick, we need to hold Mr. Winningham and we need to hold Mr. Rawls equally accountable for the mess that is going on at USDA and not doing something about the problem and not settling these class actions and not settling these employee complaints. That is where the problem is and we need to do something about that, too. Thank you.

The CHAIRMAN. Thank you. Yes, Mr. Connor.

Mr. CONNOR. What I would like to say is that before we filed our class action complaint, we actually had gone informally to upper level people. Actually, there was Mr. Roemiger, Mr. Rawls in a different position at that time, Mr. Dallis Smith, and these were people at the Secretary's level, deputy secretaries, and under secretaries. We discussed the issues we had with the Farm Service Agency on an informal basis and offered our services to help them to solve these problems.

Basically, we just got the old wink and OK and everything is fine, but basically they did not listen to us. They just kept pushing us down and wanted to do a study and finally when we got the impression that we were being put off, we just went ahead and filed a complaint because we were not getting anywhere internally. That gets back to what we were talking about before. It is throughout the agency. The people up above want to put that nice face on it, but they had the opportunity right there to, as a matter of fact, that would have prevented us probably from filing our class complaint had they just listened to us and tried to do some things informally, and you have that culture inside the agency starting from top to bottom.

The CHAIRMAN. I thank each one of you. Ms. Carranza, do you have a final comment?

Ms. CARRANZA. Thank you. I would like a final comment.

The CHAIRMAN. Yes.

Ms. CARRANZA. For those of us that are not in a class action or part of any lawsuit, we have wanted our cases to be settled in the administrative process. There is a Senate bill in the Senate. It is called the USDA Civil Rights Resolution Act of 2000, Senate bill 2079. We would like you to consider that as an avenue for us to have our cases resolved. I would also like to ask for the record if the testimony submitted by the other Montana women could also be included in the record?

The CHAIRMAN. Yes, it will be included in full.

Ms. CARRANZA. Thank you.

The CHAIRMAN. I thank each one of you. You have been illuminating, articulate and patient in a hearing that has been the better part of four hours but time very well spent. We are grateful to you. We will try to follow through on the suggestions you have made. The hearing is adjourned.

[Whereupon, at 12:40 p.m., the committee was adjourned.]

APPENDIX

SEPTEMBER 12, 2000

Senate Agriculture, Nutrition and Forestry Committee

Chairman Dick Lugar, U.S. Senator for Indiana

Date: 9/12/00

Lugar Opening Statement on USDA Civil Rights Hearing

WASHINGTON - *U.S. Sen. Dick Lugar delivered the following opening statement at a Senate Agriculture, Nutrition and Forestry Committee to review the operation of the Office of Civil Rights, USDA and the role of the Office of General Counsel, USDA, in addressing discrimination complaints pertaining to program delivery and employment.*

The Senate Agriculture Committee continues its work to help solve the problem of discrimination at the United State Department of Agriculture. We have held meetings with USDA officials, and we have enlisted the help of the General Accounting Office. When I met with Secretary Glickman in October last year, I told him that this issue was of the utmost importance to me personally, and I received his word that he was doing all he could to address the situation.

As part of this Committee's oversight responsibility, we have consistently looked at management of USDA programs and made suggestions on how to better manage the Department's resources. The problem of systemic discrimination, however, does not lend itself easily to a management critique. The troubles at the United States Department of Agriculture require more than a new computer system or a new business process. Many of the problems that will be discussed today stem from personal behavior that is difficult to eliminate in a department of more than 100,000 employees. However, it is the duty of this committee to ensure that all laws and policies are strictly followed and that those who believe that they have been discriminated against receive appropriate and speedy resolution of their grievances. That does not seem to be happening at USDA.

In recent years there has been an increasing number of class action lawsuits and administrative complaints against USDA alleging discrimination. These lawsuits and complaints are of two types - program complaints and employment discrimination complaints. The program complaints are those involving members of the public who are the participants in USDA programs. The second type involve employees of the Department who believe they have been victims of some type of discrimination. Today's hearing includes witnesses with information related to both of these types of discrimination.

We will hear from Mr. John Boyd, President of the National Black Farmers Association, Mr. John Zippert, the Director of Operations for the Federation of Southern Cooperatives and Chairman of the Board of the Rural Coalition; Mr. Lawrence Lucas, representing the USDA Coalition of Minority Employees; Mr. Harold Connor of Upper Marlboro, Maryland; Mr. Alexander Pires, an attorney in Washington, D.C. and Ms. Juanita Carranza of Lambert, Montana.

Our second panel will include Mr. Paul Fiddick, the Assistant Secretary for Administration at USDA; Mr. Charlie Rawls, the USDA General Counsel and Ms. Rosalyn Gray, Director of the USDA Office of Civil Rights.

On our first panel we will hear testimony from Mr. Roger Viadero, the USDA Inspector General and from Mr. Bob Robertson of the U.S. General Accounting

Office. As their testimony will indicate, this is a problem that has been thoroughly studied. Since 1997, the USDA Inspector General has performed at least eight reviews evaluating the Department's efforts to solve the complex civil rights problems at the Department. The General Accounting Office has also studied the issue. Both OIG and GAO made numerous recommendations to help solve the problems. The most troubling aspect of these reports is how few of the deficiencies identified by either OIG or GAO in previous reports are ever corrected.

Despite these reports and repeated efforts by USDA officials, the problems persist. Effective managers are not being hired to solve the problems, and employees are merely being shuffled from agency to agency in an appearance of problem solving and management revamping. Yet results have not emerged.

The missing link here seems to be one of accountability - from the highest level of management to the county supervisor in the field who fails to adequately service an African American farmer's loan.

Respect for the civil rights of all Americans is of paramount importance to me. I am committed to doing all I can to solve these problems at USDA.

With this in mind, I would like our witnesses to focus on solutions to the problems and solutions that can bring accountability into the equation. # # #

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FOR IMMEDIATE RELEASE: Contact: Jennifer Frost/Shannon Tesdahl

September 12, 2000

Statement of Senator Tom Harkin (D-IA)
Hearing on Civil Rights at the USDA

"Thank you Mr. Chairman for holding this important hearing to review the efforts of USDA's Office of Civil Rights and Office of General Counsel in addressing discrimination complaints involving USDA programs and employment. Regrettably, for far too long, USDA's positive record has been marred by a deep-rooted and far-reaching tolerance of racism, hostile work environments, and discriminatory treatment of minority farmers.

"Over the past several years, USDA's civil rights program has had to dig itself out of a deep hole left by the patchwork nature of addressing civil rights in the 1980s and the chaos that followed. During that time, civil rights issues at USDA escalated. Increasing numbers of USDA employees filed discrimination complaints, and larger numbers of minority farmers charged discrimination in farm programs.

"I give credit to this Administration for recognizing the severity of these problems and for addressing them. In December 1996, Secretary Glickman appointed the Civil Rights Action Team, which reviewed civil rights issues at USDA and developed a set of recommendations. In March 1997, the Office of Civil Rights was created to address the both employment and program complaints at USDA.

"This administration also reached a settlement in a class action lawsuit by African American farmers concerning discrimination in farm lending and benefit programs. There has also been increased lending to minority farmers and a higher percentage of minority employees at USDA.

"Despite these improvements, much more must be done. USDA's Inspector General and the GAO have found continuing problems in the operation of USDA's Office of Civil Rights -- and even more troubling -- a failure to address the I.G. and GAO recommendations. The I.G. noted that no significant changes in processing complaints had been made since the last review. This is unacceptable. It is essential that USDA improve the process of handling complaints as called for by both the USDA Inspector General and the GAO.

"USDA also must get to the root of the problem. The message has to come through loud and clear: at USDA discrimination is unacceptable in any form, place or time. The number of complaints at USDA completely overwhelms the system for investigating them. That is not just a problem of handling the complaints. The bad actors at the root of the problem must be held accountable in order to create a discrimination-free workplace and to ensure that no farmer is denied access to USDA programs.

"Congress must also do its part. We can start by fully funding the Outreach for Socially Disadvantaged Farmers program which provides grants to eligible community-based organizations to

provide education and other agriculturally-related services to socially disadvantaged farmers and ranchers. Congress authorized $10 million for this program in the 1990 Farm Bill, but has refused year after year to fund the Administration's request for that amount. For 2001, both the House and Senate have approved only $3 million for this valuable program. It should be fully funded before this session of Congress ends."

Statement by Senator Gordon H. Smith
Committee on Agriculture, Nutrition, and Forestry
Oversight Hearing - U.S. Department of Agriculture Office of Civil Rights
September 12, 2000

Thank you, Mr. Chairman, for holding today's oversight hearing on the Office of Civil Rights within the Department of Agriculture.

Let me first thank you and your staff for extending a warm welcome to me on this Committee. I wish this appointment had come under happier circumstances. I know Senator Coverdell was a respected leader on agriculture issues and championed the cause of Georgia farmers through his work on this Committee. His strong work ethic and consensus-building skills will certainly be missed. As one of two new Members to be appointed to this Committee on an interim basis, I will do my best to carry on in his tradition.

It is also an honor and a privilege to represent my state's unique agricultural sector on this historic Committee. Agriculture accounts for nearly 150,000 jobs in my state from farm to table, and produces an incredible variety of products -- from fruits to grains to nursery plants. As one who has made his living in the food business, I look forward to being a voice for Oregon agriculture here during the remaining days of this 106th Congress.

With respect to the important issue before the Committee today, I share my colleagues' deep concern about the Department of Agriculture's handling of discrimination cases. I am troubled by reports on this subject -- not only from investigative offices such as the GAO or the USDA Inspector General -- but also from a growing chorus of women and minority farmers as well as past and present employees. Now more than ever, the USDA needs to be a reliable advocate and a trusted partner for *all* American farmers, regardless of race or gender. The thousands of USDA employees are challenged enough as it is in meeting the pressing needs of

Statement by Senator Gordon H. Smith (continued)
Committee on Agriculture, Nutrition, and Forestry
Oversight Hearing - U.S. Department of Agriculture Office of Civil Rights
September 12, 2000

our nation's farmers and ranchers without having to question whether they themselves are being treated fairly by their management. I am disturbed by how entrenched the problems with civil rights enforcement appear to be within this agency, and how difficult it has been for well-intentioned individuals to bring about needed reforms. I hope that today's panelists will shed some light on what actions still must be taken to make USDA the model for other federal agencies on civil rights matters rather than the example of what *not* to do with discrimination complaints.

I thank the Chairman for holding this important hearing, and I look forward to the testimony of the assembled witnesses this morning.

STATEMENT OF SENATOR MAX BAUCUS
U.S. Senate Committee on Agriculture, Nutrition and Forestry
Tuesday, September 12, 2000

Mr. Chairman, it is with mixed emotion that I lend my voice to this hearing today. On one hand, I welcome the opportunity to discuss the sorely neglected issue of civil rights which has negatively impacted my state. On the other hand, I am saddened that to date we have been unable to resolve the cases that warrant our every consideration.

Today you will hear testimony from one of my constituents, Juanita Carranza, from Lambert, Montana. It is my understanding that she and her 89-year-old mother, Margaret traveled all the way to DC via train to tell their story. This is not the first time the Carranzas have visited Washington, but I do hope it will have to be the last time they have to come here regarding their case.

Mr. Chairman, I've read Ms. Carranza's testimony and it paints a very ugly picture of discrimination and frustration resulting from years and years of trying to resolve their complaints. At times, I have shared this frustration.

Since 1998, I have been working actively with over a dozen Montana women and minority farmers to help bring their cases to resolution. As of today, not one case has been resolved. Several are close but we all know that close only counts in horseshoes.

Why has this been the case? Perhaps because the Office of Civil Rights has reinvented itself more times that I can count since these serious civil rights violations occurred in the 1980's.

I understand from the GAO testimony that since October 1990, the OCR has had eight different directors. That the Program Investigation Division has had six chiefs and the Employment Complaints Division has had eight. Overall, the civil rights program has been reorganized three times since 1993. It doesn't take a rocket scientist to figure out that this much change in any agency not only results in internal chaos but also fundamentally shuts down all constituent services.

Mr. Chairman, I am not here to point fingers at anyone. I am here to search for answers. This is not a political game to me. Civil rights means real people – real Montanans – who have suffered long enough. And as my constituents know, we have tried to resolve their cases through a variety of mechanisms.

For example, on November 18, 1999, I introduced a resolution along with my colleague, Senator Burns that expresses the sense of the Senate that, not later than March 1, 2000, the Secretary of Agriculture should resolve, or take other action to resolve, all pending cases of alleged civil rights discrimination by the Department of Agriculture against agricultural producers located in Montana.

Although that deadline has long since passed this point of this resolution is just as poignant -- there is an urgent need for the Department of Agriculture to resolve Montana's civil rights discrimination cases as well as those across the nation.

Why? Because a strong anti-discrimination policy exists whether the discrimination is committed by private individuals or by the Federal Government in the operation of its programs;

Because, whenever discrimination occurs in the conduct of a Federal Government program, the responsible Federal Government agency should take quick and aggressive action to remedy the discrimination;

Because the Department of Agriculture has a track record and has been held accountable for certain civil rights violations against United States agricultural producers in connection with their attempted participation in lending programs of the Department;

Because a significant number of Montana civil rights petitioners have not received a timely and equitable resolution of their complaints (some have languished for over ten years);

Because the agricultural community continues to face a series of hardships, including record low prices, extreme weather disasters, and a shortage of farm loan opportunities;

Because additional frustration and financial difficulties perpetuated by the inadequate review process has further imposed undue hardship on the Montana civil rights petitioners;

Because the mission statement of the Office of Civil Rights of the Department of Agriculture requires the Office to facilitate the fair and equitable treatment of customers and employees of the Department while ensuring the delivery and enforcement of civil rights programs and activities; and finally

Because the Department of Agriculture should be committed to the policy of treating its customers with dignity and respect as well as to providing high quality and timely products and services.

In addition to legislative efforts, my staff calls the Office of Civil Rights on a weekly if not daily basis on behalf of the pending Montana cases. I will give you a copy of the report I receive every Thursday and will give you a copy requesting that you detail, in writing by the end of this week, **when** the Montana cases on this list will be resolved once and for all.

I have personally talked to Mr. Fiddick and I know that he is committed to getting the job done. My staff has also worked with Ms. Gray and she, too, has committed to finalizing these cases. I appreciate those efforts, however, I promise to keep each of you on the hot seat until this completed. These cases didn't originate in this administration, but it is incumbent upon you to resolve them and bring reliability back to this Agency. It's not an easy job. But someone has to do it. And do it right. Repeated wrongs never make a right.

IMPROVED OUTREACH

I think it is equally important today to address the question of "Where do we go from here?" Once these cases are resolved, how do we ensure that discrimination never again occurs under the watch of the U.S. Department of Agriculture? In the area of outreach, I feel heartened by the Farm Service Agency's agenda.

For example, in June 1999, at the request of Bruce Nelson, the Montana State FSA Director, Mr. David Whittingham spent a week in Montana. During that trip, he met with producers from the Rocky Boy, Fort Belknap and Fort Peck reservations as well as the tribal leadership from those reservations and FSA county and state workers. The intent of this trip was to improve service and make sure that the FSA was addressing these minority producers concerns.

Mr. Whittingham is here today and I am pleased that he is working in your shop as he has had a first-hand view of the way the system works in my state.

I also note that Secretary Glickman in his June 29, 2000 remarks, *Civil Rights 2000: A Continuing Journey*, states that "Our civil rights office has been expanded to not only deal with complaints . . . but to reach out to minorities, and to train managers and employees in civil rights issues."

Now, more than ever, outreach is critical.

Let's me give you some laudable facts about my state's outreach efforts – in terms of women and minorities involved in our agricultural programs.

Women -- In 1993, there were only seven women on county committees. Now, 18 women serve representing over 10 percent of the committee members and every county that doesn't have an elected female member has a female advisor to the committee. Further, the Montana FSA State Technical Committee has always had a majority. And women have served as chair on both the three member and five member committee.

Native Americans -- In 1993, the State Committee asked to appoint the first minority advisor in its history. In 1997, Ms. Ramona Howe, the first minority full-time member, was appointed. Currently, full-time FSA offices have been established at the Blackfeet and Fort Peck reservations at the request of Tribal Council and another office will soon be established at the Crow reservation. To my knowledge, these are the first full-time FSA offices at tribal headquarters of any state in the US.

Last fall and winter, the State Farm Service Agency held farm loan program outreach meetings for borrowers on all seven reservations in the state. They plan to do so again late this fall and winter. Further, this year, will mark the fourth year of the Stone Child College "credit outreach program" funded by the FSA wherein outreach staff from three reservations will work with their fellow producers to understand the intricacies of the farm credit program. Finally, the state outreach council that Bruce Nelson chairs, has held multi-agency outreach meetings including a three-day conference in Bozeman to build a strong cooperative effort between the tribes, the local and state FSA offices to deliver the program.

These are steps in the right direction.

So, too, are the grassroots efforts of producers like Juanita Carranza and her fellow producers who formed their own outreach network - MOPS - or the "Montanans Organized for Public Service."

I strongly believe that producers, no matter where they are, no matter who they are, no matter what race, religion or gender they are, need to know that they have rights that will be honored and respected by the U.S. Department of Agriculture.

I challenge the National FSA to fully implement an active and progressive thinking outreach system. We can and should do better. Our constituents deserve no less.

I look forward to your testimony today and thank you for your consideration of this very important matter.

Thank you, Mr. Chairman.

UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

TESTIMONY OF ROGER C. VIADERO
INSPECTOR GENERAL
OFFICE OF INSPECTOR GENERAL
U.S. DEPARTMENT OF AGRICULTURE

Before the

UNITED STATES SENATE
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

on the

DEPARTMENT'S PROCESSING OF CIVIL RIGHTS COMPLAINTS

September 12, 2000

TESTIMONY OF
ROGER C. VIADERO
INSPECTOR GENERAL
U.S. DEPARTMENT OF AGRICULTURE
BEFORE THE U.S. SENATE
COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY
SEPTEMBER 12, 2000

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I appreciate the opportunity to be here today to testify about our work on the Department's processing of complaints of discrimination. I will give an overview of the work we have done to monitor the integrity of this process, and I will summarize the major recommendations we have made to help improve the efficiency of the process. With me today is James R. Ebbitt, Assistant Inspector General for Audit.

Over the past 3½ years, the Office of Inspector General has performed eight reviews of the Department's processing of civil rights complaints, all at the direction of the Secretary of Agriculture. Our reviews were completed over 7 phases and resulted in 8 reports and 2 internal memoranda, all of which contained a total of 119 recommendations. Thirteen of these recommendations were directed to the Farm Service Agency, and 12 involved some action by the Secretary. The rest were directed to the Department's Office of Civil Rights.

Our most recent reviews, which constituted Phase VII of our work, resulted in two reports issued simultaneously in March of this year. Both concerned the Office of Civil Rights. One reported on the Office's processing of complaints of discrimination in program benefits, and the other, on its processing of complaints of discrimination in

employment. The story these reports tell is one of a staff that is demoralized and inefficient and of a management that never got a firm hold of a system it inherited but that simultaneously resisted recommendations for improvement. For the Office of Civil Rights, this has been a continuing story throughout all seven phases of our work. Complaints were not adequately tracked, casefiles were poorly maintained, and managers were not held accountable for deadline overruns. Open cases we reviewed dated back several years. At the end of our Phase VII review, we concluded that complainants were not well served by the Department's complaints processing system, and we questioned whether complaints of discrimination, both program and employment, would receive due care.

Many of the problems we noted at the Office of Civil Rights during our most recent efforts were evident during our first review, completed in February 1997. At that time, before the Office of Civil Rights had been created, the Secretary had raised concerns about the integrity of the Department's process for resolving discrimination complaints in farm programs. We found that the complaints system was in disarray. Complaints were backlogged within the Department and their status could not be determined. The administrative arm of the Department that processed complaints at that time did not have a usable filing system or a reliable data base, and it did not have controls in place to monitor and track complaints. It lacked current regulations and formal procedures for its operations, and it accomplished little. There was no effective leadership and no accountability.

While our audit was in progress, we notified the Secretary through an internal memorandum that the Farm Service Agency was continuing to foreclose on minority farmers. The Secretary had suspended such foreclosures until a determination of discrimination could be made, but the Farm Service Agency allowed the foreclosures to proceed after the State executive director certified there was no evidence of discrimination. The Secretary acted immediately to institute an independent review of the foreclosures.

Because the focus of our review during this first phase was the integrity of the farm program complaints process, and because the Farm Service Agency was administering its own complaints resolution system, our two foremost recommendations to the Secretary were (1) to reevaluate all complaints that the Farm Service Agency had closed without concurrence from any other Department authority, and (2) to centralize control over the complaints process so that no one agency was allowed to resolve complaints against itself. We also recommended that an ad hoc committee be convened to resolve the backlog of complaints as expeditiously as possible.

As a result of these recommendations, the Office of Civil Rights, created in May 1997, took control of the Farm Service Agency's program complaint system. However, because of the poor filing and tracking systems being used, the Office of Civil Rights had difficulty locating all Farm Service Agency cases that had been closed (and was only able to complete this task within the last 6 months). Furthermore, the ad hoc team that had been convened to clear the backlog of cases found the casefiles too disorganized to

facilitate resolution. The team's recommendations for resolution were rejected by the director of the Office of Civil Rights because the complaints were never properly investigated. The team disbanded, and the backlog of unresolved complaints grew from 530 to 984 by September 1997.

It should be noted that the backlog of complaints remained a matter of concern throughout the seven phases of our review. By the end of 1997 the volume of backlog peaked at 1,088 cases. This number came to be known as the "original" backlog, largely because the Office of Civil Rights defined the backlog as cases filed prior to November 1, 1997. Such a definition limited the number of old cases that had not been resolved, but it made no allowances for new cases that would exceed the Department's 180-day deadline for case resolution. By March of this year, almost exactly 3 years after the original backlog came to light, the Office of Civil Rights had reduced that backlog to 35 cases, but simultaneously faced a "new" backlog of 454 cases that had been filed after November 1, 1997, and exceeded or were close to exceeding the 180-day deadline.

Phases II and III: On the Question of Equitable Treatment in Farm Programs

The Secretary's request that led to our Phase I review included questions about minority participation in the Department's farm loan programs. Specifically, the Secretary wanted to know if minority farmers received a proportionate share of farm loans and if the Farm Service Agency processed minority and nonminority applications in the same manner. These questions formed the basis of our Phase II and Phase III reviews, issued in

September 1997. We did not find evidence of any systemic discriminatory practices within the Farm Service Agency. Minority applications were approved at a rate that was slightly less than the rate for nonminorities, but with only a few isolated exceptions, the processing time for both minorities and nonminorities was about the same. We concluded that better outreach efforts and greater technical assistance to minorities during loan-making and loan-servicing may improve the slight disproportionality minorities suffered in program participation. We also recommended that the Farm Service Agency seek minority advisors who had their communities' support and work to increase the number of minority employees in county offices where minority groups were underrepresented.

One legislative change we recommended the Secretary seek was authority to "pool" direct operating loan funds targeted for socially disadvantaged applicants (SDA). The Farm Service Agency's management of its funds during redistribution was allowing SDA funds to expire. By pooling SDA and non-SDA funds, more minority applicants could receive funding before the expiration deadline. A proposal was forwarded to Congress in October 1997 for its consideration, but Congress did not pass it, and SDA direct operating loan funds still expire without pooling.

For our Phase IV review, completed in March 1998, we revisited the 44 recommendations we had made in the first three phases of our review to determine how effectively the Office of Civil Rights and the Farm Service Agency were implementing corrective actions. We found that the Farm Service Agency had adopted several new procedures to

improve relations with the minority farm community and that the Office of Civil Rights had developed a more reliable data base, hired additional staff, and informed all complainants of the status of their cases. However, many inefficiencies remained within the complaints resolution process. The original backlog of cases had grown to 1,088, and the Office of Civil Rights still had no adequate plan to reduce the backlog. Moreover, the Office did not have a system to reconcile its open complaints with those of other agencies. Lists of complaints compiled by the Farm Service Agency and Rural Development showed 30 and 60 percent variations, respectively, from the list compiled by the Office of Civil Rights. Consequently, one entire year after our discovery of the original backlog, the Department still did not have an accurate count of the number of open discrimination complaints on file.

As an adjunct to our phase 2 report, we issued a confidential memorandum that provided information about situations we found in which employee conduct involving loan-making, loan-servicing, and foreclosure proceedings may have adversely affected minorities. For example, one State office foreclosed on a minority applicant who had an open civil rights complaint on file, even though the Secretary specifically suspended foreclosures in such cases. The memorandum also noted instances of unprofessional remarks or behavior. Altogether, the memorandum included nine recommendations for the Office of Civil Rights to review and take action on, as deemed appropriate. Because the recommendations involved individual employees, the information regarding them was sensitive and confidential. At the time we issued the memorandum, the Office of Civil Rights informed us they would perform a comprehensive review at each of the nine

locations. We did not discover until some time later that the Office had referred all nine cases to the Farm Service Agency for investigation. Upon discovering this, we demanded that the Office recall the cases. The Office recalled the cases before the Farm Service Agency began investigating any of them, but it did not, at the time of our Phase V review, initiate any investigations of these cases itself. It has subsequently reviewed the cases and satisfactorily resolved four of them. We are awaiting further action by the Office on the remaining five cases.

The Phase V Review and the Call for Case Management Processing

Our Phase V review, completed in September 1998, was prompted by the Secretary's insistence that the backlog of civil rights complaints be reduced and that OIG's previous recommendations be implemented. As we were coming to realize, the Office of Civil Rights did not always follow through on its commitment to corrective actions, and the results of our Phase V review made this quite clear. Although the Office indicated after our Phase I review that it was gaining control of its filing system and its data base, it showed no improvement at all by Phase V. The data base remained inaccurate and the casefiles were too slovenly to ensure the availability of critical documents. Indeed, after 20 months, the Office of Civil Rights had made virtually no progress in implementing the corrective actions we thought essential to the viability and integrity of its operations. The Office had not reconciled its casefiles with other agencies, had not reviewed all State foreclosure actions in sensitive cases, did not adequately train its investigators, could not

find lost casefiles, did not adequately plan compliance reviews, and had not published Department regulations on civil rights complaints procedures.

The absence of formal procedures and accurate records once again raised questions about the integrity of the complaints resolution process. Moreover, we found critical quality control steps missing at each stage of the process. Staffmembers with little training and less experience were assigned adjudication duties, where they judged matters with serious legal implications. The Department's Office of the General Counsel, which reviews CR's decisions for legal sufficiency, had had to return over half of those decisions because they were based on incomplete data or faulty analysis. Management controls were so poor that we could not render an opinion on the quality of CR's investigations and adjudications.

By this time, two lawsuits had been brought against the Department of Agriculture by minority farmers charging discrimination in USDA programs. The lawsuits, which became known as the Pigford and Brewington cases, turned into class action lawsuits involving other minority farmers, some of whom had previously filed complaints with the Office of Civil Rights. Because the court prohibited the Office from processing these cases as long as they were under litigation, the Office's inventory of cases that required processing shrank by about a fifth. Nevertheless, the original backlog of complaints, although slowly being resolved, still remained at 616. Furthermore, the bulk of the cases the Office of Civil Rights had resolved by this time did not require complete processing. These cases were closed for administrative or other reasons. Between January 1997 and

August 1998, the number of cases the Office of Civil Rights processed completely and closed with adjudicated decisions totaled only 19.

As disturbing as the inefficiency was at the Office of Civil Rights, equally disturbing was the level of evasiveness we encountered there. We found discrepancies between what we were told by staffmembers regarding the number of open and closed complaints and what we were subsequently able to verify. We found similar discrepancies in information the Office communicated to the Secretary and repeated at congressional hearings and other public forums.

The recommendations we made as a result of our Phase V review echoed many of the actions we called for in our earlier reviews, but with more precise details and timeframes for achieving the efficiencies we thought necessary and attainable. New recommendations called for hiring more adjudicators, hiring more experienced managers, implementing quality control over the reports of investigation, and providing training to the staff. Most significantly, we recommended moving the complaints resolution process to a case management team approach. At the time of our Phase V review, the Office of Civil Rights operated under a component processing approach, wherein each different staff group would perform a separate action that furthered the case toward resolution. Under case management, a team of employees from the various staff groups would be responsible for taking a case through the entire process, from intake to adjudication and final decision. Data showed that component processing fragmented handling of cases and slowed complaint resolution. Case management offered the appropriate corrective.

Nevertheless, as our Phase VII review showed, the Office of Civil Rights made no changes to its operating environment and adhered to its component processing approach.

Settlement Agreements and the Phase VI Review

Our Phase V review also determined that the Office of Civil Rights did not track settlement agreements after they were executed and did not know how many agreements the Department had entered into. Settlement agreements are reached when a high probability of discrimination has been found. Department policy in these cases is to offer the aggrieved party a settlement, which may provide for both program relief and compensatory damages. Because the Office of Civil Rights was not tracking its settlement agreements to verify that the other Department agencies were fulfilling the agreement terms, the Secretary asked us to determine whether all forms of compensatory damages and program relief had been implemented. This became the focus of our Phase VI review.

For our Phase VI review, completed in March 1999, we reviewed both settlement agreements entered into by the Office of Civil Rights as well as conciliation agreements entered into by the Department agencies accused of discrimination. A conciliation agreement is typically used by an agency to resolve a complaint soon after it is lodged, not when a high probability of discrimination has been found. Consequently, conciliation agreements offer program relief but not compensatory damages. We found that although the Office of Civil Rights could not account for the 101 settlement and conciliation

agreements we identified within the Department, the terms of those agreements had generally been implemented and all compensatory damages had been paid. Agreement terms that had not been fulfilled involved program relief only, a condition that occurred because of the scope of the relief (i.e., priority consideration on future loans, etc.) In some cases, these terms would not be fully implemented until after the year 2002. We found no evidence that Department agencies intentionally delayed implementing the agreements.

Because the Office of Civil Rights was unaware of the conciliation agreements reached at the agency level, we recommended that it implement procedures to apprise itself of these agreements as well as to track all settlement agreements to ensure they are completely implemented. We also recommended that the Office of Civil Rights seek greater involvement by the Office of the General Counsel in drafting and negotiating settlements. We found some agreements that inappropriately contained monetary damages that were not authorized by law and some that waived provisions of a statute when such a waiver had no legal effect. We concluded that Department civil rights attorneys should assist the Office of Civil Rights in performing economic analyses to support the agreement amounts and in ensuring all components of an agreement conform to laws and regulations. Finally, we recommended that the Office include a section in its regulations detailing how to proceed with disciplinary action in cases where employees have acted in an improper (discriminatory) manner. Although the Department's 17 settlement agreements resulted from findings of proven or probable discrimination, we found that no disciplinary actions had been taken in any of these 17 cases.

It was at about this time that the current director of USDA's Office of Civil Rights was appointed to that position by the Secretary. She was the fourth manager to take charge of the Department's civil rights affairs since we had begun our reviews of those affairs at the end of 1996.

The Phase VII Review

and the Resolution of Complaints of Discrimination in Employment

Congressional interest in equal employment opportunity (EEO) complaints led the Secretary to request our review of the Department's ability to track these complaints. Because this involved another look at the operations of the Office of Civil Rights, the Secretary simultaneously asked us to determine what progress the Office had made in implementing our previous recommendations. These two objectives formed the basis of our Phase VII review, completed in March of this year.

As mentioned at the beginning of this testimony, our Phase VII review found that the kind of inefficiencies we had been trying to correct in the program complaints processing system were equally evident in the EEO complaints processing system. Reacting to questions about the status of EEO complaints, the Secretary asked us specifically to verify the numbers that the Office of Civil Rights had provided him. We determined that these numbers were inaccurate and did not reflect the actual status of the 1,731 EEO complaints we could find in the system at that time. Moreover, we found that the

Office's representation of its progress to the Secretary did not reflect its actual performance and that it has been unable to meet the 270-day timeframe set by the Equal Employment Opportunity Commission to resolve EEO complaints. As had been so often the case in the program complaints system, the EEO data base was inaccurate and underutilized, and the casefiles were poorly maintained. We attributed these inefficiencies to the Office's constant reorganization and its practice of concentrating resources on the crisis of the moment rather than adhering to a long-term plan to which managers and employees could be held accountable.

We believe accountability has been one of the mainsprings of the Office's problems from the beginning. We reported it in our first phase report of February 1997, and observed it at work in our last phase review of the EEO complaints processing system. Under the Office's practice of relying on short-term solutions rather than long-term plans, employees are tasked to resolve the current backlog, wherever it may occur, and are not accountable for the backlog that develops within their own area of responsibility. Because of this practice, no fewer than 750 EEO complaints pending acceptance were backlogged at the beginning of this year. No key people in critical areas were held accountable to coordinate the complaint process and ensure that each complaint was handled with due care.

Part of the inefficiency in the Office of Civil Rights is reflected in the quality of its reports of investigation and its final agency decisions regarding EEO complaints. Many of the reports of investigation the Office accepted from its contract investigators

contained substantial errors. For its part, the Office of Civil Rights rendered decisions that were based on inaccurate assumptions or faulty reasoning and did not always reflect the evidence compiled in reports of investigation. In our opinion, these decisions do not show that the Office exercised due care in judging the actions of USDA managers in matters affecting the complainant's careers.

We recommended that the Office of Civil Rights account for all its EEO casefiles and documents, expedite implementation of a new data base, and especially reconcile its cases with those of other Department agencies and with the Equal Employment Opportunity Commission. We found that the Office of Civil Rights did not always update its data base when a complaint had been resolved at the agency level or when a complainant appealed a case to the Commission. For future presentations of statistics to the Secretary, we recommended the Office fully disclose its methodology and the meaning of its data. Overall, we recommended the Office of Civil Rights develop a long-term plan to address issues of leadership, organization, and process reengineering. Finally, we recommended that the Office develop controls to ensure that its reports of investigation and final decisions provide accurate information.

The Phase VII Review and the Program Complaints Process

Our revisit of the program complaints resolution process during our Phase VII review exposed many of the same deficiencies we had encountered in previous phases. Although the Office of Civil Rights had significantly reduced the original backlog of

program complaints to 35, it had by then left 646 program complaints stalled in the earliest stage of processing, and created another backlog of 454 complaints that had exceeded or were going to exceed the 180-day processing deadline. Furthermore, the Office's method of clearing its backlog raised a concern about the nature of its settlement agreements. Of the backlogged cases, 34 had been settled through agreements that had awarded the complainants compensatory damages and relief from USDA debt. In many cases, the Office significantly increased the damages and debt relief beyond the amounts recommended by a USDA task force. The Department of Justice has elsewhere opined that because damage awards are paid from appropriations and are subject to appropriations law, these awards should only be made if it is determined that a court would have made a similar award. Such a determination presupposes an assessment of the degree to which USDA was liable in the case, but we found that none of the settlement offers were fully supported by documentation that reasoned USDA's degree of liability. These claimants received $2.31 million in compensatory damages and $3.66 million in debt relief.

For future settlement cases, we recommended that the Office of Civil Rights document the computations behind its awards of compensatory damages, programmatic relief, and attorney's fees in accordance with the legal opinion set forth by the Department of Justice.

As our Phase VII review also confirmed, many critical issues disclosed during the previous six phases remained unresolved. Of the 54 recommendations we had directed to

the Office of Civil Rights, only 13 had been fully implemented. Of significant concern to us was the state of the complaints resolution process. As noted previously in this testimony, we had recommended a major transformation of this process to a case management system, which the data showed would be more efficient than the Office's system of component processing with its fragmented order of individual fiefdoms within the Office staff. However, although the Office's officials had previously agreed that the system they used to process complaints was neither effective nor efficient, no significant changes in how complaints were processed had been made. At the close of our work in Phase VII, we had to report that it was difficult to recognize any significant level of progress within the Office of Civil Rights and that we could not offer any assurances that all program complaints were processed with due care.

Our overall recommendation for processing program complaints echoed our recommendation for processing EEO complaints. We urged the Office of Civil Rights to implement a management plan that addressed effective leadership, a changing organizational culture, customer focus, and process reengineering. Originally, we were told that a reengineered process would be addressed in the agency's future manuals, but the draft manuals we reviewed did not encorporate a case management approach to distributing the workload. More recently, we have been told that the Acting Deputy Director of the Office of Civil Rights is currently developing a comprehensive management plan. We have not seen this plan and do not know to what extent it will include a case management approach.

Today, the Office of Civil Rights has yet to complete final action on 69 of the 94 recommendations we directed to it during our 3½ years of reviews. Several of these recommendations are noteworthy because they date back to the first review we performed 3½ years ago. At that time, we had recommended that the Office's predecessor distribute a weekly report that showed the age of each complaint within the resolution process. The Department could use this report as a tool to take control of growing backlogs. Although the Office is currently devising such a report, it has not instituted it and has not shown how it will use it to identify critical situations. We had also recommended that the Department develop a plan to evaluate civil rights compliance by its 33 agencies. In this case, the Office developed a partial plan but did not perform any evaluations because of budgetary constraints.

At least 29 other recommendations have a similar story. The Office of Civil Rights provided us with a plan and a deadline for completing corrective action, but either the deadline was moved back because of some exigency or the action itself became part of another plan with another uncertain deadline.

By the Office's estimation, the original backlog of program cases has been reduced to 2. One of these is still under investigation, with a completion date estimated to be the end of October, and the other remains open because the complainant has declined a settlement offer. The Office further estimates that the cases stalled in intake in March have been reduced from 646 to 145. However, we received no information about how the Office resolved the 501 cases it no longer reports as being in intake. We do not know how

many of these cases were moved forward in the process and how many may have been open beyond the established timeframe. Consequently, we cannot now address the size of any new backlog of complaints within the Department.

Throughout our seven phases of review, the Office of Civil Rights has been a portrait of a dysfunctional agency. Its staff has remained demoralized throughout three major reorganizations. Management's attempts to improve the working environment have been perfunctory, and its attitude toward accountability has been unenthusiastic. The casefiles were in no better condition in March 2000 than they had been in February 1997, and the data base was, after 3½ years of unreliability, still an inefficient means of tracking the status of complaints. Delays in processing and inconsistencies in handling complaints have further marred the integrity of the system. Unless the Office of Civil Rights implements a management plan that addresses effective leadership, a changing organizational culture, customer focus, and process reengineering, we question whether future complaints of discrimination in employment and in the distribution of program benefits will receive due care.

Mr. Chairman, thank you for the opportunity to present the issues we have identified regarding the Department's processing of complaints of discrimination in employment and in the distribution of program benefits. This concludes my prepared statement, Mr. Chairman. I will be happy to answer any questions you may have.

Summary of the Status of Recommendations in OIG Civil Rights Reports (as of September 7, 2000)

The following table shows the status of the recommendations made by the Office of Inspector General during the seven phases of its evaluation of civil rights activities at the Office of Civil Rights (CR) and the Farm Service Agency (FSA), as of September 7, 2000.

	Recommendations			Final Action Taken			Final Action Not Taken		
	CR	FSA	Secretary	CR	FSA	Secretary	CR	FSA	Secretary
Memo I	-	-	4			4	-	-	-
Phase I	11	-	3	5	-	3	6	-	-
Phase II	-	13	3	-	9	3	-	4	-
Memo II	9	-	-	4	-	-	5		
Phase III	-	-	-	-	-	-	-	-	-
Phase IV	-	-	-	-	-	-	-	-	-
Phase V	27	-	2	8	-	1	19	-	1*
Phase VI	8	-	-	2	-	-	6	-	-
Phase VII	39	-	-	6	-	-	33	-	-
TOTALS	94	13	12	25	9	11	69	4	1*

* We recommended that the Secretary establish an Assistant Secretary for Civil Rights at the sub-cabinet level. Legislation was introduced to establish such a position, but it has not yet been acted upon.

SUMMARY OF THE STATUS OF RECOMMENDATIONS
MADE BY THE OFFICE OF INSPECTOR GENERAL
DISCRIMINATION COMPLAINT PROCESSING – PROGRAM BENEFITS

EXHIBIT A – SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action Needed for Mgmt. Dec.	Recommendation Implemented
		Evaluation Report for the Secretary on Civil Rights Issues – Phase I Audit Number 50801-2-Hq(1)				
1a	Yes	Send a letter signed by the Secretary to all complainants whose cases have not yet been resolved assuring the complainants that action will be taken. The letter should include an assigned case file number and the name and phone number of a responsible person who knows the general status of the case.	CR Director sent a letter to each complainant.	Yes		Yes Repeated as recommendation 1a, Phase II
1b		Immediately assume control of the FSA program complaint system and evaluate the adequacy of FSA's civil rights staffing to carry out its civil rights mandate.	CR took control of FSA's program complaint system and assisted in developing staff and internal controls.	Yes		Yes
1c		Reevaluate all discrimination complaints closed and forwarded to program managers by FSA without concurrence from CREA.	Of the 26 cases involved, 22 have been adequately resolved. CR has not been able to find the files for the remaining four cases, thus CR has sent a memorandum to the acting civil rights director of FSA requesting copies.	No	CR needs to obtain copies of the last four case files from FSA and evaluate the associated complaints.	Partially
1d	Yes	Determine the number of outstanding program complaints at FSA and other departmental agencies with the assistance of the agencies and CREA.	CR has formalized monthly meetings to reconcile complaint data by Director's policy memorandum.	Yes		Yes Repeated as recommendation 11c, Phase V
1e	Yes	Develop a data base for the outstanding program complaints. The data base should contain the status of a complaint, the official responsible for processing the case, the actions taken to date, the actions needed to resolve the complaint, the days taken to complete specific tasks, and the age of the complaint.	A comprehensive and reliable data base is in place.	Yes		Yes Repeated as recommendations 2 (shown as 3 in Exhibit A), Phase I and 11a, Phase V
1f	Yes	Process complaints still at the agency level.	CR task force reviewed their original backlog cases and made settlements, as they deemed appropriate.	Yes		Yes Repeated as recommendations 1b, Phase II and 1a, Phase V
1g	Yes	Help CREA reduce the original backlog of complaints at the departmental level.	CR task force reviewed their original backlog cases and made settlements, as they deemed appropriate.	Yes		Yes Repeated as recommendations 1b, Phase II and 1a, Phase V
1h	Yes	Evaluate each agency's civil rights staffing to determine if the agency has committed adequately trained staff and has adequate procedures to process complaints.	Once CR's staffing is completed, its compliance unit will conduct a systematic analysis of the agencies.	Yes		No Repeated as recommendation 6c, Phase V

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DISCRIMINATION COMPLAINT PROCESSING – PROGRAM BENEFITS

EXHIBIT A – SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action Needed for Mgmt. Dec.	Recommendation Implemented
2		A uniform system is needed within the Department that holds designated USDA officials responsible and accountable for the receipt, processing, and resolution of program complaints within established timeframes.	CR has created a unit for moritoring agencies accountability. Systems have been developed which require quarterly reporting from the agencies on all civil rights responsibilities. These submissions are evaluated and a report submitted to the Secretary.	Yes		Yes
3	Yes	A master data base for program complaints should be maintained at the departmental level. This data base should be shared with agencies on a periodic basis to ensure its accuracy.	A comprehensive and reliable data base is in place.	Yes		No Repeated as recommendations 1e, Phase I, 11c, and 11d, Phase V
4		A weekly distribution of an aging report of complaints should be sent to responsible officials. This report should be used as a management tool to identify trends or situations in need of attention.	CR has begun to work with the Technology and Analysis Division to devise an aging report for, among other uses, inclusion in the bi-weekly reconciliation reports.	No	CR needs to show us how it intends to use the aging reports to identify trends or situations.	No
5	Yes	Case files need to be standardized.	CR has secured the services of a contractor to develop and establish the file system in accordance to Record Book – 16. File Plan for the Secretary.	Yes		Partially Repeated as recommendation 12a, Phase V
6		Federal and departmental regulations on processing program discrimination complaints need to be updated and published.	Department regulations have been issued. Federal regulations have been updated and published.	Yes		Yes
7		Agencies should develop a comprehensive management evaluation review system designed to evaluate civil rights compliance at all agency levels.	CR has developed a plan to evaluate 15 USDA agencies, and is in the process of hiring four contract compliance officers to assist in this effort. However, due to changing leadership and budgetary constraints, CR has been forced to postpone the civil rights evaluations.	No	CR needs to develop a comprehensive management evaluation review system designed to evaluate civil rights compliance at all agency levels.	No

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DISCRIMINATION COMPLAINT PROCESSING – PROGRAM BENEFITS

EXHIBIT A – SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS						
Rec. No.	**Repeat Rec.**	**Recommendation**	**Agency Response**	**Mgmt. Dec.**	**Action Needed for Mgmt. Dec.**	**Recommendation Implemented**
		Minority Participation in Farm Service Agency's Farm Loan Programs – Phase II Audit Number 50801-3-Hq				
1a	Yes	Immediately send a letter signed by the Secretary or his designee to all complainants whose cases are still open, assuring the complainants that action will be taken.	CR Director sent a letter to each complainant.	Yes		Yes Repeated recommendation 1a, Phase I
1b	Yes	Convene ad hoc teams to process and significantly reduce the original backlog of outstanding discrimination complaints.	CR convened a task force to review the original backlog cases.	Yes		Yes Repeated as recommendation 1a, Phase V
2a		Revoke the authority that granted FSA responsibility to conduct preliminary inquires of program discrimination complaints.	Delegation of authority to FSA to conduct PI's has been revoked.	Yes		Yes
3a FSA		Develop and implement effective methods of outreach, and establish uniform standards and benchmarks by which to evaluate outreach performance.	Memorandums to SED's requesting an Outreach Coordinator and proposed national Outreach Training meets OIG's requirement.	Yes		Partially
4a FSA		Appoint minority advisors to the county office committees based on recommendations from the underrepresented groups in the county.	Soliciting candidates for advisors from the minority community or underrepresented groups is the process that FSA has always intended to follow.	Yes		Partially
4b FSA		Provide training so that minority advisors are aware of their responsibilities to inform minority individuals and farmers about FSA programs and activities.	Beginning in 1997 FSA will instruct States to ensure that minority advisors are included in annual training of COCs.	Yes		Partially
5a FSA		Work to increase the number of minority employees in FSA county offices where minority groups are underrepresented.	A memorandum was issued to all SED's to ensure all appropriate groups are notified for employment.	Yes		Yes
6a FSA		Establish pre-application interviews with prospective applicants to determine the nature of their request and help identify information needed to complete the application process	As part of FSA's Customer Service Training schedule for August 1998, FSA will emphasize that producers are to be made aware of the fact that the Agency must provide assistance in completing loan applications.	Yes		Yes
6b FSA		Establish an assistance program that includes provisions for one-on-one attention between the loan officer and the farmer, and for farm visits, if necessary, to help farmers prepare information needed to complete application packages.	Farm Loan programs regulations are to be published in the FR as a proposed rule. It will address increased assistance to FSA borrowers. The proposed rule is expected to be published by June 2000.	Yes		Partially

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Rec. No.	**Repeat Rec.**	**Recommendation**	**Agency Response**	**Mgmt. Dec.**	**Action Needed for Mgmt. Dec.**	**Recommendation Implemented**
6c FSA		Discontinue county office committee involvement in determining creditworthiness of farm applicants.	Agency Instruction 1910-A, 1910.5© states that the Agency determines creditworthiness. FSA continues to issue annual notices that FSA loan approval officials determine creditworthiness.	Yes		Yes
7a FSA		Establish and maintain a tracking system to monitor the servicing of farm loan accounts, especially in connection with delinquency rates and borrower responses to notification of availability of loan service programs, and to ensure equality in the servicing of all farm loan accounts.	Notice FLP-90 was issued to the field on October 28, 1999. The notice indicated that implementation of MAC would take place in November or December 1999. The input system of the software has been released to field offices.	Yes		Yes
7b FSA		Make personal contact with those borrowers who do not respond to the notifications or the requests for information within the prescribed timeframes, and ensure that the borrowers fully understand the significance of the notifications and the requirements for acquiring loan servicing.	FSA will contact the borrower within 10 working days after the initial loan servicing notice is sent to determine if the borrower received the application material, reminded the borrower of the importance of responding, and answer any questions.	Yes		Yes
7c FSA		Incorporate a review of civil rights issues in FSA's formal National Internal Reviews and County Operations Reviews, and have district directors address civil rights issues when conducting periodic reviews of loan service centers and county offices.	The recommended changes were included in the fiscal year (FY) 2000 NIR Guide pages 86, 87, and 99. Similar questions were issued in the FY 1999 NIR Guide.	Yes		Yes
8a FSA		Seek legislation to "pool" SDA direct operating loan funds into the national reserve to redistribute to States with unfunded, approved direct operating loan applications.	Legislation was introduced to Congress regarding the pooling of SDA funds between States. Congress gave consideration to this proposal but it was not passed. FSA has again submitted a legislative proposal to the Department.	Yes		Yes
8b FSA		Develop procedures to establish a record keeping system to retain, document, and justify funding of loan applications from the national reserve.	FSA agrees that reserve records including any lists of applicants, which have been funded with reserve funds, should be maintained for three years.	Yes		Yes

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Rec. No.	**Repeat Rec.**	**Recommendation**	**Agency Response**	**Mgmt. Dec.**	**Action Needed for Mgmt. Dec.**	**Recommendation Implemented**
8c FSA		Discontinue the process of informally transferring funds between States and return all unused funds to the National office for redistribution as appropriate.	FSA intends to continue this type of transaction because it encourages States to utilize every resource and opportunity available to them in their efforts to assist minority farmers.	Yes		Yes The recommendation was not implemented as stated. However, the explanation provided was adequate.

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DISCRIMINATION COMPLAINT PROCESSING – PROGRAM BENEFITS

EXHIBIT A – SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS						
Rec. No.	**Repeat Rec.**	**Recommendation**	**Agency Response**	**Mgmt. Dec.**	**Action Needed for Mgmt. Dec.**	**Recommendation Implemented**
		Evaluation of the Office of Civil Rights' Efforts to Reduce the Backlog of Program Complaints – Phase V **Audit Number 60801-1-Hq**				
1a	Yes	Immediately convene a complaints resolution task force, composed of well qualified civil rights personnel from other Federal agencies and senior USDA program personnel … who would report to the Secretary.	CR convened a task force to review the original backlog cases.	Yes		Yes Repeated recommendation 1b, Phase II
1b		Require the Civil Rights Director to implement a system which demands a higher level of supervision over the complaints process and makes the PID Chief responsible for closely reviewing all proposed and final decisions.	CR 1010 package shows its realignment, OHRM has approved all management position and vacancy announcements are closed. Interviews will start when the certified candidates list is forwarded to CR.	Yes		Yes.
1c		Request OGC's legal sufficiency review for the seven cases closed with no findings of discrimination adjudicated based on the agency preliminary inquiry.	Memoranda dated February 17, 2000, were sent to OGC requesting their completion of reviews for 6 of the 7 cases. CR needs to reconstruct the remaining case.	No	CR satisfactorily addressed 6 of the 7 cases. CR needs to locate the 7th case and forward to OGC.	Partially
2a		Assure that the task force assists the CR Director in reviewing the new backlog and in recommending process changes, to include a system that emphasizes involvement of the complainant and a case management team approach to the resolution of the complaint from the initial phases of the process. Until this process is developed and implemented, however, require CR to get back control of the cases which exceeded the 24-day fact finding limit.	The Acting Deputy Director, CR, is developing a comprehensive management plan. At this point, it is not known whether or to what extent the plan will adopt the suggested approach to complaint processing.	No	CR needs to provide us with its comprehensive management plan that should include the suggested approach to complaint processing. CR needs to incorporate this suggested approach into Departmental Regulations and Standard Operating Procedures and provide us with timeframes as to when this will be accomplished.	No
2b		Require USDA agencies to abide by CR instructions, limit their 24-day reviews to fact-finding, and immediately stop obtaining signed statements from complainants and other individuals not employed by USDA.	CR has sent a memo to the agency civil rights directors.	Yes		Yes

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EXHIBIT A – SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action Needed for Mgmt. Dec.	Recommendation Implemented
3a		Direct CR to appropriately plan investigations and to conduct investigations in an effective and efficient manner. At a minimum, investigative plans should be reviewed by a CR manger who should also be following up to ensure that investigations are proceeding as planned.	CR has instituted SOPs for the investigative process, which requires the Chief of Investigations to review and approve all investigative plans. The Chief of PID will be responsible to ensure that all investigative plans are followed in accordance with the original submission statements outlined in the plan and will ensure that all investigations are preceding in a timely and efficient manner.	Yes		Partially
3b		Direct CR to design and implement a quality control system over the review process for reports of investigation. As a minimum, the system should include tracking procedures for recording the dates of reviews, the deficiencies noted, the corrective actions taken, and the number of times and to whom deficient reports are returned.	CR has implemented SOPs that address quality control in the review process for reports of investigation. The SOP establishes a quality assurance review by the Chief of PID.	Yes		Yes
4a	Yes	Require the CR Director to close cases only after all terms and conditions of settlement agreements and other required agency corrective actions are implemented.	CR has assigned a special Assistant to the Director to track all settlement agreements.	Yes		Partially Repeated as recommendation 1a, Phase VI
4b	Yes	Direct CR to immediately establish a system to control and monitor implementation of settlement agreements.	All regulations, manuals, and standard internal procedures will be implemented by July 30, 1999.	Yes		Partially Repeated as recommendation 1a, Phase VI
4c		Direct CR to review the five administratively closed cases that did not contain any evidence to support closing them.	The Early Case Resolution Task Force reviewed four of the five. The fifth complainant was contacted to see if he wanted his complaint reopened.	Yes		Partially
5a		Direct CR to create a position for managing the contracts to provide proper and timely oversight of the quality of the work submitted by contractors.	The Acting Deputy Director of Civil Rights is developing a comprehensive management plan that provides for the hiring of a contract specialist. Upon approval of the management plan, the position will be announced.	No	CR needs to provide us with its comprehensive management plan that provides for the hiring of the contract specialist. CR also needs to provide us with timeframes as to when this management plan will be approved.	No

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DISCRIMINATION COMPLAINT PROCESSING – PROGRAM BENEFITS

EXHIBIT A – SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action Needed for Mgmt. Dec.	Recommendation Implemented
6a		Direct CR, in consultation with OGC, to amend the MOU to include the requirement that HUD forward all future complaints against USDA employees to CR.	The Acting Deputy Director ordered the MOU to remain in force. Thus, CR still needs to determine whether to amend the MOU with HUD. To assist CR in making this decision, it will consult OGC.	No	CR needs to provide us with the results of its consultation with OGC. With OGC concurrence, CR needs to amend the MOU to include the requirement that HUD forward all future complaints against USDA employees to CR.	No
6b		Direct CR to immediately determine the status of 24 possible complaints against USDA employees that are currently in HUD's intake process and to analyze these for resolution.	HUD provided CR with the status of these 24 complaints. CR will enter all 24 cases into its database.	Yes		Partially
6c	Yes	Direct CR to immediately conduct surveys of all USDA programs to determine the need to execute additional MOU's to ensure that civil rights complaint processing and compliance review procedures adhere to established standards.	Due to changing leadership and budgetary constraints, CR has been forced to postpone the civil rights evaluations that would have obviated the need for additional MOU's. However, as DR's 4330-2 and 4330-3 reflect, Agencies no longer conduct complaint processing of any kind. Only CR, FNS, and HUD conduct complaint investigations, and CR currently has MOU's in place with both FNS and HUD. Thus, additional MOU's are not necessary.	No	While we understand only CR, FNS, and HUD conduct complaint investigations, the recipients of Federal financial assistance through USDA should conduct compliance reviews. CR must ensure these recipients are adhering to the standards established by the Director of CR involving compliance reviews.	No
6d		Direct CR to keep open the cases it refers to FNS. Oversee, monitor, and track complaint resolution for FNS and all future agencies with MOU's to ensure complainants receive a fair hearing.	The SOP for Program Intake has been updated to reflect the closure policy. In addition, CR PID has appointed a Point of Contact/Liaison person to oversee, monitor, and track complaint resolution for both HUD and FNS, who, as of the date of this response, has begun to obtain and keep abreast of all relevant information regarding the cases referred to those organizations.	No	CR needs to incorporate the responsibilities assigned to its Point of Contact/Liaison person into its SOP or provide us with timeframes as to when the procedures will be revised to include these changes.	Partially
7a		Establish an Assistant Secretary for Civil Rights at the sub-cabinet level to resolve cross-cutting issues between agencies and CR.	Effective FY 2000, CR will not be a part of Departmental Administration. Legislation has been introduced for an Assistant Secretary for Civil Rights.	Yes		Partially

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DISCRIMINATION COMPLAINT PROCESSING – PROGRAM BENEFITS

EXHIBIT A – SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action Needed for Mgmt. Dec.	Recommendation Implemented
8a		Require the CR Director to place high priority on hiring civil rights managers who have a strong background in civil rights and knowledge of USDA programs and delivery systems.	CR will give due consideration to candidates with strong knowledge, skills, and experience in civil rights. CR will ensure that all managers receive training in USDA programs.	Yes		Yes
9a		Develop staff training plans that adequately reflect the training needs of the agency.	Program staff has received individual plan forms, which must be completed and submitted to the Deputy's staff by March 3, 2000. These forms will be assessed, and a schedule of ongoing training and development will be completed for staff by March 31, 2000.	Yes		Partially
9b		Provide training to staff personnel as soon as possible, when it is determined that specific members of the staff have not received necessary training to properly perform their assigned tasks.	CR initiated interactions with the Howard University School of Law under an existing agreement to have the tailored training developed for staff and delivered at the end of April 2000.	Yes		Partially
10a		Provide a mechanism for employee input into office operations through quality control sessions and other forums.	It is unclear whether the Acting Deputy Director views the management plan as the appropriate document for this mechanism. CR will make a determination on how to obtain employee input by September 30, 2000.	No	CR needs to provide us with the specific methods or opportunities for employee input into office operations.	No
11a	Yes	Before the new data base is implemented, direct CR to ensure the integrity of the data in its current data base by establishing procedures and providing training to personnel on how to use the data base and input data.	Appropriate staff members have been assigned to, and trained on, CRCTS and ProgComp.	Yes		Partially Repeated recommendation 1e, Phase I
11b		Direct CR to establish a second-party review process to ensure the data is reviewed at the time it is entered and that all relevant case data is reviewed at the time the case is closed.	CR has issued a procedures memorandum establishing a second-tier review system for data entry.	Yes		Partially
11c		Direct CR to institutionalize a process of reconciliation that holds each agency head accountable for reconciling its data with that of CR.	The Standard Operating Procedure for the reconciliation process has been completed.	Yes		Yes

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Rec. No.	**Repeat Rec.**	**Recommendation**	**Agency Response**	**Mgmt. Dec.**	**Action Needed for Mgmt. Dec.**	**Recommendation Implemented**
11d	Yes	Direct CR to cleanse the current data base by reconciling all cases in CR's data base with agency data, and by determining the identity and status of the 130 missing cases and the additional 33 cases from FSA.	CR has been unable to locate the vast majority of the 130 missing cases. In order to allow time to parse out which files are needed from each agency, we will prepare memorandums to civil rights directors requesting copies of the files.	No	CR needs to provide us with timeframes as to when it expects to complete its identification and determination of the status of all the cases cited in the recommendation.	No Repeated recommendation 3, Phase I
12a	Yes	The complaints resolution task force should immediately establish control of the files to ensure their integrity and to perform a document-by-document sweep of the files.	Through the file-room project, files are being reviewed. Documents are being reviewed to ascertain that they belong to the file. When documents have been identified as not belonging to the file, those documents have been removed and associated with the appropriate file.	Yes		Partially
12b		Direct CR to find the 40 missing files.	32 of the missing files have been located. Seven of the remaining eight files have been reconstructed. The last complaint was carried as an incomplete complaint, according to the agency, and thus no file was created.	Yes		Yes
13a		Direct CR either to issue within a 2-month timeframe the departmental regulations governing the receipt, processing, and resolution of discrimination complaints, or to consider alternative means of hastening the issuance of these documents.	Departmental regulations for employment and program complaints are complete.	Yes		Yes
14a		Direct CR to issue within a 2-month timeframe standard operating procedures for program complaint processing.	Standard Operating Procedures are complete for all Program Operation Division.	Yes		Yes
15a		Direct CR to resolve within 2 months all recommendations we made in our Phase I and Phase II reports and that CR has failed to implement.	Management decision has been made on several of the recommendations in Phase I. The remaining recommendations in Phase I have been responded to by CR through previous communications.	No	We have yet to reach management decision on the three outstanding recommendations from Phase I.	No

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Rec. No.	**Repeat Rec.**	**Recommendation**	**Agency Response**	**Mgmt. Dec.**	**Action Needed for Mgmt. Dec.**	**Recommendation Implemented**
		Evaluation of the Office of Civil Rights' Efforts to Implement Civil Rights Settlements – Phase VI Audit Number 60801-2-Hq				
1a	Yes	Require the CR Director to immediately implement procedures to review conciliation agreements reached at the agency level, and to monitor and track all settlement and conciliation agreements applicable to all USDA agencies, and ensure their complete and expeditious implementation.	CR has developed a draft SOP for tracking conciliation agreements. CR has also developed an action plan for migrating the settlement agreements into CRCTS. The feasibility must be assessed prior to attempting the conversion. However, because of leadership changes within CR, the entire database system for Programs, including CRCTS, is being reevaluated. Thus, at this time it is unknown whether the migration of settled cases into CRCTS would be effectuated.	No	CR must migrate the settlement agreements in ProgComp into CRCTS, reopen them, and track them to completion. Also, CR needs to create and finalize a separate SOP for tracking conciliation agreements.	Partially Repeated recommendations 4a and 4b, Phase V
1b		Direct CR to provide guidance to agencies regarding the establishment of appropriate systems for monitoring and tracking conciliation agreements.	Memo requesting agencies to submit copies of conciliation agreements to Programs has been issued to agency Civil Rights Directors. A tracking system for both conciliation and settlement agreements will be developed and coordinated with agencies by June 30, 2001.	No	CR needs to provide us with justification for extending the proposed completion dates for its meeting with agencies and development of a tracking system by 1 year from the original completion dates.	Partially
1c		Direct CR to report to the Secretary on a semiannual basis those terms, which have not yet been implemented.	Program Operations will include settlement and conciliation agreement tracking information in its performance report for the quarter ending June 30, 2000.	Yes		Yes
2a		Direct CR, in consultation with OGC and the OHRM, to include a "disciplinary action" section in the departmental regulations as a means of formalizing general requirements and procedures applicable to employees cited by complainants in program discrimination cases who have acted in an improper manner.	CR and OHRM have drafted a policy for handling disciplinary and corrective actions based on findings of discrimination by CR. The policy has gone through clearance and is currently in the Secretary's Office for signature.	Yes		Partially

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Rec. No.	**Repeat Rec.**	**Recommendation**	**Agency Response**	**Mgmt. Dec.**	**Action Needed for Mgmt. Dec.**	**Recommendation Implemented**
2b		Direct CR to forward to the OHRM all prior settlement agreement cases in which discipline might be appropriate, and direct CR to follow up on the cases to determine if any actions are taken.	The agreements were forwarded to the offices of human resources at the Agency level. However, CR will work in conjunction with OHRM to review any decisions made with regard to disciplinary action.	No	CR needs to provide us with an SOP showing a procedure is in place whereby OHRM reviews settled cases in which discipline might be appropriate.	No
3a		Direct CR to formalize its conciliation policy in the Department regulations to encourage conciliation with complainants in program discrimination cases early in the complaint process.	CR is currently gathering model ADR plans from other agencies to use in developing its own. CR currently has the EEOC ADR plan, and will acquire additional materials from CORS. A draft ADR manual will be completed by September 30, 2000.	No	CR needs to provide us with its plan to formalize its conciliation policy in the Department regulations, including timeframes as to when this will be completed.	No
4a		Require the CR Director to instruct FSA to obtain an OGC opinion on whether the one complainant is eligible for priority consideration for inventory property under the definition of a Socially Disadvantaged Applicant; and if so, immediately notify the one complainant of the availability or unavailability of inventory property in accordance with his settlement agreement.	CR instructed FSA to implement the term of the settlement agreement for the one applicant or to provide an explanation to CR if it is unable to do so. FSA provided us a copy of the letter that the State office sent to the complainant to notify him of the availability of inventory property.	Yes		Yes
4b		Require the CR Director to assemble and chair a team of OGC civil rights attorneys and cognizant agency program officials that will meet prior to each agreement negotiation to: (a) perform an expeditious review of the economic analyses and other information compiled as support for the terms proposed in the settlement agreement and (b) analyze all components of the agreement prior to presentation to the complainant to assure they conform with applicable statutes, Departmental regulations, and program regulations.	The Director, CR, will respond.	No	CR needs to provide us with a plan to form the recommended pre-settlement agreement team and to formalize the meetings in its procedures. In addition, CR needs to provide us with timeframes as to when these actions will be completed.	No

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EXHIBIT A – SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS						
Rec. No.	**Repeat Rec.**	**Recommendation**	**Agency Response**	**Mgmt. Dec.**	**Action Needed for Mgmt. Dec.**	**Recommendation Implemented**
		Status of the Implementation of Recommendations Made in Prior Evaluations of Program Complaints – Phase VII Audit Number 60801-4-Hq				
1		Direct CR to resolve the 35 cases remaining from the original backlog with all deliberate speed.	As of March 3, 2000, the backlog has been reduced to 2 cases. One complainant's investigation will be completed by October 31, 2000. The other complainant was offered settlement, which he declined.	No	For the complainant who declined the settlement offer, CR needs to provide us with timeframes as to when it expects to close the case. Also, CR needs to provide support for how the 33 cases were closed.	Partially
2		Grant CR the authority to use an abbreviated system and forego investigations to resolve the 8 cases shown as not yet having been investigated.	The creation of an abbreviated process for the investigation of the backlog cases is not necessary. Of the remaining open backlog complaints, only one requires an on-site investigation. The investigation will be completed by October 31, 2000.	Yes		Partially
3		For future settlement cases, direct CR to include in its standard operating procedures a requirement to document the computations behind its awards of compensatory damages, programmatic relief, and attorney's fees in accordance with the legal opinion set forth by the Department of Justice's Office of Legal Counsel. In addition, CR should submit this documentation to OGC as part of its legal sufficiency review, in accordance with the Secretary's August 30, 1999, memorandum.	The Director is responsible for executing settlement agreements and thus should respond to this recommendation in the future.	No	CR needs to develop a standard operating procedure whereby OGC can review the settlement agreements per the Secretary's Memorandum dated August 30, 1999.	No
4		Refer all settlement cases to the Office of Human Resources Management for consideration of disciplinary action.	CR will forward the final agency decisions and settlement agreements for all settled cases to OHRM by June 30, 2000.	No	CR needs to provide us with a list of the cases being forwarded to OHRM.	Partially
5		Direct CR to find the 83 missing files and determine their status.	Through the file room project, CR will identify any missing files, as well as establish files for any intend-to-file cases for which CR has received correspondence but has not yet developed a file.	Yes		Partially

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EXHIBIT A – SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS

Rec. No.	Repeat Rec.	Recommendation	Agency Response	Mgmt. Dec.	Action Needed for Mgmt. Dec.	Recommendation Implemented
6		For the five recommendations CR reported as implemented but that were not implemented, direct CR to immediately develop a corrective action plan. The CR director should be held accountable for the implementation of this plan.	At the exit discussion and as part of CR's official response to the draft report, CR provided us information related to this recommendation.	No	We accepted management decisions on two of the five recommendations. CR needs to provide information regarding the remaining three.	Partially
7		For the other 17 recommendations that CR has not yet addressed, direct CR to complete all actions necessary to implement these recommendations within 60 days of issuance of this report.	At the exit discussion and as part of CR's official response to the draft report, CR provided us information related to this recommendation.	No	We accepted management decision on 10 of the 17 recommendations. CR needs to provide information regarding the remaining seven.	Partially
8		For the 19 recommendations that CR has not yet fully addressed, direct CR to complete all actions necessary to implement these recommendations within 60 days of issuance of this report.	At the exit discussion and as part of CR's official response to the draft report, CR provided us information related to this recommendation.	No	We accepted management decision on 12 of the 19 recommendations. CR needs to provide information regarding the remaining seven.	Partially
9		Direct CR to issue Acknowledgement Letters to all complainants within 5 days after receipt of the complaint, in accordance with the Department manual.	CR is developing an aging report that will identify cases that are over 5 days old in which the complainant has not been mailed an acknowledgement letter.	Yes		Partially
10		Direct CR to review all remaining open intend-to-file cases and determine whether CR had acknowledged all complaints; whether any cases should be moved forward in the complaint resolution process; and whether any have been open beyond the established timeframe.	There are currently 145 open "intend" cases in the database. Eighty-nine of these are non-class; 56 are class.	No	CR needs to provide us with statistics on the resolution of the intend-to-file cases since our review.	Partially
11		Direct CR to standardize the Acknowledgment Letters so they contain all the required information and explain what information is needed from the complainant.	CR has modified its 15-day letter to communicate more clearly the information needed to process the complaint.	Yes		Yes
12		Direct CR to reclassify the 39 cases as new complaints and move them forward in the complaints resolution process.	CR provided the current status of the 39 cases. All but one, 38 of 39, has been closed.	No	CR needs to provide us with the status (i.e. still in "intends", investigation, adjudication, etc.) for the 39th case.	Partially

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EXHIBIT A – SUMMARY OF RECOMMENDATIONS FOR CIVIL RIGHTS AUDITS						
Rec. No.	**Repeat Rec.**	**Recommendation**	**Agency Response**	**Mgmt. Dec.**	**Action Needed for Mgmt. Dec.**	**Recommendation Implemented**
13		Direct CR to monitor and report its processing times for incomplete cases in order to determine whether it is achieving its standard of 30 days to process these cases and to identify trends and other areas needing immediate attention.	The CRCTS system tracks this automatically. The review system described provides for these cases to be reviewed weekly. With regard to the existing "intend-to-file" cases, CR has already identified them and is working to resolve them.	Yes		Yes
14		Direct CR to close the 16 incomplete cases that we determined remained open beyond the established timeframe.	The 16 incomplete cases have been closed.	Yes		Yes
15		Direct CR to immediately notify program agencies of all open and closed intend-to-file cases (now referred to as "claims" by CR) so that proper actions can be taken, and ensure that this is routinely done on all future cases.	CR has modified the reconciliation SOP to require the case report to be disseminated to the agencies on a bi-weekly basis. In addition, CR has instructed staff to include in the complete complaint acknowledgement letter a "cc" line to immediately notify the appropriate agency civil rights director of all new complete complaints.	No	CR needs to provide us with the modified reconciliation SOP. In addition, CR needs to formalize its "cc" policy by including this requirement in the appropriate SOP or provide timeframes when this will be completed.	No
16		Direct CR to ensure, before closing a case, that any complainant who did not provide all of the required elements of a complaint, or who did not state a connection between "basis" and "issue," understands that he or she is required to do so.	The revised 15-day letter will accomplish this.	Yes		Yes
17		Direct CR to reopen the 70 cases we determined were improperly closed, and to adhere to its documented procedures when processing these complaints.	CR is creating a mail-merge file that will send the revised 15-day letter to the 70 complainants. However, an appeal was made to the Assistant Secretary on this matter, and CR is awaiting the response.	No	CR needs to reopen these cases and send the complainants 15-day letters and then make determinations as appropriate.	No
18		Direct CR to determine if any other incomplete cases were improperly closed.	CR stated that it would mail 15-day letters to the approximately 450 complaints who did not receive such letters. However, an appeal was made to the Assistant Secretary on this matter, and CR is awaiting the response.	No	CR needs to reopen these cases and send the complainants 15-day letters and then make determinations as appropriate.	No

SUMMARY OF THE STATUS OF RECOMMENDATIONS
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DISCRIMINATION COMPLAINT PROCESSING – EMPLOYEE COMPLAINTS

STATUS OF EMPLOYMENT RECOMMENDATIONS, AUDIT NO. 60801-3-Hq

Rec. No.	Recommendation	Agency Response	Mgmt. Dec.	Action Needed for Mgmt. Dec.	Recommendation Implemented
1	Direct CR to locate the 18 missing casefiles.	CR will locate any files that are missing or establish that the files are duplicative or do not exist	Yes	The list provided as Exhibit C in the report will be updated to include the names. While CR provided OIG with the results, for final action, CR will need to provide OCFO with the results of the search to include for each complaint the determination of found, duplicative or does not exist.	Yes
2	Direct CR to review and determine the proper status of the 87 open complaints we identified as closed, and the 2 closed complaints we identified as open.	CR will accomplish this within 30 days of receiving the list identifying those cases.	Yes	While CR provided OIG with the results, for final action, CR will need to provide OCFO with the results of its review to include the determination of the open or closed status for each complaint.	Yes
3	Direct CR to perform a document-by-document sweep of its employment complaints casefiles to ensure that all documentation is accounted for and that the documentation in the files reflects the status of each case.	CR will perform a document review of the casefiles to account for all documents and verify the accuracy and consistency of the casefiles to the database. This will be accomplished by August 31, 2000 by an independent contractor who will reorganize the file room and the file of each open case.	No	During a meeting on August 30, 2000, we learned that no action has occurred pending the development of the management plan (see Recommendation No. 15). CR needs to provide us with its plan to accomplish the review and verify the accuracy and consistency of the casefiles to the database.	No
4	Direct CR to immediately reconcile its casefiles with those of the agencies. CR should make the appropriate changes to its tracking system based on these reconciliations.	The agencies currently receive monthly reports from CR showing the open cases for each respective agency. Beginning with April 2000, CR requests in a cover memorandum that each agency reconcile the report with cases listed in their records. The memorandum requests the agencies submit the results of their reconciliation to CR by returning the CR monthly report with notations made thereupon. Immediately upon receipt of the notations from the agencies, the Employment Complaints Division (ECD) makes database changes as noted by each agency.	No	We agree with CR's action for immediate reconciliation with the agencies. CR provided the cover memo attached to the April report and the notations submitted by an agency. However, to reach management decision, CR needs to provide us with the changes made to their database for the agency report with notations that were attached in the response.	No

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Rec. No.	Recommendation	Agency Response	Mgmt. Dec.	Action Needed for Mgmt. Dec.	Recommendation Implemented
5	Direct CR to modify Department Regulation 4300-7 to require agencies and CR to reconcile their caseloads on a monthly basis.	CR will implement this recommendation through a directive within 30 days.	Yes	For final action, CR needs to provide OCFO with the directive that requires a monthly reconciliation with CR and USDA agencies.	No
6	Direct CR to implement timely management controls to ensure timely and accurate reconciliation between CR and the agencies.	Standard Operating Procedures (SOP) for the employment component of CR are being developed and will by completed by June 19, 2000. A draft of the SOP is attached.	No	CR needs to provide us with the official Standard Operating Procedures to ensure the Department Regulations will be carried out.	No
7	Direct CR to immediately reconcile its cases with those listed by the EEOC as pending hearings and appeals.	ECD initiated the reconciliation of cases pending hearings in the winter of 1999 and will complete this reconciliation by May 30, 2000. The process will be repeated at the end of the fiscal year. The appealed cases were reconciled in January 2000 and will also be reconciled twice a year.	No	At the end of our fieldwork; no one in CR was working on reconciling EEO hearings with its database. In its May 26, 2000, response CR did provide information on results of its appeal reconciliation. To reach management decision, CR needs to provide us with the results of its initial reconciliation of EEO cases pending hearings at EEOC with its database.	No
8	Direct CR to reconcile its cases on a quarterly basis with those cases listed by EEOC as pending appeal and hearings.	To complete the reconciliation process for cases pending hearings, CR must contact each of the 26 EEOC field offices. CR therefore suggested that the reconciliation occur semiannually. The SOPs were being developed and these procedures would memorialize the reconciliation processes. A draft version of the SOPs was provided and the official procedures would be available once the management plan was finalized.	No	We can agree to management decision on this recommendation when CR incorporates its reconciliation process into its operating procedures and provides a date when this would be accomplished. Draft procedures provided in the May 26, 2000, response did not include the reconciliation process with EEOC.	No
9	Direct CR, when presenting data regarding civil rights activities, to provide full disclosure about the data, methodology on how the data is used, and what exactly it means, and to be consistent in reporting over time.	Within 45 days, the Tracking Analysis and Application Division (TAAD) will institute an internal quality control review that ensures the integrity of the data presented by CR. This review will include the method of data extraction, define the representation of the data, and add the run date as a footnote on all outgoing reports.	Yes	For final action, CR needs to provide OCFO with an explanation of the review process it will use to ensure the integrity of data being presented. At a minimum, the review should explain how the data was extracted, define the presentation and must include the run date as a footnote.	No

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Rec. No.	Recommendation	Agency Response	Mgmt. Dec.	Action Needed for Mgmt. Dec.	Recommendation Implemented
10	Direct CR to expedite the implementation of its new employment tracking system containing advanced edit checks to ensure the integrity of the data and providing workflow functions for casefile management.	The Employment Data Tracking System (EDTS) is in its second phase of development. EDTS will have advanced edit checks to include lookup lists for ease of entry to avoid typographical entries, and contain a workflow system which allows users to track the flow of a case, providing better case management. The new system will be tested and finalized, including staff training, by September 30, 2000.	Yes	For final action, CR needs to provide OCFO with precise documentation on the edit checks that will be used to ensure the integrity of the data and an explanation of how the workflow system will work. This documentation should address how the system will minimize data input errors and minimize the occurrence of missing data such as milestone dates. CR must also provide the agenda for the training provided to staff.	No
11	Direct CR to maintain the integrity of the data in its tracking system by identifying suspect data in the system through routine searches for anomalies, and by assigning someone the responsibility to follow up on those suspect cases.	Beginning immediately, TAAD will identify suspect data by presenting weekly reports to ECD for action. These reports will identify missing data or invalid date entries for correction. TAAD will follow up with the specialist to ensure corrections are being made.	Yes	For final action, CR needs to provide OCFO with the first or a recent weekly report on suspect data and documentation on how it was resolved.	No
12	Direct CR to discontinue using its database to track casefile location, or otherwise develop a system that ensures accurate casefile location that can be updated only by those with the authority to do so.	CR's new employment complaints database, EDTS, will have the capability to track the location of the casefiles. EDTS will be available in October 2000. Until EDTS becomes available, TAAD will modify a file tracking system developed for another USDA agency to suit CR's needs. The modifications and installation of this new file tracking system will be completed within 30 days.	Yes	For final action, CR needs to provide OCFO with the specifics on the modification to the current system and documentation on how the new system will track location, and a detailed description on the security implemented to ensure only authorized individuals can make changes.	No
13	Direct CR to cleanse its current database before migrating the information to the new EEO tracking system.	TAAD will work closely with ECD to assist in cleansing the data. EDTS is scheduled to go online in October 2000. TAAD will identify key fields for migration to the new system and will work closely with employment complaints staff to clean those fields. TAAD will verify the validity of the data by providing reports to the employment complaints staff for concurrence.	Yes	For final action, CR needs to provide OCFO with precise documentation on how CR transferred the data to the new system and ensured the data was transferred with integrity.	No

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Rec. No.	Recommendation	Agency Response	Mgmt. Dec.	Action Needed for Mgmt. Dec.	Recommendation Implemented
14	Develop a management plan to address issues identified concerning effective leadership, changing organizational culture, customer focus, processing improvement and reengineering. This plan should include the development of a workforce planning strategy. The use of a management consultant to help develop such a plan should be considered.	The management plan will include steps, processes, procedures and projected time lines for addressing each element below. The plan will consider factors and impediments contributing to CR's inability to meeting its mission in employment and programs efficiently and effectively. The ambitious target date for plan completion is July 31, 2000. • Accountability, • Employee performance, • Training of employees and managers in areas of deficiency, • Employment job placement (skills vs. job requirements), • Work processes and procedures, • Work load levels, • Staffing levels, • Organizational structure, • Rewards and recognition, • Employee involvement, • Customer service, • Case tracking, • File management, and • Staff morale (Good or poor morale is a byproduct of something else. If the elements above are implemented effectively good morale should ensue. So morale may or may not be included in the report as a separate entry.)	No	Based on CR's comments provided in recent meetings, some of the actions on both the employment and program side are pending the completion of the management plan. To reach management decision, CR needs to provide us with a copy of the management plan.	No

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DISCRIMINATION COMPLAINT PROCESSING – EMPLOYEE COMPLAINTS

Rec. No.	Recommendation	Agency Response	Mgmt. Dec.	Action Needed for Mgmt. Dec.	Recommendation Implemented
15	Develop management controls to ensure the reviews of ROI's and FAD's are performed thoroughly and provide accurate information.	CR's response indicated that the new ECD and EAD chiefs have carefully reviewed the existing process for ROI's and FAD's, and have implemented a new uniform policy relating to complaint tracking and processing ROI's and FAD's. With regard to the ROI review process, responsibility for reviewing ROI's has shifted from ECD to EAD. The new process has been included in the draft Standard Operating Procedures attached. CR also provided copies of the new review checklist to address key evidence needed in each issue category. With regard to FAD's, a new format has been implemented to address quality assurance concerns. The EAD chief reviews all FAD's before they are submitted to the Director for final review and signature.	No	To reach management decision, CR needs to provide us with the official Standard Operating Procedures. The procedures also need to make reference to the use of the new checklists developed for the reviews of ROI's and FAD's	No
16	Direct CR to revisit the ROI's and FAD's that we found deficient and ensure that the complaint in each of these cases has been handled with due care.	According to CR, ECD and EAD would work together to review the list of ROI and FAD concerns provided by OIG. All errors and deficiencies will be corrected and documented in EEOMAS and in the record of each case; and a chart will be made of the corrective actions taken in each case and given to OIG upon completion of this exercise. These measures will be completed within the next 30-45 days.	No	To reach management decision, CR needs to provide us with the results of their review on whether each case identified was handled with due care.	No
17	Direct CR and the civil rights directors of USDA agencies to establish and develop ways to enhance the working relationship between CR and the agencies' civil rights staff.	CR will establish a task force of agency civil rights directors and managers in March 2000, to provide the Assistant Secretary for Administration recommendations to improve civil rights enforcement. CR believes that agency heads should be included since the civil rights directors report to the agency heads, not the CR director.	Yes	For final action, CR needs to provide OCFO with the names of the members of the task force and any instructions provided to the task force. The instruction should include issues presented in the finding: lack of communication, receipt of documents, reconciliation of caseloads, any other agency concerns, and points of contacts.	No

SUMMARY OF THE STATUS OF RECOMMENDATIONS
MADE BY THE OFFICE OF INSPECTOR GENERAL
DISCRIMINATION COMPLAINT PROCESSING – EMPLOYEE COMPLAINTS

Rec. No.	Recommendation	Agency Response	Mgmt. Dec.	Action Needed for Mgmt. Dec.	Recommendation Implemented
18	Direct CR to publish a current organizational chart and points of contact phone listings, which show the names of staff personnel and their areas of responsibility. Each time the Department reorganizes, an updated list should be published.	CR responded that this had been accomplished and would be placed on the Civil Rights website.	No	Our review of CR's organization chart found on its website on August 31, 2000, did not include phone numbers. Also, there have been some changes in key management positions, which have not been updated on the internet. In its May 26, 2000, response CR indicated responsibility had been assigned to the Policy, Analysis, Research, and Evaluation Division. If this is the means CR will use to provide the agencies with points of contact, to reach management decision, CR needs to provide us with assurance that this information will be updated regularly.	No
19	Direct CR to establish and provide guidance on training to the agencies and work with agencies to ensure training is developed and conducted in accordance with regulatory guidance and EEO standards. This should include identifying and developing EEO training needs for agency civil rights personnel.	CR's response indicated that this would be implemented with the task force established in response to Recommendation 17.	Yes	For final action, CR needs to provide evidence that training needs are included in instructions provided to the task force for discussion. The task force should be comprised of CR, agency civil rights personnel and agency heads.	No
20	Direct CR to distribute the notes of monthly meetings with agency civil rights directors to facilitate followup action.	CR stated that this would be implemented after their next meeting.	Yes	For final action, CR needs to provide OCFO with a copy of the meeting notes distributed to the agencies.	No

SUMMARY OF THE STATUS OF RECOMMENDATIONS
MADE BY THE OFFICE OF INSPECTOR GENERAL
DISCRIMINATION COMPLAINT PROCESSING – EMPLOYEE COMPLAINTS

Rec. No.	Recommendation	Agency Response	Mgmt. Dec.	Action Needed for Mgmt. Dec.	Recommendation Implemented
21	Direct CR to develop procedures for processing in-house complaints. The procedures should provide a mechanism for processing complaints against the Director of CR and the Assistant Secretary for Administration outside of USDA. There should also be appropriate controls on processing the remaining in-house complaints to ensure complainants are afforded unbiased due care. These controls would include adequate safeguarding and maintenance of the files and data base records.	In its May 26, 2000, response, CR stated that they were refining the OGC draft proposal to address complaints in which the ASA and the director are listed as Responding Management Officials. CR is developing a separate proposal to address complaints raised against other CR employees. Both proposed procedures are attached and were to be finalized by June 19, 2000.	No	The proposed procedures, which address the areas cited, were written by the prior acting Deputy Director for Employment. The procedures discuss the use of the Conflict Prevention and Resolution Center for mediation, which does not currently exist. To reach management decision, CR needs to provide us with the finalized procedures.	No

United States General Accounting Office

GAO

Testimony

Before the Committee on Agriculture, Nutrition, and Forestry, U.S. Senate

For Release on Delivery
Expected at
9:00 a.m. EDT
Tuesday
Sept. 12, 2000

U.S. DEPARTMENT OF AGRICULTURE

Problems in Processing Discrimination Complaints

Statement of Robert E. Robertson,
Associate Director, Food and Agriculture Issues,
Resources, Community, and Economic Development Division

GAO/T-RCED-00-286

Mr. Chairman and Members of the Committee:

We are here today to discuss the U.S. Department of Agriculture's (USDA) civil rights program and, more specifically, the problems that have contributed to delays in its processing of discrimination complaints. Our statement is based on a report we issued last year, which discussed these issues in detail.[1] In that report, we found that despite efforts to process discrimination complaints more expeditiously, USDA was not processing these complaints in a timely manner. We identified a number of long-standing problems that were impeding USDA's efforts to improve its timeliness, including

- continuing management turnover and reorganizations in USDA's Office of Civil Rights (OCR);
- inadequate staff and managerial expertise;
- a lack of clear, up-to-date guidance and procedures; and
- poor working relationships and communication within OCR and between the office and other USDA entities.

We also noted that the Department was not consistently using alternative dispute resolution techniques, such as mediation, to address workplace and other disputes before they become formal employment complaints. Federal law encourages the use of alternative dispute resolution in resolving federal workplace and other disputes.

We made four recommendations to the Secretary of Agriculture to address the problems identified in our report. In commenting on a draft of our report, the Director, OCR, stated that the management weaknesses we cited were real and that our recommended changes were necessary. Furthermore, she said that USDA was actively moving toward the full adoption and implementation of our recommendations. In preparation for this

[1] *U.S. Department of Agriculture: Problems Continue to Hinder the Timely Processing of Discrimination Complaints* (GAO/RCED-99-38, Jan. 29, 1999).

hearing, we reviewed the status of USDA's implementation of our recommendations. We found that USDA has not fully implemented any of the four recommendations. USDA officials note, however, that the agency has drafted a long-term improvement plan to systematically address problems in the program. They expect to begin implementing the plan in October 2000.

Background

USDA's civil rights program has long been hamstrung by a variety of problems and internal discord. The years prior to our report's issuance in 1999 had been a period of upheaval for civil rights at USDA. During that period, increasing numbers of employees had filed discrimination complaints, and a minority farmer class action suit charged the Department with discrimination in lending and other farm programs.

In response to allegations of discrimination, the Secretary of Agriculture appointed the Civil Rights Action Team in December 1996 to review civil rights issues and develop recommendations as appropriate. In February 1997, after holding "listening sessions" with USDA's customers and employees nationwide, the action team issued its report. Among other things, the report noted that (1) USDA's civil rights program had been in a persistent state of chaos because of numerous changes since the 1980s, (2) USDA's process for resolving complaints about the delivery of program benefits and services was a failure, and (3) USDA's system for addressing employment discrimination complaints was untimely and unresponsive. The report made 92 recommendations to address problems in four major areas–organizational structure, management commitment, program delivery and outreach, and workforce diversity and employment practices. Shortly after the report was issued, the Secretary established the Civil Rights Implementation Team to implement the report's recommendations.

In March 1997, USDA consolidated its departmental civil rights functions into a new Office of Civil Rights.[2] While the new office had overall responsibility for civil rights programs, USDA's agencies retained their own civil rights offices that were responsible for ensuring agency-level compliance with civil rights laws and regulations.

Several Problems Hampered USDA's Ability to Process Complaint Cases in a Timely Manner

It was against this backdrop of change that we conducted our 1999 review on USDA's processing of discrimination complaints. On the basis of the most current information available to us at the time, we reported that OCR was not processing discrimination complaints within its own deadlines for program discrimination complaints or within the requirements of the Equal Employment Opportunity Commission for employment complaints.[3]

We identified the following factors as impediments to USDA's efforts to improve processing timeliness: continuing management turnover and reorganizations in OCR; inadequate staff and managerial expertise; lack of clear, up-to-date guidance and procedures; and poor working relationships and communication within OCR and between the office and other USDA entities. Furthermore, we noted that USDA and its agencies were not consistently using alternative dispute resolution techniques with a neutral third party to address workplace disputes. We made recommendations to the Secretary of Agriculture to address most of these problems.

[2]Before the consolidation, departmental civil rights responsibilities were divided between two offices—one office was responsible for employment and program complaints and the other for all remaining civil rights issues, including developing civil rights policy. In addition, most USDA agencies had their own civil rights offices that performed some complaint-processing functions.
[3]Most of this information was as of October 1, 1998—it was taken from reports from OCR's database on dealing with the timeliness of program and employment complaints.

Management Turnover and Reorganizations Created Instability

Since October 1990, the various incarnations of OCR had eight different directors. Similarly, the Program Investigation Division had six chiefs between 1991 and 1998, and the Employment Complaints Division had eight chiefs from 1993 through 1998.[4] To add to this instability, the Department's civil rights program had been reorganized three times since 1993, resulting in numerous changes at the division and staff levels. Civil rights officials and the USDA Office of Inspector General's reports cited a number of examples that demonstrated how ongoing management turnover and reorganizations had affected the quality of OCR's work and contributed to poor morale and low productivity.

In the 19 months since our report was issued, OCR has continued to experience a high level of management turnover. According to USDA's Assistant Secretary for Administration, OCR's most recent reorganization was intended to address this issue and the new Deputy Director has drafted a long-term improvement plan that addresses many of the personnel concerns within OCR. However, it is too soon to tell whether this initiative will effectively resolve the many concerns that the Inspector General and we have identified because implementing the draft plan will require a long-term effort. Some of the key initiatives, particularly training and staffing, depend on additional funding that USDA plans to request in its fiscal year 2002 budget.

Inadequate Expertise Contributed to Processing Delays

The Civil Rights Action Team's report noted that USDA employees generally viewed the Department's civil rights offices as a "dumping ground" for many staff who had settled their Equal Employment Opportunity complaints. The issue of inadequate staff expertise surfaced throughout our review, and we cited several examples of this in our report. The Acting Assistant Secretary at the time cited inadequate staff expertise as an initial obstacle in resolving the existing backlog of program complaints and the lack of qualified staff as a significant contributor to delays in processing employment complaints. She

[4]These positions were held in either a permanent or an acting capacity.

noted that while many new staff had been hired, many individuals still lacked the necessary skills for their positions. To address this issue, she and the Director, OCR, developed a list of 36 staff members (almost a third of the office's staff) whom she described as being inappropriately placed in their current positions. As of mid-November 1998, OCR was working with USDA's personnel office to develop procedures for placing these individuals in other positions within USDA; plans were to refill all 36 positions with qualified individuals.

GAO's Recommendation: We recommended that USDA establish target dates and ensure that they are met for having the Director, OCR, implement the office's plans to relocate the OCR employees identified as lacking the necessary skills and fill the vacated positions with employees who have appropriate civil rights expertise. Additionally, we recommended that USDA assess the training needs of OCR employees and implement a program to meet current and future training needs.

Status of USDA's Implementation: USDA did not implement its plan to relocate the 36 staff members. Instead, USDA officials told us that they plan to address personnel problems through (1) a systematic assessment of the skills needed for OCR, (2) the implementation of training programs to properly educate employees, and (3) the use of performance evaluations that would provide the basis for taking appropriate action in regard to employees who are not performing at acceptable levels. These actions are outlined in OCR's draft long-term improvement plan.

Clear, Up-to-Date Guidance and Procedures Were Lacking

USDA did not have clear, current guidance and procedures that would govern the receipt, handling, and resolution of its program and employment complaints. Such guidance and procedures are important in promoting departmentwide compliance with, and standardization and effective enforcement of, civil rights statutes and Equal Employment Opportunity Commission regulations. However, USDA had not issued regulations that establish program policies and prescribe procedures for either type of

complaint. In addition, USDA's operations manuals, which provide more detailed and technical guidance and instructions than the regulations, did not accurately reflect existing processes for program and employment complaints.

GAO's Recommendation: We recommended that USDA establish target dates and ensure that they are met for (1) issuing departmental regulations for program and employment complaint processes and (2) revising and/or issuing operations manuals so that they accurately reflect departmental regulations. We also recommended that USDA develop procedures to ensure that departmental regulations and manuals are kept current to reflect organizational, policy, or procedural changes that can affect the implementation of USDA's civil rights program.

Status of USDA's Implementation: In March 1999, USDA issued departmental regulations that addressed the processing of both employment and program complaints. OCR is in the process of issuing two operations manuals and several standard operating procedures for implementing these regulations. In particular, OCR's program complaint section has finalized 9 of 10 standard operating procedures, while the employment complaint section has drafted, but not finalized, its procedures.

Inadequate Working Relationships and Communication Complicated Efforts to Process Complaints

Difficulties in establishing effective working relationships and communication between OCR and some USDA agencies, between OCR and the Office of General Counsel, and within OCR itself had hindered efforts to process complaints more efficiently. Our 1999 report cited a number of specific examples demonstrating this problem:

- OCR's implementation of the program complaint process was hindered by agencies' disagreement with OCR about their role in the program complaint process and by inadequate OCR guidance.

- OCR continued to experience difficulties in developing effective working relationships with the Office of General Counsel; this contributed to inefficiencies in processing program complaints. In particular, problems were cited regarding lengthy General Counsel reviews of draft OCR decisions. The Office of General Counsel attributed these delays to the fact that many of OCR's draft decisions needed extensive revisions.
- Inadequate communication within OCR contributed to low morale and productivity. According to a 1998 Office of Inspector General report, many Program Investigation Division employees said that they were never consulted when decisions were made and that this lack of consultation resulted in the establishment of timetables that they viewed as unreasonable and unattainable.

GAO's Recommendation: We recommended that USDA establish procedures for ensuring more effective consultation and communication by OCR with agency civil rights offices, the Office of General Counsel, and other affected entities, particularly in implementing new processes, policies, and procedures that affect these organizations.

Status of USDA's Implementation: According to USDA's Assistant Secretary for Administration, OCR meets regularly with a committee of agency civil rights directors. While we did not evaluate the extent to which these meetings have resulted in improved working relationships and communication, a recent Office of Inspector General report found that problems continue to exist.

USDA's Use of Alternative Dispute Resolution in Addressing Workplace and Other Disputes Was Sporadic

USDA did not consistently use alternative dispute resolution techniques to address workplace and other disputes. These techniques, which typically involve intervention or facilitation by a neutral third party, range from more formal approaches (e.g., management review boards and arbitration) to less formal techniques, such as mediation, where a neutral third party helps craft a solution to the dispute. When used

early in a dispute, before positions solidify, mediation can resolve workplace disputes before they become formal complaints. By reducing the number of formal complaints, OCR would be relieved of some of the burdens imposed by its large caseload and could focus on streamlining its employment complaint process to make it more timely.

In May 1996, the Secretary of Agriculture directed each USDA agency or mission area to develop, by November 30, 1996, an alternative-dispute-resolution-based conflict resolution program outside of the formal employment complaint process. However, at the time of our report, USDA had only five alternative dispute resolution programs, which covered (1) all employees in 6 of USDA's 17 agencies, (2) employees in two regions of one agency, and (3) some employees in a department-level office. In March 1998, USDA established the Conflict Prevention and Resolution Center to coordinate its alternative dispute resolution and conflict prevention efforts, which was not fully funded or staffed at the time of our report.

In addition, OCR's operations manual for program complaints called for complainants to be offered mediation early in the complaint process. However, at the time of our review, mediation was not being offered as part of the program complaint process.

GAO's Recommendation: We recommended that USDA develop and implement a program for using alternative dispute resolution early in the program complaint process.

Status of USDA's Implementation: USDA's regulations for processing program complaints do not include the use of alternative dispute resolution, nor has OCR used alternative dispute resolution in the program complaint process. OCR officials said that they plan to examine the potential use of alternative dispute resolution in the program complaint process. However, they noted that alternative dispute resolution may not always be effective for resolving certain types of program complaints.

In conclusion, our 1999 report found that USDA's civil rights program had a long way to go before it achieved the Secretary's stated goal of making USDA the civil rights leader in the federal government. In recent months, USDA has taken some initial steps to address the Department's chronic problems in addressing civil rights complaints. Unfortunately, these plans will require long-term implementation, including additional funding for hiring and training personnel. As a result, it appears as if the Secretary's goal, at least in the short term, remains elusive.

Mr. Chairman, this concludes our formal statement. If you or other Members of the Committee have any questions, we will be pleased to respond to them.

Contact and Acknowledgments

For future contacts regarding this testimony, please contact Robert E. Robertson on (202) 512-5138. Individuals making key contributions to this testimony include Jerilynn Hoy, Richard Cheston, Rosellen McCarthy, and Jacqueline Cook.

(150293)

STATEMENT TO THE SENATE COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY
BY PAUL W. FIDDICK, ASSISTANT SECRETARY FOR ADMINISTRATION,
U.S. DEPARTMENT OF AGRICULTURE
SEPTEMBER 12, 2000

(also submitted on behalf of USDA witnesses
Charles R. Rawls, General Counsel, and Rosalind Gray, Director, Office of Civil Rights)

Good morning, Mr. Chairman and members of the Committee. Thank you for inviting us to testify before you today on the promotion and enforcement of civil rights at the Department of Agriculture (USDA).

I am offering this testimony on behalf of Secretary Dan Glickman, as well as my colleagues here with me today – Charles R. Rawls, our General Counsel, and Rosalind Gray, Director of the Office of Civil Rights. In addition to this written testimony, Charlie, Rosalind, and I will each make brief remarks to the Committee and stand ready to answer any questions you may have.

It was almost exactly one year ago that I appeared before this Committee for my confirmation hearing. The Senate confirmed my appointment on November 10th and I was sworn in as Assistant Secretary for Administration on November 16th of last year. In this capacity, I oversee several Departmental staff offices, including our Office of Civil Rights (OCR) -- which brings me before you today.

When I arrived at USDA, Secretary Glickman made it clear that there is nothing more important to him than continuing to advance the Department's civil rights record. As in any venture, there's always room for improvement and more steps to take. However, we believe we've made significant progress in addressing the circumstances that give rise to complaints on one hand, and in processing the complaints we receive in a timely and efficient manner, on the other.

The USDA civil rights story is a story of struggle, of challenge, and of heartache and heartbreak. It is only in this Administration that USDA has really faced up to its history and acknowledged how much we need to do to eradicate inequality.

The Civil Rights Action Team (CRAT) report of February 1997 stated:

> "Despite the fact that discrimination in program delivery and employment has been documented and discussed, it continues to exist to a large degree unabated....The comments [received by CRAT] reflected the depth of pain and betrayal felt by so many customers and employees."

We are not here to tell you that our problems are fixed. We're here to tell you that we take them seriously, and that we are doing everything we can to fix them. We appreciate the role of Congress, oversight agencies like GAO and our IG, and USDA customers and employees to point our shortcomings out to us. We've made progress, but there is still much work to do to make USDA a leader in civil rights.

Better Representation of Women and Minorities in USDA Employment

One part of this story that sometimes doesn't get told is how well we're doing at USDA in terms of overall representation in employment, and the progress we have made toward the President's goal of a workforce that looks like America. USDA's total workforce has decreased by more than 15% since 1993, but our representation of minorities and women has steadily improved. The percentage of women has marginally increased, from 41.1% to 41.9% since 1993. African American employment has grown from 9.4% to 10.8%; Hispanics have increased from 4.1% to 4.8%; Asian Americans and Pacific Islanders from 1.7% to 2.0%; and Native Americans from 2.4% to 2.6%. Our current hiring rates show that this progress will continue. It has been doubly difficult to make these gains in the environment of a shrinking workforce and fewer jobs. We have further to go, and I'll detail later some major initiatives to address employment of the most under-represented groups.

GROUP	1993 EMPLOYMENT	1999 EMPLOYMENT	1999 HIRING RATE
African Americans	9.4%	10.8%	15.1%
Hispanics	4.1%	4.8%	5.6%
Asian Americans/ Pacific Islanders	1.7%	2.0%	3.3%
Native Americans	2.4%	2.6%	1.4%
Persons with Disabilities	9.0%	7.9%	9.8%
Women	41.1%	41.9%	53.5%

The Civil Rights Action Team

As you know, Secretary Glickman appointed the CRAT in late 1996, to thoroughly review USDA's civil rights record and recommend hard-hitting actions to address some long-standing problems. The CRAT report, issued in February 1997, stands as a landmark in Federal Government civil rights efforts. It represents a sober, impartial, and sometimes uncomfortable look at the institutional and underlying problems, and presents a roadmap for remediation and relief.

As you are aware, USDA moved decisively to implement the CRAT recommendations, and by now, the majority has been implemented. Of the 92 recommendations, implementation of 57 is complete, 27 are in progress, and 8 require Congressional action. One of the recommendations dealt with our Civil Rights office, which had been fragmented into a number of different units and functions, with no strong central oversight and accountability. In 1997, Secretary Glickman reassembled and empowered all civil rights functions at USDA in an independent office, and appointed noted civil rights attorney Rosalind Gray as Director in July 1998. And since my arrival ten months ago, the Civil Rights Office again reports to a Senate-confirmed official.

Another key CRAT recommendation was to expand our civil rights training and make it mandatory and universal. We selected important topics that should be covered over a three-year period (ending in FY 2000) in training provided for every employee of USDA. You can imagine what an undertaking this has been in a Department the size of USDA.

Most USDA agencies completed training on several of the topics during FY 1998 and 1999. Last September, the Office of Civil Rights entered into an agreement with the USDA Graduate School to leverage modern technology and develop an automated on-line training course covering the remaining topics. Our employees are in 15,000 locations worldwide. This is a state-of-the-art, interactive, low-cost way of reaching them, and represents the Federal Government's first comprehensive, Department-wide on-line training, consistent with Executive Order 13111, "Using Technology to Improve Training Opportunities for Federal Government Employees." The training is custom-designed for USDA and uses agency-specific exercises and examples to make the training relevant. The training went live on July 31, 2000. A hard copy version is available for those employees without sufficient computer support to take the on-line training.

African American Farmers Class Action Lawsuit

With our colleagues in the Justice Department, we entered into negotiations – ultimately successful – to settle the *Pigford v. Glickman* class action lawsuit by African American farmers concerning the Department's farm loan programs. We agreed to an objective third-party adjudication of claims and the use of outside parties, not employed by USDA, to monitor and oversee the process. Since the April 1999 settlement, over 20,000 persons have filed claims under the Consent Decree, and more than 18,000 claims have been decided. A little over 60% of the claims have been resolved in favor of the claimant. Through the end of August, the Government has paid out more than $357 million in liquidated damages, mostly paid out through the Department of Justice's Judgment Fund. We've also forgiven another $8 million in principal and interest owed

on farm loans. We're providing plain-English information and status updates to the public through a special web site, www.usda.gov/da/consent.htm.

Holding Managers Accountable

Accountability has been at the heart of the Secretary's civil rights commitment. Accountability comes in two forms – establishing objective standards of conduct, and taking appropriate disciplinary or corrective actions.

Under CRAT, a separate civil rights element was added to every USDA manager's performance standards. Civil rights criteria were also inserted into the existing standards for non-supervisory employees. We've since taken the process a step further, by insisting on tough, plain-English, quantifiable standards outlining each agency head's responsibility. OCR Director Rosalind Gray and I have required each agency head to report his or her accomplishments, and we will be providing performance ratings based on demonstrated accomplishments at the end of the fiscal year.

On June 30 of this year, the Secretary issued a new Departmental Regulation addressing the "consequence" side of accountability. As recommended in the CRAT report, we've already stepped up enforcement: 39 disciplinary actions (including 4 removals) were taken for discrimination in calendar year 1998; 40 (including 6 removals) in 1999; and 18 (including 4 removals) during the first half of calendar year 2000.

The Secretary's latest action makes the policy even stronger. Now, every time an EEO complaint is closed either with a finding of discrimination or by a settlement agreement, Human Resources staff will review the complaint file. They will determine whether and what disciplinary or corrective action is appropriate. This does not mean that every settlement agreement will result in someone being disciplined. But it does close a

loophole in the system. Before, disciplinary action was rare in cases that were closed with a "no-fault" settlement agreement.

As you know, USDA is highly decentralized, and component agencies have their own civil rights staffs that are responsible for managing, subject to Department-wide procedures, their internal equal employment opportunity programs. This year, we are requiring each USDA agency to do a full compliance review of its civil rights employment program. To ensure impartiality, these reviews are being conducted by outside contractors, rather than by internal staffs, using a standard set of Department compliance review guidelines. Some USDA agencies have already completed their reviews, and all agency reviews will be under way by the end of this month.

Employee Input

Beginning with the Secretary, USDA strives to hear the message that employees and customers are sending us. The Secretary, those of us here, and the administrators of our agencies have maintained an ongoing dialogue with groups and individuals representing employees, customers, and other stakeholders. We have honestly endeavored to maintain an "open door" policy.

In June, Secretary Glickman announced that he is establishing a portfolio of employee civil rights advisory councils. We already have two such employee advisory councils -- one for Hispanic employees and one for employees with disabilities. Now, we're chartering councils for five other groups -- African Americans, Asian Americans and Pacific Islanders, Native Americans, women, and gays and lesbians. These councils will give each protected group a means to share concerns and provide advice directly to the Secretary, and a way for the Secretary to make policy that takes into account the perspectives of each group. The Secretary is also creating an overarching Diversity Council, comprised of two representatives from each of these employee councils, to harmonize the advice of the councils and provide consistent policy direction. We expect to have the chairs and co-chairs of the councils named before the end of this month.

Affirmative Steps

I also wanted to share with you three specific initiatives that are targeted to the needs of specific groups that are underserved or under-represented – employees with disabilities, Hispanics, and Asian Americans and Pacific Islanders.

Even before the President's recent Executive Order that the Government hire a total of 100,000 new disabled employees over the next five years, USDA was moving into the forefront in this area. The Secretary established an advisory committee to focus attention on the unique needs of employees and applicants with disabilities, and to improve our hiring record. Two years ago, the committee issued a report entitled "A Time for Change," making a series of comprehensive recommendations. Last year, it conducted a broad survey of employees (30,000 voluntary responses) to determine where we needed to concentrate specific efforts. This year, it worked with the Office of Civil Rights to issue a Department-wide policy on reasonable accommodations to help employees with disabilities function at peak efficiency and to fully utilize their potential. The Committee also instituted a pilot mentoring program for disabled employees, to provide support in meeting the special challenges they face. Our state-of-the-art TARGET Centers are leaders and acknowledged Government-wide resources for accessible technology.

We are also a leader in reaching out to the Hispanic community. This May, the Secretary invited leaders of the 15 largest national Hispanic organizations to meet with him and key staff, to hear how we could do better in employee recruitment and retention, and forge partnerships and alliances with Hispanic groups. Led by the Secretary's Hispanic Advisory Council, we developed a far-reaching Hispanic Employment Plan. We are expanding the number of positions for which we recruit from all sources, rather than just internally, and increasing the use of bilingual/bicultural certification for appropriate positions, as the groups requested. We've created a unique Hispanic Recruitment Cadre that will work with six newly selected Hispanic-Serving

Institution Liaisons stationed around the country. The Recruitment Cadre will receive its orientation and training later this month, and then hit the road in our quest for the best candidates. We're expanding use of targeted student employment and establishing mentoring and leadership development programs. The leaders of the Hispanic organizations were impressed with our determination, but wanted to ensure that this was no one-shot deal. They asked for a follow-up "proof of performance" meeting that, in fact, will occur tomorrow.

We are actively implementing the President's Executive Order on increasing outreach to underserved communities of Asian Americans and Pacific Islanders (AAPI's). I convened a work group with representatives from every USDA mission area and from the three AAPI employee organizations to prepare an action plan under the Executive Order. We issued that plan July 15, and we look forward to a host of creative actions in this area in FY 2001, including targeted college recruitment, more USDA publications in languages such as Chinese, Hmong, and Vietnamese, and expanded outreach and partnerships with AAPI community organizations and educational institutions. I've been an active member of the working group put together by the White House Initiative on AAPI's, and I'll be in New York next week with the President's Commission on AAPI's to hear testimony from community groups and AAPI organizations on improving service to them.

Complaint Processing

Let me turn now in detail to discrimination complaint processing. In light of the findings of the General Accounting Office (GAO) and our Inspector General (IG), we think it would provide useful perspective to compare the work and workload of USDA's civil rights office with that of other Federal agencies.

As this Committee knows, the Department of Agriculture is a very large and dispersed organization. With almost 100,000 permanent and temporary employees, it is the fifth largest Cabinet agency by employment. However, on a *per capita* basis, it is in the

middle of the pack in the rate of EEO complaints filed. We're exactly at the Government-wide average of 1.0% per year in the rate at which Federal employees file discrimination complaints, according to the EEOC's 1998 report, the latest data available. In other words, because our Department is so large, the complaint volume is numerically high. But on an equalized basis, the rate of complaint filing is average.

USDA program complaints -- which normally involve farm loans and rural housing benefits, but can involve any one of our dozens of programs -- are unique to USDA's mission and therefore do not easily lend themselves to comparison. Again, however, the denominator of USDA customers is very large. In 1999, for example, we made almost 38,000 farm loans and serviced an inventory of over 214,000 farm loans. We also provided financial assistance to 60,000 families for new or improved housing. We logged over 109,000 calls to our Meat and Poultry Hotline, and about 350 million visitor days to our National Forests. We have inspectors every day in 6,400 privately owned meat and poultry plants. About 1 in 6 Americans, or about 46 million people, are touched by our Food and Consumer programs, such as Food Stamps or the WIC Program.

For the same period, FY 1999, we received 1,261 program discrimination complaints, and we are projecting a total of less than 650 complaints for FY 2000, based on the run rate through August.

Let me be clear. This is not meant to minimize or excuse any acts of discrimination -- which are anathema and unacceptable in any number. It is meant to place the volume of our civil rights complaints in context. A consequence of being an agency with tens of thousands of employees and millions of customers is that there is a lot of work to do. And as the GAO and our IG have pointed out, we have not been keeping up with our work.

Over the past five fiscal years, USDA has closed an average of 744 EEO complaints a year. This is more than all but three other Cabinet agencies. Unfortunately, we have

been receiving an average of 835 EEO complaints a year for the same period. Let me tell you what we have done this year to close this gap.

We know we have our work cut out for us. Our average complaint processing time is not acceptable to me or to the Secretary. We will devote the resources necessary to reduce it, meaningfully, and we have a carefully developed management plan, which I'll share with you in a moment, to do it.

Action Plan for Improvement

To address the standing inventory of employment complaints at the intake stage awaiting acceptance or dismissal, we engaged contractors to review 360 complaints, recommend action, and draft appropriate letters for our ratification. So far, we've received 316 of the cases back from the contractors and expect to have the last of these cases moved forward into the investigation stage within a few weeks. Also under consideration is a comprehensive complaint-reduction initiative, expected to last a year, to eliminate the remaining inventory of program and employment complaints, as well as new complaints received during the twelve-month period. In other words, it's not enough to tackle individual problem areas as they occur, but we must ensure that we fix the entire process "end-to-end" once and for all.

As you may remember from my confirmation hearing, Mr. Chairman, I am new to Government. I spent more than 25 years of my career in private industry, most of that time as president of three different companies. When I arrived at USDA, Secretary Glickman instructed me to use my business experience to develop an enduring solution to the inefficiencies of our civil rights operations. I approached this assignment as I would a business problem, one where an operating unit was not performing up to expectations. I concluded that:

1. The Office of Civil Rights, as presently organized, was not able to process complaints at the same rate as complaints were being filed;

2. The problem was unlikely to correct itself simply with the passage of time, or without modification to the "business plan";
3. For the solution to be survivable, it would need to be led by a career officer (as opposed to a political official); and
4. Any changes would have to be made from the "inside out" rather than the "outside in".

In this last regard, I've observed that Government's "default setting" is often the "outside in" approach -- in other words, the hiring of consultants or the creation of a task force. These techniques work well for acute problems and crises, but in my experience are less effective in fixing chronic, structural problems.

I recommended and the Secretary approved a plan to create a new position in OCR that I borrowed from the private sector -- that of Chief Operating Officer (COO – officially, Deputy Director) -- with delegated authority for the complaints processing and administrative functions of the office. This bifurcates OCR into two distinct areas -- complaints processing and administration headed by a career senior executive, and the policy, regulatory, and legislative functions led by a senior political official. The latter role is filled by our Director of the Office of Civil Rights, Rosalind Gray. Five months ago, I named David Winningham, a 28-year USDA employee with extensive management experience, to the COO position. Both of these talented individuals report directly to me as Assistant Secretary.

The Secretary and I directed Mr. Winningham to immediately set about the task of developing a long-term improvement plan (LTIP) to address the actions and resources necessary to fundamentally and permanently improve the operations of OCR. To our knowledge, this is the first business engineering plan that has been undertaken since the creation of the office in 1997.

The LTIP is truly a collaborative work -- approximately one-third of our civil rights staff has been involved in its production. It is comprehensive in design, and covers all functional areas of complaint processing. Specifically, the LTIP focuses on:

- staffing levels needed,
- types of knowledge, skills, and abilities needed,
- performance expectations and accountability,
- staff training needs and proper job placements,
- systems and process engineering, and
- automation and database support needs.

The process for developing the LTIP involved four stages:

- Impediment Survey to ask employees of OCR to identify what they felt to be impediments to performing their jobs.
- Fact-finding to get input from USDA agency civil rights managers and key USDA officials.
- Benchmarking to determine how OCR compares to similar sized outside agencies.
- Time Study to determine the time it takes to perform each task in complaint processing.

During the benchmarking phase, we compared our staffing, organization, and processes to the best practices of our analogs in Federal Government, the Department of the Treasury and the Air Force. At the same time, we have taken a zero-based approach to determining the staff and time resources necessary at every stage of the complaint process. A draft of the plan was delivered in August and we should be ready to roll within 30 days.

In the Field and On the Front Lines

Before I close, let me say a word or two about how our civil rights initiatives are having a real effect throughout the organization. I want you to know that the Secretary's message is not just " getting through," it's making a difference. Just two months ago, Secretary Glickman summoned all Subcabinet members and agency heads to hear him reiterate – in no uncertain terms – how important civil rights are, and that he expects results.

What you've heard today is mostly about initiatives we've taken at the Departmental level. To be fair and complete, though, we should credit the diligent work USDA agencies are doing. They are making the kinds of changes that will result in better service and fewer complaints being filed. Just a couple of quick – but representative – examples:

In just five years, the Farm Service Agency (FSA) increased its lending to African American farmers by 67 percent, making 893 loans in FY 1999 (up from 530 in FY 1995), totaling $32.3 million (up from $19.4 million in FY 1995). In the states where there are the highest number of claims under the Pigford consent decree, the percentage of total direct borrowers who are African American has grown to 13.4% of all borrowers in Alabama and 20.1% in Mississippi. Although African American farmers comprise 1% of American farmers, they comprise 3% of loan recipients in FSA's direct loan portfolio, and more than 4% of the loan recipients in fiscal year 2000.

In an attempt to ensure that USDA's vital message of food safety and advice on safe food handling reaches all segments of the public, the Food Safety and Inspection Service is now providing information in Spanish, Chinese, Korean, and Vietnamese, and sent information packets to 183 African American newspapers.

The Forest Service has hired a full-time Native American liaison in its Southwest region and a full-time national recruiter for employees and summer interns with disabilities.

The Natural Resources Conservation Service trained 750 employees on working effectively with Native Americans on the Environmental Quality Incentives Program, assisted 19 American Indian tribes in assessing the water quality in their watersheds, and is placing 77 employees on tribal lands to assist tribes in improving soil and water quality.

Our Research, Education and Economics mission area is providing practical assistance and training to farmers with disabilities through our unique AgrAbility program and through the Education and Assistance Program partnership with Purdue University.

These are but a few examples to give you a flavor of the good work being done around USDA. There are many more we could share. For the sake of the thousands of hard-working, caring employees, it's important we not overlook their day-to-day contributions to the civil rights effort.

The commitment of our Secretary, Dan Glickman, to the promotion and enforcement of civil rights at USDA is a matter of record. I can assure you that we take this commitment most seriously. We have been hard at work crafting an institutional solution that will endure beyond this Administration, and that will provide responsible social justice for USDA employees and the public today and in the future. As the Secretary said in his June 29 speech to all USDA employees,

> "We need to set a benchmark, a baseline to which future managers, future Secretaries and future Administrations will be held accountable. I want you to know I'm going to sit down with my successor and I'm going to lay it out -- exactly what we've done, exactly where USDA is headed and the institutional structure that we've put in place to deal with civil rights. There is no turning back. That is the standard we've set against which all future managers will be measured. But it is also a standard that every employee of the department and the next Administration must carry on."

National Black Farmers Association

Prepared Testimony of John W. Boyd, Jr.
President, National Black Farmers Association

before
United States Senate
Committee on Agriculture, Nutrition, and Forestry
Tuesday, September 12, 2000
9:00 a.m.
SR-328A

Chairman Luger, Ranking Member Harkin, and other distinguished members of the Senate Agriculture, Nutrition, and Forestry Committee,

Good Morning:

My name is John Boyd, Jr., President of the National Black Farmers Association and a farmer from Mecklenburg County, Virginia. I thank you for the opportunity to discuss some of the issues that are facing the members of the NBFA and farmers across the nation. It is our belief that actions taken, or not taken, by the U.S. government over the past century have systematically deteriorated rural America and the livelihoods of tens of thousands of American farmers. At critical times, when our farmers needed government most it failed to come through for them.

For this reason I wish to thank you, Mr. Chairman, and the entire committee for holding this hearing today. Rural America is watching us right now, and it is our responsibility to ensure that their best interests are taken to heart. I hope that my statements here today will educate your committee about the plight of black farmers, the remarkable work the NBFA has been doing to help black farmers, and the need for bipartisanship in dealing with the issues that have arisen out of problems within the U.S. Department of Agriculture and remain to this day. I would like to acknowledge, Mr. Chairman, that the Clinton Administration has taken some new steps toward bringing justice for black farmers, but much is yet to be achieved.

In the early 1900's, there were more than one million black farmers. Today, that number has declined to less than 30,000. The NBFA believes that much of this decline can be directly attributed to the actions and inaction of USDA and government officials.

I remind you that the examples of illegal and immoral actions over the past few decades at USDA are numerous and shocking. Loan applications denied on the basis of race. One case when a handgun sat on the desk of an administrator as applicants met to discuss farm loan opportunities. Black farmers -- waiting in line for hours to meet with USDA officials -- who later learned that the officials slept through the application process. And a party-like atmosphere in many parts of the country as USDA officials gave out millions of dollars in gifts to their friends in the farming community -- all while thousands of black farmers were left without help.

Seven years ago, as I personally faced some discriminatory acts by the USDA – as I sat in my farmhouse by candlelight, during the dead of winter -- it was becoming very clear to me. My lights had been turned off; federal officers were knocking at my door threatening to confiscate my farm equipment; foreclosure signs were being posted on my property; stress had destroyed my family; and there was no money. All of this, at no fault of my own. Through conversations with others in my community, and through outreach to other communities, I realized that I was

not alone. Many other black farmers had also been the victims of some of the most incredulous acts of discrimination by the US government in American history.

As these acts of discrimination continued within the US Department of Agriculture, our government distanced itself from the core values on which this country had been founded. During the Reagan Administration, America's top decision-makers dismantled the Office of Civil Rights within USDA. This resulted in thousands of discrimination claims simply being thrown away or stored in boxes standing as much as ten cubic feet high. As a result of actions like these, Black and other economically disadvantaged farmers have been, and continue to be, denied access to the financial and programmatic resources readily available to others throughout our society. Mr. Chairman, I report to you today that: the American dream is still being denied to many American farmers.

One of the first leaders to recognize the problems at USDA, and actually devote personal energy to fixing them, was the former chairperson of the Congressional Black Caucus, Congresswoman Maxine Waters. She requested congressional hearings to begin a discussion and examination of the discrimination against black farmers by the USDA. With her leadership and a sincere dedication to making things right, and our unrelenting grassroots effort, the largest civil rights settlement in US history was made a reality. The Clinton Administration has taken the first steps to start addressing this problem, but everyone knows that many more Administration and congressional steps must be taken. We must continue to make progress.

But, only the hearts of few have been pricked as it relates to the devastation caused by this monumental deception. With thousands and thousands of the farmers yet to be compensated from the settlement, this appears to be another example of hollow promises -- like that from the 1800's promising the "40 acres and a mule" -- to those who had been wronged.

Mr. Chairman and other committee members, let me be straight: more work is needed to ensure that America's black farmers receive their just due. It's not a political game, like some have treated it, it's the livelihood of thousands of hard working families that are at stake.

The settlement with Black Farmers is just the nucleus of what is necessary to begin the healing.

My recommendations to the committee list some key points that will begin the healing process and seriously address the discrimination problems within USDA. The NBFA calls upon Congress and USDA to create and fund the following:

- FIRST: New programs must be developed and implemented to promote adult education and Farm Administration outreach, and to bridge the technological and digital divide that we now view as a growing ocean between developing rural America and the rest of the great national continent.

- SECOND: An endowment to provide low interest emergency loans must be created; including an assessment of the farm management practices for black and economically disadvantaged farmers to ensure sustainability.

- THIRD: A new study conducted by the US General Accounting Office must be commissioned with the major focus on reviewing the hiring practices and possible ongoing discriminatory activities of the Farm Service Agency and its County Committees in which the racial make-up is 8,000 white males, 28 blacks, and 2 females.

- FOURTH: A new outreach effort must initiate forums which will discuss (a) the results of the settlement, (b) all problems with payments to claimants, and (c) new opportunities made available to claimants resulting from the settlement. These forums should be held throughout rural America through a partnership between USDA, the Department of Justice, non-profit organizations, and black economically disadvantaged farmers.

- FINALLY: We urge your committee and the Administration to hold a national, bipartisan conference on the issues most affecting rural America comprised of Members of Congress, the farm community, the Administration and USDA staff and officials. This conference's goal should be to develop recommendations and performance measures for the USDA that will be presented to the full Senate and House Committees on Agriculture as well as to the Administration.

Mr. Chairman, in the coming weeks I hope to work with congressional leaders to develop and introduce legislation that will deal with each of these new proposed steps – among others – on how to best fix the system and begin moving to bring justice through new programs and initiatives.

Mr. Chairman, the members of the National Black Farmers Association and I often look out from our farmhouses, and we see an America with so much purpose and so much hope. But, we find ourselves continually perplexed by the way Black and even many White farmers in rural America often live like they are living in third-world countries. In the year 2000, all my neighbors should all have running water, electricity, access to phone lines and modern technology. But they don't.

While the US leads the world in agricultural processes and technologies, rural America continues to be treated as second class. While their labor feeds and clothes the American people, they still receive a raw deal from the US Government when they are most in need. Mr. Chairman, rural access has been denied, and we must do something about it.

Let me tell you, a few more months of waiting for Congressional action can equal three years of financial losses for family farmers. Today's small farmers need action. Today's small farmers need leaders who rise to the occasion. Today's small farmers need a Congress that is ready to commit what it takes to keep family farms strong for the long term.

I sincerely thank you for the opportunity to appear before your committee.

STATEMENT OF JOHN ZIPPERT

on behalf of the

**FEDERATION OF SOUTHERN COOPERATIVES/
LAND ASSISTANCE FUND**

and the

**BOARD OF DIRECTORS AND MEMBERSHIP
of the RURAL COALITION/COALICIÓN RURAL**

to the

**Committee on Agriculture
United States Senate**

**Washington, DC
September 12, 2000**

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My name is John Zippert. I am Program Director of the Federation of Southern Cooperatives/Land Assistance Fund and Chair person of the Rural Coalition. I personally have worked on promoting equity in poor rural communities for more than 35 years, starting in St. Landry Parish Louisiana with the Congress of Racial Equality. I have never met a black farmer who was not discriminated against, and believe the same is true for most of the minority farmers represented within the Rural Coalition.

We appreciate this opportunity to speak candidly to you on behalf of both of these organizations to address the question: ***"why are things not improving at USDA with respect to civil rights and service to minority producers."*** The organizations I represent, are uniquely qualified to answer this question. Due to the short time provided both to prepare and present this statement, compared to the years of work we have invested on this subject, we request permission to revise and extend our statement and submit additional materials. Here are our views:

1. USDA in general, and Farm Service Agency and the National Outreach Office in particular, have failed to work appropriately and strategically with the groups that are the legitimate representatives of its underserved constituents, and create partnerships with them to assure fair and equitable service is provided in all USDA programs.

Collaboratively and for many years, the organizations I represent today have served as the primary and often only source of technical assistance and support to a significant proportion of the minority farmers in this nation.

The ***Federation of Southern Cooperatives/Land Assistance Fund*** has for more than 30 years worked with African-American farmers and landowners in some of the poorest counties in the nation. Our membership includes over 75 cooperatives and credit unions. Through our outreach program, we provide land and agriculture-related assistance to over

12,000 rural families.

The Federation implements its various programs throughout the southeast but is concentrated primarily in Alabama, Mississippi, South Carolina, Georgia and north Florida. Over the years, we have worked one on one with minority farmers and their cooperatives to develop new enterprises. A great deal of our work has had to be focused on saving black-owned farms and assisting their owners to fairly access farm credit and other farm programs and services. We have assisted hundreds of farmers in seeking redress for discrimination, and recently, in responding to the class action settlement in Pigford v. Glickman. Of necessity, we have also sought legal and legislative remedies to assure fair and equitable service to minority producers, including the Minority Farmers Rights Act, which passed as part of the 1990 Farm Bill.

The ***Rural Coalition***, of which the Federation is a a founding member, is an alliance of over 80 culturally and regionally diverse rural community-based organizational in the US and Mexico which has served minority and other limited resource producers for two decades. The members of our Coalition include some of the most diverse and experienced minority farm organizations including the ***Intertribal Agriculture Council***, which represents 84 Indian tribes; the ***Rural Advancement Fund***, which has worked with African American producers for more than 50 years; as well as the ***Washington Association of Minority Entrepreneurs***, and the ***Hmong American Community***, who serve the growing population of new Latino and Asian-American farmers.

In recent years, for example, we have worked actively to develop new methods with our members to help USDA fill service gaps. In 1996 and 1997, in collaboration with USDA, we trained our members on the roles and election procedures for FSA county committees, and have held two outreach trainings to help our members better understand the purposes and eligibility requirements of a wide range of USDA programs. Our collaborative legal and legislative work included the 1987 Agriculture Credit Act, the 1990 Farm Bill, the 1994

Agriculture Reorganization Act, and the Waiver of the Statute of Limitations.

With the support of the Department of Commerce and private funders, the Coalition and its members have also created the Supermarket On-line electronic marketing project which links our many cooperatives online to provide a virtual electronic warehouse of goods and services. Our new retail website, Supermarketcoop.com, links our member cooperatives to accomplish together what none of us could do alone: to accept and process on-line orders and develop new markets for the goods of some of the poorest farmers in the poorest counties in the nation. Up until the recent commitment of technical support by the Rural Cooperative Business Service, this project, rejected in every USDA grant round to which it has been submitted, has been accomplished entirely without the support of the Department of Agriculture. Largely without the support of the "people's department" we have helped minority farmers cross the digital divide and seek new markets for their goods.

Collectively, the Federation, and the Rural Coalition and its members, have assisted thousands of farmers with the intricacies of their dealings with USDA. We have attempted on many occasions to see that USDA was held accountable for its discriminatory practices that we have observed, and to seek structural change both administratively and in policy. We have written letters and proposed policy changes, including an entire Minority Farmers Rights Act, portions of which were instituted into law in the 1990 Farm Bill.

In the past several years, we have supplied reams of documents, analysis and testimony to the Civil Rights Action Team, the National Small Farms Commission, the US Congress and the US Civil Rights Commission. A half dozen of us served on the National Small Farms Commission, and we have also participated on other committees and in many sessions with the Secretary and the staff of the Department.

We have provided numerous proposals to the Department to upgrade its operations to serve minority farmers better. The results even of these efforts to have been very slow

and impeded repeatedly by a bureaucracy that seems to resist change and to lack respect for our clients. The services are still not the way we would like them to be, and the Department still seems unwilling to deal directly with groups like ours who most directly represent minority farmers.

If the Department were really committed to reaching and serving its underserved customers, than why is it so unwilling to work with the Rural Coalition and its members, the organizations who most directly represent its underserved population, as it sets in place its National Outreach Office, the Outreach Office and the many other entities it is now establishing?

In recent months, the existing projects and contracts the Rural Coalition and its member organizations including the Intertribal Agriculture Council and others had negotiated with USDA agencies have not been renewed. We have spent countless hours in fruitless attempts to resolve these issues. Continual bureaucratic barriers have been constructed and cited as reasons to cease the work, and lack of funding continually cited. At the same time, USDA and its agencies have awarded contracts to other for profit entities to accomplish services we have provided in the past. At least two of the successful awardees subsequently sought our unfunded assistance, citing the necessity of our experience to provide for the Department the services they are being paid to deliver.

In addition, USDA agencies who have expressed a desire to work with the Rural Coalition and its members in order to accomplish the missions of their programs have been thwarted in their attempts to enter into contracts and cooperative agreements with community based organizations. Other agencies have expressed fear of retaliation were they to continue working with us. Their inability or fear of entering into contracts with community based organizations including the Rural Coalition and its members is presently severely impeding the ability of USDA agencies to fairly accomplish the missions of their congressionally authorized and mandated programs.

Recommendations

We recommend that Congress direct the Secretary to immediately delegate necessary authority to all mission areas and agencies of the Department to enter into contracts, grants and cooperative agreements with community based organizations with demonstrated experience in serving limited resource and minority producers to accomplish the missions of any and all USDA programs which serve farmers or rural communities.

We further recommend that the Secretary delegate specific authority to the National Outreach Office to enter into contracts, grants and cooperative agreements with community based organizations as cited above to accomplish the missions of multiple programs from multiple agencies of USDA, using the funds authorized by Congress for those respective missions. This general authority for cooperative agreements with experience community based organizations should specifically not be limited to either the appropriated funding level nor the specific mission of the Section 2501 Minority Farm Outreach Program.

The Secretary should be directed to report to the Congress within 90 days on how he has delegated such authority, and should call to the attention of Congress any statutory limitations that would impede him for accomplishing this goal, and how such limitations could be removed.

2. The USDA Leadership has failed to a) redress and remove vestiges of past discrimination, b) create a system which rewards or does not undercut or punish those agencies and individuals who are making changes, and c) hold top level managers accountable for the performance of their subordinates.

It would be patently unfair for us to report to this committee that nothing has changed at USDA. Far more change has occurred under this administration, and in particular since the end of 1996, than under any administration in many years. The

admission by USDA that it had discriminated, followed by the assignment of the Civil Rights Action Team and the production of their landmark report, have assured this issue will never again be hidden from public view.

While the full implementation of the CRAT report is still incomplete, many agencies, employees and leaders have made important strides in changing the climate of USDA agencies with respect to minority customers. The Intertribal Agriculture Committee has reported on the vast improvement in attitudes and action by the Natural Resources and Conservation Service to root out the many discriminatory practices which long impeded its work with Indian Tribes. For most of our members, the NRCS leadership has been continually accessible, and its staff reach out to consult with and seek assistance to make additional necessary improvements in program and services and to develop better programs to serve small farmers. In addition, there are numerous other people in programs at the national level who are much more proactive than in the past in reaching out to, consulting with, and including representatives of minority farmers in their work.

Redressing Wrongs: Pigford v. Glickman

USDA has admitted past wrongs in its practices. The court has ruled on the Pigford v. Glickman case. Mr. Glickman should instruct Farm Services Agency in particular to stop denying that they did something wrong, and to cease interfering in the implementation of the settlement.

At the present time, the injustice facing black farmers is being compounded at the taxpayers expense by allowing USDA employees, and particularly FSA county employees any role in responding to the court in the Pigford case. We have also learned that USDA employees are also assisting in appealing decisions of the arbitrator that are favorable to the farmers. We find it abhorrent and a misuse of the public trust that those reviewing cases and answering the courts are the same people who caused the problems in the first place.

Congress should consider it retaliation and a violation of the "zero-tolerance policy that FSA county employees have any role at all in Pigford response, and order this interference to cease immediately.

After the court ruled, the agencies responsible are still using our taxpayer money to fight against and deny this discrimination, saying it did not happen, and even exerting pressure to deny rulings made in favor of the farmers. Extremely high paid individuals continue to argue against cases they have already lost, actively subverting the entire justice process at taxpayer expense. In our interactions with FSA staff, we continue to encounter blatant denial that anyone every did anything wrong.

The fact is that discrimination did happen, both in credit programs and in the old ASCS programs, where farmers rarely gained enough access to the programs to generate complaints. Unless that reality is accepted and addressed, it is highly unlikely that forward progress can be made in creating a system that serves all farmers fairly.

Pigford vs. Glickman Concerns

As of August 15, 2000, according to a report of the Court Monitor, there were a total of 20,675 eligible claims filed in the case. Of these 187 are Tract B and 20,488 are in Tract A. There may be some additional late claims accepted since this date and other late claims are being sent in until the September 15, 2000 deadline for those claims based on extraordinary circumstances.

Of the 20,488 eligible Tract A claims, 18,062 (88%) have been adjudicated; 2,426 (12%) are still being processed. Of the 18,062 adjudicated claims, 10,931 (61%) have been approved and 7,131 (39%) have been denied.

Of the 10,931 approved, 6,601 (60.3%) have been paid and 4,333 (39.7%) have not

been paid. A year and a half since the settlement (two farming seasons) less than a third of the total class has been paid for their claim of discrimination.

We have a number of grave concerns with the process in this Black farmer class action lawsuit, that Congress can help illuminate and correct, among them are:

• The process in this settlement has been too complicated and difficult for farmers to follow and comply with, which has reduced the full number of people joining the class

• There was insufficient outreach to Black farmers to explain the settlement, during the original sign-up period, which resulted in many eligible farmers being eliminated from the class

• The claim denial rate of almost 40% has been inordinately high and does not reflect the actual record of discrimination by the USDA. Many farmers are being denied based on recommendations and records of USDA "task-force employees" who were involved in the original record of discrimination and should not be involved in the process. We suggest Congress direct USDA and USDOJ to pay all eligible claims in this case, including those denied by adjudicators based on questionable information from the government.

• The process of paying the farmers is entirely too slow. The claims facilitator recently sent farmers a letter saying there would be additional delays in issuing and sending checks because "ten times as many people filed claims as had been expected" and they did not have enough staff to issue checks! Why don't they hire sufficient staff to process these checks?.

• The government has been placing holds on some of the checks authorized by the adjudicators, because it plans to request that the Monitor in the case "reconsider" these claims. The farmers have not been informed of these holds, so they are going to the mailbox

each day looking for a check that will not come anytime soon! We question whether the USDA (government) should be trying to overturn findings of discrimination by third party independent adjudicators and we urge Congress to instruct the USDA and USDOJ to drop these efforts at reconsideration of legitimate claims of discrimination against the government.

• The deadline for submitting reconsideration petitions for the 7,131+ claimants who were denied, is now November 13, 2000. This deadline must be extended by at least 60 days to allow everyone to file a petition. Any farmer who requests a reconsideration by November 13, should get an extension of up to six months to file their petition, especially if the government files and records on which the adverse decision was made are not made available by the November deadline. A better solution as recommended above is to reverse these decisions and pay all eligible claimants in the class, which was our initial understanding of the settlement.

• The claims of some Black farmers who were discriminated against for "program benefits", i.e., conservation benefits, disaster livestock feed, adverse acreage decisions; and not credit claims, have not been paid under the settlement because the government cannot agree on how much to pay. These claimants have a finding of discrimination by the independent adjudicators and they should be paid the full $50,000 settlement amount.

• There remain farmers who did not get full debt relief under the settlement, even though a previous act of discrimination may impede their ability to pay subsequent debt. They should receive full payment.

Finally we note that injunctive relief provided in the settlement has not been clearly translated in federal regulations. Moreover, the injunctive relief requested and provided failed to address the many changes USDA still needs to make to prevent future problems for recurring.

Because it is in the national interest of the US, we believe that Congress should do everything in its power to fully resolve and lay to rest the injustices committed by a federal department in its failure to fairly implement it mission.

Just because claims are denied, it does not mean that discrimination did not occur. We urge Congress in particular to revisit and terminate the provisions in the 1996 Farm bill which deny farmers who have had any loan restructured from seeking new credit in the future. The policies Congress has adopted are more stringent than those in the private credit industry and further lends credibility to the belief of farmers that the government charged with protecting them is more interested in punishing them.

We believe many other changes are needed if farm programs, and especially credit programs are to fairly serve and advance the viability of small farmers. The Small Business Administration has a much more substantive program for low-doc loans. We look forward to supply substantive recommendations on credit and access to farm programs to this committee as the Farm Bill consideration begins.

Creating a system which rewards or does not undercut or punish those agencies and individuals who are making changes

We hope to make clear as well to the Congress that entities such as county committees which serve farmers well in many regions of the country, may operate very differently in other places. Because we represent a diverse group of farmers we are well aware that county committees are viewed very differently in Ohio or Minnesota, for example, than they are in Alabama, Mississippi or North Carolina.

But even in regions where service was poor before, we are seeing changes. Within Farm Services Agency, state directors in Montana, Wyoming, North Dakota, Arizona, Oregon

and Oklahoma, have held recalcitrant county employees accountable, and where necessary replaced employees who failed to serve all farmers well. As a result, service has improved dramatically.

On the other hand, in states such as Alabama, Washington, South Dakota, Kansas, etc., conditions have not changed or they have gotten worse. What has also not changed is the national leadership of Farm Services Agency, which keeps getting in the way of those who are making the right changes, while protecting those who are not. Top leaders must be held accountable for the actions of their subordinates if service is to be consistent and fair, and the employees who are making changes should be rewarded.

What also causes great concern to us is the propensity of USDA at the national level to make work unpleasant for those who try and make the changes the Secretary has mandated. High level managers whom we have recommended to the Department, and those who have demonstrated a real capacity to work with minority producers have frequently in the past and in the present been removed from their jobs, transferred elsewhere, or treated in such a way as to cause them to see the futility of trying to make change, and seek employment elsewhere. With their departures, USDA conveys a clear message that, despite what its leaders have often said, it can cause people to leave if it so desires.

As a result of these practices, the Department is losing precisely the people it needs to lead its efforts assure fair services to all farmers. Moreover, USDA employees at many level are very well aware that they system does not reward those who are serious about civil rights and equity.

Holding top level managers accountable for the performance of their subordinates

Top leaders including the Secretary of Agriculture have expressed frustration with their inability to hold people accountable for their failure to deliver services fairly. In July

1998, the leaders of the Rural Coalition met with Secretary Glickman. He told us that he lacked the authority to hold employees accountable for their performance, and to remove those who fair to perform equitably. Farm Services Agency Administrator Keith Kelly on the same day and on subsequent occasions also told us that he cannot fire people, and specifically asked that we provide him with the names of employees with whom our members have had problems.

Secretary Glickman has also called upon Congress for legislation to bring county committee employees under the Federal Civil Service Act, noting that this action is necessary to provide him with the authority to really manage the employees who deliver services at the county level. The CRAT report did in fact include a recommendation seeking precisely that change. However, it has subsequently come to our attention that a departmental regulation has long existed which supplies that authority directly to the national Farm Services Agency.

The existing regulation clearly covers action that may be taken against an employee for civil rights and other violations. We recommend that Congress not proceed with any pending legislation to provide federal civil service status to county employees, but instead take a more active oversight role in reviewing what the Department has accomplished. In recent months, the Department has begun to report that somewhere in the area of 50 employees have been reprimanded or faced negative personnel action as a result of discriminatory behaviors.

We recommend that Congress assist Mr. Glickman in making difficult changes by requesting a report every six months of personnel actions taken to solve discrimination. The report should include the number of employees at what grade levels and in each state or the national office who have faced what specific actions with what result.

It is also long past time that senior managers be held accountable for the performance

of their employees. Where changes are not happening at the field level, it is long past time that managers be held accountable, and that we begin to see personnel changes at the state and national levels. The failure of USDA to remove those who blatantly and openly question court decisions and deny discrimination which has already occurred constitutes in our view permission to employees at the field level that they are free to continue business as usual, and if they do not serve minority farmers fairly, nothing will happen. The seriousness of the situation is compounded by the fact that political appointees who continue to deny problems which exist have been rewarded with career positions.

It is our hope that the leaders of USDA will realize that unless they make top level changes especially in the Farm Services Agency, the value of all the other work they have done to advance civil rights is vastly reduced. While change still needs to be made in many other USDA agencies, it is patently unfair to the many employees who have been working to change the culture of the Department of Agriculture be discredited by the recalcitrance of key officials in a single agency with a long record of poor performance on equity issues.

3) USDA has consistently shown it cannot fairly process complaints. Congress should implement what GAO has recommended and contract out all review of civil rights complaints to unbiased sources.

In October 1997, David Harris, then Director of the Land Loss Prevention project, testified before the House Committee on Agriculture based on a decade of experience in attempting to make USDA respond to complaints. He noted that

> *"Civil Rights investigations can only be fairly be conducted by professionally trained civil rights investigators within a civil rights structure insulated from the agencies being investigated. This is the basis of any credible system...[1] "*

[1] Statement of David Harris Jr, Executive Director, Land Loss Prevention Project to the Committee on Agriculture, US House of Representatives, October 23, 1997, Washington, DC.

While the program complaints system at has failed on many levels, the most egregious is that it has not been insulated from the agencies being investigated. Farm Services and other agencies remain far to involved in the process of reviewing complaints. Quite apart from the skills of the individual involved, it does not increase confidence in the area of program complaints that a former Civil Rights official in Farm Services Agency has recently been assigned as the Deputy in the Office of Civil Rights, with responsibility over both employee and program complaints. USDA has simply not yet earned a reputation for fairness in this area necessary to avoid questions about that appointment.

The failure of USDA to get on with the business of processing complaints, rectifying injustice, and fixing problems with service delivery to prevent future problems is grossly unfair not only to farmers and employees who try to do their jobs well, it also risks new liability and taxpayer expense to solve problems that should no longer be occurring.

Discrimination and disparity in service has not stopped at USDA. However, farmers are so frustrated with the complaints process that they fail to file complaints until situations deteriorate beyond easy rectification.

USDA, to our knowledge, still lacks any comprehensive and consistent monitoring and compliance review system. Even data collected on a regular basis that would allow USDA officials to monitor performance of agencies and employees at the county level are not reviewed from the framework of preventing disparate treatment. It is not clear that these factors are considered specifically in monitoring the performance of employees.

As a result, complaints are the only evidence USDA has to take corrective action. Were program complaints contracted out to an agency which could review them in a consistent and unbiased manner, completely insulated from the agencies against whom the complaints are filed, USDA Office of Civil Rights could instead focus on the training and corrective action that is essential to instituting a fair system of service delivery.

The failure to adequately and fairly address complaints only delays the time it will take to end the history of past discrimination by USDA. We recommend that Congress require USDA to institute what GAO and others have recommended: that USDA contract out all civil rights casework. We further recommend that the complaint process be divorced from any USDA staff involvement. Any employee who meddles should be dismissed and liable as a criminal offense for their actions.

4) The Minority Farm Registry is an essential tool to reach and serve minority farmers and to monitor the progress of USDA agencies in reaching these farmers. It should be implemented immediately with the support from multiple USDA agencies under the existing missions of their programs.

The Registry promised by the Department and approved this summer by the Office of Management and Budget has not yet been officially instituted. Nor has its use as a vehicle to collect baseline data and monitor progress in serving minority farmers been articulated. The registry implements recommendation #28 of the CRAT report. We fear the approved program has fallen victim to bureaucratic bungling within the department. Apparently, agencies cannot agree on where funds should come for the implementation of the registry. Because the registry would help many agencies better deliver and accomplish the purposes of their program, we believe multi-agency support should be provided, and the funds for data collection should not be supplied from the scarce resources of the Section 2501 minority farm outreach program.

Earlier in the year we worked actively with staff members of several agencies to develop an outreach plan for the registry. It is critical that USDA work in partnership with organizations who have credibility with minority producers if the registry is to be used and USDA to develop new credibility. Several USDA agencies have rejected the need for funding such a program, which we believe is essential to the success and usefulness of the registry.

We recommend that Congress urge the Secretary to resolve the bureaucratic issues, establish the registry with appropriate support and collaboration from those agencies which deliver services to farmers, and work as proposed in partnership with community based groups to educate minority farmers about the registry, its purposes and use.

5. The existing FSA county committee system should be substantively reformed to assure it provides fair delivery of services everywhere, or else it should be eliminated.

It is the opinion of most minority and limited resource farmers that they will not be fairly served. The many deficits in the system for minority farmers are laid out in the appendices to this testimony. Our ability to complete an analysis of the elections in counties where members work have been severely impeded by USDA's failure to respond to our FOIA request in December 1998 for election data. FSA should not only immediately provide the requested data to us. It would be in the public interest that the data we have requested be routinely reported to the public on existing FSA websites for the county, state and national level, as a regular procedure, and we recommend that Congress instruct the Secretary to do so.

We believe it is also of paramount importance that the election process be revised and fully monitored to reflect completely the spirit of the Voting Rights Act and other civil rights laws with respect to minority participation.

Discrimination and neglect still exist, and the community groups working in the field are among the best equipped to cooperate with the department in bringing about a new responsiveness and spirit of service in the delivery of USDA programs. For example, at our recent workshop on minority representation on County Committees, FSA reported that of 8378 elected FSA County committee members in 1996, only 20 were African American, 33 American Indian, and 50 Hispanic. The 40 representatives of community-based organizations

present articulated unanimously the lack of confidence minority producers have in the county committee system and in the willingness of FSA to serve them at all. Building a new climate of trust and confidence, redressing these concerns and assuring fair participation in USDA programs will take time. While these changes are made, outreach programs assure underserved producers know how to access urgently needed FSA services and provide the assistance necessary now to help minority farmers succeed where other avenues had thus far failed.

Similar revised procedures must be put in place with respect to all other Boards and Committees that currently administer USDA programs, including those in NRCS, Extension and elsewhere. In every case, the Department must have in place a responsible and accountable staff who are federal employees. New recruitment should emphasize diversity in the delivery workplace.

6) Brief Recommendations:

Below is a brief list summarizing and extended our recommendations for immediate action to the committee.

1) Remove USDA and FSA in particular from any work on the Pigford case.

2) Contract out all civil rights investigation to independent contractors,

3) Immediately solve bureaucratic barriers and set in place the Minority Farm Registry and conduct outreach in conjunction with the RC and other similar groups with the demonstrated capacity to deliver services to Minority Farmers.

4) Hold top managers accountable for the behavior of subordinates.

5) Fix the 2501 Program and the National Outreach operation, and require USDA

agencies to serve all farmers in their missions

6 Congress should assure that disaster assistance and crop insurance serve all farmers. Over 75% of bailout funds and AMTA payments are going to the top 10% of farmers. Support for 10 acre intensive vegetable farmers who were equally devastated would be equitable, and crop insurance has also failed to serve these producers. These programs do not help minority and small family size farmers that we represent, and need to be reexamined and changed to reach our constituents.

7. Congress should require reports from all farm programs, and from crop insurers, on the participation of minority farmers in programs. Over 99% of CRP payments in my home county in Alabama go to white farmers even though the vast majority of producers are African American. Forest Service and conservation programs similarly better serve largely non-minority producers. FAS programs not designated for small farmers. Credit programs need vast improvements. Rural cooperative programs should better serve minority producers throughout the nation. Congress should highlight equity issues as it reviews these programs for reauthorization.

8) Make the county committee system work fairly for all producers, or abolish it.

ADDITIONAL RECOMMENDATIONS AND A CALL FOR CONTINUED CONGRESSIONAL OVERSIGHT AND ACTION

This nation has a body of civil rights and other applicable laws that are very pertinent to this inquiry, and which should form the basis of a fair evaluation of the practices in the Department. Continuing Congressional action and oversight is essential to help Secretary Glickman and his staff fully implement the changes they have currently begun to set in place, and to identify additional actions which are necessary.

1. We call upon Congress, first and foremost, to supply the resources the CRAT report has identified as necessary for the full implementation of all 92 recommendations of the report. Funding must be supplied immediately for the expansion of the Civil Rights office, and the implementation of the Outreach Office. In addition, we support full funding for all the additional programs recommended in the report, including direct lending, the Section 2501 outreach and technical assistance program, the Indian Reservation Extension Agent Program, the extension and allocation of funds in the EQUIP program, the prioritization on the use of one third of the funds in the Fund For Rural America to meet the needs of underserved communities, and others. We fully support the CRAT recommendations and urge that the expanded funding be supplied for FY 1999, and in every way possible, for FY 1998.

2. We call for continued oversight and review by the US Congress on civil rights implementation. We believe the many of the abuses that have been identified in the department continue because those who commit do so with the well-founded belief that there will be no negative consequences for what they do, and because the managers at the highest level of the Department have continually dismissed and failed to act on documented evidence that demands action. Despite the current emphasis within the department on upgrading its civil rights practices, the agencies and entities of the Department still engage in retaliatory action against those at every level who try to make the proactive and affirmative changes needed. At the same time, we are unaware of any case in which sanctions have been applied against supervisors at the district, state or national level for violating the civil rights standards, or the current directives and decisions of the Secretary with respect to civil rights, or for allowing those whom they supervise to do so.

This committee and its House counterpart are the appropriate places for farmers and those who represent them to present testimony and share their experiences of how services are now being provided, and what the most urgent needs are. We share the goal of the Administration and the Congress that programs of the department be well managed and fairly and equitably accessible to all who qualify, and that any deficiencies in program or service

will be identified so corrective action can be taken.

Congressional oversight is essential to assist the Secretary in fully implementing and documenting the need for the very difficult structural changes which yet need to be made system wide at USDA.

3. We Call for Upgraded Outreach and a Proactive Approach to Reaching Farmers and other Rural Populations not Yet Fairly Served by the Department - Over the years, we have heard many promises from the department to do better in fixing problems and assuring action. The structures and delivery system of USDA are not easy to change. The most key ingredient for success is the leadership of the Secretary's office in a long-term program to assure all necessary changes and renewed systems are implemented. However, every statement must be followed with concrete initiatives, goals, accountability measures at every level, combined with monitoring and reporting of results. The National Outreach Office is still not fully functional and working with our member groups. Although earlier this year the Rural Coalition signed a Memorandum of Understanding with the National Outreach Office, it is not clear that this agreement has any real weight to the ever changing leadership of that Office. It is time to move into the future by assuring minority farmers do get the services they deserve.

We believe the Department must implement clear goals and overall monitoring measures aimed at reducing the vast disparity in the rate of loss among minority and other farmers by reducing the rate of minority farm loss. Another measure may be setting and reaching targets for participation in all programs of the department by minority producers and other minority clients. We have discovered very few minority producers who have been successfully graduated from direct to guaranteed loans. We are also concerned about the disparities in loan rates between minority and limited resource, and other producers.

We also believe a comprehensive outreach initiative should be instituted within every

mission area of the department, with a single office in each area given responsibility for reviewing adequacy of goals and evaluation of results. The plan should include a phase for building new relationships with previously underserved populations. We will supply further recommendations on this system, which at least for an interim period, should be conducted in close collaboration and partnership with community based groups who have the trust and confidence of these farmers.

Rural Development programs and minority farmers still operate in separate universes, and the majority of applications Rural Coalition member groups have submitted to Rural Development grant rounds have been rejected, despite our record of service to minority and low income members in forming cooperatives. Most Extension and other programs administered through universities are not accessible to minority producers or to low income populations within communities.

The Rural Coalition is also currently developing a stronger relationship with the Foreign Agriculture Service, with whom we also have an MOU, although our progress is hindered by stringent program requirements that all but exclude small and limited resource producers. Programs such as Agriculture Marketing, require recipients to go through states and Land Grant Universities. Most programs supplied at the state level are not accessible to minority producers; a whole new level of discrimination frequently exists with little federal oversight. The main point is that we need all of these services to be successful in the agricultural climate of today. But if you provide the community based organizations who have long served minority farmers with real and fair access, we will show we can be as hard-working and creative as any of the other clients to which USDA devotes vastly more resources.

V. CONCLUSION

We deeply appreciate your willingness to review these matters. We also know making

change is very difficult and our challenges are great. We will continue to cooperate in any way we can to support these efforts. We further urge you the US Congress to provide adequate resources to implement the level of real changes necessary to assure all rural people have real access to services and are treated always with dignity and respect.

APPENDIX A. THE NEED FOR NATIONAL OUTREACH AND THE OUTREACH AND TECHNICAL ASSISTANCE PROGRAM FOR MINORITY FARMERS

The Outreach and Technical Assistance Program for Socially Disadvantaged Farmers, established in Section 2501 of the 1990 FACT Act, has allowed the United States Department of Agriculture (USDA) to reach producers traditionally under-served by USDA programs. The 1990 Farm Bill authorized $10 million to be appropriated to community based organizations and educational institutions to provide outreach and technical assistance to minority farmers.[2]

The Small and Disadvantaged Farmer Initiative, established administratively within USDA by the Reagan and Bush administrations in response to a 1982 report by the Civil Rights Commission, detailing the precipitous decline in black-owned farms and the relationship of this decline to USDA service delivery, was folded in to the Section 2501 program. Funding for this program was provided administratively from the Salaries and Expense line item in the Farmers Home Administration (FmHA) budget, in the amounts of approximately $1 million a year from about 1984 through 1993. The "S and E" allocation was increased to almost $4 million, until it was eliminated when FmHA was split in the 1994 reorganization of USDA. Most programs funded under this program have continued to receive funds in relatively similar amounts under the new Section 2501 program.

After many years of trying, Congress appropriated $1 million for the fiscal year ending September 30, 1993,[3] and the first funds were allocated in late 1993. Congress appropriated $3 million for fiscal years 1994 and $2.9 million in 1995, but despite coordinated advocacy efforts led by the community based organizations, this amount was reduced to $1 million for FY 1996 and FY 1997. In FY 1997, Secretary Glickman provided an additional $4.5 million for the program from the Fund for Rural America. Congress recently approved $3 million for FY 1998.

A number of community based organizations that have for a number of years worked to preserve minority farm operations advocated for the Section 2501. The community based organizations also advocated that, of funds appropriated pursuant to this program, one-half should be given as grants to community based organizations and one-half should be given as grants to 1890 colleges and other educational institutions. The Statement of the Bill Managers reflected this desire, although this language was not expressly included in the bill itself. Today only two of the 28 entities that receive Section 2501 funds are community based organizations and the remainder are educational institutions. The two community based organizations that receive Section 2501 funds, both operating excellent and

2 Pub. L. No. 101-624, §2501(a), 104 Stat. 4062 (1990) (codified at 7 U.S.C. § 2279).

3 Report 102-815, Conference Report to accompany H.R. 5487 -- Making Appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Programs for the Fiscal Year Ending September 30, 1993, and for Other Purposes 17 (1992).

important programs, were prior recipients under the Small and Disadvantaged Farmer Initiative. All current commitments were allowed to extend for 5 years and no new applications have been accepted since 1993. USDA has aggressively resisted efforts to expand the Section 2501 program to include other community based organizations. Furthermore, with some exceptions, agencies of USDA have resisted non-Section 2501 efforts to partner with community based organizations to provide much needed outreach and technical assistance to people of color farmers and limited resource farmers, and have excluded on a technicality the major organization which provides outreach and assistance to American Indian producers. This resistance is very sad especially given the fact that community based organizations have often filled the gap where USDA itself has utterly failed.

Recommendation:

Expand the appropriation for the program to the full $10 million, as provided in HR 2185, and immediately require that all community based organizations serving minority farmers be permitted to compete for grants and contracts under the program. The program has been underfunded since it was created. Expansion of the program to its full authorized level, and reopening it to groups which can provide services to those farmers not yet reached through current programs and with current funding, are urgent needs. The program also needs to be expanded to provide outreach to programs in other mission areas, and more coordination among program areas is urgently needed.

The program was moved from Farmers Home Administration during reorganization to the Farm Services Agency, and then to the Natural Resources and Conservation Service. Following the implementation of recommendations in the Civil Rights Action Team report, it was recently moved to the Office of the Assistant Secretary of Administration where it will be incorporated into the new USDA Outreach Office. Outreach services continue to be an important link in assuring equitable program delivery to traditionally underserved clients. Community Based organizations are critical partners in helping USDA deliver those services to this client base.

On July 17, 1997, Secretary Glickman assured Congress the director of the expanded new USDA National Outreach Office was to be hired imminently and the office to be opened immediately. This would be the first USDA-wide office established to meet the needs of traditionally underserved clients and to work in partnership with the organizations which serve them. In addition to full funding for the Section 2501 program, Congress should call upon to supply the National Outreach office with the necessary authority to act as a strategic entity to coordinate outreach efforts in all mission areas.

Program Goals:

The Outreach and Technical Assistance Program is designed to meet the following objectives by assisting small farmers:

- to expand their economic capabilities through education and technical assistance.
- to own and operate successful farm-related businesses.
- to access effectively agriculture programs, services and resources.
- to become part of the economic and sustainable development forces that shape their communities.

Outcomes and Accomplishments: The Outreach and Technical Assistance program:

• Supports projects located in 28 educational institutions and community based organizations in over two dozen states. These include community based groups with long experiences serving small producers and educational institutions including 1890 Historically Black Land Grant Colleges and Indian Tribal Colleges.

• Provides services in an aggregate of 394 counties.

• In conjunction with loan programs, the outreach program serves 1,818 borrowers. Of these, the vast majority are current in payments. Services provided included debt restructuring and loan servicing and packaging.

• Another 6,145 non-borrowers have been served directly through technical assistance, farm diversification and small business planning.

• The total number of producers served through direct assistance, and educational activities, including trainings in cooperative and credit union development is 52,563.

Results:

Participating farmers and cooperatives have developed alternative agriculture enterprises including vegetable production and marketing, developed additional markets for new products, provided opportunities for small farmers to build successful business and increase farm and other alternate business opportunities. Participants have improved and sustained their farming operations, upgraded management skills, increase farm profitability and implemented sustainable and integrated farming systems that also benefit the small communities in which they reside.

Examples:

As a result of this program,

• Collaboration between 1890 colleges and community based organizations led to new levels of economic cooperation and development. The Mississippi

direct marketing and added value packaging operation including the completion of a half million dollar processing shed in Hattiesburg, MS to do added value processing. The facility serves and subsidizes the income of 75 farmers, employs a dozen people, and creates new markets. Other projects under development include a cotton gin for small farmers, a processing facility for hot sauce, a special livestock cooperative and the expansion of a direct marketing program which sells vegetables to inner cities consumers in New Orleans, Chicago, and Memphis.

• In Georgia and South Carolina, universities and community based groups collaborate to provide loan serving, debt restructuring , cooperative development, and the development of added value and alternative markets in vegetables, pecan processing, cut flowers, and direct inner city marketing in Atlanta. A regional market in Memphis is being developed to serve the Southeast region. The Federation of Southern Cooperatives/Land Assistance Fund alone provides over 500 meetings and trainings annually for small farmers on cooperative and and credit unions development, alternate markets, and soil conservation.

• The program also serves American Indian producers. In Minnesota, Project Grow is operated by the American Indian Opportunities Industrial Center. Organized in 1990 , Project Grow assists American Indian Tribes, schools and community organizations to develop self-sustaining agriculture, health and nutrition, and diabetes education and prevention programs appropriate to local needs. Project Grow now includes "Grow Labs" and community, school and elder garden projects, with 1250 family gardens, 12 community and 10 school gardens. Almost 100 "Grow Labs" which focus on diabetes and wellness education, and which raise seeds for planting, have been installed in elementary schools and in 9 urban Indian schools and organizations in inner city Minneapolis.

Challenges:

The program has been underfunded throughout its entire history, and has never received close to its full authorization, despite overwhelming need. It has been closed to new community based organization applicants since 1993, when a decision was made to focus on making longer term commitments to programs already funded. Most current projects funded under Section 2501 relate to serving credit needs. Minority farmers are also requesting services in conservation, crop insurance and other programs, with an emphasis on more training and technical assistance in the area of marketing.

The program provides the sole clear authority for entering into grants and contracts with the community based organizations who work most closely with minority and American Indian farmers. Only a handful of community based organizations have received funding. Other similar organizations are awaiting the opportunity to apply; large numbers of minority farmers are not being served

because existing organizations with the capacity to provide the services they so clearly need have been unable to apply for funds which are already too limited to serve existing programs.

Conclusion Regarding the 2501 Program

The Outreach and Technical Assistance program is the sole legislative response to the crisis in minority farm agriculture. The program supports outreach and assistance to low income minority farmers and cooperatives to diversify operations and build markets and is the most effective tool Congress has provided to carry out the mission of USDA as the technical provider for small farmers. For a very small investment, the program has significant multiplier effects in the small and poor communities where there exist few other possibilities for sustainable economic development.

Expanding funding to authorized amounts and reopening Section 2501 to more community based groups serving minority farmers would quickly yield results in stabilizing current farm operations, increasing their viability and expanding the number of minority and American Indian farmers entering agriculture. By directing resources to organizations with the demonstrated experience and ability to reach and assist these farmers and ranchers, cost effective and expert assistance can equip traditionally underserved people to more readily access new markets and the many USDA services and programs previously out of their reach.

However, the limited funding available denies services to farmers in areas where community-based organizations, which have not been funded, are ready and able to serve. The long delay in establishing the National Outreach office similarly postpones the day when USDA can spend much more time bringing new minority and limited resource farmers into agriculture than it now does addressing the civil rights complaints which until now have been the only avenue open to farmers who simply want the same services anyone else receives.

However, the issue of funding of extension agents on Indian reservations similarly merits more attention. We call the attention of the committee to the statement of the Intertribal Agriculture Council as delivered to a subcommittee of this committee on July 17, 1997. Indian reservations have been denied federal dollars and ill-served by the Extension Service. While Congress should provide the full 8 million for the program, it should also be prepared to respond with additional funding to make more equitable the delivery of services to American Indian farmers who have been poorly served for so long.

In addition, the Department should be required to consult with community-based organizations and groups serving traditionally underserved clients and report back to Congress on other inequities which are identified.

III. COUNTY COMMITTEES - PROBLEMS IN ELECTIONS

Measured by the letter and the spirit of the Voting Rights Act, county committee election procedures are seriously flawed. Voting participation averaged from 10-15% of eligible voters, with only 5% participating in one South Carolina County. Up to 25% of ballots were disqualified in some counties because they were not filled out correctly, or because the committee or office staff exercised their option to determined voters were ineligible. In many places, no independent observers were allowed, contrary to regulations, and disqualified ballots were destroyed without review or an opportunity to appeal.

Where qualified minorities supported by their communities were nominated for the ballot, they were sometimes intimidated, or the current committee used its power to add additional minority candidates acceptable to them, often in the final hours the ballot was open. Many candidates are elected with less than 100, and sometimes, with only 25 votes. Many committee members have served on the committees for years. Most minority farmers believe this system will never change and have abandoned hope there is ever a chance they will get benefits they deserve.

Specific background on County Committees with respect to service delivery and election procedures:

1) As currently constructed, FSA County Committees served mainly to exclude minority farmers from USDA programs.

• Minority farmers felt very strongly that County Committees were made up of insiders and "you would not get USDA resources unless you went to the same coffee shop where they met."

2) Election and conflict of interest procedures, regulations, enforcement and oversight do not include adequate safeguards. There is a clear lack of standards and compliance review. For example:

• In any number of counties, we heard reports that up to 25% of the ballots cast were disqualified in the past two elections. Until the 1997 elections, counties were not required to report the number of disqualified voters. The number of disqualified ballots and the number of those which are from minority farmers should be reported by every county in the nation.

• Ballots may be destroyed after 30 days, though in at least one case in Indian country, the ballots were reported destroyed within the week after the election. A voter whose ballot is disqualified has 30 days to appeal that disqualification. Unfortunately, the voter would not be informed if his or her ballot

was disqualified, and there is no certain way to find out if it had been or why.

• According to the information provided by the FSA at the recent training, reasons for disqualifying ballots range from the fact that
- they are destroyed in the mail and illegible,
- they are not signed in the correct place--although FSA may use "personal knowledge" of the farmer to qualify the ballot if it is incorrectly signed,
- FSA officials determine through their own personal knowledge that the prospective voter is not eligible or does not meet standards.

Congress should review voting procedures and make necessary changes, including informing a producers or farm owner if their ballot was disqualified and why. For the next year, FSA should ensure that no ballots are destroyed.

• Ballots are opened and county by county committee members and staff, except those who are candidates for the particular LAA. Both processes should be open for observation; frequently they are not, and farmers feel they would be at risk should they request this information. More specifically, the management of the election process should be removed from the hands of the county committee and staff, as this is an inherent conflict of interest.

• The national rate of participation of listed eligible votes was around 20%. In some counties, the rate was less than 6%, and in one case we know of, only 2%. Counties with very low election participation rates should be carefully evaluated on how well they are providing other services.

• In at least two counties, eligible voter lists included people who had been dead--some for long periods, and in one case, since 1984.

• Voting lists are not regularly updated, and in several counties in SC from which we have information, the number of eligible voters remained unchanged in the last two elections.

• As many as 80% of eligible American Indian voters are not counted in the 10 most populous Indian states.

• New farmers, especially Asian and Latino farmers, do not know what county committees are or the power they hold. In Fresno County, California, only about 100 of 1200 Asian farmers are included as eligible voters.

• County offices have wide discretion about who to add to eligible voter lists, and there is no formal registration process. People with an interest in agricultural land are eligible to vote in elections whether or not they reside in the county. Most minority farmers felt ballot requests from non-residents, or from

additional owners, would not be honored from minority individuals, although other absentee voters--mostly white farmers--were on the list, and some voted.

• Rural Coalition produced a prototype of a voter registration form, which FSA produced and got cleared through OMB for approval. However, FSA implemented the use of the form only to rescind its use soon after. Congress should require USDA to once again make this form available. Asian, Latino and American Indian producers are anxious to begin using the form now as a means of increasing registration in the normal course of their outreach and field efforts without necessitating that the new voter go to the county office.

• The use of a voluntary registration form would be especially useful for outreach among American Indian producers who are most under counted.

• Similar problems were encountered in an office in Indian country by one of the trainees at the conference. The County Director informed her she had to produce the title of her land in order to qualify. First, as an enrolled member of the tribe, she is eligible to vote. Second, it would be impossible to produce a title to her land which is within the Navajo Nation boundaries, and the CED knows that. It would appear that many minority voters give up in trying to secure ballots because of similar treatment.

• The nominations process needs revision. Of special concern is a provision which allows the county committee to fill up the ballot and add additional minority candidates. What has happened in numerous cases is that when a qualified minority candidate is nominated, the county committee at the last moment adds an additional candidate for the express purpose of splitting the vote. County committee members should not be allowed to add minority candidates to the ballot in any case.

• Outreach efforts conducted in conjunction with community based organizations probably helped to increase the number of minority farmers elected in the 1996 and 1997 elections; the lack of outreach and the short time line for the 1995 election, the first under the reorganized USDA, probably affected minority farmers--who normally receive information later--- more than other farmers, and accounted for the drop in minorities elected in 1995.

Summary of Problems Encountered in the County Committee elections

What is clear through all this work is that minority and Indian farmers in all regions of the nation face formidable barriers in accessing USDA services in all program areas. While a great deal of attention has been focused on discrimination within lending programs, it is also clear that loans were one of the few services minority farmers even attempted to access.

The more limited number of complaints in other program areas should not be construed to mean there were less civil rights concerns in those areas: it simply means that minority farmers avoided even attempting to participate in many programs either because they did not know they existed, they felt there would never be any resources available to them, or because the time and energy needed just to qualify for loans limited their ability to apply for other programs. In any case, outreach to traditionally underserved clients in all program areas is urgently needed.

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1			YEAR	# OF FARMS		%	ELIGIBLE VOTERS			LIGIBLE VOTERS IN OPEN LAA's			JTER PARTICIPATION				NOMINATIONS		ELECTED	
2			OF	Total	Minor	Minor	Total		Minority	Total		Minority	Total			Minority	Total	Minority	Total	Minor.
3			ELECT.				(#)	(#)	(%)	(#)	(#)	(%)	(#)	(%)	(#)	(%)				
4	**ALABAMA**																			
5		Autaga	95				1875	315	16.8%				151	**8.1%**	14	**4.4%**	15	3		
6			96				1935	308	**15.9%**	699	76	10.9%	47	**6.7%**	1	**1.3%**	4	0		
7			97																	
8		**Bullock**	**95**				**1789**	**574**	32.1%											
9			**96**				**1789**	**574**	32.1%	836	304	36.4%	92	11.0%						
10			97																	
11		**Butler**	**95**				**2343**	**917**	39.1%				309	13.2%	131	14.3%	4	2		
12			**96**				**2343**	**917**	39.1%	776	311	40.1%	90	11.6%	32	10.3%	3	1		
13			97																	
14		Chilton	95				3488	128	3.7%				101	2.9%	11	8.6%	12	0		
15			96				3127	127	4.1%	136	14	10.3%	61	44.9%	2	14.3%	4	0		
16			97																	
17		Conecuh	95				2231	1022	46.0%				384	17.2%	178	17.4%	12	6		
18			96				2245	1023	45.6%	826	374	45.3%	134	16.2%	61	16.3%	4	2		
19			97																	
20		**Dallas**	**95**				**3632**	**1247**	34.3%				303	8.3%	31	2.5%	12	5		
21			**96**				**3632**	**1247**	34.3%	1035	251	24.3%	50	4.8%	18	7.2%	4	1		
22			97																	
23		Greene	95				1507	568	37.7%				525	34.8%	188	33.1%	8	6		
24			96				690	334	48.4%	690	239	35.0%	334	48.4%	175	73.2%	4	3		
25			97																	
26		Marengo	95				2314	1163	50.3%				287	12.4%		12.4%	12	6		
27			96																	
28			97																	
29		Perry	95				1794	691	38.5%				272	15.2%			14	5		
30			96				754	219	29.0%	754	219	29.0%	104	14.0%			4	1		
31			97																	
32		Sumter	95				1625	572	35.2%				365	22.5%	100	17.5%	12	6		
33			96																	
34			97																	
35		Wilcox	95				1581	622	40.0%				364	23.0%	73	11.7%	13	4		
36			96																	
37			97																	
38																				

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
39			YEAR	#OF FARMS		%	ELIGIBLE VOTERS			LIGIBLE VOTERS IN OPEN LAA's			OTER PARTICIPATION				NOMINATIONS		ELECTED	
40			OF	Total	Minor	Minor	Total		Minority	Total		Minority	Total			Minority	Total	Minority	Total	Minor.
41			ELECT.				(#)	(#)	(%)	(#)	(#)	(%)	(#)	(%)	(#)	(%)				
42																				
43	CALIFORNIA																			
44		Santa Cruz	95																	
45			96				344						58	16.9%						
46			97																	
47		Monterey	95																	
48			96				1531						101	6.6%						
49			97																	
50																				
51	NEW MEXICO																			
52		McKinely	94				3371	3168	94.0%											
53			95										84							
54																				
55	NORTH CAROLINA																			
56		Lenoir		531			4039	305	7.6%	1008	113	11.2%	186	18.5%	26	23.0%	4	1	1	
57			96																	
58		Wayne																		
59			96	902			6079	749	12.3%	1955	292	14.9%	231	11.8%	8	2.7%	1		1	
60																				
61	SOUTH CAROLINA																			
62		Chas	95				955			86										
63			96				850						95	11.2%			1	2		
64			97																	
65		Clarendon	95				1383	690	50.0%				136	9.8%						
66			96				1319						180	13.6%			3	1		
67			97															2		
68		Florence	95				4096	1803	44.0%				203	5.0%						
69			96				4199						268	6.4%			2	2		
70			97																	
71		Horry	95				2064	745	36.1%				338	16.4%						
72			96				1943						217	11.2%			3	1		
73			97																	
74		Lee	95				777	319	41.1%				106	13.6%						
75			96				833						121	14.5%			2			
76			97																	
77																				
78																				
79																				
80																				

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
81			YEAR	# OF FARMS		%	ELIGIBLE VOTERS			ELIGIBLE VOTERS IN OPEN LAA's			VOTER PARTICIPATION				NOMINATIONS		ELECTED	
82			OF	Total	Minor	Minor	Total		Minority	Total		Minority	Total			Minority	Total	Minority	Total	Minor.
83			ELECT.				(#)	(#)	(%)	(#)	(#)	(%)	(#)	(%)	(#)	(%)				
84		SC Cont'd																		
85		Sumter	95				1217	526	43.2%				124	10.2%						
86			96				1247						172	13.8%			2	2		
87			97																	
88		Williams	95				**2579**	1036	40.2%				**209**	**8.1%**						
89			96				**2640**						**159**	**6.0%**			3			
90			97																	
91																				
92		WASHINGTON																		
93		Adams	95				2851	13					0	0.0%	0		0	0		
94			96				2917	3		724	0	0.0%	0	0.0%	0		0	0		
95			97																	
96		Chelon	95				1397	449	32.1%				353	30.0%						
97			96				1411	474	34.0%	472	151	32.0%	79	10.0%	27	17.9%	4	1		
98			97																	
99		Douglas	95				1960	10					513	30.0%	0		12	0		
100			96				1989	8		579	4		160	10.0%	2	50.0%	4	0		
101			97																	
102		Grant	95				4048	78	2.0%				745	20.0%	13	16.7%	12	1		
103			96				4205	69	2.0%	1224	37	3.0%	257	10.0%	8	21.6%	4	0		
104			97																	
105		Okanagan	95				1464	64	4.4%				277	20.0%	14	21.9%	12	1		
106			96				1457	63	4.3%	737	20	3.0%	205	14.1%	0	0.0%	4	0		
107			97																	
108		Yakima	95	**3651**	**210**		**6634**	**201**	3.0%				752	11.3%	53	26.4%	12	3		
109			96				**6585**	**311**	5.0%	2428	157	6.5%	325	5.0%	28	9.0%	5	2		
110			97																	

APPENDIX C: Results of Outreach Work on County Committee Elections

A training and outreach program was held in the fall of 1996 and 1997 to increase minority participation in county committee elections. While the precise relationship between outreach and election participation needs further analysis, the number of African Americans on County committees expanded from 20 to 37, while to total numbers of county committee members declined from 8,378 to 8,148. Obviously, a great deal of effort needs to be expended on further outreach if these figures are to be improved. Participation of other minorities also improved; see attached charts for further data.

A. Minority Nominations - In many places, community groups have been successful in increasing the number of minorities running in the elections. In some cases, the fact that our member groups were working to prompt nominations has led to an overall increase of interest in the elections, and an increase of nominations in general. In other cases, minority candidates apparently more to the liking of the current establishment have been nominated seemingly in response to the nomination generated by community groups.

It remains to be seen if those nominated have any chance of election, and if outreach efforts can change results, particularly in an election where only one seat is open.

Many groups are not hopeful. One, in South Carolina reports:

> *In the past ten years, dozens of minorities have run for county committees in our ten county area. None have won. As can be expected current and past committees have been much more responsive to the majority than minority farm community. The same can be said of USDA offices, though to a lesser degree. Experience with minority advisors reflect the relative weakness of their position. They tend to "go along to get along" which translates into zero net results for specific minority concerns.*

Where outreach efforts were held, results improved.

• In a ten county area in Alabama, 12 of 41 candidates were minority. Voter participation in the local area, Sumter-Greene, where outreach was most intense reflected a voting rate of over 50% with almost 75% of minorities voting. Still, no minority was elected in that community.

• In Monterey County, CA, all four candidates were minority, and one of three candidates at last report from Santa Cruz county were minority, another was being sought.

• in south Georgia *"There is a black person or another minority on every LAA*

holding an election in 1996. A black has been reported on every one of the ballots of the thirteen LAA's electing a member to the committee."

• Minority participation increased in Mississippi, where outreach efforts were conducted in 26 counties.

• In Washington State the group was *"able to secure two Latino/Chicano nominees for the Yakima County Area 2 nomination. One Spanish speaking Latino/Chicano was recruited by an organized effort of minorities. The other Latino/Chicano was recruited, we believe, by an established white group to counter our nomination.*

Present committee composition in the area - *"Only Okanagan and Yakima counties have had a minority farmer elected elected position to the county committee. Okanagan is the only county that presently has a minority farmer, Native American elected to the board. There is a concentration of Native American farmers from the reservation--about 2/3's of the 50 minority farmers registered. Yakima county has one elected minority farmer, a Hispanic who does not speak Spanish and does not relate to new and emerging small minority farmers."*

B. Election Participation - We have received complete figures from a number of counties in several states. In many cases, the number of ballots cast in the 1995 elections was extremely low-as few as one in ten to one in twenty farmers participated. We will be asking USDA how these figures compare with participation in previous elections, to ascertain if participation was low due to the very limited lead time before the election or confusion over USDA reorganization, or if participation was always low.

Some comments and statistics on voter participation:

• In the South Carolina counties where outreach was being done, in most cases, fewer than one in ten eligible voters listed participated in the 1995 elections. Percentage of eligible voters who cast ballots for each county are as follows: Chas/Berkeley(9%), Clarendon(10%), Florence(5%), Horry(16%), Lee(14%), Sumter(10%) and Williamsburg(8%)

• In one election in either Santa Cruz or Monterey County, only 80 ballots were cast in 1995. Many ballots were discarded for being incorrectly filled out.

• In south Georgia, "we have found the number of individuals voting in the election to be very low. And in that low number, up to twenty five percent of the vote was thrown out for not being completed or the person not being eligible. In one county an individual was elected by

receiving forty-one votes out of a county that had over sixteen hundred eligible voters."

• In previous elections, about 10% of the 2,400 eligible voters in Yakima County LAA #2 voted. Of the eligible voters listed, about 153 were Latino/Chicano-an increase of about 25 new voters since outreach efforts began.

Regarding minority participation-we do not have figures on how many minorities voted in the last election, compared to all voters. What we do know is that in numerous counties, the number of minority farmers exceeded the number of ballots cast, and if all minority farmers had voted, it should have been possible to elect minority candidates, if any were gotten on the ballots. Thus, efforts to increase voter turnout for qualified candidates could be very important.

However, the low election participation figures also indicate that the process for nominations and election, and the way the counties handle this work may mean there is very limited outreach to minority and possibly other limited resource producers, and those not within the "inner circle" in counties are not encouraged to participate. If true, this tends to lend substance to the idea that "the old boys network" still has a great deal to say about how things are run, and possible, how resources are allocated. Thus, outreach may be very important in changing election outcomes, and increasing the accountability of the committees.

Also, low election participation seems to reflect in many places one or more of the following factors:

1. A lack of knowledge about Farm Services Agency and what it does, particularly among Latino and Hispanic producers who are more recent entrants into agriculture.

2. A general lack of knowledge or understanding about what county committees are, what they do and what they are supposed to do.

3. Negative views or "giving up" on FSA because of previous bad experiences.

4. A feeling that running for seats would be risky for farmers now in programs, or that there was no chance of being elected.

5. Farmers and other eligible voters are not on the county committee list-a particular problem for American Indian producers.

6. Active discouragement by FSA staff, or questioning of one's eligibility, an inaccurate reading of regulations by staff, or negative attitudes and responsiveness.

C. Attitudes and Understanding of County Committee Offices.

In several cases, offices in nearby counties who have dealt differently with outreach have received different results. In New Mexico, the San Juan County office made a real effort to cooperate in outreach for nominations, in building the voter list and so forth. In another case, the Gallup office told many producers they were not eligible to run or to vote, and informed two Navajo candidates they were not eligible to vote. Both candidates and voters were told they needed to bring in their land title to qualify. Our contact person, a Navajo woman who has land, was told that the candidates did not qualify, despite the fact that she tried to show him the workbook prepared by Farm Services agency for the September 16 training. He refused to look at it. The state office was contacted to resolve the matter and within hours, the attitude of the local office changed. The state office affirmed the contention of our groups that because the Navajo Nation holds agricultural land, all Navajo people are eligible to vote. The Gallup office knows that, but continued to discourage candidates and voters. Another person who went to the office was told that "Navajo people are not interested in agriculture."

In other places, the offices discourage siblings who jointly own land passed to them from voting, or have said that people who reside outside the county are ineligible to vote. Some have been unwilling to look over the regulations with the community groups to clarify the issues. Some offices have been highly cooperative. In most cases, once the office understands that the state and national offices support the outreach efforts, marked progress has been made. In conjunction with the Land Loss Prevention Project, an article to promote voter participation by African Americans was prepared and used.

Another comment regarding the staff of USDA offices reflected a deep concern that was shared by many minority farmers about the level of expertise for dealing with small farmers, particularly with regard to credit since reorganization:

> *"It is very apparent that the staff of USDA offices and FSA offices in particular are primarily white males in the decision making process and white females in the clerical staff. There is one white female in that is a County Executive and two minority loan officers within these five counties. The one loan officer in Yakima county is not trained to be a loan officer and received minimal training. Since he is the only Spanish speaking person on staff, he is referred all the Hispanic clients which are mainly new and emerging farmers that require more time and work."*

D. Building Voter Lists - Indian producers whose names are not on county lists seem particularly vulnerable to being overlooked for ballots, and also for program participation. But many eligible voters are not receiving ballots or county newsletters.

At this time, having potentially eligible voters return the ballot request form we have prepared, is useful even after the election. We are telling those who return the form late that though they may not get a ballot this time, they should be added to the list for future elections. Some organizations are reviewing voter lists at the county committee office and to observing the counting of votes. A key area of concern remains the high number of ballots which are rejected in all areas.

We highly recommend that the department continue outreach efforts, and prepare a voter registration form based on the one we have submitted, and produce more copies of materials such as the article on voter eligibility for African Americans.

Dept Regulation supplying authority to remove County committee members or staff

§ 7.27 Political activity.

(a) No person may be a member of the county governing body or hold a Federal, State, or county office filled by an election held pursuant to law or be employed by any such office and also hold office as a county committee member, community committee member, delegate, alternate to such office, or be employed in any capacity, except, that members of school boards, soil conservation district boards, weed control district boards, or of similar boards are not ineligible to hold office or employment under this paragraph solely because of membership on such boards.

(b) No person may be a candidate for membership on the county governing body or for any Federal, State, or county office filled by an election held pursuant to law and hold office as a county committee member, community committee member, delegate, alternate to any such office, or be employed in any capacity, except, that candidates for school boards, soil conservation district boards, irrigation district boards, drainage district boards, weed control district boards, or for similar boards are not ineligible to hold office or employment under this subsection solely because of candidacy for such boards.

(c) No person may be an officer, employee, or delegate to a convention of any political party or political organization and hold office as a county committee member, community committee member, delegate, alternate to any such office, or be employed in any capacity.

(d) The tenure of office of any county committee member, community committee member, delegate, alternate to any such office, or the employment of any employee, shall be automatically terminated as soon as any such person becomes ineligible for office of employment under the provisions of paragraph (a), (b), or (c) of this section.

(e) No county committee member, community committee member, delegate, or alternate to any such office, or any employee shall at any time engage in the following political activities:

(1) Solicit or receive any contributions (including the sale of tickets) for political party organizations or for a candidate for political office or for any other political purpose in any room or building used for the transaction of any Federal official business, or at any place from any other county committee member, community committee member, delegate, or alternate to any such office or employee.

(2) Use official authority or influence to discharge, remove, demote, or promote any employee, or threaten or promise to so do, for withholding or giving contributions (including the buying or the refusal to buy tickets) for political purposes, or for supporting or opposing any candidate or any political organization in any primary, general, or special election for political office.

(3) Use or direct or permit the use of any official space, equipment, materials, supplies, or personal services either to support or oppose any political office holder, candidate or party, or for any other political purpose.

(f) A county committee member or alternate to such office, an employee on any day when entitled to receive pay for services in performance of duties, or an employee who serves during a continuous period of 90 days or more and has a regular tour of duty established in advance at any time, shall not solicit, collect, receive, disburse, or otherwise handle contributions of money, pledges, gifts, or anything of value (including the sale of tickets) made for:

(1) Political party organizations;

(2) A candidate for political office in any primary, general, or special election, but excluding such activities on behalf of individual candidates in township and municipal elections; or

(3) Any other political purpose.

[52 FR 48512, Dec. 23, 1987; 53 FR 1441, Jan. 19, 1988]

§ 7.28 Removal from office or employment for cause.

(a) Any county committee member, community committee member, delegate to the local administrative area convention or the county convention, an alternate to any such office, county executive director, or any other county employee who: Fails to perform the duties of office; commits or attempts, or

conspires to commit fraud; is incompetent; impedes the effectiveness of any program administered in the county; violates the provisions of §7.27 (e) or (f) of this part; refuses to carry out or fails to comply with the equal opportunity and civil rights, including the equal employment policy, or who interferes with others in carrying out such policy; or violates official instructions, shall be suspended from office or employment. Any person who is under formal investigation for any of the above-cited reasons may be suspended. The suspension action may be taken by the county executive director with respect to any other employee, or by the county committee or State committee with respect to the county executive director or any other county employee and by the State committee with respect to any county committee member, community committee member, delegate to the local administrative area convention or the county convention, or any alternate to any such office. Any person suspended shall be given a written statement of the reasons for such action and be allowed 15 days from the date of mailing of the notice of suspension in which to advise the county committee, or the State committee if it made the suspension, in writing, in person, or both, why such person should be restored to duty.

(b) The county committee or the county executive director, or the State committee if it made the suspension, following such further investigation as is deemed necessary shall restore to duty or remove the suspended person. The county committee or county executive director may not restore a suspended person to duty without prior written approval of the State committee, and, if such approval is denied, shall promptly remove such person. Upon refusal or failure of the county committee or the county executive director to remove promptly the suspended person, the State committee shall remove such person. In the event further investigation develops reasons for the action taken, in addition to those disclosed in the suspension notice, the suspended person shall be given written notification of such additional reasons and allowed 15 days from the date of mailing of the notice of additional reasons for the suspension in which to advise why such person should be restored to duty. In the event a person under suspension submits a resignation, acceptance thereof shall not prevent a determination by the county committee or State committee that such person would have been removed had the person remained in the position. Such determination shall constitute removal within the meaning of §§7.27 (e) and 7.28(c) of this part. The person so removed shall be given written notification of any such determination and the reasons therefor.

(c) Any incumbent or former county committee member, community committee member, delegate to the local administrative area convention or the county convention, an alternate to any such office, county executive director, or any other county employee who during a term of employment: Fails or failed to perform the duties of employment; committed, attempted, or conspired to commit fraud; was incompetent; impeded the effectiveness of any program administered in the county; violated the provisions of §7.27 (e) or (f) of this part; refused to carry out or failed to comply with the Department's policy relating to equal opportunity and civil rights, including the equal employment policy; or violated official instructions, may be disqualified for future service or employment by the State committee. Before any such disqualification determination is made, the State committee shall undertake such investigation as it deems necessary, after which the State committee shall give the affected person a written statement of the determination for the proposed disqualification action. Such person shall have 15 days from the date of receipt of such determination to advise in writing, in person or both, why the action should not be taken. If any further investigation develops substantial additional reasons for disqualification, the person involved shall be given a written statement of such reasons and 15 days from the date of mailing in which to respond. The State committee may remove the disqualification for future service or employment only with prior approval of the Deputy Administrator.

(d) Any county committee member, community committee member, delegate to the local administrative area convention or the county convention, or any alternate to any such office, county executive director, or any other county employee, who, prior to taking such persons's present office: Committed, or attempted or conspired to commit fraud; or impeded the effectiveness of any program administered in the county, may be suspended. Any such person who is under formal investigation for any reason set forth in this section may be suspended. The proceedings under this paragraph shall be applied the same as provided in paragraph (a) of this section.

(e) If in the event of suspensions or vacancies there are less than two members, including alternates, available to serve on the county committee, the State committee shall designate a person to administer the programs in the county pending the exoneration or removal of those persons under investigation and, if removed, pending the election of new county committee members and alternates. Such person may be the remaining member or alternate member of the committee if available. Any person named by the State committee to serve in such capacity shall have full authority to perform all duties regularly performed by a duly elected county committee.

§7.29 Delegation of authority to Deputy Administrator.

Notwithstanding the authority vested by this part in a State committee, a county committee, and the county executive director, the Deputy Administrator shall have authority to suspend and/or remove or disqualify for future service or employment, any county committee member, community committee member, delegate to the local administrative area convention or the county convention, an alternate to any such office, county executive director, or other county employee, for any and all of the reasons and causes authorizing such suspension, removal, and disqualification by the State committee, the county committee, or the county executive director. Any person suspended, removed or disqualified pursuant to this section shall be given a written statement of the reason for such action and shall be advised of the right of review as provided in §7.30 of this part.

§7.30 Right of review.

Any person dissatisfied with a determination of the county committee or county executive director may appeal in writing or in person or both, such determination to the State committee. Any person dissatisfied with a determination of the State committee may appeal such determination in writing to the Deputy Administrator. Any person dissatisfied with the determination of the Deputy Administrator made under §7.29 of this part may request a reconsideration of such determination by the Deputy Administrator. Any such appeal or request for reconsideration shall be made within 15 days from the date of the mailing of the determination with respect to which the appeal or request is filed. Except as provided in §7.31 of this part, such appeals and requests for reconsideration shall be determined on an informal basis. The person filing the appeal or request for reconsideration may present reasons, in writing or in person, or both, why the determination should be reversed or modified. Within 60 days after the reasons have been presented, such person shall be notified of the determination on appeal or reconsideration. The notification shall clearly set forth the basis for the determination. The determination of the Deputy Administrator is final and not subject to further administrative review.

§7.31 Hearing in connection with appeals and requests for reconsideration to Deputy Administrator.

Any person (the "appellant") filing an appeal with the Deputy Administrator, or a request for reconsideration of a determination made by the Deputy Administrator under §7.29 of this part, is entitled, at such person's election, to a hearing in connection therewith. If the appellant does not request a hearing, the appeal or reconsideration shall be handled in accordance with §7.30 of this part. If the appellant desires a hearing, such person shall so advise the Deputy Administrator. The hearing

shall be conducted by the Deputy Administrator, or a designee of the Deputy Administrator, who shall serve as a hearing officer. The hearing shall be held at the time and place designated by the hearing officer. The appellant may appear personally or through or accompanied by a representative. The hearing officer shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. Rules of evidence shall not be applied strictly, but the hearing officer shall exclude irrelevant or unduly repetitious evidence. Information having a bearing on the issues shall be received in evidence. Both the appellant and the agency representatives are entitled to produce witnesses and the appellant and agency representative shall be given an opportunity to cross-examine witnesses. The hearing officer shall inform the witnesses that they are subject to a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, for making any false statements (18 U.S.C. 1001). The hearing officer shall cause a transcript to be made of the hearing and it shall be made available to the appellant at actual costs.

§ 7.32 Findings, analysis, and recommendations of hearing officer.

If the hearing has been conducted by a designee of the Deputy Administrator, the hearing officer shall, within 60 days from date of receipt of the transcript transmit to the Deputy Administrator:

(a) The record of the hearing;

(b) The findings and analysis of the hearing officer; and

(c) A recommended determination.

§ 7.33 Determination of the Deputy Administrator.

Within 30 days after receipt of the findings, analysis, and recommendations of the hearing officer that are made under § 7.32 of this part, or within 60 days from the date of receipt of the transcript prepared under such section if the Deputy Administrator conducted the hearing, the Deputy Administrator shall make a final determination. The notification shall clearly set forth the basis for the determination. The determination of the Deputy Administrator is final and not subject to further administrative review.

§ 7.34 Custody and use of books, records, and documents.

(a) All books, records, and documents of or used by the county committee in the administration of programs assigned to it, or in the conduct of elections, shall be the property of the Commodity Credit Corporation or the United States Department of Agriculture, as applicable, and shall be maintained in good order in the county office.

(b) For polling and mail type elections, ballots shall remain in sealed boxes until the prescribed date for counting. Following the counting of ballots in all types of elections, the ballots shall be placed in sealed containers and retained for 30 days unless otherwise determined by the State committee.

(c) The books, records, and documents referred to in paragraph (a) shall be available for use and examination:

(1) At all times by authorized representatives of the Secretary; the Administrator, or a designee of the Administrator.

(2) By state, county, and community committee members, and authorized employees of the State and county office in the performance of duties assigned to them under this part, subject to instructions issued by the Deputy Administrator;

(3) At any reasonable time to any program participant insofar as such person's interests under the programs administered by the county committee may be affected, subject to instructions issued by the Deputy Administrator; and

(4) To any other person only in accordance with instructions issued by the Deputy Administrator.

§ 7.35 Administrative operations.

The administrative operations of county committees including but not limited to the following, shall be conducted, except as otherwise provided in these regulations, in accordance with official instructions issued: annual, sick, and other types of employee leave; location and use of the county

shall be conducted by the Deputy Administrator, or a designee of the Deputy Administrator, who shall serve as a hearing officer. The hearing shall be held at the time and place designated by the hearing officer. The appellant may appear personally or through or accompanied by a representative. The hearing officer shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. Rules of evidence shall not be applied strictly, but the hearing officer shall exclude irrelevant or unduly repetitious evidence. Information having a bearing on the issues shall be received in evidence. Both the appellant and the agency representatives are entitled to produce witnesses and the appellant and agency representative shall be given an opportunity to cross-examine witnesses. The hearing officer shall inform the witnesses that they are subject to a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, for making any false statements (18 U.S.C. 1001). The hearing officer shall cause a transcript to be made of the hearing and it shall be made available to the appellant at actual costs.

§ 7.32 Findings, analysis, and recommendations of hearing officer.

If the hearing has been conducted by a designee of the Deputy Administrator, the hearing officer shall, within 60 days from date of receipt of the transcript transmit to the Deputy Administrator:

(a) The record of the hearing;

(b) The findings and analysis of the hearing officer; and

(c) A recommended determination.

§ 7.33 Determination of the Deputy Administrator.

Within 30 days after receipt of the findings, analysis, and recommendations of the hearing officer that are made under § 7.32 of this part, or within 60 days from the date of receipt of the transcript prepared under such section if the Deputy Administrator conducted the hearing, the Deputy Administrator shall make a final determination. The notification shall clearly set forth the basis for the determination. The determination of the Deputy Administrator is final and not subject to further administrative review.

§ 7.34 Custody and use of books, records, and documents.

(a) All books, records, and documents of or used by the county committee in the administration of programs assigned to it, or in the conduct of elections, shall be the property of the Commodity Credit Corporation or the United States Department of Agriculture, as applicable, and shall be maintained in good order in the county office.

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Black Farmers' Settlement
Claims Facilitator
P.O. Box 4390
Portland, OR 97208-4390

July 25, 2000

Re: Late Payment

Dear Claimant:

The purpose of this letter is to provide you with an update on the payment process in the Black Farmers' Settlement. You should receive your check within 90 days from the date you receive your decision.

According to our database, your claim has been approved for cash relief under the Track A Adjudication process. We are currently paying claimants on an on-going basis; however, we have encountered some delays.

The number of claimants in this settlement exceeded 20,000, which is approximately ten times larger than anyone had expected. The delays in the check issuing process are not due to the failure of any of the parties, but rather, due to the large volume, which all parties were not able to anticipate.

Please feel free to contact our Claimant Services department at 1-800-646-2873 if you have any questions.

Sincerely,

Claims Facilitator

Testimony

Before the

United States Senate

Agriculture Nutrition & Forestry Committee

on

September 12, 2000

By
Lawrence Lucas, President
USDA Coalition Of Minority Employees

189

September 2000

REPORT ON THE STATE OF CIVIL RIGHTS AT THE UNITED STATES DEPARTMENT OF AGRICULTURE

Prepared For Secretary Dan Glickman
by the
USDA COALITION OF MINORITY EMPLOYEES

For further information contact
Lawrence Lucas at 856-910-2399

www.agcoalition.org

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I. Overview

The U.S. Department of Agriculture (USDA) Coalition of Minority Employees (The Coalition) was founded in 1994. A multi-racial and multi-cultural organization, its primary mission is to work toward the eradication of historical and systemic discrimination at USDA, identify issues/concerns and to recommend solutions. The Coalition's goal is to eradicate barriers to equality found in employment and program delivery. Issues of concern include discrimination, hostile environments and reprisals against employees; lack of management accountability; mismanagement in program delivery; and glass ceilings for people of color, women, persons with disabilities and others.

USDA continues living up to its reputation as a bastion of **racism and sexism**, guilty of wholesale reprisal and discrimination. It embodies the "slave-owner" mentality and is aptly called, "**The Last Plantation.**" USDA officials try to subjugate employees by manipulating the work environment, denying promotions and inflicting physical and emotional pain. These supervisors deal with USDA employees disparately and capriciously and are rarely held accountable for the misery they inflict on others. Solutions have been proposed. However, the culture, behavior and attitudes have not changed. To date, USDA continues its pervasive acts of reprisal, intimidation and hostile environment for those who seek justice.

Report after report has been authored by USDA officials and others documenting USDA's discriminatory culture: the Blue Ribbon Task Force, ***1996****; the D.J. Miller Report,* ***1996****; the USDA Civil Rights Action Team (CRAT),* ***1997****; the CRAT Listening Sessions,* ***1997****; the USDA Civil Rights Implementation Team (CRIT); USDA/Coalition sponsored seminar, "Race and Diversity in the Workplace and America,"* ***1998****; the NAACP Federal Sector Task Force Interim Report, "Discrimination in the Federal Government,"* ***1998****; the NAACP Federal Sector Task Force Interim Report, "Employment Discrimination and Abuses in the Federal Workplace, Practices, Patterns, Issues and Findings",* ***January 2000****; U.S. Civil Rights Commission Reports and many others. In* ***March 2000****, the Office of the Inspector General (OIG) published a report describing USDA's civil rights programs, policies and practices as ineffective, chaotic and poorly administered.* ***USDA "leaders" write "reports" to deceive others into believing that change is imminent, but are in fact, maintaining the "status quo."***

USDA has failed miserably in its responsibility to its customers and employees. At the 1997 CRAT Listening Sessions, Black farmers and USDA employees expressed concerns regarding the lack of diversity. Blacks, Hispanics, Asians, Persons with Disabilities, women and others reported that those trying to use USDA's EEO process were retaliated against. The **charges communicated in 1997 are identical to the charges conveyed in 2000–harassment, fear, reprisal, and intimidation.** Nothing has changed. The missing ingredient for bringing about lasting institutional change at USDA is ACCOUNTABILITY.

In Fiscal Year (FY) 2000, three years after Secretary Glickman's "Listening Sessions" employees and customers still suffer due to:

- **Disparate Treatment** - USDA's personnel rules, regulations, and policies are applied differently for women and minority employees; and programs are delivered inequitably to minority customers.

- **Lack of Career Growth** - Employees are refused permanent positions, developmental assignments, training and awards.

- **Retaliation for employees filing Complaints** - Multiple complaints are often filed because of reprisal.

- **Glass Ceilings** - Promotions are denied to minorities with specialized degrees or educational achievements.
- **Hostile Work Environments.**
- **Sexual Harassment and Sexual Assault**.
- **Widespread Nepotism and Favoritism**; and
- **Few Accommodations for Employees with Disabilities** - Lack of Reasonable Accommodations prevents competent employees from carrying out and completing assignments.

II. State of Civil Rights

A. Employee Complaints

Important EEO data being reported to the Equal Employment Opportunity Commission and Congress is skewed to misrepresent the true state of USDA civil rights.

Since USDA began its civil rights improvement plan, the number of cases filed has increased. From October 1999 - May 2000, cases increased by 10 percent. Complaints are being filed faster than the Civil Rights Office can handle them.

From FY 1996 to FY 1999 there was a 48 percent increase in formal complaints filed.

Complainant's cases languish in the Office of Civil Rights (OCR) for years. USDA refuses to resolve individual complaints. Complainants are denied Alternative Dispute Resolution, despite a mandate by the Secretary to resolve complaints in the early stages of the process.

B. Class Action Complaints

USDA refuses to resolve class action complaints. **In FY 1999 there were 15 class action complaints.** To date USDA has approximately **20 class action complaints pending** including:

Hispanic - The California class action *Brionez v. Glickman*, has been active for 10+ years with no resolution. Members of the Forest Service-wide Hispanic Class (*Sedillo v. Glickman*) filed in 1999, have attempted to initiate dialogue with the Department but have been refused.

Gender - The California class action *Donnelly/O'Connor v. Glickman* has been active for 6+ years. After 3 years of negotiations USDA and plaintiffs reached settlement in September, 2000.

African American - The USDA African American Class, *Spencer v. Glickman* was filed in May 1999. USDA has tried to derail the Class, introduced incorrect information and has tried to manipulate existing and potential class members. A new class action has been filed (*Reed v. Glickman*), due to USDA deliberately delaying action on African American employees' formal complaints - backlash from the Spencer Class.

On July 10, 2000, Administrative Judge Rebecca L. Dickinson issued an order to produce complaint files for *Reed v. Glickman*, including reports of investigation. The Agency responded on July 21, 2000, stating that the cases had been held in abeyance because they were subsumed in a class complaint, *Spencer v. USDA*. **On August 24, 2000, Judge Dickinson issued a response to the Agency. The Prehearing Order stated, "The Agency is incorrect that this is the proper procedure. Individual complaints that may possibly be subsumed in a class case should not be held in abeyance but should continue to be investigated."** The Agency was ordered to investigate the cited complaints and produce a report to Judge Dickinson and the complainant within forty-five days.

Meaningful dialogue must begin for all classes. In order to settle the numerous class action complaints at USDA, the Department and Office of the General Counsel (OGC) must agree to come to the table.

C. Dysfunctional Complaint Process

Because of USDA's lack of effective civil rights leadership, employees and customers filing EEO complaints endure an extremely chaotic system.

- **Lack of Responsiveness** - USDA's Office of Civil Rights - No response calls or letters regarding status of cases.

- **Sloppy Record Keeping** - Cases are misplaced and sometimes lost. Data and information are misreported to give the appearance of improvement.

- **Non-Compliance with Settlement Agreements** - Appeals can go on for years.

- **Time Limits** - Complainants must meet time limits. Failure by one day results in cases being dismissed. Yet, employees wait years to hear anything about their cases. *USDA rarely meets deadlines and is not penalized for tardiness.*

- **Systemic Issues Not Addressed** - USDA settles some complaints but is not interested in dealing with the cause of the problems. OCR's only motivation is getting cases off the books, and legitimate issues of discrimination remain unaddressed.

D. Acts of Harassment and Discrimination

Egregious incidents of racism and sexism at USDA remain uninvestigated or subject to minimal inquiry. Charges continue to be ignored. Perpetrators are not held accountable. USDA questions the existence of many of these events. Some refuse to admit that discrimination is alive and well at USDA!

Racist and Sexist Incidents

- "**Hangman's Nooses**" have been displayed on USDA property. Employees and customers are victims of racial slurs and foul language.

- Allegations filed stating that one of the highest political appointees in the Clinton Administration at USDA (a Black female) was called "**Wonder Monkey**" and "**Jungle Bunny**" by top management employees. No disciplinary action has been taken to date!

- **NAACP - "NOW APES ARE CALLED PEOPLE"** written on USDA headquarters bathroom walls.

- A USDA employee (found guilty of discrimination against Black farmers) was given only a one day suspension for bringing a gun to work on government property.

- Not one employee found to have engaged in discriminatory practices or named as a discriminating official has been punished as a result of the recent Black Farmer Class Action Settlement.

- Allegations that evidence was purged from files to cover-up a host of sexual harassment charges brought against a former USDA Civil Rights Director.

- A woman was asked to perform indecent sex acts by her supervisor.

- A woman lost her unborn child due to a hostile environment.

- A woman had salad dressing spread on her breasts.

- A woman's underwear was displayed by male coworkers on a moving vehicle.

- Women have suffered mental breakdowns, lost their homes and children.

- Women have been physically assaulted, stalked and threatened.

E. ACCOUNTABILITY

There is a lack of **ACCOUNTABILITY** for managers and employees who perpetuate harassment, discrimination and reprisal. USDA touts its **ACCOUNTABILITY** record of 13 employees removed for discriminatory actions. This is a dismal figure compared to the thousands of complaints filed. Additionally, all 13 employees removed were discharged on the basis of sexual harassment, *completely disregarding the discrimination against thousands of Black farmers and employee cases classified by race and other bases.*

LACK OF ACCOUNTABILITY

- USDA continues to violate civil rights laws, i.e., Titles VI and VII and does not hold those persons found guilty of discrimination **ACCOUNTABILITY**.

- USDA's **ACCOUNTABILITY** Policy Implementation Document was purposely stalled for over a year by top officials.

- USDA's April 2000 report entitled, "Commitment to Progress" is a "Document of Deception."

- Increased reprisal, retaliation and hostile work environment continues and goes unchecked by USDA.

III. The Coalition's Actions

The Coalition has attempted to work with USDA officials to eradicate the systemic discrimination in the USDA. The Coalition participated in former Secretary Espy's Blue Ribbon Task Force and other major civil rights initiatives. Coalition members attended Listening Sessions and members assisted in developing the CRAT report. History was made when USDA and The Coalition worked together in cooperation and partnership to present the seminar, *"Race and Diversity in the Workplace and America."* USDA

officials, employees and customers came together to explore innovative approaches to civil rights issues. The Coalition has resolved individual and class action EEO complaints. The Coalition has been vigilant for the past six years in identifying civil rights issues and providing solutions. Despite The Coalition's actions, little progress has been made to reduce complaints of discrimination and widespread reprisal against those who speak out against discrimination.

A. THE COALITION SOUGHT EXTERNAL ASSISTANCE

The lack of civil rights improvement forced The Coalition to seek assistance from external resources.

1. First Congressional Meeting

During the week of **January 12, 2000**, Coalition advisors, members, supporters, and USDA class agents traveled to Washington, D.C. *The objective of the visit was to meet with congressional representatives to obtain support and assistance, and to resolve widespread civil rights violations in USDA.* The Coalition met with staffers representing Senators Charles Robb (D, VA), Conrad Burns (R, MT), John McCain (R, AZ), and congressional representatives, Patrick Kennedy (D, RI), Earl Hilliard (D, AL), Maxine Waters (D, CA), James Clyburn (D, SC), John Lewis (D, GA), Eva Clayton (D, NC), Elijah Cummings (D, NC), Joe Skeen (R, NM), the Congressional Black Caucus, and the Congressional Hispanic Caucus. Leroy Warren, Jr. of the NAACP and John Boyd of the National Black Farmers Association attended some of the meetings in support of The Coalition's efforts. That same week, Coalition members participated in the NAACP's Federal Sector Task Force Summit.

The Coalition also requested to meet with the Secretary, but the request was denied.

For six months after the congressional visit, no progress was made by USDA toward resolving individual or class action complaints. The **Accountability** Policy was not released. Class Agents continued to be victims of retaliation. Secretary Glickman's report, "Commitment to Progress" was seen by many as an "Act of Deception." The Coalition decided to take a proactive stance to gain attention to USDA civil rights violations and again, asked Congress for assistance.

2. Second Congressional Meeting

During the week of **June 19 through June 23, 2000**, The Coalition members traveled again to Washington, D.C.

On **June 20, 2000**, Coalition presidents, advisors and supporters met with senators, congressional representatives and their aides to discuss the issues of racism, sexism and other forms of discrimination and reprisal at USDA. The Coalition's objective was to update the senators and congressional representatives on the continuing systemic problems giving rise to new civil rights complaints and preventing the resolution of existing complaints. Additionally, The Coalition requested congressional support and assistance to correct USDA's dysfunctional civil rights administration and provide much needed oversight.

The Coalition delegation met with Senators Charles Robb (D, VA), Barbara Boxer, (D, CA), congressional representatives Patsy Mink (D, HI), Joe Skeen (R, NM), Heather Wilson (R, NM), staffers Mason Williams and Laura Chaney representing Senator Mitch McConnell (R, KY), and Mark Edwards representing Senator Bingaman.

The Coalition's delegation included Lawrence Lucas, The Coalition President; Allen Spencer, lead class agent, *Spencer v. Glickman*; Joe Sedillo, Southwest chapter president and lead class agent, *Sedillo v. Glickman*; Lesa L. Donnelly, CA chapter president and lead class agent, *Donnelly/O'Connor v. Glickman*; Cathy Peralta-Messerschmitt, Coalition legislative advisor; Barbara Reed, lead class agent, *Reed v. Glickman*; Susan Powell, Coalition Law Enforcement and Investigations advisor; and Dennis Montoya, co-counsel for *Sedillo v. Glickman*. Howard Wallace and Steve Scott of the Equal Employment Opportunity Network joined the group later in the day. Arun Basu, *Basu v. Glickman*, and Farouk Sait joined the group at Congresswoman Patsy Mink's office.

A packet of information was provided to the Senators, Congressional Representatives and their staffers. The packet included information on harassment, discrimination and reprisal at USDA; a press release on discrimination issues at USDA; EEO data that refutes the Secretary's Accomplishment Report; letters from Senator Robb and the Congressional Hispanic Caucus to Secretary Glickman; media articles on civil rights issues at USDA; and affidavits from abused employees.

Issues Discussed

- **Lack of Accountability at USDA.**
  - The policy governing penalties for those who discriminate has been held up in the Secretary's office.
  - Officials have not been held accountable for resolving class actions and individual complaints.
  - Racist and sexist behaviors continue unabated with no one punished. Often "disciplinary promotions" are provided to the abusers.
  - Millions of taxpayer dollars have been wasted because of dysfunctional EEO processes and failure to remedy complaints.
  - Reprisal against employees who speak up or file complaints is rampant. Officials who retaliate do not receive disciplinary action.

- **USDA Office of Civil Rights Has Been Virtually Shut Down.**
  - Cases are not being processed.
  - The Office of the Inspector General report recommendations have not been implemented.
  - The lack of emphasis on civil rights is shown by the failure to place competent and qualified personnel in OCR at the Department level. As an example, there have been approximately eighteen civil rights directors in the last several years. Job vacancies in the Civil Rights Office that have been recommended and funded by Congress have not been filled.
  - The Secretary's Accomplishment Report on civil rights was a misleading document that belies the fact there have been very few accomplishments in civil rights.

- **Backlog Complaints of Harassment, Discrimination and Reprisal.**
  - There are approximately 20 class action complaints filed in the USDA.
  - The number of formal complaints filed has increased since the Civil Rights Action Team.
  - USDA Civil Rights and the OGC refuse to come to the table to resolve the complaints.

- **USDA Office of General Counsel's Control of Civil Rights Policy.**
  - Arbitrary and capricious application of civil rights laws and policies prevents expeditious resolution of class complaints and individual complaints.

- **The Secretary's Civil Rights Action Team Report Recommendations Have Not Been Fully Implemented.**
  - There has been no change in the organizational structure, i.e. no separation of Civil Rights and Human Resources functions.
  - There is still inaccurate civil rights report processing and data tracking.
  - An accountability policy for harassment, discrimination and reprisal has not been implemented.

Request for Assistance

The Coalition asked the Members of Congress and/or their staff to:

- Contact Senator Lugar and request congressional hearings on employment discrimination and employee abuses in USDA.

- Sign a letter of support asking that USDA come to the table to resolve class complaints and individual complaints.

- Support Congressional Oversight of Civil Rights and Human Resources administration at USDA.

- Support the legislative package introduced by Representative Eva Clayton, and Representative Bennie Thompson. These bills are The USDA Accountability and Equity Act of 2000; The Small Farmers Civil Rights Protection Act of 2000; and the National Employment Dispute Resolution Act of 2000. Additionally the legislation from Senator Conrad Burns was discussed and supported.

- Request that President Clinton meet with The Coalition to discuss issues of widespread discrimination at USDA and to gain his support of the Coalition's request for oversight.

Congressional Response

There was a good understanding of the issues of racism, sexism and reprisal. Some had discussed discrimination issues with Secretary Glickman in the past.

There was general support for congressional hearings and a commitment to contact Senator Lugar to request congressional oversight.

The Coalition was asked to provide a memo outlining structural changes for Senator Bingaman.

There was interest in halting the waste of taxpayer dollars due to USDA's failure to resolve complaints.

One representative stated that the federal government should set an example for the rest of the country. She felt that federal employees should be able to trust that the system will not be used against them.

There was concern about the lack of **ACCOUNTABILITY** in USDA and disagreement with USDA's practice of reassigning the victim to another location in lieu of halting the discrimination. It was recommended that *The Coalition provide President Clinton with a Bill of Particulars on issues of discrimination and the failure to correct the problem.*

Senator Robb and Congresswoman Mink enthusiastically supported the idea of The Coalition meeting with President Clinton. Both agreed to work toward that goal.

3. **Press Conference and Media Attention**

On **June 21, 2000**, The Coalition held a press conference on the U.S. Capitol grounds. In attendance was a large group of Coalition members, attorneys, class members, and supporters from almost all of the USDA employee resource groups. Congressional representatives spoke on behalf of The Coalition. Kim Anderson, representing Senator Chuck Robb and Congresswoman Patsy Mink gave eloquent presentations. They pledged full support for a meeting between The Coalition and President Clinton.

On **June 22, 2000**, an article was published in the Washington Post titled, *"USDA Workers: Bias Persists."* The article was subtitled, *"Minority Employees Seek Meeting with Clinton."* Lawrence Lucas was quoted, "There is continued widespread discrimination at USDA. We demand that President Clinton meet with The Coalition to resolve this." See article in appendix.

B. THE COALITION MEETS WITH USDA OFFICIALS

1. Sub Cabinet Meetings

At the request of Secretary Glickman, on **June 21, 2000**, The Coalition met with the Secretary's staff and others.

USDA Attendees:

Clyde Williams, Chief of Staff, Secretary's Office; Paul Fiddick, Assistant Secretary for Administration; Charlie Rawls, General Counsel; Rosalind Gray, Director, Civil Rights; Dr. Catherine Woteki, Under Secretary, Food Safety; Miley Gonzalez, Under Secretary, Research, Education and Economics; Dr. Enrique Figueroa, Deputy Under Secretary, Marketing and Regulatory Program; Inga Smulkstys, Deputy Under Secretary, Rural Development; Kevin Kennedy and Jeremy Anderson representing Anne Kennedy-Keys, Deputy Under Secretary, Natural Resources and Environment. No Farm Service Agency representatives attended the meeting.

Coalition Attendees:

Lawrence Lucas, Allen Spencer, Cathy Peralta-Messerschmitt, Joe Sedillo, Arun Basu, Lesa L. Donnelly, Barbara Reed, Susan Powell, Charles Sims, Ivory Walker, Brad Yamauchi, attorney, Minami, Lew and Tamaki, LLP; Alex Talmadge, Jr., attorney at law.

Coalition President Lawrence Lucas opened discussion by thanking Secretary Glickman for responding to The Coalition's request to meet with top USDA officials. Mr. Lucas discussed the events of the week with the attendees, including the previous day spent on Capitol Hill. ***Mr. Lucas informed the group that Senator Chuck Robb and Congresswoman Patsy Mink would be making a request to President Clinton to meet with The Coalition.***

Mr. Lucas stated that President Clinton is sensitive to civil rights, however, the attitude of USDA bureaucrats and political appointees is not consistent with President Clinton. This is manifested by the influx of discrimination cases, the benign neglect of employees and the lack of **accountability**. Mr. Lucas identified the Black Farmers' lawsuit and settlement as an example of the lack of accountability for discriminating officials. *Despite over a billion dollars for the Black Farmers' settlement,* ***not one USDA employee has been held accountable.***

The Blue Ribbon Task Force Report, the Civil Rights Action Team and Civil Rights Implementation Team, the recent Office of Inspector General reports and other reports have identified the problems and solutions, however, the Office of Civil Rights has not acted. **The Office of Civil Rights is dysfunctional and complaints are not being processed. Despite the millions of dollars provided to the Office of Civil Rights, it is worse off now than it was in 1995.**

Mr. Lucas described the Class Agents and advisors as loyal employees who have been forced to take action on discrimination and reprisal issues because the USDA would not do so. Mr. Lucas told the officials present, "**It is you all who have made them advocates.**"

Issues Addressed by Mr. Lucas

- **Accountability for Managers is Lacking.**
  Managers who harass, discriminate and retaliate are being given "disciplinary promotions" rather than being held accountable for their actions. [*A recent CA Forest Service disciplinary promotion situation was provided as an example.*]

- **The Accountability Policy.**
  The Accountability Policy has been sitting in the Secretary's office for over a year. This is an example of the arrogance against our people. This policy needs to be released and implemented immediately.

- **The Office of General Counsel.**
  The predecessor to Charlie Rawls, OGC Director, was hostile and insensitive to Civil Rights. It is the same now. OGC will not come to the table to resolve cases, i.e. the Black Farmers' complaints and more recent employee class complaints. This is arrogant and unacceptable. Secretary Glickman said to settle the cases, OGC said "NO".

- **Outreach Programs.**
  The Forest Service Hispanic/Asian outreach programs were approved and funded. The Agency has since dismantled the programs. The programs should be implemented.

USDA officials and The Coalition members spent a considerable amount of time discussing issues. The Coalition members are cautiously optimistic that action will occur from this meeting. See appendix for detailed comments.

2. USDA Forest Service Meeting

On **June 22, 2000**, Coalition members met with Hilda Diaz-Soltero, Associate Chief for the Forest Service. Ms. Diaz-Soltero initially refused to meet with the group and wanted to only meet with Lawrence Lucas. She relented when Mr. Lucas asked her to contact the office of Anne Kennedy-Keys, Deputy Under Secretary for Natural Resources. The group discussed Law Enforcement and Investigation issues, the Civil Rights/Human Resources structure, program delivery of Hispanic and Asian programs, disciplinary promotions in the Forest Service, reprisal against complainants, and Region 3 and Region 5 management officials' refusal to enter into mediation and settle complaints. Ms. Diaz-Soltero advised she would relay the information to Deputy Chief Phil Janik. The Coalition requested follow-up on the issues.

3. DISCUSSION WITH SECRETARY GLICKMAN

On **June 23, 2000**, Lawrence Lucas spoke with Secretary Glickman. Mr. Lucas and the Secretary discussed events of the past week and The Coalition's desire to work in partnership with the USDA to resolve the civil rights problems. Mr. Lucas and Secretary Glickman agreed they should meet on a month-to-month basis to discuss progress. As of September, the Secretary's office has not scheduled one meeting.

IV. Secretary Glickman's Response

On **June 29, 2000**, Secretary Glickman called USDA employees together to speak about the state of civil rights at USDA. His speech was entitled, "Civil Rights 2000: A Continuing Journey." Secretary Glickman spoke of civil rights as a human relations issue. The Secretary announced several actions **"to further enhance our ability to enforce civil rights and improve human relations."** Many of the actions have been emphasized by the Secretary in the past with little-to-no results.

V. Solutions

Secretary Glickman stated on June 29, 2000,

"We also understand that there are those who want to change things, who want to solve these problems, whose hearts are in the right place, but they don't know how. We must show each other the way."

The Coalition is a solution-oriented employee advocacy group. The Coalition has offered to participate in problem solving in the past and continues to believe we can assist Secretary Glickman with his vision of making USDA "The People's Department." **It is time for the Secretary to include The Coalition in his circle of advisors.**

Establish an Independent Monitoring Team. The Secretary's new action items (June 29, 2000,) lack a compliance mechanism or monitoring process. For example, it is not a new direction to evaluate managers' performance under civil rights and human relations. The problem in the past has been no monitoring for compliance of this directive. Additionally, Secretary Glickman's "zero tolerance for harassment and reprisal" has not been enforced due to a lack of monitoring . A Monitoring Team **(consisting of Class Agents and Coalition employees from around the United States)** will assist the Secretary in monitoring, evaluating and assessing real progress.

Charter The Coalition Advisory Team to provide the Secretary with solutions to the identified problems such as escalation of individual and class action complaints, civil rights organizational structure and processes, reprisal issues, and accountability.

Place The Coalition Advisory Team members on the newly established advisory committees and the Diversity Council. Coalition members have been working within the civil rights arena for a number of years. They work in the field with USDA employees and are knowledgeable and skilled in civil rights problems and problem-solving.

The USDA Office of General Counsel must be ordered to cease its interference with settlements of individual and class action complaints. Individual and class action complaints should be expeditiously resolved, especially the African American cases being held in abeyance. There is a need to correct the institutional causes that gave rise to these complaints.

A White House Oversight Committee should be appointed for the duration of this Administration. *The Oversight Committee will monitor civil rights administration, to include the accountability process, insuring that those who discriminate are held accountable. At minimum, a Congressional Oversight committee should be appointed for USDA.*

The Office of Civil Rights should answer directly to the Secretary, not to the Assistant Secretary of Administration. The present system needs to be restructured to assure Human Resources (Personnel) does not have the oversight/control of USDA Civil Rights.

USDA must fill the approximately 42 vacant positions in the Office of Civil Rights.

Fully implement the Civil Rights Action Team and Office of Inspector General recommendations to improve civil rights.

Re-establish an Accountability Unit that is independent of the Assistant Secretary for Administration and Human Resources.

Examine the rating system of the Agencies in regard to Civil Rights. Currently there is a flaw with the ratings due to political appointees subverting the ratings issued by the Office of Civil Rights and The Coalition.

Hispanic program outreach should get approvals from the Secretary's Office for Forest Service implementation.

Changes must be made within the next 30 days. If change does not occur, The Coalition will request removal of individuals creating historical and immediate problems at USDA.

Action must be taken now! Secretary Glickman must not wait to see if his June 29, 2000 action items will resolve the severe civil rights problems in the USDA. *As time passes employees continue to work in hostile environments. The consequences - more complaints are filed, class action lawsuits are filed, more taxpayer dollars are wasted, additional external resources become involved and the USDA continues its spiral downward.* With the right solutions and **Accountability** a cultural change will occur. The Coalition will continue in its efforts to be a part of the solution.

On **October 11, 2000**, The Coalition will hold a Press Conference at The White House on Pennsylvania Avenue as **a show of solidarity against continued oppression of civil rights at USDA**. Attendees will include Coalition chapter presidents and members, class agents, employee groups, unions, and USDA employees and customers. The theme, "**Walk in Our Shoes**", will convey the seriousness of the pain and suffering in USDA around the nation. USDA employees, customers and "Silent Victims", (i.e. their husbands, wives and children) from all over America have been encouraged to send shoes to the Press Conference to cry out to the conscience of the American people.

Exposing discrimination in our Federal Government is essential for maintaining a free and democratic society. The diversity in our country compels us to remember that disregard for people based on race, religion, sex, nationality, ethic origin, sexual orientation, disability, etc. has led to disastrous consequences. The historical discrimination against Black farmers and USDA employees has become a national disgrace for America and the world.

The Coalition and its supporters on The Hill have requested a meeting with President Clinton to discuss the "State of Civil Rights at USDA." It is our hope that President Clinton and the Congress will step in and take charge of civil rights at USDA and hold officials ACCOUNTABLE for implementing change.

* * * * *

APPENDIX

VI. Appendix

I. Comments from the USDA Sub Cabinet/Coalition Meeting

Allen Spencer: The Spencer Class has been stonewalled. African American complaints under the Spencer Class are being held in abeyance. USDA has taken this action to undermine the African American Class. The Office of Civil Rights has exhibited sloppiness and incompetence. Complainants who are not even African American have been subsumed into the Spencer Class and their cases held in abeyance! Holding complaints in abeyance has been an attempt on USDA's part to scapegoat Allen Spencer. USDA must initiate discussions that lead to resolution of the Spencer Class Action Complaint. It is not necessary to go to court. Resolving the African American complaint is consistent and compatible with the President's and the Secretary's direction. **The American taxpayer will not stand for the money wasted on unnecessary litigation.** Some people in this room will not have jobs if the correct action is not taken.

Cathy Peralta-Messerschmitt: The Secretary has met with Hispanics but little has been done to help them with the harassment, discrimination and reprisal. **People have lost their jobs, their homes and their lives.** There is a lack of respect for employees. Management officials in the agencies and Department will not even return phone calls to employees requesting information or assistance on their complaints. There are many repeat offenders who are not held accountable. They continue to harass and discriminate against employees. This must be stopped - accountability for the offenders is the key. It must occur now.

Lesa L. Donnelly: Accountability *is* the key to preventing and eliminating harassment, discrimination and reprisal. **Disciplinary promotions are damaging to the credibility of Department officials, a Department that continually states it won't tolerate civil rights violations.** The message sent is one of indifference to employee suffering and civil rights enforcement. The tone set for managers is that it is acceptable to harass and retaliate against employees. This is the worst possible message to send if the USDA wants to make a significant change. *[Kevin Kennedy responded that he would take the information back on the disciplinary promotion to Anne Kennedy-Keys.]*

EEO Complaints are languishing because managers will not respond to requests for resolution. In Region 5 and other regions we request mediation and we receive a negative response or no response at all. We have situations where complainants are not asking for money in their resolutions, just simple lateral assignments to vacant positions to get away from a hostile environment. The Forest Service management will not act on these complaint resolutions when these settlements could be done quickly and cheaply. We need higher level oversight to get our complainants into mediation and get resolutions.

Joe Sedillo: This same group of Employee Advocates came to Washington, D.C. in January. We are here again today and we will be back as many times as it takes to accomplish our goals of getting the Agency and Department to resolve individual complaints, come to the table on class complaints and hold managers accountable. **We are not going away.**

We've been told the Office of General Counsel has instructed the Agency not to come to the table to resolve class complaints. Phil Janik advised us that was not true. Last month Charlie Rawls instructed the Chief to engage in resolution. I'm asking, here today, are you willing to come to the table and resolve class complaints? [*No response from Mr. Rawls.*] Asked again, Are you willing to engage in discussions to resolve the class complaints? *[Charlie Rawls responded that he would look into the possibility of starting discussions for resolution. He said it was "entirely appropriate" to work out a resolution to the class complaints*

and used the Donnelly Class as an example of what can be done. Lawrence Lucas added that if the Department/Agency/OGC can come to the table and resolve the Donnelly Class, it should be able to do the same for the other class actions.]

Mr. Sedillo asked Ms. Donnelly to discuss the issue of official time and resources for class agents.

Lesa L .Donnelly: Class agents have been denied the use of official time, government facilities and equipment while in the EEO complaint process. The Donnelly Class agents were allowed official time and full use of resources such as facilities, phones, computers and other equipment throughout the life of the Donnelly Class Action. To deny other class agents reasonable time and resources amounts to disparate treatment. All class actions and class agents should be allowed time and resources in an equitable manner. Mr. Rawls should insure that occurs.

Arun Basu: The Secretary's directives on Civil Rights are being ignored. Recently the South Asian employees filed a class action complaint. We regret having to file a complaint but we had no other choice. We are required by the Department to follow the administrative process, but the Department does not comply with the administrative process. The Class should be resolved within the Department before it gets to the EEOC. **Eighty-three percent of the South Asian employees have advanced college degrees, yet they are still treated as not qualified for managerial positions.** Reprisal occurs in the form of abolishing positions, investigations, etc. Employees are not being protected for prior EEO activities.

Barbara Reed: The structure of Civil Rights and Human Resources is not working. The Office of Civil Rights and the Human Resources office are working on EEO cases together. **They should be separate.** It is a conflict of interest to have them working on cases together, as they many times do. **Another conflict of interest in the EEO process is that Responding Officials are acting as Resolving Officials in cases.** A Human Relations Specialist called me "bitchy" and I filed a complaint against him. The Forest Service sent him to the EEOC hearing as a Resolving Official. This is absurd! It is an example of the conflict of interest. It violates Management Directive 110. *Rosalind Gray agreed with Ms. Reed that it violates MD 110.*

I am a Class Agent. We cannot get a response from the Office of Civil Rights on our cases. Letters are late when they do come to us. Documents are lost. This is not appropriate. It is happening right now in my case.

Susan Powell: Law Enforcement and Investigations now has approximately 25 employees who will become a part of The Coalition and come forward about harassment and reprisal. These people have been harassed and intimidated by Law Enforcement and Investigations management. I personally have been sexually harassed, stalked, and threatened. I am not receiving a paycheck because of this. I've endured intimidation and reprisal by these people. The hostile environment created a health condition and I can no longer do my job. I can no longer perform athletically. I was slated for the Pan American Games and the Olympics and that dream has been taken away from me. Accountability should have happened a long time ago in my case and this would not have occurred. The Law Enforcement and Investigations managers are still harassing me and retaliating against me. No one will stop it or hold them accountable. I am willing to take a stand because I do not want to see another Law Enforcement employee go through what I've gone through at the hands of Law Enforcement and Investigations management. I drove here in my pickup and slept in the back of it. If I have to drive here again in two weeks, I will. I will be back until changes are made. **We are not going away.**

Brad Yamauchi: There is a disconnect between the worker in the field and the Regional Offices. There is a disconnect between the Regional Offices and the Washington Office. **Forest Service units are rural kingdoms that have been created over the generations. The culture in these kingdoms is against women and minorities**. This has been going on for a hundred years with no change. You must change the culture that exists. **Accountability is the answer**. Holding people accountable is the best way to make a change. Accountability is the symbolism that will change the culture.

Ivory Walker: *[Coalition Advisor, representing the Region 8 African American class]*
I am the former president of an African American employee association. These things people are saying in this room are real. People are hurting. I've heard a lot of this stuff for a long time. Nothing has changed. People are losing their jobs. **The root causes have not been addressed. Accountability is the key.** It is foolish to hurt people and foolish to spend the taxpayer's money to do it.

Charles Sims: First of all, where is the representation at this meeting from the Farm Services Agency? I'd like to know why they are not here. I'm tired of meetings with people promising me things. The African American people went to Charlie Rawls and Richard Rominger. This lead to the class action of Herring v. Glickman. We were told they would take care of the problems - they didn't. **We are meeting now and Farm Services Agency is not here again.**

Secondly, there is an accident about to happen. [*Mr. Sims advised Mr. Fiddick of a situation in which an official with EEO complaints against him was placed in a management position in Civil Rights - a serious problem.]* I am involved in three class actions. Things keep changing, but not for the better. I'm in a class one minute and not in a class the next minute. Things are not going anywhere. I am not going to go along to get along. I am sick and tired of being sick and tired. Things need to change!

Clyde Williams: I am not here today to defend Secretary Glickman. We are here to listen to what people have to say. We've accomplished a lot in civil rights. We set the groundwork for addressing civil rights issues. We have been successful in many ways. This administration will be over soon and we will no longer be here. **We have a short time left to accomplish things. The people here today will listen and try to help you.**

Paul Fiddick: The USDA is a confederation of agencies. It is difficult for us to manage with so many different agencies spread throughout the Department. **Accountability is important. We need to hold people accountable who discriminate and hold people accountable** for **misconduct.** We have promulgated the accountability policy and we are in the process of implementing it. Rosalind Gray and I are working on this. We have done the best job we can in putting together a policy to hold accountable supervisors and employees who discriminate. We have a set of prescriptive disciplinary policies and penalties. We have set 30 days for comments and will then publish the policy immediately.

Lawrence Lucas: People that are part of the problem are being put in official positions. [*Specific situations were discussed of management officials with deplorable records being placed in high level positions and civil rights positions].* There was credibility for civil rights under Pearlie Reed and Lloyd Wright. You now have a serious credibility problem in civil rights. **There is indifference and arrogance at OGC now.** Ms. Woteki, Mr. Gonzalez and Dr. Figueroa have shown sensitivity in resolving individual complaints. But there are many more bad examples. Charlie Rawls can do a better job. The Donnelly Class is a good example of a turn around because the Department and OGC took action. We want the same for the other classes. We want you to show sensitivity. Charlie can do it. He did it once and he can do it again.

Miley Gonzalez: I believe there is sensitivity to the issues. **I know some of these things have taken place and I am sorry for it.** You have asked us to be responsive. How do you get responsiveness? You get it by working together. We need to do that. We need to find some ways to respond to these issues.

Joe Sedillo: If you want to bring about change we are here to help you.

Charlie Rawls: We understand that the Class Agents feel they were forced into their positions. But filing class actions - it puts us in a different forum. Once you get into the legal system, it is not easy to get out of it. It takes a lot of work and a lot of time. Lesa can tell you that.

Allen Spencer: *[Speaking to Charlie Rawls]:* It is you who make it a legal issue. You do that at the very beginning when the issue is still in the informal stage.

Lawrence Lucas: You are settling the Donnelly Class. **Use the same model with the other class actions. Stop wasting the taxpayer's money.** We don't need another five-year protracted lawsuit (Pigford v. Glickman) that will embarrass the Department while it goes through the system.

Cathy Peralta-Messerschmitt: I talked with Larry Newell in the Office of Civil Rights because the Office couldn't find some of my cases. It's a mess. There are so many cases it is overwhelming for the Office of Civil Rights. We are only cases to these people. You need personalization. People are bleeding. There are employees in the Southwest Region of the Forest Service who only want an apology for the way they have been treated. Management would not do that. Now they are going to court on their EEO complaints. Managers retaliate to hurt employees. They try to take your dignity away. **I can't stop you from keeping my cases in the system for years, but you still need to respect me as a human being and an employee.** There is no respect for employees.

Lawrence Lucas: *[Speaking to Paul Fiddick]* I question the appointment of David Wittingham as the solution to the Department's ills because he has been unable to resolve the discrimination problems in the Farm Service Agency for farmers and employees.

Paul Fiddick: I've had discussions with Lawrence about the Office of Civil Rights. We know we have problems there. We brought David Wittingham in as a detailer to help fix some of the problems in Civil Rights. **We have fifty slots for jobs to be filled. We need to look at why they are not filled.**

Lawrence Lucas: *[Speaking to Dr. Figueroa]* **The dismantling of the Hispanic and Asian programs, two very productive programs, has occurred. This contrasts with the President's initiative on Hispanic and Asian issues.** The money has been allotted. Why have the programs been placed in file thirteen? Why has Jose Salinas' budget been cut at a disproportionate rate than the others?

Dr. Enrique Figueroa: You are talking about program delivery issues. $580,000 was allocated in FY00 to be used for recruitment. I support these programs but I have no authority to implement the programs.

Lawrence Lucas: Dr. Figueroa and Mr. Fiddick can work this out and implement the programs. It is the Secretary's mandate. **The President's and the Secretary's goals should not be undermined.**

Dr. Enrique Figueroa: **No employee should experience what has been said here today. We can not have the erosion of people's dignity.** If this has happened in my mission area, I apologize. We have within my mission area a policy to resolve issues before they escalate. Accountability is happening. We have

removed people, but it is not easy. We need to hold people accountable for their performance. **I salute your courage for what you all are doing.**

Dr. Catherine Woteki: Don't underestimate how we have a desire to make changes. We have policies in place and have tried to enforce them. It is easier in some agencies than in other agencies. **This is not the environment we want for employees.** We remain committed to act. It is not always easy to do what needs to be done - hold people accountable for conduct and performance. I feel like we are progressing, but there is more to be done. You can come talk to the Under Secretary or myself at anytime.

Mr. Williams asked that the meeting end with final words from each Coalition member.

Lawrence Lucas: We have tried to enlist help from Phil Janik and Clyde Thompson. The Forest Service has not taken sufficient action. Thus we have continued to seek assistance at higher levels.

The Coalition rated the Farm Service Agency (FSA) as failed under David Wittingham. Under David Wittingham the FSA decided they did not have to follow the Secretary's directives. **We failed the FSA, you passed them**. The FSA does not make the same effort made by the Forest Service.

The arrogance of the Food Consumer Service is shown in its treatment of its employees, as well as its customers. Another example is, the use of the "N" word, the employees drinking at a government facility and calling a Black female official a jungle bunny. **This was done to one of your own and you still did nothing about it. If you won't do something out of respect for your own Under Secretary, how can we expect you to do it for us?** There was a cover-up. How can we have confidence in you to do anything you say in this room? But maybe you all don't view her as one of you all because she is a Black woman.

Little-to-no Title VII complaints (Black farmers) have been processed under the leadership of David Wittingham.

[To Charlie Rawls] When you first came to the job you were interested in working on the issues. You must have had an Out of Body experience. This is not the case anymore. There are things that you can do. You can settle cases. You can approve official time for class agents. You can take action in the Jungle Bunny situation. You can start a dialogue on the class action complaints. We need to see action and results now.

Joe Sedillo: Resolve the individual complaints. Resolve the class action complaints.

Barbara Reed: I am asking Rosalind Gray for assistance in the problems we are having with the Civil Rights and Human Resources conflicts of interest. *[Ms. Gray acknowledged this]*

Allen Spencer: *[To Paul Fiddick]* The confederation of agencies you spoke of leads to subposts and kingdoms. This is a major problem that must be corrected.

[To Charlie Rawls] Judge Bradley authorized the Department to start discussions on the Spencer Class. You need to put the legal issues aside and come to the table to start a dialogue on the class complaints.

Cathy Peralta-Messerschmitt: **The problems you heard today are real. People are suffering. We need your help to stop this.** We have had no help from Ms. Gray in the past. I am heartened to hear Ms. Gray is going to help Barbara with her issues. We need more of this commitment from all of you.

Arun Basu: The employees who work for the USDA are dedicated employees. We need to go back to the Secretary's policies and make them work. There are still options to look at - settle the individual and class complaints. Take some interest in these issues and resolve them.

Lesa L. Donnelly: When I spoke with Rosalind Gray in January, I advised her that Brad Powell in Region 5 was non-responsive to our requests for mediation. Ms. Gray told me to make my requests for alternative dispute resolution through her and she would take action. I am preparing letters to send for these requests and I'd like to know if Ms. Gray still intends to honor this. *[Ms. Gray acknowledged the conversation and said she would still take action.]*

The Department and the Forest Service have a policy on EEO settlement agreements that is not functioning well. The policy is that any resolution over $5,000 must be approved by Deputy Chief Clyde Thompson and any resolution over $25,000 must be approved by Rosalind Gray. We have situations where the settlement agreements have been agreed upon and signed by both parties and then they sit for months and months in Mr. Thompson's office and/or Ms. Gray's office. When we call the responsible officials, we can't get answers on the status or location of the settlement agreements. At minimum the Department and the Forest Service should have a time frame that they adhere to. When both parties agree upon a settlement, the Offices of Civil Rights and Human Resources should not become a barrier to the settlement. The current policy needs to be changed, including the higher level oversight of both offices' participation in the process.

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THE FEDERAL PAGE
THURSDAY, JUNE 22, 2000 A23

USDA Workers: Bias Persists

Minority Employees Seek Meeting With Clinton

By MICHAEL A. FLETCHER
Washington Post Staff Writer

A group of minority and female workers at the Department of Agriculture yesterday called on President Clinton to resolve long-standing complaints of discrimination at the agency, saying that bias continues to fester there despite repeated pledges by Secretary Dan Glickman to stamp it out.

About 30 members of the Coalition of Minority Employees aired their concerns at a Capitol Hill news conference before meeting with senior USDA officials yesterday. Citing their own experiences as well as an upsurge in the number of discrimination complaints brought by USDA employees, coalition members said the agency is making little progress in its much-touted civil rights fight.

"Nothing has changed," said John Sedillo, a Forest Service employee from New Mexico. "If anything, things have gotten worse."

Members of the coalition said that minority and female employees frequently receive disparate treatment from USDA supervisors, are often steered away from assignments that will enhance their careers, are denied promotions and are targets of blatantly racist jokes or sexual harassment, particularly in the agency's rural outposts.

"There is continued widespread discrimination at USDA," said Lawrence Lucas, president of the coalition. "We demand that President Clinton meet with the coalition to resolve this."

Since being named agriculture secretary in 1995, Glickman has said that his highest priority is to make USDA into a "civil rights leader in the federal government." In May, the agency released a report that officials trumpeted as evidence of the civil rights progress that had taken place. A USDA spokesman referred to the report when asked for comment about the coalition's charges yesterday.

The report said that the agency had increased its farm lending to minorities and women, increased minority and female representation on the local committees that make loan decisions for farmers and increased the percentage of agency employees who are minorities from 17 percent to 20 percent.

"Our efforts are having a real impact on USDA's programs and people," Glickman said then.

But minority employees said that has not been enough. Despite Glickman's efforts, they said, the number of employment discrimination complaints increased by nearly 50 percent between 1996 and 1999. At the end of last year, more than 1,700 were on file.

"There are so many cases that they are largely put aside," said Rep. Patsy T. Mink (D-Hawaii), who attended the news conference.

Also, the coalition said, the agency is the target of 20 class action complaints, either in the courts or before the Equal Employment Opportunity Commission. The coalition said several of the complaints have been filed in the past year.

BY RAY LUSTIG—THE WASHINGTON POST

Agriculture Secretary Dan Glickman said progress has been made in easing discrimination at USDA.

"The Department of Agriculture is an overflowing cesspool of filth that needs cleaning," said John Boyd, president of the National Black Farmers Association, who is running for Congress from Virginia's 5th District. "Nothing will change unless people are held accountable for their actions."

In his May report, Glickman said that 13 employees were fired and another 81 were at least reprimanded as a result of the agency's civil rights initiative—numbers that coalition members say are inadequate.

For decades, minorities at USDA have complained about a hostile work environment that fosters discrimination against employees as well as some USDA clients.

In 1999, USDA settled a class action lawsuit brought by black farmers who charged that they were denied loans and other services because of their race. Payouts in the suit are on track to top $1 billion.

The coalition's complaints come on the heels of a report by the agency's inspector general, who in March criticized the agency's handling of civil rights complaints. The report said USDA's civil rights division had lost more than a dozen files and mishandled hundreds of others.

During the news conference, a spokesman for Sen. Charles S. Robb (D-Va.) said that Robb plans to request a meeting between Clinton and the minority employees.

"The secretary has failed us," said Allen Spencer, an USDA employee involved in a suit against the agency. "It seems that all of our resources other than presidential action have been expended."

U.S. Department of Agriculture
Coalition of Minority Employees

Chapter Presidents•Class Agents•Employees•Unions•Employee Groups

PRESS CONFERENCE

A SHOW OF SOLIDARITY AGAINST CONTINUED OPPRESSION OF CIVIL RIGHTS AT USDA.

" WALK IN OUR SHOES "

THE WHITE HOUSE
Pennsylvania Avenue (facing LaFayette Park)
Washington, DC

WEDNESDAY - OCTOBER 11, 2000 ~~ 11:00 AM - 12:00 NOON

Send a pair of shoes along with your Name (optional), State and USDA Agency guilty of the discrimination and those of the "*Silent Victims*," husbands, wives, and children. Enclose signed affidavits or letters to President Clinton and to Vice President Gore describing your experiences. If you desire, forward shoes for each act of discrimination not later than **October 1, 2000 to**:

Shiloh Temple
1275 North Pulaski Highway
Elkton, MD 21921

Contact: Lawrence Lucas, President
USDA Coalition of Minority Employees, (856) 910-2399

WE HAVE SUFFERED TOO LONG IN SILENCE AND FEAR, COME JOIN US!

SENATE AGRICULTURE COMMITTEE
September 12, 2000

Good morning, my name is Juanita Carranza from Lambert, Montana. I would like to thank the Senate Agriculture Committee for the opportunity to address the civil rights resolution process at the United States Department of Agriculture.

I will have no statistics to testify to because numerical figures do not tell what the reality is about. The fact is, that in the delivery of its federally mandated farm programs the United States Department of Agriculture has like the Bridgestone/Firestone Corporation a broken, defective and deadly product that must be recalled.

If a recall isn't in order at USDA, what other reason can one give why certain farmers and ranchers are selectively chosen to be denied services at the FmHA/FSA County Office level when federal law states that no one shall be "treated differently"?

If a recall isn't in order at USDA, why is the pattern of discrimination that begins at the County Office level continued and enforced by entrenched FmHA/FSA State Office officials regardless of what Congress mandates?

If a recall is not in order at USDA, why is the mandatory in-house appeals system, one that ultimately reiterates the original death sentence begun at the County Office for the targeted family farmers and ranchers foolish enough to believe that there can be justice in that mortally flawed charade?

If a recall is not in order at USDA, why do regional USDA Offices of General Counsel combine forces with the Department of Justice not just to remove farmers and ranchers from their land but go for the jugular effect. Then the selected farm and ranch families are left penniless, humiliated and beaten with not one shred of human dignity left and in some cases self-inflicted death is an easier solution than the tortuous process delivered from those two government entities?

If a recall is not in order at USDA, why has the civil rights resolution process been such a dismal, bumbling farce? On November 13th, 1998 when Secretary of Agriculture Glickman spoke of resolving the discrimination fiasco at USDA, he quoted Dr. Martin Luther King: "an unaddressed injustice at any time is an injustice for all time." The Secretary should be reminded of what Dr. King instinctively knew, that it is the speakers' actions that validate the spoken word not just the pacifying rhetoric.

Let the Secretary and his Civil Rights team tell Joann Martens of Wolf Point, MT who filed a civil rights complaint in 1993 because she was denied the same servicing actions that were only given to her ex-husband and was then told by the County Office Supervisor that women don't belong in farming, and is still waiting for her case to be resolved that USDA really does believe in justice?

Let the Secretary and his Civil Rights team tell Sharon Mavity of Sidney, MT who filed a civil rights complaint in 1997 when she tried and failed to save her 4th generation family ranch for her and her sons because she was denied the loan servicing that was instead given to a selected young, white male and is still waiting for her case to be resolved that USDA really does believe in justice?

Let the Secretary and his Civil Rights team tell Rose Mary Love of Harlem, MT who filed a civil rights complaint in 1997 and whose 36-year marriage ended three months ago because of the strain of fighting FmHA/FSA for seventeen years and is still waiting for her case to be resolved that USDA really does believe in justice?

Let the Secretary and his Civil Rights team tell Dolly Stone, from Browning, MT who last week had to stare-down a Sheriff's foreclosure sale on her ranch despite USDA's own moratorium on foreclosures for class members of the Keepseagle v. Glickman class action that USDA really does believe in justice?

Let the Secretary and his Civil Rights team tell Margaret Carranza, my eighty-nine year old mother who experienced the deliberate pattern of insufficient and repeated late funding from FmHA/FSA meant to drive certain farmers and ranchers into insolvency and bankruptcy.

The USDA in-house appeals process deliberately failed her by failing to make FmHA/FSA adhere to the regulations and rules that are supposed to regulate farm programs.

The USDA civil rights process failed her at the time of the discrimination complaint, partly because it had been dismantled by the Reagan/Bush administrations.

The Chapter 12 bankruptcy process failed her because the long tentacles of FSA could reach into that system as well. The State FSA Office furious that a discrimination complaint had been filed refused to let the family operation into Chapter 12 protection unless they signed a drop-dead agreement that signed away the discrimination complaint and all of their rights under due process guaranteed to them under the law.

Our Congressional delegation failed her because when letters were written asking for their intervention, FmHA/FSA State and National officials responded denouncing her operation as being the guilty party. Even elected representatives, like the general public can also be guilty of believing that only government knows best and that the government is always right, until its too late.

Too late, to stop an over zealous Assistant U. S. Attorney from declaring that she is aware of Secretary Glickman's Moratorium against foreclosures on open USDA civil rights complaints but she is going to bring down the full force of the federal government down upon the Carranza women and make an example of them.... And she did.

The personal property was seized by U.S. Marshall's and sold at public auction even though Dr. Jeremy Wu of USDA Office of Civil Rights kept assuring the Carranza's that the sale would be stopped. When it wasn't, he would not return repeated phone calls.

Personal family effects: baptismal records, farm and ranch records, family heirlooms are still on their former property because the same Assistant U.S. Attorney said she would: "have the FBI on their heads so fast it will make their heads spin." If they attempted to retrieve their possessions from their former property now owned by FSA's pre-determined buyer.

The USDA Office of Civil Rights has failed Margaret Carranza miserably as well, because they not only failed to protect her rights in the foreclosure process, but they have failed to honor her rights as a human being. The same rights that our country was founded upon: "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are: Life, Liberty and the pursuit of Happiness."

I ask you today, is seven years long enough for Margaret Carranza to wait for the justice that the Secretary pontificated about? What about the women from Montana that I mentioned earlier? What about all over the other farmers and ranchers, men and women that this out-of-control FmHA/FSA system has been allowed to selectively remove from farming and ranching?

Senators, this is not exaggerated, unsubstantiated testimony that a federal system that you are responsible for is defective and that it must be fixed. What you have heard is the reality of our lived-experience and no buck-passing; denials or stonewalling is going to make it go away. Because, we the people upon whom the injustice was committed are not going to go away until the system is changed. Changed not just for us, but also for all of those that will be a target the next time someone walks into a USDA office and wants their land, too.

TESTIMONY OF HAROLD CONNOR
Before the Senate Committee on Agriculture, Nutrition, and Forestry
Tuesday, September 12, 2000

Good morning. My name is Harold Connor, and I would like to thank the Committee for the opportunity to testify today. As an African American employee of the U.S. Department of Agriculture, I have experienced racial discrimination in my employment, and I have experienced firsthand the shortcomings of USDA's Office of Civil Rights as it is currently structured. In addition to sharing some of my personal experiences with USDA's Office of Civil Rights, I hope also to offer some insight into ways in which those problems could be addressed.

I live in Upper Marlboro, Maryland, and I work for the USDA Farm Service Agency (FSA) as the Deputy Director for FSA's Price Support Division. In this position, I share responsibility with the Director for setting administrative policy for several programs, including the Marketing Assistance Loan and Loan Deficiency Payment (LDP) programs. Programs assigned to the Price Support Division for the 1999 crop year provided approximately $15 billion in financial assistance to the nation's farmers.

I began my career with FSA in 1971 as a supply clerk, when FSA was still known as the Agricultural Stabilization and Conservation Service (ASCS). I graduated from the University of Missouri in 1974 with a Bachelor of Science degree in Business Administration, and in 1975, I was hired as the first African American ASCS County Executive Director in the State of Missouri. In 1983, after seven and a half years of successful service at the county level, I applied for a position in Washington, D.C. and was selected to fill that position. It was right here in Washington, D.C. that I first experienced significant discrimination at FSA. As you are well aware, it was FSA that recently reached a multimillion dollar settlement with the Black Farmers after years of discriminating against them by denying them farm operating loans. I first filed an EEO complaint to oppose discrimination in 1989, but decided to drop that complaint after being warned by my friends and co-workers, both black and white, that I would probably be marked for retaliation and never be promoted. However, in 1991, with discrimination still continuing, I filed another EEO complaint

which was settled in 1994, but not before the discrimination I had experienced had severely and permanently damaged my health and marriage.

In 1996, while I was serving in my present position, I applied for a GS-15 position as the Director of the Audits and Investigations Group in FSA. I was well qualified for this position, particularly in light of my experience with audits as a program specialist and because I was already a GS-14 manager with over 12 years of management experience at that time, including 7 ½ years managing a county office. However, the white selecting official selected a less qualified white employee, who was a GS-13 with no management experience and no county office experience. I pursued this complaint before the Equal Employment Opportunity Commission as a named member of the Herron v. Glickman class action, which represents African American managers at the Farm Service Agency at grades GS-12, GS-13, and GS-14 who have been discriminated against in being denied promotions. On December 14, 1999, an EEOC Administrative Judge found that I had been discriminated against, and the USDA Office of Civil Rights accepted the EEOC Judge's recommended decision in its Final Agency Action in my case, which I received on June 5, 2000.

As relief in my case, USDA's Office of Civil Rights first ordered that I either be promoted in my current position from a GS-14 to a GS-15, or that I receive a position substantially equivalent to the position of Director of the Audits and Investigations Group, which has been abolished. USDA's Office of Civil Rights also ordered FSA to award me back pay retroactive to June 9, 1996; $10,000.00 in compensatory damages; and attorney fees.

Immediately after the EEOC Judge made her finding that I had been discriminated against, the Secretary of Agriculture's spokesman Andy Solomon falsely told the Washington Post that I had already been promoted. See Black USDA Managers Lose Round in Bias Complaint, The Washington Post, December 18, 1999, at A11, copy attached. I still have colleagues at USDA who come up to me and congratulate me on my promotion. The truth is that nine months after the EEOC Judge's finding that I had been discriminated against in 1996, I have yet to receive a promotion, and USDA has yet to begin processing the back pay that it

awarded me as a result of the unlawful discrimination I experienced.

The USDA Office of Civil Rights should never have allowed the Farm Service Agency, after it had been found guilty by EEOC and USDA of discriminating against me, to choose what position to offer me. I am currently in a supervisory position with major program responsibilities, and the GS-15 position that I was denied because of discrimination, Director of the Audits and Investigations Group, was a supervisory position with major program responsibilities. When FSA was ordered to offer me a promotion and make me whole, it created a non-management, non-supervisory staff aide position that reports to a schedule C political appointee, on the eve of a Presidential election.

Because the position that FSA offered me was clearly not comparable either to the position I now occupy or to the position I was denied, I declined the offer and filed a noncompliance complaint with USDA's Office of Civil Rights. I also asked the Office of Civil Rights to require USDA and FSA to process my back pay award. The Office of Civil Rights did not even reply to my complaint of noncompliance within the time required by the EEOC's regulations, and so I have had to appeal USDA's effective denial of my noncompliance complaint to the EEOC's Office of Federal Operations. I am confident that I will prevail on this clear-cut complaint of noncompliance, but I realize that it typically takes as long as two years before the EEOC's Office of Federal Operations issues a decision. That will be two more years I have to live with the damage to my career, health, and pocketbook from discrimination that USDA's Office of Civil rights found the Farm Service Agency had perpetrated and ordered it to remedy. I believe the Office of Civil Rights and the Farm Service Agency, in full knowledge of the consequences of their actions, have colluded to deny me the remedy that USDA itself ordered.

One reason I believe USDA's Office of Civil Rights is consciously acting to protect FSA management's interests by delaying or denying me any remedy, even when management has been found guilty of discrimination, is its Final Agency Action on the complaint of my colleague and fellow class member Harry D. Millner. Whereas in my case the Office of Civil Rights abetted management's interests through inaction, in Mr. Millner's case

it decided a reprisal claim against him that had never been investigated and for which there was no record. Clearly, the Office of Civil Rights should not be deciding claims against employees in the absence of any record or investigation. The Office of Civil Rights' action or inaction clearly seems to depend solely on which course will be most favorable to the USDA Agencies at the expense of employees, even when it has been found that the Agency is guilty of racial discrimination.

The costs of not vigorously enforcing the discrimination laws and the laws against reprisal for EEO activity at the Department of Agriculture are significant. One example I wish to call to your attention is the obstacles that my Director and I have faced for two years in trying to make loan deficiency payment applications available to farmers over the Internet to make possible the kind of on-line transaction mandated by Congress when it passed the Freedom to E-File Act, Public Law 106-222, on June 20, 2000. The Director of my Division, who is also African American, and I have tried for two years to obtain the cooperation of the Agency to put this program on-line so that farmers have the option of obtaining these LDP's over the Internet without being required to come to the FSA office but we have received no cooperation from our white supervisors. Vindictiveness against African American employees who protest discrimination is not a valid reason to deny program services to the nation's farmers.

The same white official who has consistently prevented the Price Support Division from making LDP's available on-line has also:

- verbally instructed key people under his supervision not to talk to me, my immediate supervisor, who is also African American, or to the chief of the Price Support Division Automation Branch;

- asked what could be done about people who file multiple EEO complaints at a monthly meeting of FSA managers; and

- refused to authorize my written request to purchase software that would allow the Price Support Division to upgrade and maintain an existing web-based process

that can display the daily posted county price for commodities eligible for LDP's for any county in the United States.

In addition, since my complaints were filed, I have observed unfair treatment of other employees in my Division, including the following determinations by FSA's Human Resources Division:

- a recommendation in 1998 that a white Branch Chief, my subordinate, be temporarily promoted to Acting Director of my Division in the absence of the Director, even though my job description specifically states that I act as the Director's alter ego;

- a refusal to delay implementation of FY 2000 quality step increases for two PSD employees, even though Human Resources had granted a similar request for an employee in another division.

These are just a few of the many retaliatory actions that the Price Support Division has suffered.

There are positive steps that USDA could take to address the problems and improve the performance of its Office of Civil Rights. First, instead of giving responsibility for the enforcement of its decisions to the very Agencies that have been found guilty of discrimination, the Office of Civil Rights should have the authority and the responsibility for seeing that its Orders are carried out. For example, in my case, the Office of Civil Rights should have ordered the Farm Service Agency to offer me a specific position, rather than leaving it up to the discriminating agency to decide what position to offer. Similarly, the Office of Civil Rights should have taken responsibility for seeing that my back pay award was processed in accordance with its Orders. As it stands, my back pay award has not been processed, and neither has that of the lead complainant in the Herron class action, Dr. Clifford J. Herron, whom EEOC and USDA also found to have been the subject of unlawful discrimination.

My second recommendation is that the Office of Civil Rights, rather than the USDA Personnel Office, should have a more active role in overseeing the keeping of statistics related

to race and promotions at Agencies. The EEOC Administrative Judge in the Herron v. Glickman class action roundly criticized the statistical information provided by the Agency to the three expert witnesses in the case, including the expert that she independently appointed to analyze the data. The Judge stated as follows:

> [the EEOC expert] opined that the format of the data provided by the agency imposed excessive and unnecessary burdens on the parties in that it failed to provide standard computer documentation describing how the print files were prepared, the meaning of the variables used, etc. AJ-Ex.2 at 3. He noted that the variables supplied were not designed to facilitate efficient data processing and that important sources of information, usually analyzed in promotion cases, were missing or not available. For example, the agency did not provide applicant flow data or machine readable data on the vacancy announcements or on the successful candidate's prior position.

Findings and Conclusions, Herron v. Glickman, EEOC No. 100-98-7658x (December 14, 1999), at 6-7. USDA's Office of Civil Rights should ensure that the USDA Personnel Office and Agencies are keeping complete and accurate data in the form usually used to assess discrimination.

Third, I am aware of at least one situation in which a member of the Office of Civil Rights was sent to defend an Agency manager in a deposition in an EEOC discrimination case. This practice again shows OCR's bias against employees who bring discrimination complaints. If Agency employees are to be able to trust the Office of Civil Rights with their complaints of discrimination, this practice should be stopped.

Finally, I would like to suggest that the Office of Civil Rights should take a more active role in settlement negotiations. At present, the only parties involved on the Agency's side are the Agency and a lawyer from the Office of General Counsel, who typically defers to the Agency's wishes. This was our experience in the Herron class action, a case in which we had several settlement conferences. To ensure that the law and policy against discrimination are being properly

considered when cases are being settled, the Office of Civil Rights should have an active role in negotiating and approving settlements.

Thank you again for giving me the opportunity to testify, and I will gladly answer any questions that you may have.

Black USDA Managers Lose Round in Bias Complaint

By MICHAEL A. FLETCHER
Washington Post Staff Writer

An EEOC administrative judge has dealt a blow to a class action complaint filed by a group of African American employees at the U.S. Department of Agriculture, finding no evidence that the department's Farm Service Agency systematically discriminated against blacks when granting promotions.

The decision, issued this week by Equal Employment Opportunity Commission Administrative Judge Adria S. Zeldin, found no evidence that the agency's promotion practices have a disparate impact on blacks. The administrative judge did determine, however, that the agency had discriminated against two black managers who originated the complaint in 1997. The complaint was expanded to a class action earlier this year.

In one case, Clifford J. Herron, an African American outreach manager who holds a doctorate, was passed over for a promotion in favor of a white woman who was a high school graduate. In the other case, Zeldin found that Harold Connor was discriminated against when he was denied a promotion to a post as an FSA audits and investigations director. USDA officials said both men have since been promoted to other posts.

Lawyers for the complainants could not be reached for comment, but EEOC officials said the decision could be appealed to the commission.

The administrative judge's decision finding no evidence of broad-based discrimination was applauded by USDA officials who have been under fire in recent years to correct what they acknowledge as widespread complaints of discrimination within the agency's ranks.

"We know at USDA that we still have a long way to go, but we feel this is a positive development," said USDA spokesman Andy Solomon.

Secretary Dan Glickman has declared stamping out the discrimination problems to be one of his top priorities. Currently, USDA is facing five other class action or proposed class action complaints, alleging racial and gender discrimination and sexual harassment.

Also, USDA earlier this year reached a settlement with black farmers, who said that for years they were denied USDA assistance because of their race. More than 22,000 current and former black farmers have filed claims under the settlement. So far, more than 6,000 have been approved for payments of at least $50,000 each, while more than 11,000 of the claims are awaiting processing.

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March 29, 2000

VIA FACSIMILE ONLY

The Honorable Adria S. Zeldin
Administrative Judge
Equal Employment Opportunity Commission
1400 L Street, N.W., Suite 200
Washington, DC 20005

Re: Clifford J. Herron, et al. v. Daniel Glickman,
EEOC No. 100-98-7658X; Agency No. 971290

Dear Judge Zeldin:

On behalf of Complainants Clifford J. Herron and Harold Connor, we hereby move to amend their testimony to include revised and corrected back pay interest computations performed by Mr. Connor, using OPM's Computation of Interest on Back Pay System available to the public for download from the OPM website at <http://www.opm.gov/oca/PAY/backpay/backpay.htm>. These computations amend the calculations submitted by Dr. Herron and Mr. Connor at the hearing on February 28, 2000, and they are more accurate and more inclusive than the calculations presented at the hearing by Ms. Patricia Moore, a witness for the Farm Service Agency.

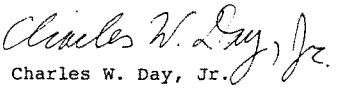
According to Mr. Connor's revised computations using the OPM system, his Adjusted Gross Back Pay Plus Interest as of February 26, 2000, was $32,279.01 (see Exhibit 1 attached). Mr. Connor based his computations upon the actual pay stubs issued to him by the Agency, which he keeps on file, and which are of course in the Agency's possession. The Agency, in contrast, erroneously calculated Mr. Connor's back pay to be only $20,806.13.

Mr. Connor calculated Dr. Herron's back pay based on the figures provided by the Agency at the hearing, as Dr. Herron does not have copies of his pay stubs on file. Dr. Herron's Adjusted Gross Back Pay Plus Interest was $33,245.35 as of February 26, 2000 (see Exhibit 2 attached). In contrast, the Agency at the hearing calculated Dr. Herron's back pay as being equal to $27,929.22.

Naturally, the amount of back pay and interest for Mr. Connor and Dr. Herron will have to be increased for the period after February 26, 2000 up to the time that they receive their back pay. This will likely result in several more months of back pay and interest.

It is reasonable to expect that one of the largest Departments in the federal government could perform accurate and up-to-date back pay calculations, particularly when the federal government makes free software for performing the calculations publicly available through OPM. The Department of Agriculture's choice of suspect manual calculations, based upon incomplete data and not including interest, shows that the calculation of back pay should not be entrusted to USDA alone, but should be carefully scrutinized for completeness and accuracy by the presiding Administrative Judge.

Very truly yours,



Charles W. Day, Jr.

cwd
Enclosures (2 as noted)

cc: Marissa J. Suarez, Esq., USDA
Mr. Harold Connor
Dr. Clifford J. Herron
Pamela J. Bethel, Esq.

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September 14, 2000

VIA MESSENGER DELIVERY

Charles R. Rawls, Esq.
General Counsel
U.S. Department of Agriculture
Jamie L. Whitten Building, Room 107W
14th and Independence, S.W.
Washington DC 20250

Re: Clifford J. Herron, et al. v. Daniel Glickman,
EEOC No. 100-98-7658X; Agency No. 971290

Dear Mr. Rawls:

At the hearing before the Senate Committee on Agriculture, Nutrition and Forestry on September 12, 2000, you testified that USDA's Office of General Counsel is "pro-Civil Rights." Your testimony, unfortunately, is squarely at odds with USDA's conduct in the cases of our clients Harold Connor and Clifford J. Herron. As Mr. Connor testified at Tuesday's hearing, he has not been promoted even after the EEOC Judge and USDA have both found that he had been discriminated against in nonpromotion, and neither he nor Dr. Herron have received the back pay that USDA's Office of Civil Rights ordered that they be paid. See Testimony of Harold Connor, copy enclosed. Mr. Connor also informed the Senate Agriculture Committee that you were part of the group of USDA officials who disagreed with an informal resolution of the discrimination complaints of the Farm Service Agency's African American middle managers in 1996. That decision in turn led to the formation of the Herron v. Glickman class action and then to findings of race discrimination in Mr. Connor's and Dr. Herron's cases.

In view of the EEOC Judge's and the Office of Civil Rights'

findings of race discrimination in Mr. Connor's and Dr. Herron's cases, any skepticism you initially had must surely have been laid to rest. Accordingly, we would like to meet with you to discuss Mr. Connor's and Dr. Herron's relief issues at your earliest convenience.

Mr. Connor submitted back pay calculations, using the U.S. Office of Personnel Management's software, to the EEOC and your Office in February of this year (copy enclosed). Over six months later, USDA has not even begun to calculate Mr. Connor's back pay. The only response by your Office to Mr. Connor's inquiries has been to refer him back to us, his attorneys. If the USDA Office of General Counsel is in fact "pro-Civil Rights," you should be taking immediate steps to see that Mr. Connor and Dr. Herron's back pay is promptly paid in full, with appropriate interest. In addition, you should mandate that Mr. Connor receive an offer of promotion that complies with the EEOC and USDA orders. The most appropriate and least disruptive promotion would be to implement the EEOC Judge's and Office of Civil Rights' first alternative, promoting Mr. Connor from a GS-14 to a GS-15 in his current position of Deputy Director of the Price Support Division. (At least three other Deputy Division Directors in FSA are GS-15's.)

I look forward to your reply and to meeting with you shortly.

Very truly yours,

Joseph D. Gebhardt

Joseph D. Gebhardt

jdg/cwd
Enclosures (2 as noted)

cc: ✓Hon. Richard G. Lugar
Hon. Jesse Helms
Hon. Thad Cochran
Hon. Mitch McConnell
Hon. Pat Roberts

Hon. Peter Fitzgerald
Hon. Charles Grassley
Hon. Larry E. Craig
Hon. Rick Santorum
Hon. Gordon Smith
Hon. Tom Harkin
Hon. Patrick J. Leahy
Hon. Kent Conrad
Hon. Thomas A. Daschle
Hon. Max Baucus
Hon. J. Robert Kerrey
Hon. Tim Johnson
Hon. Blanche Lincoln
Hon. Zell Miller

Hon. Paul S. Sarbanes
Hon. Barbara A. Mikulski
Hon. Albert J. Wynn
Hon. Daniel Glickman
Hon. Paul W. Fiddick
Mr. Harold Connor
Dr. Clifford J. Herron

Short Summary of Testimony of
Alexander J. Pires, Jr., Co-Lead Counsel
Pigford v. Glickman ("The Black Farmers' Case")
Keepseagle v. Glickman ("The Native American Farmers' Case")
Senate Agriculture Committee
September 12, 2000

Pigford v. Glickman
(Black Farmers)

1. Since the implementation of the Consent Decree, more than 24,000 farming families have participated in the claims process.

2. About 61% of the 20,945 Track A claims adjudicated thus far have been approved by the 46 retired adjudicators. Those 11,252 families have received a letter stating that they will receive a payment of $50,000, debt forgiveness of loans affected by discrimination, a payment to the IRS to cover taxes, and injunctive relief, prohibiting future discrimination and providing for one-time priority loan status. There are about 4000 Track A claims awaiting a ruling.

3. In addition, there are 198 Track B arbitrations. About 45 have been settled or have received a ruling. The awards have been in the $100,000 to $800,000 range.

4. The Monitor, Randi Roth, appointed by Judge Friedman to oversee the implementation of Consent Decree, took office on March 1, 2000. She has toured the country to meet with farmers, and provides regular updates to class members through the mail. The Monitor has established a toll-free number to answer farmers' questions. She has begun to receive appeal requests. She meets regularly with Class Counsel and government counsel to facilitate implementation of the Consent Decree.

5. There is still work to do. Thousands more petitions to file late claims (the deadline is September 15th) are pouring in--Class Counsel expects 20,000 late claim petitions--hopefully a large percentage of that receiving approval to submit claim packages.

6. The appeals process for denied claims is still in its early stages. Class Counsel alone has approximately 2,500 Track A appeal requests in our office. Class Counsel and Of Counsel continue to meet with and assist appeal clients across the country.

7. USDA has implemented a unilateral freeze of accelerations and foreclosures against claimants who are appealing their claims.

8. There are 2 key Track A questions:

   1. Have the adjudicators of Track A claims been fair? (39% of the claimants have lost).
   2. How will the claimants who have lost fare on appeal?

9. There are 2 key USDA implementation questions:

   1. Are things changing in the South in USDA/FSA offices?
   2. If not, why not?

Keepseagle v. Glickman
(Native American Farmers)

1. We filed the class action complaint on November 24, 1999.

2. While the Pigford settlement is resolving the claims of African-American farmers, Native American farmers and ranchers are in federal court responding to the government's (1) motion to dismiss, and (2) motion to deny class certification. The government defends the case even though reports by the Civil Rights Action Team, and the Office of Inspector General found that Native Americans suffered discrimination in USDA programs. Although USDA now claims credit for settling the Pigford suit, it continues to try to defeat the Native Americans in Keepseagle.

3. USDA has been a racist organization, resulting in rampant discrimination against minority farmers. Native Americans deserve the same opportunity as African-Americans to (1)

complain of discrimination, (2) achieve justice, and (3) promote meaningful reform within USDA. So do all farmers injured by USDA's discriminatory actions--whether these acts were based on their race, age or gender.

4. Class Counsel has offered to settle the case. Class Counsel continues to hope that Keepseagle can be resolved in an equitable settlement.

5. Congress must speak. We need Congress' assistance to bring this to a fair and respectable resolution--the alternative, returning to USDA's civil rights program--is no alternative.

DOCUMENTS SUBMITTED FOR THE RECORD

SEPTEMBER 12, 2000

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VIRGINIA

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COMMITTEES:
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Democratic Policy Committee

Statement of Senator Charles S. Robb
Hearing of the Agriculture Committee
Regarding Civil Rights at USDA
September 12, 2000

Thank you Mr. Chairman, Senator Harkin, and the members of the Committee for allowing me to comment on the topic of civil rights at the Unites States Department of Agriculture -- one that I've been working on and following very closely for the last three years. I am grateful to you for scheduling this hearing, and I look forward to reviewing the testimony of the panelists here today.

I know today's hearing is really designed to continue looking forward and find ways to continue the USDA's work on ensuring equal access and equal treatment at USDA, but no discussion of progress is complete without some idea of where we started. Three years ago, I met with a group of minority farmers who relayed to me countless stories of egregious discrimination by officials at the United States Department of Agriculture. Minority farmers were routinely being denied access to loans and credit opportunities simply because of the color of their skin. I learned that there was a backlog of some 600 civil rights complaints that had been filed by minority farmers. And I was extremely disheartened to learn that the Investigative Unit at USDA's Civil Rights Office had been disbanded in 1983. Essentially, farmers who had filed complaints were led to believe that those complaints were being processed and investigated, which simply was not true. At that point, I knew that there were both short-term things that needed to be done as well as long-term, more systemic changes.

Some of the short-term things we've done include adding $1 million in 1997 to USDA's budget to reestablish the Investigative Unit at the Office of Civil Rights. This enabled the processing and investigation of civil rights complaints that had been forgotten or ignored. For farmers struggling to make it, we quickly provided access to millions of dollars in credit opportunities to those who had experienced discrimination. This enabled many to stay in business and some to keep their farms -- some of which had been in their families for many, many generations. Once the Department was one the verge of offering settlements in many of these back-logged cases, the government asserted that the statute of limitations had run for these complaints. It was appalling to me that a group of Americans, who were pursuing their rights and had been affirmatively misled by the Department, could be halted so easily from obtaining the justice they deserved. So, in 1998 Congress passed legislation to waive the statute of limitations for these claims. This waiver paved the way for the *Pigford* class action settlement, which some have called the largest civil rights settlement in American history.

<over>

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While I am pleased by this progress, I am too often reminded of how far we have to go. As we continue to work on implementing procedures to process program complaints in a timely manner, I would like the Committee to be aware of three main problems that continue to exist. First, while we have focused primarily on resolving complaints from USDA customers, we have yet to really focus on resolving the complaints of USDA employees who have experienced discriminatory treatment in the workplace. There is one class action suit that has been pending for ten years! We need to move much more quickly not only to resolve ongoing litigation, but to expedite the processing of internal employment complaints.

Second, we need to continue to closely monitor the progress being made to process all types of discrimination complaints. While there have been improvements in the processing of some program complaints from USDA customers, the processing time for internal employment complaints from USDA employees remains too lengthy.

Finally, I was pleased to hear the Secretary's announcement in June about an enhanced accountability policy within the Department. Too often, cases were being settled without any disciplinary action being taken against the person who had actually committed the wrong. I hope the Secretary and Assistant Secretary Fiddick are committed to referring all settled cases to the Human Resources division for further disciplinary review. All cases of discrimination, regardless of the monetary value for which they are settled, should be treated with the same shock and outrage when considering how to discipline the wrong-doer and prevent the discrimination from occurring again. Accountability within the Department is the area I believe is most in need of constant and vigilant oversight. We simply cannot allow people to brandish guns at USDA customers and let them get away with it. We simply cannot allow USDA employees to be called hurtful, racist names and accept it.

I urge the Secretary and all at his Department to continue what has been a painful process of self-examination, but one that has been critically needed and long overdue. I urge the Committee to push for Department-wide, systemic changes at the USDA which better educate USDA personnel about the importance of civil rights, allow more minorities to advance into positions of leadership, open up real lines of communication between customers, employees, and supervisors, and treat with diligence all claims of discrimination. Thank you very much.

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January 31, 2000

The Office of the President of the United States
President William Jefferson Clinton
The White House
Washington, D.C. 20500
Sent Via Facsimile: (202) 456-7929
C/O: Ms. Minyon Moore

Dear Mr. President:

In your radio address a few weeks ago, you said you wanted to take new steps to fulfill Dr. King's dream and redeem our country's promise. You said that you wanted to repave the road of equality for all people to own their own home, to receive educational opportunities, attend the school of their choice or obtain financial credit free from discrimination of any kind. I know that if you persevere, this will be the lasting legacy of your administration. Freedom from oppression of any kind is the wellspring of our country.

I read with interest the story about Charlotte Filmore and her two wishes: to live to see the year 2000 and to meet you. Thanks to your invitation to the White House, both of her dreams have come true. This gave me courage to write to you of my dream: to live to see justice prevail with regard to discrimination at the United States Department of Agriculture.

Too often, when stories are written about events in our country, the human side of the event is never told. This is the case with the story of civil rights at USDA. I would like to tell you mine. I came to this country with my parents in 1916 at the age of five, fleeing the civil war in Mexico. My father said this country could give us what we didn't have in Mexico, freedom. Freedom to work, to raise his children in a safe sanctuary and most importantly for him, to own land again that would not be taken from him illegally.

My mother and father taught us to work, work hard. We worked from the cotton fields of Texas to the grape fields of California to the sugarbeets fields of Colorado. Finally in 1925, the Holly Sugar Company was recruiting families to go to Montana to work

sugarbeets at their new factory. When my father saw this land of the Big Sky, he said, "This is where we will make our dreams come true, we will not wander anymore."

Our family of six worked thousands of acres bent over from the waist down, thinning out sugarbeets with short-handled hoes. And in the fall of the year, topping the sugarbeets with machetes, then loading them into waiting wagons and trucks from 1925 to 1936. Year after year they saved their hard earned money until the family bought its first farm. When my father died in 1953, his dreams had come true. Our family owned two small sugarbeet farms in the valley that he had grown to love.

I continued his legacy with my mother. It wasn't easy. Women in agriculture, especially Mexican women were not an everyday occurrence in Montana. I had to learn to drive a tractor, to plant sugarbeets, drive a truck and all of the many things that encompass good husbandry of the land and livestock. Because of our hard work, we earned the respect of our peers. We were treated as equals. And we were successful.

Agriculture is an every day struggle of hard work, coping with the elements of nature and the constant intervention of government policies into commodity prices. I could handle all of those things, but a brain tumor laid me low in 1979. I had to relearn all of my basic skills, walking and learning to drive my tractors and trucks. It was very difficult, but I did it.

We went into debt because of my brain surgery, and then my mother died without leaving a will in 1980. My siblings demanded their share of the estate. Because I had promised my father to always keep our land in the family, we went into deeper debt to pay off the heirs. Now I was joined in the struggle by my daughter and niece. We knew we could make if we just worked harder.

What I never counted on was the lending practices of the United States Department of Agriculture. We were forced to visit FmHA in 1984 to achieve long-term financing in order to cope with the drought and low commodity prices. For three years we got along with our local FmHA loan officer, who represented the federal government to whom we had given a lien on our land and all of our chattels.

Then our local office was closed, and a new County Supervisor came into the picture. The first indication we had of trouble was when we received notice that there were no funds available for our operating loan for the entire 1987 year. We did what most logical people do. We wrote to our Congressman to complain. As we would later learn, this was not acceptable behavior to state FmHA officials. From that point on, our funding was late: too late to plant revenue-producing crops, too late to feed starving animals. The next indication was in 1989, when a neighbor called me at 7:00 A.M. to tell me her son had just gotten a call from a Realtor that FmHA had our farm was for sale, and we had never even received an acceleration notice!

To describe the nightmare that followed for the next seven years would take dozens of pages of sorrowful, anguished text. I could not believe that my government that I'd learned about when I became a naturalized citizen in 1952 would do the terrible things that its officials did to me and my family.

But it did. I have screamed the seemingly silent scream of the rape victim to whom no one listens. Every law and regulation that prohibits discrimination at the United States Department of Agriculture was broken. Our rights not just as citizens, but as human beings were torn asunder. I even wrote to the First Lady for her assistance in 1996. She tried, but to no avail as the powerful within USDA are too cunning, too entrenched.

The goal that the County Supervisor and his like-minded state FmHA cohorts began in 1987 was accomplished in 1995 when our land was sold on the courthouse steps. Then in an action never before done to an FmHA borrower in our county, Federal Marshals were ordered to seize our chattels, and they were sold at public action in 1997.

These corrupt officials were not satisfied to just take us out like drug lords in an all-out vendetta. They also ordered that I could not set foot on my former property or in the words of Montana Assistant U.S. Attorney, Victoria Francis: "they would have the FBI on us so fast it would make our head spin". Mr. President, the priceless possessions of my parents are still on that property. The tools of my trade that FmHA had no lien on are still on that property. Documents of family history, birth certificates, farm records, tax records are all still, hopefully locked in our safe. I have no way of knowing if anything is even there after four years of waiting.

We first filed a discrimination complaint against the Department of Agriculture in 1993. It was never investigated. We filed again in April of 1997. The Office of Civil Rights at USDA is a "black hole" in whose hands our future now rest. Millions of taxpayer dollars have been funneled there with no results of justice for all of us whose lives discrimination took its horrible toll.

You said in your State of the Union address that Benjamin Franklin for a moment when the Constitution was being written could not decide if the sun was rising or setting on America. "Today," Franklin said, "I have the happiness to know it's a rising sun." You closed your address with these final words: "Today, because each succeeding generation of Americans has kept the fire of freedom burning brightly, lighting those frontiers of possibility, we all still bask in the glow and the warmth of Mr. Franklin's rising sun. After 224 years, the American revolution continues. We remain a new nation. And as long as our dreams outweigh our memories, America will be forever young. That is our destiny. And this is our moment."

These words touched my heart, Mr. President because at the age of eighty-nine I want to know that the rising sun of justice can shine in the stark darkness of the discrimination committed at the United States Department of Agriculture. I want the discrimination cases to be resolved in my lifetime, while I still have dreams to dream. Please, I ask that

Carranza

April 9, 1997
P.O. Box 236
Lambert, MT 59243
(406) 774-3793

The Honorable Mr. Dan Glickman
Secretary of Agriculture
United States Department of Agriculture
Fax (202) 720-3631

Dear Mr. Secretary:

I am writing you to ask for your urgent intervention. On December 18, 1996 you issued a moratorium to halt foreclosure sales on delinquent farm loans "until a determination can be made on each case as to whether there is any evidence of discrimination or inconsistency in program delivery." I adamantly feel that our case is one of those that falls within the boundary of your moratorium.

The reason that we need your urgent intervention is that Victoria Francis, the Assistant United States Attorney for the Billings Division, District of Montana has stated to our attorney that your moratorium does not apply to our case and that she fully intends to make an example of us and bring the full force of the Federal Government down upon us and she will pursue the case vigorously at all costs.

Mr. Secretary, even a cursory look at our history with FmHA will show that we have been victims of discrimination and disparate treatment. The facts of our case stand in mute testimony that past administrations allowed FmHA to function under a system that placed more power in the hands of County Supervisors and State Officials than in your own Office. It was this practice that allowed County Supervisors and entrenched State Officials to play their perverse game of unequal treatment while holding **selected** borrowers in a bondage of despair and hopelessness until they are starved-out.

Our family corporation, Ranchos Del Valle Inc., started with FmHA in 1984. Our problems with the agency began in 1987 with late funding and I complained to President Reagan and Senator John Melcher about the late funding. From then on our funding did not come until our crops and livestock had all suffered irreparable damage and we had suffered severe economic losses. As evidenced by funding in 1988 on May 20 when our sugar beets suffered a 58% loss and in 1989 on July 12.

Do you know Mr. Secretary, what deliberate late funding does to an operation that relies on irrigation water taxes being paid for crops to grow and sheep that are lambing? But, the ground work was laid to show that we could not cash flow when our historical yields and lambing percentages would be crucial to us with 1951-S processing.

We attempted to negotiate with County Supervisor Pederson with an attorney on May 16, 1989, Mr. Pederson said he would reschedule our loans and we signed and sealed them with our corporate seal in the presence of our attorney that day and C/S Pederson said he would probably have to do debt forgiveness and we also signed a subordination to be sent to the Richland Bank and Trust. (We have the copies.)

On May 17, 1989 C/S Pederson called me and said the loans had been rescheduled and the debt would be forgiven in the amount of $125,000.00. On May 18, 1989 C/S Pederson called and said that there had been a mistake and that his computer now said that we were to be foreclosed on.

When I went to the Glendive County Office in 1993 to prepare for the discrimination complaint the only thing left in our file of those incidents was the rejection letter from the Richland Bank and Trust dated May 23,1989 and the subordination dated May 16,1989.The other borrowers, Guido and LaVonne Vaira, named in the rejection letter and who were also in the same financial position as Ranchos fared differently. Records from the Richland County Clerk and Recorder's Office show that they had their loans rescheduled and debt written down on May 19,1989, thereby treating Ranchos Del Valle Inc. and its individual borrowers "differently" than other borrowers in the local area.

We received 1951-S finally in August of 1990 even though FmHA regulations state that borrowers who were delinquent should have 1951-S servicing. The Farm and Home Plan completed by the FmHA contractor dated February 29,1990 stated in Table C, Improvements and Key Practices: "Apply for debt restructure with FmHA--in March 1990. In this situation and in accordance with the Agricultural Credit Act of 1987 wasn't FmHA charged with the responsibility to offer debt servicing to borrowers such as Ranchos?

The running case record dated April 2,1990 from Roger Meredeth, Chief of Farmer Programs at the State Office states "Why isn't 1951-S processing complete? It would appear it should be processed along w/OL-S request. This should be accomplished!" In my letter to C\S Pederson dated April 28, 1992 I reminded him that FmHA would have to address to issue why we weren't given the debt restructuring package in November of 1988. The deliberate delay of servicing and FmHA's management practices led to the ultimate destruction of our farming and ranching operation.

A series of Farm and Home Plans were submitted for 1951-S but were always "revised" according to C\S Pederson's arbitrary standards. On April 14, 1992 the National Appeals Staff overturned FmHA' s adverse action. FmHA's response was to have the District Director, Jim Holzler call our Peer Councilor, JoAnn Forsness and tell her to have us submit "a bare bones plan" so that FmHA could make a operating loan under the hardship designation as the security, namely the sheep, were still dying from lack of feed. He suggested the figure of $15,000.00.

This was the Farm and Home Plan that was used to reflect the **"current operation"** as FmHA was directed to do by the National Appeals Staff. That bogus plan again put us in Net Recovery Buy-Out. In our appeal (#P110 070 018) to State FmHA Director, Eugene Combs, I again protested that FmHA was not treating us in the same way it treats other borrowers. We stated in our Appeal Hearing that C/S Pederson knew explicitly that he was in direct violation of FmHA AN #.2526(1900) when he ran the "bare bones" Plan. We were not listened to.

The proper "normal" servicing options were never considered or implemented as evidenced by my letter to E. (Kika) de la Garza, Chairman, Committee on Agriculture, which is part of our file, to protest the untimely funding year after year and the discrimination that was on-going. We had asked that C\S Pederson restructure us under the provisions concerning "the socially disadvantaged" described in 7CRF 1943-A on November 12,1990 and that his response to us was that Washington, D.C. had not sent him the proper forms to process the socially disadvantaged program.

FmHA Administrator La Verne Ausman in a response dated March 12, 1991 assured Chairman de la Garza that we would "be offered all the servicing options available to them under the law". He assured the Chairman that the Agency had provided us with every consideration. A careful analogy of our record will prove that the State Officials who responded to Ausman's inquiry had lied to him and totally misrepresented the facts!

This is evidenced by the Record of Telephone Call or Office Visit on 2-25-91 from Ruth Ann Morrison, National FmHA Office in Washington, D.C. to Dale Gibson, FmHA Farmer Programs Specialist who tells Ms. Morrison that Ranchos has not had a Farm Plan that will cash flow since 1988 and that FmHA was making continuation loans while servicing 1951-S in 1989,1990 and 1991 and that FmHA had withdrawn from mediation on 1-24-91. We were not served with 1951-S until August of 1990 and FmHA withdrew from State of Montana mediation in1990 not 1991. Gibson states that Ranchos had only paid back $1310.62 on those continuation loans but fails to mention that in 1988 we had paid back $22,929.32 and $33,799.60 in 1987 wouldn't it have been in FmHA's interest to fund Ranchos in a timely manner and not practice discrimination in its delivery of programs?

The mis-management by FmHA and funding practices that destroyed our sugar beet operation reached their peak in 1991 with our sheep operation. We contacted the District Director's Office on May 3, 1991 to tell them that their security was in danger of dying due to lack of proper nutrition from our lack of operating funds. Lawrence Nays, Assistant D/D informed me that FmHA had released all the funds that they were going to give us for operating. On November 20,1991 FmHA Contractor Keith Warrenburg paid a field visit to our farm just as I was loading four dead ewes into our pickup for disposal. His report that the security was in dire straits brought out C/S Pederson and Assistant C/S Ellison who wrung their hands and took pictures of all the dead sheep (the pictures are in our file) and ordered $1500.00 of grain as a protective advance.

What good does grain do to animals who have endured starvation diets? Poor nutrition contributes to more open ewes, week or dead lambs, higher than normal death losses and poor quality sheep all of those aspects negated the purpose of having a registered herd of Nationally-rated Targhee sheep, which was what Ranchos had when they became FmHA borrowers in 1984? Both C/S Pederson and D/D Holzer would later deny that I had called the District Office to warn them of the impending disaster in May. But, Assistant D/D Nays had sent me a written copy of my phone call and I showed it to them.

Even when I attempted to file discrimination charges against FmHA and its officials it was an uphill battle. I called C/S Pederson on January 26, 1993 to request going through our file for information I might need to file a discrimination complaint. C/S Pederson said to come right up and go through the file and as long as there was a staff member to assist me I could have a copy of any thing I needed. A friend and I made the one hundred mile round trip, but when we got to the office C/S Pederson was gone and his secretary said after he received my call he'd told her to box up my file and send it immediately to the State Office in Bozeman. After calling the full State Congressional delegation I finally had access to our file ten days later.

I formally filed a complaint against the Farmers Home administration and its officials in a letter dated April 30,1993 to Ms. Jenny Phillips, Director Equal Opportunity Staff, U.S.D.A . Thus began a comedy of justice of what should have been a impartial investigation into the facts of the case. Instead the complex structure of the beast that State Offices and County Supervisors have established found ways to assure that their malevolent management practices would not see the light of day.

We received a request from a Helen E. Anderson, State FmHA Civil Rights Coordinator to meet with us to begin an "informal information process" at the satellite FmHA Office in Sidney in June 29, 1993. Ms. Anderson, began by telling us how wonderful C/S Pederson had been to us and how he had gone out of his way to help us. She wanted us to sign a statement that she was writing on a yellow legal tablet that we were satisfied our charges had been investigated. She would not listen to one word we had to say or to the two witnesses we had taken with us. At that point we left to call our Peer Councilor as we felt our rights were being violated just by being in her presence. What a great investigation to have a staff person from the State FmHA "investigate" discrimination charges that were committed by State Officials and the County Supervisor!

We received letters from James Westbrooks and a Gladys Gear, for Mr. Westbrooks, from the Office of Advocacy and Enterprise saying that they would use the "evidence" gathered up by the top notch investigator Ms. Anderson, the last one dated August 31, 1993. I wrote back to Ms. Anderson on August 4, 1993 to express our confusion at what seemed to be a rerun of the Abbott and Costelo comedy routine Who's on first and What's on second.

The asinine way of documenting discrimination without an actual, impartial investigator from the Office of Advocacy and Enterprise coming out and see the factual physical

evidence, the destruction of government security by FmHA Officials and the mental and physical anguish caused to borrowers is travesty of justice of epidemic proportions. I also wrote to the Congressional delegation, but we never heard back from anyone again. Because FmHA had refused to let us use releases or loan proceeds to pay Farm Credit Systems our annual land payment they filed for foreclosure and we were forced to file for protection under Chapter 12 in October of 1993.

During the Chapter 12 proceedings our attorney, Andy Patten from Billings, MT for reasons known only to himself changed the figures in our bankruptcy plan to show it would not cashflow. When I sent him a fax stating I would not be at the 341 creditors meeting because of his deceit, he made a deal with Kenneth E. Tonn, Farmer Program Specialist, State Office. The deal was "that the Fairveiw farm would be sold for $80,000.00 and FmHA would sign off and allow Farm Credit to receive the proceeds. Because Ken Tonn has someone in the area who will pay that amount." quote from Gary Brownson, Senior Credit Officer from Farm Credit at a meeting in Lewistown, MT with Margaret, Patsy and Juanita Carranza. We dismissed Mr. Patten.

After regrouping with friends who leased us sheep and land so that our bankruptcy plan would be acceptable according to FmHA and Farm Credit expectations in June of 1994 we obtained the services of another attorney, Robert Drummond of Great Falls, MT. But between Farm Credit Services and FmHA, this Chapter 12 pre- proceeding took one year from start to finish. Believe me by the time we threw in the towel and told Mr. Drummond to ask the court to dismiss the Chapter 12 in July of 1995 and have Farm Credit move for foreclosure, we were finished.

We had survived for four years without any credit of any kind. Borrowing from friends and family. Watching our ranching and farming operation move from successful to non-existent. A sheep flock which before C/S Pederson took over management of our operation had produced a 170% lamb crop to a 80% lamb crop. Rich fertile crop land which produced bumper crops to no crops because we didn't have money to buy seed or pay water taxes. Our living and operational costs coming from my eighty-four year old mothers' Social Security check and my part-time job and experiencing the pain and rejection from former friends and businesses.

During the bankruptcy pre-proceeding FmHA and Farm Credit Services had pooled together for all the mean-spirited tricks they could think of. Including: asking for and receiving a Court Order to inspect our chattels by an expert (Jack Wicks, someone who will testify as to the feasibility of an operation, depending on who pays him, we were offered his services, but couldn't afford him.) who came to our farm on the appointed day when it happened to be raining. All of the sheep were in the shed as we were shearing at that time. He drove around our property in his pickup for 5 minutes and after having traveled 275 miles from Billings, MT, he left. He reported that our operation wasn't satisfactory. We protested. Farm Credit and FmHA then received another court order and sent Gary Brownson, the Senior Credit Officer from Billings, MT to come in person to count and inspect all the sheep and lambs and give his expert opinion.

After objection after objection and delay after delay including a directive from FmHA and Farm Credit that they would not proceed with the bankruptcy proceedings until we were finished lambing, because we had to prove our actual lambing percentage. In June, 1995 after months of delay Farm Credit and FmHA then said the only way they would not contest the Chapter 12 confirmation hearing and approve our Chapter12 plan was if we would sign a drop-dead agreement.

Among other things this agreement had in it were: If we missed or were late with a payment we were to be evicted by the Sheriff's department immediately; we would lose our right of redemption according to Montana Law; we could not sue any of the entities and individuals named and in FmHA's agreement we would sell off the sheep, turn over the equipment and in other words **drop-dead**! Any and all rights given to us under the laws of the State of Montana and the United States as borrowers were to be denied and negated. What was the purpose of going through Chapter 12 protection?

Once again we were to be treated "differently" than the other hundreds of FmHA and Farm Credit borrowers in this **very area** who have filed for Chapter 12 protection and did not have to sign the drop-dead agreements to have their bankruptcy plans approved. We felt we had no choice but to have the bankruptcy dismissed and let Farm Credit move to foreclosure. But the Judge and FmHA and Farm Credit weren't done with us yet, they moved and the Judge granted their request not to allow Ranchos Del Valle Inc., my mother, Margaret or myself from seeking protection in bankruptcy court as a corporation or as individuals for one year even though the court had allowed my cousin Patsy Carranza Paulus to file for Chapter Seven protection.

The Judge stated that Ranchos had filed for Chapter 12 protection four times and had abused the bankruptcy process. Even though it was a matter of record at the bankruptcy interrogatories when I had testified, that the first time we filed was with attorney Andy Patten. The second time we filed it was upon the advise of Malcom Goodrich, the Farm Credit attorney. We were faced with a filing deadline and could not find an attorney to take our case, when Migrant Legal Services lawyer Maria Beltran, who is a personal friend, called and asked Mr. Goodrich what I should do.

It was his advise that Ranchos should file bankruptcy without an attorney even though the Judge would throw the case out, the filing would stop Farm Credit from foreclosing until we could find an attorney to represent Ranchos. The third time we filed our attorney, Robert Drummond, forgot to file his papers on time with the Court and the Judge dismissed the case. Mr. Drummond apologized to us and paid the new filing fee himself and filed for Ranchos the fourth time.

Life has not been easy. Since the bankruptcy dismissal, the Rural Electric cooperative shut off our power at our farm home because we couldn't pay our utility bill. So we moved thirty miles away with a friend, Julie Rehbein, who had been running sheep with us the past ten years, to her ranch where we ran our sheep together in the summer

months. A friend gave us a trailer house to live in, but we were only there three months when a tornado hit and blew apart the trailer with us in it on July 29, 1995. We survived.

We have been trying to obtain the services of an attorney to represent us as FmHA has continued to file papers in Federal court against us. Many times we don't receive notice until the deadlines have passed because until the right of redemption had passed (October 18,1996) we still had all of Ranchos mail sent to our old address in Sidney.

On June 9, 1996 we received a letter from Patrick Turner, Farm Service(FmHA) Ag specialist addressed to our new address in Lambert, MT stating he had a Court Order to inspect Ranchos livestock and equipment. I responded on June 12,1996, that in looking through our papers the continuation statement filed with the Montana Secretary of State did not contain the signatures of the borrowers and that we contended that FmHA didn't have a perfected lien and that attorney Robert Drummond had brought up the matter during the bankruptcy.

(Excerpt from letter to Alan Beck, attorney from Billings, MT who had told us he might take our case)
"This morning we were out to Julie Rehbein's ranch working at the neighbors, fixing fence, we heard our dogs barking furiously and could see a car driving around the corrals and pasture in her yard. We drove over to Julie's and saw that it was the Sheriff's car, they had opened a secured gate that had a no trespassing sign on it and were driving from place to place. We drove up to them. Denny Palmer, a Deputy Sheriff came over to us and Julie asked him what they were doing there. He replied that they had a Court Order giving them permission to search for Ranchos property.(the Court Order stated that they were to inspect Ranchos Del Valle property at Rte 2 Box 2365 Sidney, MT not Lambert, MT thirty miles away)

Julie informed them, Patrick Turner, FmHA Ag Specialist Farm Service Agency, as well, that the place they were at was her private property, but Denny Palmer told her that the Court Order stated they could go anywhere they wanted to search for Ranchos property. Patrick Turner said he had been told that this was where Ranchos sheep were located. They pointed to the various equipment and asked if they were Julie's property, which they are except for Ranchos broken-down GMC pickup and the neighbors tractor.

Julie again told them they were trespassing. Patrick Turner responded that the reason they were there was that I hadn't cooperated with him. I asked him if they had looked for the irrigation pipe or anything at Ranchos Fairview property, Turner looked confused and asked what Fairview property? I told him the irrigation pipe was at Fairview, MT I don't think he even knew what he was looking for.

I asked Turner if he hadn't gotten my fax at the Glendive FmHA office and that his letter said to contact him before June 12th, he said he hadn't because his office was in Culbertson. I asked him if the Glendive office hadn't forwarded it to him and that the

original was going to be in the Sidney office today. I also asked why he hadn't given me time to contact my attorney as was stated in the letter.

He then said, that my letter mentioned that I was questioning the validity of their lien and what were the enclosures that I mentioned in my letter. I told him to go to his office and look at the enclosures for himself and I wasn't going to respond to anymore questions until I had the opportunity to contact an attorney. Denny Palmer said that they probably didn't have anything else to do there and they both got into the Sheriff's car and drove out with us following them. The whole time they were there we took pictures of them."

In late August, 1996 my mother and I were served with an Order To Show Cause. I responded myself to the Order because we still didn't have an attorney, but to this date we haven't received any response from the Court. Our saga with FmHA didn't end there.

We were approached by a real estate agency in August, 1996 to sell the option to our redemption rights. After contacting Diane Savage, a local attorney as to the legality of it we decided to explore that possibility. But once again, three days before the redemption deadline the local County Attorney, Mike Weber, who also represents the person who bought our property at the Sheriff's Sale contacted the party who was purposing to purchase our option.

He informed them that he had been told by FmHA that they had filed a Deficiency Judgment against us and that amount would be included against the redemption price and that FmHA and Farm Credit could not guarantee them a clear title. The buyers backed out and the deadline passed. We have never received notice of a Deficiency Judgment against us.

Kenneth E. Tonn, FmHA State Program Specialist told Gary Brownson, Senior loan officer of Farm Credit during our Chapter 12 pre-proceeding that they (FmHA) would never come to terms with us because: **"Juanita filed discrimination charges against us and we're going to take her out".** I didn't believe then that an entity could circumvent the law and that justice would not be allowed to prevail, but I believe it now.

I began this letter asking for your intervention, the ending pleads for your compassion. I cannot even find words that adequately express the nightmare that we have experienced. My family migrated to this country from Mexico during the revolution in 1916. My grandfather worked for the El Paso Railroad from Texas to California and then to Pueblo, Colorado. There in 1925 they were recruited by Holly Sugar Company to come to Montana and work in the sugar beet fields.

My grandfather and grandmother worked hard with their young family until they had saved enough money to buy two farms. When my grandfather died of cancer in 1953, my mother took over the family farms learning to do everything by herself. I grew up following her example. We all were well respected and successful in the community, but it was a earned respect from the sweat of our brow and the strain of our backs. When my

grandmother passed away in 1980 at the age of 94, we experienced the inheritance problems that drove us deep into debt to pay the heirs of her estate.

The drought and low commodity prices that plagued everyone in the eighties forced us to visit FmHA, supposedly *the lenders of last resort*. But, no one ever told us they were also *the self-appointed judge, jury and executioner.*

When Ted Thompson, an attorney who is of looking into at our case relayed the message to us from United States Assistant Attorney Victoria Francis, I had to send my eighty-six year old mother away to spend Easter with family. She hasn't anymore fight left to give. She wanted to end everything rather than to continue to endure this constant harassment that has been our companion these past nine long, long years and believe me I am not too far from that point too.

I read an article in January supposedly written by you, *USDA has a dream: Throw Out Discrimination. In it you stated: "Clearly, there is a problem. Now is the time for a solution. This month, we commemorated the birthday of Martin Luther King Jr. He had a dream that his children "would one day live in a nation where they would not be judged by the color of their skin, but by the content of their character."*

I, too, have a dream: That USDA customers and employees are not judged by the color of their skin, but treated with fairness and efficiency, dignity and respect."

Mr. Secretary, I pray that what you proclaimed is true.

Sincerely Yours,

_____

Juanita Carranza

cc: Ted Thompson

October 12, 1998

P.O. Box 236
Lambert, MT 59243

Honorable Rick Hill
U.S. House of Representatives
1037 Longworth Bldg.
Washington, D.C. 20515

Dear Congressman Hill:

Thank you for your letter of intervention to the Office of Civil Rights, USDA on our behalf. **I again, want to state for the record that I stand by my contention that the Office of Civil Rights did on or about June 24, 1998 write a finding of discrimination on our complaint against USDA and its officials.** I do not know what reason, Civil Rights Director Gray has denying that fact.

There are important considerations that need to be investigated as to the contents of the letter from Director Rosalind D. Gray. She states that our case was assigned for investigation on November 18, 1997. I do not know if this was the result of the letter I wrote to Ms. Jenny Phillips, Director of the Equal Opportunity Staff, USDA on April 30, 1993 or the letter I faxed to Secretary Glickman on April 9, 1997 or the letter I wrote to Mr. Tom Boumont, PACD, USDA on July 7,1997 begging all of the above to investigate our complaint of discrimination.

I know now that the 1993 claim was never investigated as the Civil Rights Office was dismantled by the Reagan/Bush Administrations. The letter to the Honorable Secretary was not answered until May 7, wherein author Almanda (Dee) Cole states her regrets on behalf of the Agency. She tells us to cooperate with the Department of Justice as Secretary Glickman's Moratorium expired on April 18, 1997. The very Moratorium we were asking him to apply to our case and stop the adverse actions being taken against us. ***"We apologize for any inconvenience this may have caused her." Rosalind D. Gray***

After the July 7, 1997 letter I was in contact with Vita Patterson, Vi Hall and Dr. Jeremy Wu. Dr.Wu, kept assuring me all summer that Civil Rights was doing everything possible to stop the foreclosure action on our chattels. Finally, he would not return my calls. Then Vi Hall called me November17, 1997 to tell me Civil Rights was going to investigate our complaint. She said the foreclosure had been stopped and someone would be out to Montana and investigate our case during the second week of December. After that, Ms. Hall would not return my phone calls. Our chattels were seized and sold by the U.S. Marshall's and Patrick Turner, FSA Farm Specialist on December 2, 1997.
"We apologize for any inconvenience this may have caused her." Rosalind D. Gray

I have been told that Civil Rights operates under a self-imposed 180 day deadline for resolving complaints. If one were to use the November 18, 1997 date as a starting point this complaint should have been resolved around May 17, 1998. Even giving USDA the benefit of the doubt, because they are such nice people and using the February 18, 1998 date as a starting point this complaint should have been resolved around August 17, 1998. From February 18, 1998 to this date, 236 days have passed.
"We apologize for any inconvenience this may have caused her." Rosalind D. Gray

Our complaint shows that USDA and its representatives began to discriminate against us from 1987 to the present time. We have been through every mean-spirited action that no human being should ever be forced to endure. We have been raped mentally and spiritually by the calculated deeds of a system that for too long has escaped the vigilance of the Congressional representatives that are bound by law to oversee it.

Inspector General Roger Viadero has just issued his fifth report on the Office of Civil Rights in just over a year. In it he says what those of us who have endured the debacle of civil rights all know, the Civil Rights Office is in disarray. With files lost, law interns serving as adjudicators over complaints, Civil Rights staff members with little or no training put in charge of serious complaints, ect, ect. He recommends the creation of a special task force to review and resolve complaints. As of September 11, there are 616 backlogged complaints. Many like ours have been ignored for years.
"We apologize for any inconvenience this may have caused her." Rosalind D. Gray

People have committed suicide because of the discrimination. People have died of broken hearts because they lost what generations have slaved for, their farms. Families have been broken apart because of the stress of the ordeal. Whole lives have been destroyed as the corruption, greed and reprisal on the part of USDA and its representatives continues. When Congressman Hill, do you think enough is enough?

President Clinton will endure a trial of impeachment because he tried to lie about a personal relationship. This foolish affair has consumed congressional representatives with all of its smutty details. Now Congress proclaims to the media that the President must pay for his actions. How brave of those who voted for that stupid circus to continue. Tell my 87 year-old mother, Congressman Hill, when does USDA pay for its very real actions of malice inflicted on thousands of lives? What is the reason for condoning their deceit? When will the injustice end? Who justifies the inconvenience?
"We apologize for any inconvenience this may have caused her." Rosalind D. Gray

Sincerely,

Juanita Carranza
cc: Mr. Sam Taylor
Congresswoman Eva M. Clayton
Congresswoman Maxine Waters
Mr.Charles R. Ruff
Senator Conrad Burns
Senator Max Baucus
Secretary of Agriculture, Dan Glickman
Civil Rights Director, Rosalind D. Gray

July 12, 1999

Senator Max Baucus
207 North Broadway
Billings, MT 59101

Dear Senator Baucus,

I am writing you to express my deep disappointment and disbelief in the recent letter from Civil Rights Director, Rosalind Grey in which she states that I never filed a civil rights complaint.

Our family farm corporation, Ranchos Del Valle, Inc. and myself and my daughter were discriminated against by USDA and its authorized agents and collectively filed the discrimination complaints in 1993 and in 1997. When Juanita filed her affidavit as Secretary-Treasurer of Ranchos Del Valle, Inc. with the Civil Rights Office she was acting by my authority as President. To single one out of the three to settle with, is discrimination in itself!

How can USDA and its authorized agents and the United States Attorney file $500,000 liens against us individually in court and then choose only one to settle with? How can they destroy the family farm corporation.my mother, Brigida founded and then choose only one to settle with? How can you, Senator Baucus tell me that all of the injustice the USDA authorized agents, the United States Attorney, the United States Marshall's and the people they hired heaped upon me mean nothing and that myself and my family corporation don't deserve to see the entire discrimination complaint resolved?

I am eighty-eight years old, but if you think I will not continue to fight this blasphemy of injustice Sir, you are sadly mistaken! USDA and its agents have refused to give us all the rights and accords as other borrowers. When we were forced to seek protection in bankruptcy court because of their discriminatory actions again and again, the assaults continued in their never ending collusion to take us out of farming! Even as we were stalked and harassed during the foreclosure process, the USDA agents continued their discrimination. I was disposed from my home, deprived of the homestead exemption accorded to other borrowers. We were told never to return to retrieve our personal possessions or the United States Attorney would send the FBI down upon us, those possessions remain there to this very day, three years later. They even sold my personal truck at the U.S. Marshall's sale knowing full well that it was my personal property.

In his press releases Secretary of Agriculture, Dan Glickman professes to believe deeply in justice. In his November 13, 1998 press release he quoted Dr. Martin Luther King: *"an unaddressed injustice at any time is an injustice for all time".*

In this darkest chapter of USDA history, I believe he is just someone who speaks of justice simply to placate the thousands that have been discriminated against because Dr. King lived what he professed. For if Secretary Glickman truly believed in justice he would not have allowed what happened to me transpire. If he truly believed in justice he would not allow our case to languish for this long while his underlings try to find excuses for their ineptness. The question that begs to be answered now Senator Baucus, is do you believe in justice?

Sincerely,

_____
A. Margaret Carranza

_____
Ranchos Del Valle, Inc. by
A. Margaret Carranza, President

cc: Mr. Sam Taylor
Senator Conrad Burns
Congressman Rick Hill

October 5, 1999
P.O. Box 236
Lambert, MT 59243

Attention: Mr. Dave Ebersol
Subject: Review of USDA Civil Rights Programs and Responsibilities
Date of Hearing: October 14, 1999

The Honorable Bob Goodlatte, Chairman
Subcommittee on Department Operations, Oversight, Nutrition and Forestry

Dear Congressman Goodlatte,

I am enclosing with this letter, the documentation of our discrimination complaint that was accepted by the Office of Civil Rights, USDA in April of 1997. We had previously filed a discrimination complaint that was never investigated in April of 1993. As I write this letter I can hear my eighty-eight year old mother, Margaret playing the song "Mi Ranchito". I don't have to walk out to the kitchen to know what is happening. She is crying silently as she listens to the singer lament the loss of his little ranch.

It is our understanding that your Subcommittee is going to review the plight of the Black Farmers and the Civil Rights process at USDA. I hope that you will broaden the scope of the Hearing to look into just how everyone is treated in that sink hole known as Civil Rights, USDA.

Twenty months after USDA accepted our complaint into their process, we were offered a settlement agreement in December of 1998. During that time FSA/FmHA state and local officials had continued with their foreclosure process that contributed to previous discrimination practices. They conducted their adverse acts even though Secretary Dan Glickman had sent out a Memorandum on April 22, 1997 regarding foreclosures that "freezes the foreclosure process, at whatever stage it is in, until charges of discrimination can be heard by an independent review team." Our chattels were seized and sold by FSA/FmHA and the United States Marshall's on December 2, 1997. To this very day we have not been allowed to retrieve our personal property from our farm that was sold at Sheriff's sale.

The settlement agreement sent by Director Rosalind Gray was responded to with a counter proposal by Mr. Phillip Fraas as our legal representative in February of 1999. That offer was rejected. Office of Civil Rights has since remanded our case to yet another incompetent, inept, unqualified entity called the Statute of Limitations Project.

We have always demanded to have our case resolved in negotiations with Director Rosalind Gray as is our right. FLP-64 states that even Class Members of Pigford v. Glickman can "opt out of the litigation and have their claims decided by the Department's Office Of Civil Rights." Yet Director Rosalind Gray chooses to continue the torture begun at the local level in 1986 by refusing to respond to our requests and that of the Montana Congressional delegation to resolve the cases dying of decay at Office of Civil Rights, USDA.

The singer echoes the Spanish words *" There at the foot of the mountain, where the sun rises early. My little ranch is left lonely, as I abandon my labor. It was there I spent my years, there that I found my first love. It was the disappointments that killed my illusions. Oh my love as you leave me, never to return, don't tell me good-bye. Return to bring happiness to my ranchito, the ranchito that like you was the light of my life."*

How long, Congressman Goodlatte, must my mother cry for the injustices committed in the name of the United States Department of Agriculture by state and local officials that still go unpunished? How long will Secretary Glickman be allowed to pontificate with flowery words of justice that are as empty as his promises? After a while the feelings of Job, began to echo in our hearts: *"Though I cry injustice I am not heard; though I call for help I receive no aid".* Job 19.7.

We hope that you and your Subcommittee hear all the calls for help and come to our aid.

Sincerely,

_____
A. Margaret Carranza

_____
Juanita Carranza

cc: Senator Conrad Burns
Senator Max Baucus
Congressman Rick Hill
Mr. Phillip Fraas

Jacky Shiplet
1259 Hiway 89N
Livingston, MT
August 3, 2000

Dear Senator Lugar and the Senate Agriculture Committee:

Please Help Me! Now!

This is a plea for help! An urgent request for help to save my family farm, at least what's left of it. The fact are:

1. I lost 2,500 acres to foreclosure in 1998.

2. We are having the hottest, driest year in Montana history. There are wild fires in may county, Park Co. The West is ablaze!

3. I am on the verge of being foreclosed on again!

4. I need my civil rights case settled, so I can operate my ranch again.

5. The Office of Civil Rights at USDA has indicated that I have been discriminated against, but still will not settle my case.

6. I have 3 USDA civil rights cases:

   i. SOL #247.
   ii. CR 1740.
   iii. CR 1000476.

7. I have been discriminated against again. On April 16, 2000, the FSA required that I spray my CRP land chemically, while letting young male CRP contractors clip their weeds. FSA continues to retaliate against me for filing my first civil rights complaint.

8. USDA recognized my 1996 claim (October 31, 1996). Yet, it remains one of the few statute of limitations (SOL) claims that has not been settled.

9. I have prepared two settlement proposals for Rosalind Gray, the first in 1999 and a later one on Mary 232 of this year.

10. In 1998, the Office of Civil Rights made a very small settlement offer with debt write-off, but has not even responded to the realistic proposals I have presented. The Office of Civil Rights is fiddling while the West burns!

11. Some of my pastures are without stock water, waiting for funds to repair dried-up springs.

12. My CRP is on the verge of being terminated again because I do not have money to replant 98 acres or to "spray/curtail", as required

I continue the constant battle of survival on the Western plains without the help of the very people who are supposed to be helping me (FSA and the Office of Civil Rights). Again, this year I cry out so that the game of "starve out the farmer" STOPS! My case should be settled immediately, so our family farm and others like it will survive.

The Federal Government has forgiven the debts of third-world countries, but those of the American farmers who producer low-priced food for the world.

Your immediate attention and response will be greatly appreciated.

Jacky Shiplet

Responses to Questions from Senator Charles Robb

Questions for Charles Rawls, General Counsel

Question No. 1

Without commenting on the substance of the suits, how close is the Department to settling the two major class action employee lawsuits?

Background: In a July 11, 2000 Meeting with my staff, an official from the Office of the General Counsel indicated that the lawsuit involving Latino employees would be settled within 60-90 days. She also indicated that, with regard to the Donnelly class action suit, the USDA was "waiting on DOJ."

Response

With regard to the class action entitled, Regional Hispanic Working Group v. Glickman, EEOC/OFO Request No. 05960492, both parties are still involved in ongoing settlement negotiations. Significant progress has been made during the negotiation process and the parties have narrowed the number of outstanding issues. Because there exist several issues which both parties are working to resolve, and due to the fact that once resolved, the agreement as a whole will still have to undergo approval from the plaintiffs, the Agency, and from the Department of Justice, and then undergo a fairness hearing in Federal District Court, the Agency cannot put forth an estimated date as to when it believes the settlement agreement will be finalized.

With regard to the Donnelly class action, that matter was approved by the Department of Justice in late August 2000. The Union representing the bargaining unit for Forest Service employees was provided a 30-day period to review the proposed settlement and make comments. The comments from the Union's review of the proposed settlement were due and received on October 14, 2000. A status conference is scheduled for October 27, 2000, before the Judge and the parties anticipate receiving preliminary approval from the court on that date. This matter will be scheduled for a fairness hearing and implementation of the settlement agreement should commence within 30 days of the fairness hearing.

Question No. 2

Mr. Rawls, Sharon Mavity is a woman from Richland County, Montana, who filed a civil rights complaint from Montana against USDA. In August of last year, the Office of Civil Rights determined that Ms. Mavity had suffered discrimination. Since then, she has tried to get USDA to settle her case. In May of this year, the Office of Civil Rights and Ms. Mavity agreed to submit the case to mediation under USDA's Alternate Dispute Resolution (ADR) process. Since then, the case has been stalled at the Office of the General Counsel—your office. Why won't you agree to mediation of this case? Will you agree to it now?

Response

With regard to the Sharon Mavity matter, it is not accurate that this case has been "stalled" in the Office of the General Counsel (OGC). Ms. Mavity made a request pursuant to the Statute of Limitations Bill to have a hearing on her complaint by an Administrative Law Judge. The Department was fully prepared to go to a hearing and have a neutral third party make a determination on her complaint. However, when the case was ready to proceed to a hearing, Ms. Mavity voluntarily withdrew her request for a hearing. Although her request for a hearing has been withdrawn, Ms. Mavity's underlying discrimination complaint technically is still pending before the Office of Civil Rights (CR). Therefore, in this instance, it is within the CR Director's discretion to determine if Ms. Mavity's case should be settled or referred for mediation–despite her withdrawal of her request for a formal hearing. However, any such determination by CR must be reviewed by OGC for legal sufficiency.

Regarding OGC's view on mediating this case, OGC does not recommend settlement or mediation of any case unless our analysis shows that there is some merit to the case or that there is some risk of liability. OGC has performed an extensive review of Ms. Mavity's complaint and the underlying record and concluded that the complaint does not have merit. It is not accurate that CR found that Ms. Mavity suffered discrimination. Rather, in its position statement submitted to the Administrative Law Judge, CR noted that the complaint had some merit. This was not a formal determination by CR. OGC conducted its own analysis of the record and does not agree with CR's position statement. Accordingly, OGC would not recommend mediation of the Mavity complaint. OGC would reconsider this conclusion if CR made a formal determination that the case should be settled and provided a legally sufficient justification for such conclusion. In sum, it is CR's decision at this juncture regarding how to proceed. It should be noted that Ms. Mavity has the option of bringing a civil action on her claim.

4633 2nd Street South
Arlington, Virginia 22204
October 19, 2000

Representative James R. Moran
8th District of Virginia
United States House of Representatives
2239 Rayburn House Office Building
Washington, DC 20515-4608

Dear Congressman Moran:

As a long-time constituent, I am requesting your assistance in setting the record straight on some false and misleading statements that were made about me in recent testimony before the Senate Committee on Agriculture, Nutrition, and Forestry. These statements amount to slander, and the circumstances surrounding this matter have caused me both personal and professional grief.

The enclosed article, entitled "USDA Makes Slow Progress on Resolving Bias Claims", appeared on the Federal Page of *The Washington Post* dated Monday, October 16. The article states that USDA employee Harold Connor had been discriminated against by being passed over for a "director's post" by a "white employee with less time on the job, no management experience, and no college degree."

Congressman, I am that white employee. In previous articles *The Washington Post* identified the position in question, so many people in USDA and, especially, the Farm Service Agency (FSA) know that it is my former position as the Director, Audits and Investigations Group, under FSA's Office of the Administrator, that is at the center of Mr. Connor's discrimination case. Consequently, I get plenty of telephone calls when one of these articles is published. Having had no direct interest in the discrimination case, I have ignored these articles and kept silent when it was implied that I was not qualified for that job, despite being confronted by other employees that were involved in the class action suit that precipitated Mr. Connor's case. After seeing false and misleading statements being printed about me in *The Washington Post*, I can no longer remain silent.

I cannot address issues regarding the legitimacy of Mr. Connor's discrimination complaint, because I do not know the specifics of the case. It is my understanding, however, that the Equal Employment Opportunity Commission (EEOC) rendered a determination of discrimination because USDA's Office of General Counsel had neglected to subpoena the Selecting Official, who had retired, to testify as to the basis of my being selected for the position, and FSA was therefore unable to provide definitive reasons why Mr. Connor was not selected. I understand that the EEOC's decision did not address issues regarding who was most qualified for the position; however, subsequent articles in the *The Washington Post* have implied that I was not qualified.

The October 16 article's assertion that I do not have a college degree is patently false. I received my Bachelors of Science degree in Business Administration in 1991, and my Grade Point Average during this course of study was a 4.0. Contrary to what was implied in the article, neither program specialist nor management experience was required for the position in question. The position was more of a "team leader" position with a staff of 4 subordinate employees, and management experience was not included in the "Knowledge, Skills, and Abilities" (KSAs) that had to be addressed as part of the job application (although, under FSA's organizational structure at the time, I did have unofficial management responsibilities at the time I applied for the position). I also had over 6 years' direct experience in audit and investigation matters, and this experience (not specific program experience) *was* a critical factor in the KSAs. I have always assumed that I was selected because I was best qualified and, as is evidenced by my performance ratings and reputation with the agencies I worked with in this capacity, I did a darn good job. The EEOC's decision, as I understand it, does not refute this. I do not know who was *best* qualified for the position; however, I was not disqualified during the selection process and am concerned that the Senate Agriculture Committee's records may state otherwise based on testimony presented at the hearing.

I contacted the reporter, Michael A. Fletcher, who wrote the article and asked him for the source of his information. He advised me that the statement was made in Mr. Connor's September 12 testimony before the Senate Agriculture Committee. I also understand that Mr. Connor advised the Committee that I was, in fact, less qualified for the position; however, to my knowledge this determination has not been made by the EEOC or any other official entity. I hope that I was the only victim of false and misleading testimony before the Committee. The article points out that information presented at the hearing contradicts the USDA's earlier statements to the *Post* (see Mr. Fletcher's December 18, 1999, article, "Black USDA Managers Lose Round in Bias Complaint", also enclosed), but I am not in a position to know the facts in the case.

Congressman, please understand that I do not condone discrimination in any of its forms. In fact, being a white female working my way through the ranks of civil service has made me particularly sensitive to this issue, and I make it a point to ensure that all aspects of my work reflect active and total support of equal employment opportunity, civil rights, and employee development goals and initiatives. I strongly believe that all acts of discrimination should be rectified and, in Mr. Connor's case, I am challenging neither the EEOC's decision nor Mr. Connor's right to pursue this matter. Still, I had no involvement in Mr. Connor's discrimination case, and I should not feel forced to defend myself against lies and innuendo related to a job in which I excelled. However, given my understanding of the testimony given at the September 12 hearing, it appears that I must defend myself if no one else will.

Like you, I have devoted my career to public service. I take my job seriously, and I am proud of my work and my accomplishments during the 16 years I've worked at FSA. Moreover, as a manager of an office whose primary function is preventing waste and abuse in FSA programs and

operations, it is critical that my credibility and integrity be above reproach. Consequently, I cannot abide by my name and reputation being tarnished by others' false statements, especially in a formal government proceeding.

The *Post* printed a correction in its October 18 edition; however, I do not know how to go about correcting the records of the Senate Agriculture Committee. Can you please help me?

If you would like to discuss this further, please do not hesitate to contact me at (202) 720-4966 (days), or at (703) 486-0440 (evenings).

Thank you for taking the time to listen to my concerns. I look forward to hearing from you soon.

Sincerely:

Carol Wagner

Enclosures

cc: Senator Richard G. Lugar
Chairman, U.S. Committee on Agriculture, Nutrition, and Forestry
United States Senator
SR-328 Russell Senate Office Building
Washington, DC 20510-6000

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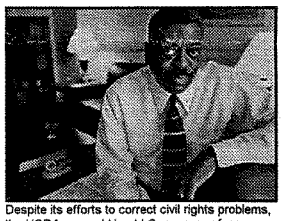
USDA Makes Slow Progress On Resolving Bias Claims

By Michael A. Fletcher
Washington Post Staff Writer
Monday, October 16, 2000; Page A25


Despite its efforts to correct civil rights problems, the USDA passed Harold Connor over for a promotion and gave the job to a less qualified Caucasian. (Susan Biddle - The Washington Post)

E-Mail This Article
Printer-Friendly Version

With his experience as a program specialist and a manager, not to mention a quarter century on the job, Harold Connor saw himself as a prime candidate for a director's post at the U.S. Department of Agriculture.

But in the end, Connor, who is black and a college graduate, lost out to a white employee with less time on the job, no management experience and no college degree.

It is the kind of thing that critics say was standard practice for years at USDA, a sprawling agency regarded by some as a cesspool of discrimination and openly derided as "the last plantation."

It is a reality that USDA Secretary Dan Glickman has been struggling to change for several years. In 1997, he launched a much-touted effort to make civil rights a top priority at USDA. Under Glickman, the agency has restored its office of civil rights, reduced the backlog of discrimination complaints, settled a huge lawsuit by black farmers and increased the percentage of minorities in its ranks.

But many other problems have gone unresolved. Minority employees still complain about continued discrimination and a slow-moving civil rights process. For example, Connor told the Senate Agriculture Committee last month that he has yet to receive the compensation ordered by the Equal Employment Opportunity Commission judge who upheld his discrimination complaint nearly a year ago, despite public statements by agency officials that he had.

"I have yet to receive a promotion and USDA has yet to begin processing

back pay that it awarded me as a result of the unlawful discrimination I experienced," Connor told the committee.

When the administrative judge's order was issued last December, a USDA spokesman told The Washington Post that Connor had already been promoted, which was erroneous. Connor, who applied for the promotion in early 1996, has since been offered one promotion, which he rejected because it offered no supervisory role and appeared to be a dead end professionally.

Experiences like Connor's have led minority advocates at USDA to question whether Glickman, a former member of Congress from Kansas, has the power, or the will, to extend his civil rights message beyond his executive suite. In a recent interview , he acknowledged continued problems, but said USDA has made substantial progress.

"You've got to go back to the beginning," Glickman said. "I turned over the rock here and found a lot of stuff that hadn't been dealt with in decades. The government had neglected these issues for too long."

Glickman said he was surprised at the dimensions of USDA's civil rights problems. There were black farmers who were found to be denied loans and other assistance because of their race; minority and female employees complained about harassment; and thousands of discrimination complaints filed by both agency employees and customers were simply backing up, as the department's civil rights operation had been dismantled during the 1980s.

Making the problem more difficult is the unusual structure of USDA, whose 89,000 employees are spread through every county in the nation. Also, many of the decision makers on key programs such as farm aid are technically local officials who cannot be removed by their bosses in Washington.

Still, Glickman says he has been building management structures and hammering at the need for the agency to make civil rights a true priority. And even amid continued problems, he said he sees sure signs of progress.

In the past year, the backlog of complaints filed by USDA customers, including farmers who apply for loans or disaster relief, has been reduced from 1,038 to 480. Meanwhile, the department received fewer complaints in the past year than any year since the anti-discrimination effort began.

Among employees, there were fewer complaints filed in the first 10 months of the past fiscal year than at any time since 1996. But even with the improvement, there were 1,804 EEO complaints by USDA employees pending last month.

The agency also has averted at least four class actions brought by employees within the past year, as judges have denied class certification.

Also, USDA settled a suit by female Forest Service employees whose complaint was filled with lurid examples of harassment and discrimination.

But even with that progress, USDA lawyers acknowledged that there are still 19 proposed class action complaints pending against the agency. Just last week, lawyers filed a proposed class action in U.S. District Court alleging that for 20 years USDA systematically discriminated against 20,000 Latino farmers by unfairly denying them loans and failing to investigate bias complaints.

"I doubt there is another agency in government that has made anywhere near the progress we have" in addressing civil rights problems, Glickman said. "We started a lot further back. We had a lot farther to go."

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Black USDA Managers Lose Round in Bias Complaint

By Michael A. Fletcher
Washington Post Staff Writer
Saturday, December 18, 1999; Page A11

E-Mail This Article
Printer-Friendly Version

An EEOC administrative judge has dealt a blow to a class action complaint filed by a group of African American employees at the U.S. Department of Agriculture, finding no evidence that the department's Farm Service Agency systematically discriminated against blacks when granting promotions.

The decision, issued this week by Equal Employment Opportunity Commission Administrative Judge Adria S. Zeldin, found no evidence that the agency's promotion practices have a disparate impact on blacks. The administrative judge did determine, however, that the agency had discriminated against two black managers who originated the complaint in 1997. The complaint was expanded to a class action earlier this year.

In one case, Clifford J. Herron, an African American outreach manager who holds a doctorate, was passed over for a promotion in favor of a white woman who was a high school graduate. In the other case, Zeldin found that Harold Connor was discriminated against when he was denied a promotion to a post as an FSA audits and investigations director. USDA officials said both men have since been promoted to other posts.

Lawyers for the complainants could not be reached for comment, but EEOC officials said the decision could be appealed to the commission.

The administrative judge's decision finding no evidence of broad-based discrimination was applauded by USDA officials who have been under fire in recent years to correct what they acknowledge as widespread complaints of discrimination within the agency's ranks.

"We know at USDA that we still have a long way to go, but we feel this is a positive development," said USDA spokesman Andy Solomon.

Secretary Dan Glickman has declared stamping out the discrimination problems to be one of his top priorities. Currently, USDA is facing five other class action or proposed class action complaints, alleging racial and gender discrimination and sexual harassment.

Also, USDA earlier this year reached a settlement with black farmers, who said that for years they were denied USDA assistance because of their race. More than 22,000 current and former black farmers have filed claims under the settlement. So far, more than 6,000 have been approved for payments of at least $50,000 each, while more than 11,000 of the claims are awaiting processing.

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Subject:
Date: Thu, 21 Sep 2000 14:53:46 -0400
From: "Rahman, Altaf" <Altaf.Rahman@usda.gov>
To: "fdl@lugarcamp.com" <fdl@lugarcamp.com>

Dear Sir:

I was trying to find your website under the headlines

www:\\sendit.gov\~ag. given to me by coalition of agriculture group within the USDA, a coalition of minorities formed to fight discriminatory practices within the department. As you know USDA is enjoys a reputation of "known ation in the United States. It is of course a very derogatory reputation to for a department of the government to have earned. Having failed to get the home page and with my understanding that today was the last day to send comments pertaining to our own experiences within the USDA. I have been with USDA for more than twenty years, started my career with the USDA from academia, where I was an associate professor. Saddled with a Ph.D and two master degrees, starting in the govt. was a dream coming true, especially having migrated from England, where I had completed my education.

After twenty years with the system, I still not have managed to get into a managerial position, despite the fact that I have been to many management training courses. There is not much more for me to say because it is difficult to pen your vast experiences of glass ceiling in a short note.

I shall appreciate, if you could include me in the proceedings you might conduct on behest of the agriculture coalition.

Thanks

Best regards,

Altaf U. Rahman Ph.D

altafurahman@cs.com

United States Department of Agriculture | Forest Service | Mt. Baldy Ranger District | 110 North Wabash Avenue
Glendora, CA 91741
(818) 335-1251 Voice
(818) 335-1251 Ext.256 TTY
(818) 914-3790 FAX

File Code: 1700
Route To:

Date: September 16, 1996

Subject: Region 3 Special Assistant for Civil Rights Closeout Report

To: Kathleen Connelly, Deputy Chief for Administration

The following report summarizes my detail assignment as Special Assistant for Civil Rights, Region 3. This report is supplemental to information contained in a letter, previously forwarded to you, dated July 3, 1996 (copy enclosed).

Introduction

On Friday, April 19, 1996, I was contacted by Lynn Sprague, Regional Forester for Region 5, inquiring if I would be interested in serving in a detail to Region 3 as a Special Assistant to the Regional Forester for Civil Rights. A letter, dated May 3, 1996, was sent to Charles W. Cartwright, Regional Forester, Region 3, informing him of my assignment. This letter also included direction set forth by the Washington Office, on the roles, responsibilities and expectations of my detail assignment and of the Regional Forester.

On May 20, 1996, I began the detail in Region 3. I was to serve as the Special Assistant for Civil Rights, under the direct supervision of Region 3 Regional Forester, Chip Cartwright. This detail assignment was an interim measure until a permanent Special Assistant for Civil Rights was selected. The selection was to be made by July 31, 1996.

The Special Assistant detail was to be effective from May 20, 1996 to approximately August 31, 1996. However, due to what I perceived to be a lack of support for the Special Assistant position, and lack of support for recommendations and suggestions I made, I proposed to end the detail on July 26, 1996. This proposal was accepted and supported by the Regional Forester.

It is important to note that the information contained herein is a reflection of my personal thoughts, opinions and observations, formed as a result of the various discussions and interactions I had with Region 3 employees.

Statement of the Issues

The Regional Forester and I discussed our interpretations of the purpose and expectations of this detail within the first couple of days of my arrival to Region 3. The purpose and expectations were similar to those addressed in two letters you issued; one to me dated May 2, and one to the Regional Forester dated May 3, 1996.

In broad terms, my role in this detail was to implement actions required to address employment issues raised by several employees in the Region. I understood the issues included: 1) Those specific issues raised by the Forest Service Hispanic Employee's Association (FSHEA), Zone 3; 2) Management's concern regarding negative relationships between FSHEA and other employee groups; and 3) General volatile working relationships between management and employees. I understood the Regional Forester developed an action plan to address these issues, and my role was to assist the Regional Forester in implementing this plan.

Communications--Employees

Shortly after my arrival in Region 3, I realized few employees understood who I was or why I was there. I got this impression after I sent a note via Data General to all employees. The responses I received generated numerous questions about my position and its objective. I prepared a letter for Regional Forester's signature, dated June 19, 1996, to explain the role and objective of the position. I later discovered from your May 3, 1996 letter, that you encouraged the Regional Forester to convey to employees that I was coming to the Region, and the intent of my detail. This did not occur. As a result, many employees and some management officials were not aware I was in the region. This affected my early interaction with employees and management representatives. This action may seem minor and simple, but the ramifications of NOT notifying employees is indicative of the overall communication breakdown that exists in Region 3.

Even after my return to Region 5, I received e-mail messages from Region 3 employees who did not know I was in the Region. They did not know there was a person in the Region who was available to listen to their concerns and forward them to management for action.

Employees must have a method in which to communicate their concerns that is free of any perception of retaliation (i.e., neutral and unbiased), and that is viewed as responsive.

Communications--Advocacy Groups

One critical objective of the Special Assistant was to assist the Regional Forester with identifying issues and concerns common to all Advocacy Groups, not just those issues raised by FSHEA. In Region 3, Advocacy Groups exist for Disabled, African American, American Indian, Hispanic, and Asian American/Pacific Islander employees. Advocacy Groups are not Special Emphasis Program areas, but are supplemental to those programs.

The Regional Forester asked me to coordinate a meeting between all Advocacy Groups, whereby each group would identify common issues and concerns. The Regional Forester's expectation was that the Groups would develop a single action plan that would address issues for all the groups.

This process was not supported by all of the Groups. Some of the Groups felt they had already proposed several actions that had not been implemented by the Regional Forester. The Groups also felt developing one action plan diminished the importance of issues raised by each Group individually.

The Groups preferred to meet with the Regional Forester individually, to address their individual Group's concerns. The Regional Forester met with FSHEA July 25, 1996. He was in the process of setting up meetings with the other Groups. I know the Regional Forester has met with some of the other Groups, but I don't know which Groups specifically.

The Regional Forester and his Deputies each gave me a list of names of individuals who they felt I should contact. I believe the Regional Forester and Deputies thought the issues raised by FSHEA were specific only to members of that Group. I believe the lists he provided to me were intended to display FSHEA was an isolated group, and their concerns were not related to concerns raised by other Advocacy Groups.

Not long into the detail, I came to realize that although other Advocacy Groups may not have agreed to the method or approach in which FSHEA raised their issues, the issues were of concern to all Advocacy Groups. This report will focus only on the issues and concerns that are known to be shared by all Advocacy Groups.

Analysis and Findings

Workforce Environment--FEAR

I interviewed and/or heard from over seventy employees during my detail. The employees were diverse in occupation and grade. I interviewed employees who were diverse in ethnicity and gender, including non-minority men and women. At the request of the Asian American Advocacy Group Leader, I sent a personal note to each employee shown in his database. I actively sought out those individuals whose names had been given to me by the Regional Forester and Deputies. I personally visited employees in the field, in their offices, and at local restaurants. I also spoke with employees via telephone.

The strongest impression I got when I interviewed these employees was a profound fear of retaliation. As I contemplate how to summarize the various discussions I had with employees, I am reminded of the most frequent concerns expressed to me by those I spoke with. These were, "...will what I tell you be shared with anyone else?"; ...is what I'm telling you confidential?"; "...who will know that I spoke with you?" The overwhelming response from the note I sent to those employees shown on the Asian American/Pacific Islander database, was "how did you get my name?" These all led me to the number one concern expressed by those employees I spoke with--FEAR. This fear has been reinforced by perceptions that there is a silent rule, and silent acknowledgement of that rule, that those who speak up, or speak out, will have forever secured their destiny of no promotion or other career development opportunities.

As discussed in my July 3 letter, this same fear was exhibited by Leadership Team members at a Regional Leadership Team meeting held June 18. In fact, one Director admitted to having the same level of fear that I described being felt by employees. Employees' fear to speak up/out was affirmed by Kaibab and Gila Forest Supervisors, Connie Frisch and Abel Camarena, during the FSHEA/Regional Forester meeting held on July 25, 1996.

Employees do not feel comfortable speaking freely--to share opinions, nor to disagree with a supervisor. I was unable to identify a consistent pattern as to what previous actions have created this environment. Fear permeates all levels of the organization.

Some employees I spoke with said they had observed outspoken employees get "black balled"; get pressured in to resigning or retiring; and even have false accusations levied against them which ultimately resulted in disciplinary action. The term I heard used often by employees was "head hunting". Other employees I spoke with could not give me specific examples of reprisal actions, but had heard many stories about those who had been victims. Other employees said they were threatened by their supervisors. In some cases, the District Ranger or Forest Supervisor "counseled" employees to rethink their course of action, if they valued their career with the Forest Service.

Civil Rights

I saw that employees were not knowledgeable about their human and civil rights, nor were they informed to understand why their work environment was so poor. It appeared they learned to accept a negative work environment as an acceptable standard, and most learned to "just live with it". For example, basic fundamental necessities, such as access to Data General equipment and accounts were not available to all permanent employees, and this was accepted as "just how it is." Employees did not know what rights and benefits they were entitled to, let alone how to process requests to improve their working conditions.

With regard to how employees felt about Civil Rights, and the Region's Civil Rights program, most stated that they had heard or read that the Regional Forester was committed to Civil Rights and diversifying the workforce. Many employees felt that having a minority Regional Forester would result in an environment more sensitive to the needs of minority employees. However, most employees with whom I spoke, could not provide examples of actions taken by the Regional Forester that displayed a positive, visible "leadership" role in Civil Rights.

Several employees pointed to the combining of Civil Rights with Personnel to create the Human Resources staff, as a symbol of the Regional Forester's lack of support for Civil Rights. Further adding to this was concern was the reduction of personnel working directly with the Civil Rights program.

Most minority employees with whom I spoke, stated that they felt they had been passed over for promotion; were not given the same opportunities as their non minority coworkers; and felt their involvement in Civil Rights programs and activities worked against them. Minority employees felt management's actions and employment decisions reflected a general "glass ceiling" attitude--that management thought they were good enough for the lower graded jobs, but not management level positions.

Employees provided me with examples they perceived to display racial discrimination. The employees who presented these examples to me had not taken action to raise their concerns to management. This is a symptom that needs further investigation. Why did employees not present their concerns regarding racial discrimination to management? Was it because they chose not to be responsible for their careers? Was it a fear of retaliation? Was it a lack of knowing the process?

I reviewed the Region's Affirmative Employment Program Plan. The AEPP appeared to me to meet the basic guidelines set forth by the Equal Employment Opportunity Commission. The AEPP was not up to date. The plan included positions that no longer existed, that have "civil rights" responsibilities. An example includes "Regional and Forest EEO Counselors" that are no longer in place. Action Plans in the AEPP had completion dates that were "years" old. There were "ongoing" actions that have no follow up actions documented.

"Statistical analysis" is just a listing of numbers without interpretation as to what the numbers represent. Numerical hiring goals were dated "1993" and this was a "1996" Plan.

Members of the Human Resources staff admitted that the Region's AEPP was not a good plan, and was viewed by management as "something we have to do, but don't really have to use." Evidence to support this attitude is, "accomplishments" are incomplete (i.e., "...due to budget constraints...training minimized; ...opportunities are limited...").

What kind of "leadership" attitude is displayed when a "significant accomplishment" indicates the Civil Rights Director position has been vacant since May 1994, and has been filled with Actings?

Employee Development and Employment Processing

There was concern expressed by the American Indian, African American, and Hispanic Advocacy Groups that efforts and accomplishments made by the previous Regional Forester, Larry Henson were viewed negatively and with animosity by some current Leadership Team members. These groups believe that Regional Forester Cartwright discounted civil rights programs developed under Henson's supervision, and did not build upon the success of those programs.

There was a concern expressed by African American employees that they were so few in number, yet a high number of these employees were listed as unfunded. Both unfunded/surplus Hispanic and African American employees felt they were not being given the same consideration for placement into funded positions as non minorities.

One African American employee stated that they would not encourage other African Americans to apply for positions in Region 3. This employee was looking at every opportunity to move out of Region 3, stating that they had never felt so invisible in their Forest Service career.

Another concern raised was in the area of developmental opportunities. Opportunities for training were reserved for employees "in favor" with influential management officials. It was felt by many employees that an employee's chance of benefiting from this type of opportunity is heavily dependent on who you know, and who likes you.

Individuals from two of the Advocacy Groups expressed concern related to the Director of Human Resources, Judy Hudson. It was felt by individuals of these groups, that Hudson was not sensitive to minority employee's issues and concerns, and that many members of the Human Resources Staff would not speak out against her for fear of reprisal. It was also felt that Hudson had the unwaivering support of the Regional Forester and Deputies, and therefore, issues brought to their attention regarding Hudson would not be addressed and/or resolved. One employee in the Human Resources Staff stated that the poor work environment in Human Resources could be resolved by moving Hudson from the staff.

There are at least four different categories that I have identified as contributing to the negative work environment in Region 3. These same categories contribute to how employees view the effectiveness or ineffectiveness of the Civil Rights program in the region. The categories, and some examples are:

1. **Fear and Retaliation**
   - Employees have observed retaliatory actions against others.
   - There is a lack of trust between management and employees.
   - Employees concerned that if Forest Personnel Officer (Cibola) found out they were talking to the Special Assistant, discrete and subtle action would be taken against them by this person.
   - An employee's supervisor (now retired) directed him to go to a local store to purchase Playboy magazines for him. The employee stated he feared retaliation if he refused to do what his supervisor directed him to do.
   - Employee who believed she was victim of age discrimination was afraid to file EEO complaint because she had 2 years left to retire, and needed her job. This employee was eventually moved from her position to a lower graded position. District Ranger told her it was because she asked too many questions.
   - Advocacy Group leader was afraid to discuss his concerns with Regional Forester because of previous EEO activity.
   - District Ranger would not disagree with his supervisor. Stated that he would do whatever supervisor asked him to do, even if he knew or felt it was wrong.
   - Employee told by his supervisor that if he filed a grievance, it "would mean war."
   - Unfunded employees who felt they were being passed over for vacant funded positions were afraid to discuss concern with their supervisor, lest it result in even fewer opportunities.
   - Member of Advocacy Group for disabled, told by national chair to keep a low profile; not to cause waves because program was in its infancy.
   - Employee elected to work in what she called harassing and threatening (physical and emotional) work environment rather than discuss her concerns with supervisor. Employee felt she could not take action until she achieved next grade level, at which point she could consider resigning.
   - Letter sent by Regional Forester to FSHEA on 11/6/95, where he encouraged FSHEA to reconsider their course of action; viewed by FSHEA as retaliatory.

2. **Lack of Communication**
   - Employees do not know or understand their rights and responsibilities.
   - Regional Forester would not/did not immediately address what he perceived to be inappropriate actions by FSHEA due to fear of EEO complaint being filed.
   - Regional leadership seems more willing to listen and perpetuate rumors, and defend a particular position, versus identifying and resolving the real issues and concerns of employees.
   - At all levels of the organization, from Regional Forester level to field employee, employees are not talking to each other; letting other employees know of inappropriate behavior; of what's bothering them. This makes it difficult to distinguish fact from assumption.
   - Employees stated critical information is stopped or held at the Forest Supervisor level.

- One District Ranger stated that Forest Management/Leadership Team only meets 1-2 times per year; Rangers on Forest do not interact with each other.
- Employees do not feel that their input is solicited; and/or their input considered when given, i.e., not asked for input, or actions do not reflect input was considered.
- Employees do not understand basic personnel practices and procedures. Many believe they can be fired overnight.

3. **Lack of Leadership (as indicated by lack of responsiveness by management to employee concerns)**
   - Employee in Personnel states that they have many examples of illegal or inappropriate actions/activities, but will not discuss with management due to management's past history of ignoring, and because "it won't make a difference."
   - Many employees don't see the Regional Forester as being in charge of the region. This is due in part to the Regional Forester's desire to have full support of Regional Leadership Team, before making a decision.
   - Regional Forester and Deputies seem to respond with doubt when issues of resprisal/retaliation brought to their attention, thereby exhibiting "discounting" behavior. This behavior was exhibited by the Regional Forester and Deputies at three meetings I attended.

4. **Lack of Understanding of the EEO Complaint and Grievance process.**
   - Employee on Santa Fe Forest told by District Ranger that he (Ranger) felt employee was discriminated against, but discouraged filing of EEO complaint because of effect it would have on employee's career.
   - Employee given grievance procedure information by Regional Human Resources Staff, which was incorrect. Resulted in employee missing timeframes.
   - Many employees called me to ask how to file; who to contact; what issues constituted EEO versus grievance.

Recommendations

Communications

I believe the Regional Forester should focus his efforts to improve communications in Region 3. The priority for his efforts should be: 1) Communications between employees; 2) Communications between employees and management; and 3) Communications between management and employees. In order for his communication efforts to be successful, the environment MUST allow employees to believe they can communicate without personal or professional harm.

Civil Rights

It is difficult to address civil rights issues when you do not have a well defined Civil Rights Program. A program needs to be developed so processes and procedures are clearly understood. Reestablishing the Civil Rights Director position is the first step in the right direction. In order to ensure a successful Civil Rights program, the focus and attention placed on the Civil Rights program must be equal to, and as important as, that focus and attention placed on other regional programs.

The Regional Civil Rights Program must include a role for Advocacy Groups. The Regional Forester must continue his dialogue with these individual Groups. Rebuilding a trusting relationship is paramount to achieving honest and open communications between the groups and Management, and between the Groups themselves.

Conflict Resolution vs. Conflict Adversaries

The Region must move away from resolving conflict in an adversarial environment. The Regional Forester and his Leadership Team must move beyond focusing on a group of individuals, and focus on the issues. A very specific action plan, which identifies what is to be done, the objective to be achieved; who is responsible; and by what date, must be developed. Time, energy and funding must be devoted to this goal.

Addressing Employee Issues/Concerns

Employees in Region 3 MUST have a process to address their concerns in a manner that is neutral, without fear of personal or professional retaliation. This process must include response and monitoring components that reflect the Regional Forester's commitment to Region 3 employees, their concerns, and the general work force environment. Some ideas include:

Establishing an early intervention Hotline, similar to Region 5. This Hotline would provide a way for employees to raise issues and concerns about discrimination, sexual harassment, gender harassment, reprisal and have them addressed prior to filing EEO complaints or grievances.

Establishing an "ombudsman" position or responsibility, where an individual serves as the method for employees to raise issues and concerns. This is similar to the "hotline", only has a person vs. a mechanical device for employees to talk to.

Develop an Affirmative Employment Program Plan that is easily understood and viewed as a useful tool to monitor career progression and employment actions that help diversify the workforce and deal with workforce diversity issues.

Openly recognize the employee Advocacy Groups and the positive role they play in addressing employee's issues and concerns.

Develop conflict resolution skills that deal with the issues not people.

Develop performance elements that ensure inappropriate actions and behavior are handled promptly and effectively.

The Regional Forester must display stronger, more visible leadership in the area of Civil Rights and positive work environment. Action plans developed must be implemented. "Visibility" can be enhanced by developing a video, or having the Regional Forester take time to visit each forest and interact with employees. Encourage honest; ensure safe, dialogue.

Regional Forester should work with management consultant to assess current leadership skills, and/or to develop effective leadership skills.

Regional Forester should investigate allegations of illegal personnel actions.

The Region needs to complete analyses that evaluate adverse impacts and civil rights impacts as a result of downsizing, budget deficits, and any other actions/decisions that may affect employees. Only then, can the Region do an accurate assessment of the civil rights impacts in their work force.

Conclusions

While on the detail, I heard a concern raised, that because I would not be able to speak with every employee, whatever conclusions I drew from those I did speak with, would not be an accurate reflection of the regions issues and concerns. This concern may or may not have validity. It is my opinion that employees need to be advised of the opportunity to provide input. They also need to be assured that their input will be taken at face value, and that they will not be subjected to reprisal for availing themselves of the opportunity to speak. With this in mind, I commend those employees who came forward to share their thoughts, opinions, and perspectives regarding the Region's work environment and Civil Rights concerns.

There were several members of the Leadership Team who preferred to focus on the positive things that employees had to say, versus the issues and concerns of employees. While it is important to recognize and build on the positive, the work environment, and numerous employee concerns indicates the work force as a whole does not think many positive things are happening in Region 3. Denying there are problems in Region 3 does not alleviate the Region's responsibility to identify and correct these problems.

This concludes the summarization of my detail as Special Assistant for Civil Rights, Region 3. Specific or detailed information obtained through my discussions with employees can be provided upon request. Please do not hesitate to call me at (818) 335-1251, ext. 250 if you have questions.

PEGGY HERNANDEZ
District Ranger

Enclosure

cc: Regional Forester, Region 3
Luther Burse, W.O.
Christine Pytel, W.O.

United States Department of Agriculture

Office of the Assistant Secretary for Administration

Office of Civil Rights

1400 Independence Avenue SW

Washington, DC 20250

Case Number: 971223-1260

AUG 30 2000

Chenay Costen
c/o Alexander J. Pires
Langston Frazer Sweet & Freese, P.A.
201 North President Street
Jackson, MS 39201

Dear Mr. Costen:

The Office of Civil Rights (CR) has reviewed your December 23, 1997, discrimination complaint in which you allege that the Department of Agriculture (USDA) discriminated against you.

The Office of Civil Rights has determined that you are an African American farmer who alleged discrimination based on race related to a credit application. You are a potential member of the African American class of farmers who were eligible to participate in the *Pigford v. Glickman* class action settlement. If you did not opt out of the class action, CR must close your case.

If you have not filed a claim or opted out, you must file a claim no later than September 15, 2000. No extension will be granted. You may obtain a claim form by calling the Facilitator, Poorman Douglas. The telephone number is (877) 924-7483. The claim form must be postmarked no later than September 15, 2000.

No person shall be subjected to reprisal or harassment because he or she filed a discrimination complaint; participated in or contributed to the identification, investigation, prosecution or resolution of civil rights violations in or by any USDA conducted program or activity; or otherwise aided or supported the enforcement of Federal or USDA civil rights laws, rules, regulations, or policies.

This is USDA's final action regarding your complaint. You may wish to consult an attorney. If you have any questions concerning our determination, you may write our office at U. S. Department of Agriculture, Office of Civil Rights, 1400 Independence Ave., S.W., Room 326-W, Washington, DC 20250-9430, to the attention of Program Investigations Division.

Sincerely,

Rosalind D. Gray
Director
Office of Civil Rights

cc: Alexander J. Pires

AN EQUAL OPPORTUNITY EMPLOYER

HISPANIC ROUND TABLE OF NEW MEXICO

Juan José Peña, GI Forum, Chairman 1998
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***

Congressman Robert Menéndez
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Washington, DC 20515

Congressman Carlos Romero-Barceló
2443 Rayburn House Office Bldg.
Washington, DC 20515

Congresswoman Lucille Roybál-Allard
2435 Rayburn House Office Bldg.
Washington, DC 20515

Congressman Robert Underwood
424 Canon House Office Bldg.
Washington, DC 20515

Congressman Rubén Hinojosa
1032 Longworth House Office Bldg.
Washington, DC 20515

Congressman Ciro Rodriguez
323 Canon House Office Bldg.
Washington, DC 20515

Dear Members of the New Mexico Congressional Delegation And the Hispanic Congressional Caucus:

The Hispanic Round Table is a consortium of some 35 member organizations, all of which deal with issues of concern to the Hispanic community throughout the State of New Mexico. At a duly called meeting of the Board of Directors of the Hispanic Round Table, the issue of the continuing mistreatment, harassment and retaliation against Hispanic employees of the United States Department of Agriculture, Forest Service, was brought to our attention. After discussion, it was decided that this letter would issue, to be signed by me as the chair of the Hispanic Round Table, making inquiry into the problem and requesting strong involvement by your offices.

Concerns regarding the civil rights atmosphere within the United States Forest Service are matters of well-documented historical standing. As early as May 13, 1968, M.J. Hassell documented the problems surrounding the Forest Service's lack of accountability and indifference to the native communities of New Mexico in a 40 page report entitled, "The People of Northern New Mexico and the National Forests". The objective of Hassell's report was "to determine possible ways of making the resources of the National Forests in northern New Mexico and the work they generate, contribute more effectively to the people who reside there". Mr. Hassell made ninety-nine (99) recommendations, which identified specific ways in which the Forest Service could improve its program delivery, by including native New Mexicans.

The central theme of Hassell's recommendations, that of including local, native New Mexicans in addressing the problems, continues to be ignored by the Forest Service and the Department of Agriculture.

Around 1989, when the Chief was Dale Robertson, the Forest Service and Hispanic management officials of the Forest Service jointly founded the Forest Service Hispanic Employees Association (FSHEA). The Forest Service participated with FSHEA in what was then known as the "Partners for Success" program. Officially accepted and recognized by the agency were the following issues of concern:

1. The under-representation of Hispanics in line and staff positions at all levels;

2. Hispanic females conspicuously absent at most grade levels and occupational series;

3. Selecting officials are not held accountable for non-selection and promotion of Hispanics;

4. Hispanics are not receiving developmental training and career advancement;

5. The Forest Service is not well-known in the Hispanic community and Hispanics are not aware of opportunities that the agency has to offer. ("Program Delivery problems.)

The above issues have been recognized and re-validated by each Forest Service Administration (Jack Ward Thomas and Michael Dombeck) since their initial recognition in 1989. Despite official acceptance and recognition of these issues, however, tension has continued to grow within the Forest Service as management indifference and reprisal has been seen by Hispanic employees to worsen, and management efforts to address the problems have been shown to be ineffective or counter-productive.

Concerning "Program Delivery," in New Mexico, conflict between the United States Forest Service and traditional Hispanic communities has long been a fact of life. Heated confrontations between Hispanic community members and Forest Service officials have frequently erupted over the use of Forest Service controlled lands that were once large portions of community-held land grants. This has been especially true in the Santa Fe National Forest, Española District, which includes traditional Hispanic communities such as Tierra Amarilla and Truchas, both of which are land grant based communities.

Region 3 of the United States Forest Service is the region encompassing the states of New Mexico and Arizona. In 1996, concern regarding a negative civil rights atmosphere in Region 3 prompted the assignment by the Chief of the Forest Service of Peggy Hernández, a District Ranger out of the Angeles National Forest in California, to serve as Special Assistant for Civil Rights in conducting an investigation of the civil rights environment for Hispanics within Region 3. Her report, dated September 16, 1996, which is included with this letter, documents a high level of frustration and intimidation by Hispanic employees in this Region, which is reflected as a widespread belief that voicing concerns will result in retaliation by management officials and adverse career consequences. The atmosphere documented by District Ranger Hernández in her report has been especially evident from 1995 through 1998, in the following particulars.

1. November of 1995, FSHEA officially requested (in writing, of Deputy Forest Service Chief for Natural Resources Gray Reynolds at the time of a visit to New Mexico) an investigation of the above-described civil rights issues. In his closeout report, Deputy Chief Reynolds made the following observations:

> **"The Native American and Hispanic cultures dominate many of the resource issues in the Southwest and require an expertise that greatly exceeds the Forest Service's capability." (Closeout Report, Deputy Chief Gray Reynolds, December 4, 1995)**

2. FSHEA executives, increasingly concerned about the lack of Forest Service response to these pressing issues, began in late 1995 to formulate plans for a high-profile effort to engage Forest Service management in dialogue geared towards addressing Hispanic concerns, both within and without the agency. In late 1995, Personnel Director Judy Hudson of Region 3 assembled a position paper or white paper" dated October 5,1995, in anticipation of the scheduled visit by Deputy Chief Gray Reynolds. This document included statements with which Hispanic Forest Service employees took strong exception, such as "the total work force is currently at 55.5% minorities and women, which is very impressive." What such statements ignored, principally, was that virtually no minorities were progressing beyond the lower grade levels, and almost no Hispanics were represented in policymaking positions. Personnel Director Hudson, soon after her arrival from Idaho and after her promotion to the position of Region 3 Personnel Director, had been heard to remark that "The problem in this Region is that Hispanics have too much influence,"

and that "**we** are going to put a stop to that." These remarks have been documented in an affidavit signed by a first-hand witness, which is on record with the Forest Service;

3. FSHEA officials drafted a letter, dated October 24, 1995, addressed to Forest Service Chief Jack Ward Thomas and simultaneously delivered to Deputy Chief Reynolds and Region 3 Regional Forester Chip Cartwright. This correspondence voiced concerns that the Region's diversity targets were not being met because of 1) the regional leadership's attitude towards cultural diversity and 2) the regional leadership's lack of skills and knowledge to effectively manage a diverse organization. (FSHEA letter dated October 24, 1995) The letter pointed out that 1) 70% of Region 3 minority employees held GS-9 or lower-graded positions, primarily in clerical and technical fields; 2) of all positions. at GS-12 and above, 85% were held by non-minorities and only 2% were minority women, compared to 18% non-minority women; 3) the Region's stance that it funded four "notable programs" geared towards benefiting minority communities did not address the fact that such programs were a continuation of the past twenty years of entry-level and technical position recruitment, and offered no solutions to today's cultural diversity issues; and 4) no plan was offered by the agency to answer why, after 20+ years of recruitment, 74% of the Region's minorities remain at the GS-9 and below grade levels. (Id.)

4. FSHEA was also concerned over the practices of Region 3 Deputy Regional Forester for Administration Lou Volk, a management official with over 20 years in Region 3 and perhaps 30 years experience with the Forest Service. Deputy Regional Forester Volk had been instrumental in bringing Personnel Director Judy Hudson to New Mexico, promoting her into the position of Personnel Director, and acting as her mentor. As mentioned above, one of Hudson's early comments upon arriving in New Mexico was that Hispanics had "too much influence" and that "we are going to put a stop to that."

5. On November 6, 1995, Region 3 Forester Chip Cartwright directed a hostile letter to FSHEA regarding FSHEA's request for an investigation. Cartwright initiated this retort by stating, "Frankly, I'm disappointed in the tone of the letter and the manner in which the letter was brought to my attention."

6. On December 4, 1995, Deputy Chief Reynolds issued his Closeout Report;

7. On February 12, 1996, FSHEA, including advisor Joe Sedillo, a lawyer employed by Region 3 in its Office of Human Resources, met with Regional Forester Chip Cartwright, Deputy Regional Forester for Administration Lou Volk, and Deputy Regional Forester for Natural Resources John Kirkpatrick, regarding FSHEA's request for a USDA investigation. The FSHEA officials stressed the need to address and take meaningful action on the five issues described above, acknowledged by the agency in 1990. Cartwright stated that his only reason for the meeting was that FSHEA "stop the letter-writing campaign." FSHEA informed the Regional Forester that its objective was that the agency address the issues and produce measurable results;

8. On March 8, 1996, Joe Sedillo was appointed interim co-chair. An electronic mail message was sent by Mr. Sedillo to Chip Cartwright notifying him of this fact;

9. On March 15, 1996, a Civil Rights Team dispatched jointly by the United States Department of Agriculture and the U.S. Forest Service, came to Albuquerque to listen to concerns regarding the Civil Rights atmosphere in Region 3. The USDA senior official was George Robertson, Director of Civil Rights. Robertson brought with him a staff member by the name of Rick Chávez. The Forest Service senior official was Kathleen Connelly, Deputy Chief for Administration. Ms. Connelly brought with her Christine Pytel, a Hispanic female Associate Deputy Chief for Administration. Luther Burse, Director of Civil Rights for the United States Forest Service, also attended this meeting, as did Lyle Laverty, Director of Recreation, Heritage and Wilderness Resource Management for the Forest Service. Representing FSHEA were co-chair Joe Sedillo, Marlene Nuñez, Treasurer; Delbert Griego, Zone 3 representative, and advisors Miguel Aragón, Carmen Mazer, and George Martínez.

10. The March 15, 1996, meeting included an introduction by acting FSHEA co-chair Joe Sedillo. After Mr. Sedillo's introductory comments, which included expressions of concern over the attitudes and postures taken by Director of Human Resources Judy Hudson and Deputy Regional Forester Lou Volk, Kathleen Connelly and Luther Burse stated that they had come to gain a better understanding of the issues, to listen, and to work towards resolution. Burse added that there was a strong desire on the parts of the Secretary of Agriculture and the Chief of the Forest Service to "move towards the point that will eliminate the need for a working partnership." George Robertson indicated a desire to "get the parties to the table to

resolve issues and work together." Robertson further stated that there were opportunities to work through these issues, and assured FSHEA that progress would be monitored through the Department of Agriculture. Robertson stated that the investigation requested by FSHEA of the Department had not been foreclosed, but stated that an investigation would be a last resort, and that he preferred to work towards a resolution. Robertson stated that he had related to Associate Chief Dave Unger the Department's expectations regarding this situation. Kathleen Connelly commented that it was "our collective responsibility" to work things out, that the Chief of the Forest Service considered FSHEA's concerns very important, but felt that it was best, to work things out without an investigation at this time. Connelly further stated that "any group of people that want to come to a common goal can work it out," and stated that she viewed the meeting as a "first step," with investigation as a "last resort."

11. Miguel Aragón and Joe Sedillo emphasized the unwillingness of Region 3 management to listen to FSHEA's concerns, thus accounting for FSHEA's having taken the stance it took. Kathleen Connelly stated that the' two sides needed to listen to each other. George Robertson noted that the issues articulated had been raised more than once, and that their being in Albuquerque was intended to intercede to facilitate resolution. Robertson added that more could be done by "coming to the table" and noted that this was "the best way to go for now."

12. Carmen Mazer inquired whether, if the Chief of the Service intended to resolve these issues, did part of the role of the agency representatives present at the meeting include authority to make commitments on behalf of the agency to resolve the issues. Luther Burse responded that the agency representatives were not present to make commitments on behalf of the Chief at this time.

13. Delbert Griego explained that Hispanic Forest Service employees were feeling considerable frustration that the issues were discussed over and over, but that no definitive actions were taken to change the situation.

14. The March 15, 1996, meeting continued with similar comments. FSHEA presented an organizational chart showing that, all but 4 of 31 senior leadership positions had experienced turnover within the preceding 6 years. A chart of District Rangers showed that only 4 out of 63 were Hispanic. George Martínez noted that the continued placement of non-Hispanic Forest Service leaders in predominately

Hispanic northern New Mexico communities when these individuals knew little of the local culture, and perhaps had little inclination to learn, seemed to perpetuate ongoing conflicts between the Forest Service and these communities. Martínez stated that the agency seemed to have learned little from the events surrounding an uprising led by famed land grant leader Reyes López Tijerina thirty years ago.

15. Joe Sedillo presented 19 Forest Service employee testimonials to the management officials present. A copy of these testimonials is attached with this letter. At the request of the employees, who feared retaliation, their names and identifying information was removed from their statements. The testimonials addressed issues of civil rights concern, from inequity in employment and training opportunities to fear of retaliation for voicing concern over civil rights issues. These 19 cases of discrimination continue to be ignored by the Forest Service, despite Mr. Sedillo's repeated offers to assist the agency in addressing them.

16. At the close of the meeting, George Robertson voiced that he was "embarrassed for the Department" that these problems existed. Joe Sedillo stated that FSHEA felt that it "needed to see a commitment." Kathleen Connelly stated "we're going to have a commitment." Sedillo replied, "we do not see a commitment at our level." Miguel Aragón stated that the position Region 3 management seemed to be taking was that "'no relationship is better than a bad relationship." This is a sentiment that Aragón had heard Deputy Regional Forester Lou Volk voice regarding resolution of employee issues.

The well-intended "feel good" comments from high-ranking management officials described above notwithstanding, what has ensued following the voicing of concerns by FSHEA and individual Forest Service employees regarding the negative civil rights atmosphere within the agency is a virtual "war of retaliation" against Hispanics. The following anecdotes are highly illustrative of this:

1. The week following the meeting, Joe Sedillo requested that the FSHEA secretary publish the minutes of the March 15, 1996, meeting to possibly interested Hispanic Forest Service employees over the Forest Service electronic mail system. On May 2, 1996, Mr. Sedillo was accosted by Director of Human Resources Judy Hudson, who waived papers in his face, almost striking him, while shouting that she demanded written justification for Mr. Sedillo's statements that she had

demonstrated contempt for Hispanics. Mr. Sedillo filed an EEO complaint regarding this issue and the Department of Agriculture found "no discrimination";

2. On July 18, 1996, John López, Assistant Director for Personnel Management, U.S., Forest Service, Washington Office, came to Albuquerque, unannounced. López, accompanied by Associate Deputy Chief for Administration Christine Pytel and Employee Relations Specialists Hope Esperanza Pineda and Hugh Maxwell, stated to Mr. Sedillo that he wanted to talk about the "conflict with Judy Hudson." They demanded examples of the manner in which Hudson treated Hispanics with contempt. Mr. Sedillo gave them examples, and identified other Forest Service employees that could be contacted for information. These employees were not contacted.

3. On July 19, 1996, Mr. Sedillo asked that Mr. López and his team meet him and his attorney. Mr. López agreed to meet with Mr. Sedillo at 2:00 p.m., the only time that Mr. Sedillo's attorney was available. López indicated that team member Chris Pytel had already left, and that two other members were scheduled to leave. Mr. Sedillo requested that the other team members delay their departure, but by 2:00 p.m., Mr. Sedillo and his attorney met alone with López, the other team members having already left Albuquerque.

4. Upon questioning by Mr. Sedillo's attorney, John López admitted that Joe Sedillo was the target of his investigation. Until that moment, Mr. Sedillo and his attorney had both believed that Judy Hudson was the target, as she had engaged in misconduct in the form of violence in the workplace and discrimination. When López stated that Sedillo was the target of the investigation, Sedillo asked what penalty was being considered. López responded that the penalty might range from "suspension to termination."

5.On July 23, 1996, Sedillo wrote a letter to USDA Secretary Glickman, hand-delivered the sa day, complaining of his further victimization by the agency in the form of John López' investigation; again, the Department of Agriculture found no discrimination.

6. On July 25, 1996, FSHEA officers met with United States Department of Justice officials. At this meeting the focal point included specific instances of reprisal by Human Resources Director Judy Hudson. The Regional Forester's Management Team, excluding Judy Hudson, attended this meeting. Hudson was excluded at the

request of FSHEA officers, who stated that they wished to be free of reprisal. Regional Forester Chip Cartwright stated at this meeting that "it [reprisal] is merely your perception";

7. The "perception" of reprisal has been extremely evident in the Española District, where in 1998, as many as 35 Hispanic employees, all of whom had either been active in filing EEO complaints and requests for Congressional inquiries, or were perceived by management as being "close" for reasons of friendship or familial ties, to those employees who had brought such complaints, were fired from their jobs or, after years of seasonal employment with the agency, suddenly discovered that they would not be returning to work for the Forest Service. The three individuals believed by management officials to be the "principal" EEO filers were all simultaneously targeted for an OIG investigation. After an extremely one-sided investigation which involved witness intimidation and the overlooking or burying of evidence and testimony favorable to these employees, all three were targeted for removal from their jobs. The charges against these three individuals, Frank Miera, Minnie Miera, and Andrew Serrano, appear to have been cut by the Forest Service from whole cloth. Each of them is a long-time Forest Service employee. Minnie Miera, the most senior of the three, is a 25+ year career employee and the Finance Officer at the Española District offices. She was charged with over 300 instances of mismanagement of funds, despite the fact that she had passed numerous audits by the Forest Super-visor and the District Ranger. Minnie was placed on administrative leave for months while the OIG investigation was underway, and was then denied access to information critical to her defending against these scandalous accusations. She suffered a stress-induced heart attack, and then was fired from her job. Frank Miera, her husband and another participant in the filing of EEO complaints and complaints to Congress, was targeted for termination in a similar manner. Andrew Serrano, Acting Fire Management Officer, was falsely accused of "sexual harassment" of a woman who was not his subordinate and who never made a contemporaneous complaint to management during the course of the supposed harassment. This "victim" made statements to at least two independent witnesses that Forest Service management had promised her a two-grade promotion in exchange for her making statements against Andrew Serrano. The "victim" was, in fact, promoted shortly after proceedings against Mr. Serrano were initiated. The disciplinary records of each of these employees was essentially spotless before they became active in bringing issues of discrimination within the Forest Service to the fore.

Members of the New Mexico Congressional delegation, and Members of the Congressional Hispanic Caucus, the civil rights issues addressed herein, are long-standing, and require your intervention. The Forest Service and the Department of Agriculture, have demonstrated by their actions, that they do not have the sensitivity or the human resources necessary to bring about meaningful, long-lasting change. Yet, they continue to shun repeated offers by qualified Hispanics to assist the agency.

Joe Sedillo, one of the victims of the reprisal described in this letter, has made such offers of assistance. The Forest Service has consistently turned a deaf ear to Mr. Sedillo's offers to work within the agency to bring about much needed change., Yet, Mr. Sedillo brings to the agency an impressive background, which includes the following:

◊ he's been an attorney 14 years;

◊ he has over 25 years of management experience;

◊ he has been directly involved resolving civil rights issues for the past 30 years;

◊ he received a commendation from USDA Secretary Glickman for his assistance in civil rights in 1995; and

◊ he is a native of New Mexico and is imminently qualified to address the civil rights issues that the Forest Service has failed to address.

Mr. Sedillo is one of many highly qualified Hispanics whose talents and efforts could be brought to bear at all levels to address the- problems within the United States Forest Service outlined in this letter. Instead, those Hispanics that do not leave the agency altogether are likely to become the victims of reprisal as outlined for you in this letter. It is very important to note that the Forest Service has only two Hispanic employees in the Senior Executive Service (SES) in its entire workforce; yet, USDA in collaboration with the Forest Service, continues to reject Mr. Sedillo, and other very highly qualified Hispanics, who seek placement in the SES.

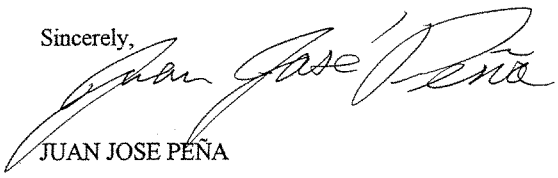
It is our understanding that Hispanic employees of the Forest Service in Washington, D.C. have already taken the initial steps in filing a class complaint against USDA and the Forest Service for violating Title VI and Title VII of the Civil Rights Act of 1964, and that others in the Southwest are contemplating filing one as well.

The Hispanic Round Table, and the many organizations we represent, will support a civil rights class complaint by the Hispanic employees of the Forest Service Southwestern Region; however, we are hopeful that your intervention will result in the Forest Service and USDA taking immediate steps to place individuals such as Mr. Sedillo in positions of authority, necessary in resolving these long-standing problems.

Given the long history of inaction and deliberate neglect by both USDA and the Forest Service, however, we see no alternative to litigation, unless your offices intervene in a manner that is both swift and decisive.

We await your prompt response.

Sincerely,



JUAN JOSE PEÑA

Chair

cc: Congressional Black Caucus, Hon. Maxine Waters
USDA Minority Employees Coalition, Lawrence Lucas

September 7, 2000

The Honorable Richard Lugar, Chairman
Committee on Agriculture, Nutrition, and Forestry

Ruby Joann Martens
107 Hill Street
Wolf Point, Montana 59201

Dear Mr. Chairman:

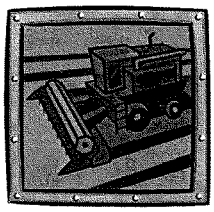
Thank you so much for holding the oversight hearing on civil rights enforcement at the U.S. Department of Agriculture. This is to advise you that, ever since I filed my discrimination complaints in 1993, the Farm Service Agency (formerly the Farmers Home Administration) has retaliated against me for going against them, which continues up to today.

I met with Rosalind Gray to discuss my case on July 20. The day after that meeting, I submitted some supplemental materials to her. She told my attorney that she needed some answers from other agencies, i.e., FSA, to respond to what my attorney and I told her at the July 20 meeting. It has been over 50 days since she made that request of the other agencies. Clearly, they are stalling on this. How long will they be able to stall? Forever? Who will hold them accountable?

Some people at USDA believe they are accountable to no one, especially on civil rights issues. Please do something to make USDA more responsive to the minorities and women who both are especially needing of USDA programs and especially vulnerable to discrimination by the "good old boy" network.

Sincerely,

Ruby Joann Martens



NICODEMUS FLOUR COOP INC
RR #2 BOX 132
NICODEMUS, KS 67625

edgarh@fcstone.com

Senator Richard G. Lugar, Chairman
Senate Committee on Agriculture,
Nutrition & Forestry
U.S. Senate
Washington, D.C.

September 13, 2000

re: ***YESTERDAY'S (SEPTEMBER 12) USDA OVERSIGHT HEARING***
COMMENTS ON FSA - - COMMODITY CREDIT CORPORATION (KCCO)

Dear Senator Lugar:

Through midnight serendipity via watching C-SPAN, we observed comments dealing with the Farm Service Agency in which we would like to add our testimony. We embrace many of the comments that were made before your committee. However, our concern is the sustaining program, after 'the lawsuit' settlement.

The Nicodemus Flour Coop is drawn from the thirty members of the Kansas Black Farmers Association (KBFA). Last year, the KBFA came into existence at a meeting of farmers in Nicodemus to discuss the USDA lawsuit.

In November 1996, Congress established the Nicodemus National Historic Site as a unit of the National Park System. In 1877, following the Civil War, ex-slaves migrated from Kentucky seeking to establish a community portrayed as an opportunity for black self-government. Over a hundred years later, the community of Nicodemus is still seeking to be autonomous in the area of community development via having some control of our grain marketing via value-added and access to export outlets through indigenous reunions with sub-Sahara Africa.

The grain industry is a very mature and traditional business. *(In Africa, Biblical Joseph, interpreting Pharaoh's dream in the Book of Genesis, was the first government CCC official)*. Also, the industry is capital intensive, clannish, and currently functions in an over-capacity environment. The Nicodemus Flour Coop *standing alone*, as most *underserved farmer* coops, currently can't meet the financial eligibility on Standard Form 129 (enclosed) that the CCC requires to qualify. Is your response, "So be it!"?

The USDA has a pilot export program (two-sided enclosure) that should involve the commodity operations (CO) of the USDA in an ***outreach*** effort. On inquiring why our Coop has not heard anything on our March program application, we find out that the program has no one to help implement it. This program needs FSA (CCC) participation. When it comes to commodity marketing, the CCC is our government's expert on buying and selling, dealing with major exporters, and transportation.

The Nicodemus Flour Coop interest goes beyond just a FOB price.

Also, the Senate's Small Business Committee, chaired by Senator Kit Bond, has pending legislation that would *reduce* the incentives for *underserved* participants in a HUBZone trying to qualify for USDA-CCC grain business. In the area of bulk grain to Africa, there really should be a *greater incentive* in an effort to put an end to *program delivery apartheid.*

Eight million black souls starving in Ethiopia ($145 million in Section 416(b) business) and not one black entity in America is in a position to be an indigenous bridge in connecting black farmers with sub-Sahara! Note the most recent announcement (Invitation 204, two-sided enclosure) to Ethiopia for 5,000,000+bushels. It truly gives vision to a Civil War type of ag-apartheid in which even our 1890 Land-Grant institutions don't have the capacity to provide educational outreach.

Senator Bond's committee needs input from the *underserved* but (earlier this year) in bringing the issue to the attention of the Sub-Committee on Outreach within the USDA's Advisory Committee on Small Farms, we could not network with anyone outside of the current exporting multinational corporations to help educate and shed light on the 'seclusive impact' the commodity operations (CO) function of the FSA has on the future existence of black farmers.

Within our USDA, when it comes to donation program delivery in grain to Africa, should it continue to be understood that black farmers never will have the tools to participate? If not, is there room for correction in the 2002 farm bill?

Please add our testimony into your official record.

Respectfully,

Edgar J. Hicks, marketing for
Nicodemus Flour Coop

enclosure: 4 (two-sided)

cc: Senator Pat Roberts, Kansas, Senate Committee on Agriculture
Representative Jerry Moran, Kansas, House Committee on Agriculture
Senator Christopher Bond, Missouri, Chairman, Senate Committee on Small Business
Senator Tom Harkin, Iowa, Senate Committee on Agriculture and, Senate Committee on Small Business
Representative Eva Clayton, North Carolina, Congressional Rural Caucus

SEQUOIA NATIONAL FOREST
GREENHORN RANGER DISTRICT.

SEPTEMBER 19,2000.

EDDIE L. CHILDS.

DEAR CHAIRMAN DICK LUGAR.
WE UNDERSTAND THE DEADLINE SET FORTH BY YOUR OFFICE AND WE UNDERSTAND AND WILL FOLLOW YOUR DECISION. HOWEVER, THIS IMPORTANT INFORMATION WAS PRESENTED TO US FOUR DAYS AFTER THE POST MARK DATE ON YOUR DOCUMENT (9/12/00).

PLEASE TAKE NOTE THAT THE GROUP OF PEOPLE NO THIS DOCUMENT IS WORKING EXTEMELY HARD TO MAKE YOUR DEADLINE WITH ACCURATE INFORMATION. WE UNDERSTAND ALL OF THE CRITERIA SET FORTH BY YOUR OFFICE.

ATTACHED IS A LIST OF ISSUES THAT I GATHERED DURING A PHONE INTERVIEW WITH THE FOLLOWING PEOPLE: STEPHANIE MARTINEZ (X- FOREST SERVICE EMPLOYEE, SEQUOIA NATIONAL FOREST), ROBERTO TRISTAN (FULTON HOTSHOT FIRE FIGHTER, SEQUOIA NATIONAL FOREST, GREENHORN RANGER DISTRICT), RICHARD SANDAVAL (FIRE ENGINE CAPTAIN, PEPPERMINT STATION, SEQUOIA NATIONAL FOREST), JILL SLATER (AUTOMATION CLERK, SEQUOIA NATIONAL FOREST, GREENHORN RANGER DISTRICT), EDDIE CHILDS (FIRE ENGINE CAPTAIN DEMOCRAT STATION, SEQUOIA NATIONAL FOREST, GREENHORN RANGER DISTRICT), RAUL ESTRADA (FIRE PREVENTION/PATROL UNIT, SEQUOIA NATIONAL FOREST, GREENHORN RANGER DISTRICT), LORREN LOMAX (ARCHEOLOGIST, CANNEL MEADOW DISTRICT, SEQUOIA NATIONAL FOREST).

MR. LUGAR, HERE'S A LIST OF CONCERNS RELATED TO THE WORKPLACE AND THE WORKFORCE. THE LISTS OF ISSUES REPRESENT THE CENTRAL POINT OF THE GROUP'S CONCERNS. ALTHOUGH HARSH, THESE ISSUES HAVE TO BE ADDRESSED AT THE HIGHEST LEVEL POSSIBLE.

ISSUES:

- PARTICIPANTS HAVE RECEIVED UNACCEPTABLE PERFORMANCE RATING FROM SUPERVISORS.
- RECEIVED LETTERS OF WARNINGS AND LETTERS OF REPRIMAND FOR UNKNOWN OR UNSPECIFIED REASONS.
- PARTICIPANTS ON THIS DOCUMENT LIVE WITH SLANDEROUS REMARKS FROM OTHERS ON THE DISTRICT AND ON THE FOREST.
- PARTICIPANTS ON THIS DOCUMENT HAVE BEEN INVESTIGATED FOR MISCONDUCT INFRACTIONS WITHOUT ANY KNOWLEDGE OF THE INVESTIGATION.
- INDIVIDUALS HAVE BEEN DENIED FIRE ASSIGNMENTS.
- MANAGEMENT REPRISES ON ETHNIC MINORITIES PERSONNEL WITH TREATING LETTERS OF WARNING AND LETTERS OF REPRIMAND.
- MANAGEMENT ASKS FOR MANY PIECES OF DOCUMENTATION TO SUPPORT A COMPLAINT OF RACIAL HARASSMENT, DISCRIMINATION, GENDER HARASSMENT.
- PARTICIPANTS ON THIS DOCUMENT FILL THAT THEY'RE TARGETED FOR REPRISAL.

- PARTICIPANTS ON THIS DOCUMENT HAVE ACTIVE E.E.O. COMPLAINTS ON FILE.
- INDIVIDUALS HAVE BEEN BANNED FROM THE GREENHORN DISTRICT FOR EXERCISING THEIR RIGHTS.
- INDIVIDUALS HAVE E.E.O. COMPLAINTS THAT ARE 3 YEARS OLD.
- INDIVIDUALS ARE CONSTANTLY RIDICULED AND EMBARRASSED.
- PARTICIPANTS ON THIS DOCUMENT ARE CAROUSED AND TREATED INTO SIGNING LETTERS OF REPRIMAND, LETTERS OF WARNING AND SIGNING UNSATISFACTORY PERFORMANCE RATINGS.
- PARTICIPANTS ON THIS DOCUMENT HAVE BEEN OPERATING UNDER THESE CONDITION FOR YEARS.
- INDIVIDUALS ARE CONCERNED ABOUT THEIR CURRENT AND FUTURE EMPLOYMENT WITH THE U.S.D.A. FOREST SERVICE.
- PARTICIPANTS ON THIS DOCUMENT OR NOT RECOGNIZED FOR THEIR SAFETY RECORD, WORK PERFORMANCE, OR THEIR DEDICATION TO THE AGENCY.
- MANAGEMENTS ALLOW OTHER EMPLOYEES TO VERBALLY AND MENTALLY HARASS AND INTIMIDATE PARTICIPANTS ON THIS DOCUMENT.
- PARTICIPANTS HAVE BEEN AND IS CURRENTLY SUBJECTED TO A NON POSITIVE WORK ENVIRONMENT.

MR. LUGAR, THE PARTICIPANT OF THIS DOCUMENT HAD LITTLE TIME TO GATHER VALID INFORMATION. IF MORE INFORMATION IS NEEDED FEEL FREE TO CALL.

1. RICHARD SANDOVAL .
2. JILL SLATER.
3. EDDIE CHILDS.
4. RAUL ESTRADA.
5. STEPHANIE MARTINEZ.
6. LOREEN LOMAX.
7. ROBERTO TRISTAN.

EDDIE CHILDS.
SEQUOIA NATIONAL FOREST,
GREENHORN RANGER DISTRICT.
WORK PHONE 661-399-6149.
HOME PHONE 661-869-1897 OR 661-873-7515.

September 12, 2000

The Committee on Agriculture, Nutrition and Forestry
United States Senate
Washington, D.C.

Dear Senators:

I hope that you will support the recommendations of the Coalition for Minority Employees to be presented to the Agriculture Committee on Tuesday. The issues that affect minority employees, as you will see from my letter, affect all American taxpayers. That is because the atmosphere of reprisal that punishes employees to asserting their civil rights also punishes those who attempt to implement the desires of Congress and taxpayers in the implementation of USDA programs.

When Secretary Glickman promised that reprisal would not be tolerated at USDA, he was correct. Reprisal is not tolerated. It is encouraged. In my eight years as an emergency programs specialist at USDA, there have been many incidents in which USDA program administrators and human resources personnel cooperated in reprisals and violations of my civil rights. One of my supervisors bragged openly that upper management trusted him to "handle" so-called problem people— EEO complainants and whistleblowers. The same supervisor, who called a food safety whistleblower a "traitor," labeled me a "traitor" after I filed a civil rights complaint. A mere mention that I had civil rights was enough to have me sent home from work as swiftly as if I'd been diagnosed with plague.

When Secretary Glickman promised that reprisal would not be tolerated at USDA, he was correct. Reprisal is not tolerated. It is encouraged. In my eight years as an emergency programs specialist at USDA, there have been many incidents in which USDA program administrators and human resources personnel cooperated in reprisals and violations of my civil rights. One of my supervisors bragged openly that upper management trusted him to "handle" so-called problem people— EEO complainants and whistleblowers. The same supervisor, who called a food safety whistleblower a "traitor," labeled me a "traitor" after I filed a civil rights complaint. A mere mention that I had civil rights was enough to have me sent home from work as swiftly as if I'd been diagnosed with plague. My complaint and those of others indicate that reprisal is an entrenched culture at USDA. But, the reprisals have been much worse over the past four years. Rather than reprimand the guilty parties, USDA reprimanded the victim and promoted the violators.

Reprisal and discrimination are of concern to all Americans because the same people who engage in violations of civil rights often have violated public trust, as well. In my case, a supervisor refused to spend money allocated by Congress for the purpose of ensuring that USDA was prepared to assist farmers and food processors affected by a chemical weapons release at one of the nation's chemical weapons storage facilities, such as the Newport Army ammunition plant in Indiana. Most of the areas around those facilities are agricultural.

My supervisor also stonewalled the development of a USDA emergency plan for chemical weapons emergencies that would enable the Department to carry out its responsibilities, under federal law, to protect consumers, farmers and processors in an emergency. The emergency responsibilities assigned to USDA cannot be carried out by anyone other than USDA, but no money was allocated to implementing those responsibilities. Instead, my supervisor and his successor spent large amounts of money on travel to assignments that are normally done by contractors for another federal agency. As a result, consumers and the agricultural industry in ten states were needlessly left at risk. (See attached letter from the State of Colorado.)

There were many other instances when the same supervisors who violated my civil rights acted with disregard for public welfare, federal laws, or the wishes of Congress. When I tried to make USDA emergency programs as responsive to the needs of tribal governments as they are to State and local governments, I was ordered to cease my activities, despite an Executive Order requiring all federal agencies to do what I proposed. After I discovered that an emergency assistance program was available to help dairy farmers affected by a radiological emergency, my supervisor told me that I should not mention it to the public--even though Congress approved funds for that purpose.

The lesson learned from all of this is that those who show contempt for the rights of one group—be it people of color, women or those with disabilities—will show contempt for others, too, since they are concerned only with their own welfare. When reprisal and discrimination are protected activities, caring and capable people are either driven out or marginalized. In my case, I was isolated for several months with only an occasional report to read even as the Secretary of Agriculture complained to Congress that there were not enough people to handle the disaster assistance requests of U.S. farmers. Thus, USDA gives reprisal priority over the needs of disaster victims. That is much more than tolerance of reprisal. It is advocacy.

When I reported threats from my attackers, USDA took no action against them. My supervisor told me he would "put a stop to my complaints." He repeatedly threatened to send me on a tour of meat packing plants where, he said there were stories of troublemakers disappearing and turning up in the freezer beside sides of beef. Male coworkers shouted insults and obscenities at me. But, when my attackers claimed that I cried on the job, USDA officials leaped into action. Although I had no history of hurting or threatening anyone, I was labeled a threat to the security of my persecutors—some ex-military men and twice my size. Their claims were false, but since I had been abused for years by the individuals making the accusations against me, crying would have been a normal response, in any case. Nevertheless, I was isolated and forced to take a mental status exam from a USDA-paid contractor. Statements from several mental health specialists that my mental health justified having a Top Secret clearance were ignored. The decision of USDA's medical officer to accept the statements of those mental health specialists was also ignored.

Although I received excellent marks on all tests I was given, the contractor wrote a report saying I didn't deserve a clearance because I did not tell her in advance that my treating psychologist was intending to come to her office and ask to speak with her. I had never been told that I needed to tell anyone in advance, but the contractor's report nevertheless labeled this evidence of dishonesty

that justified taking away my security clearance—which USDA ultimately did. Genuine dishonesty, negligence and violation of federal law on the part of my persecutors was ignored, although USDA officials had access to a wealth of evidence confirming it.

USDA officials have lost my complaint paperwork and violated their own procedures. Even the most obvious evidence is ignored in their investigation reports, which gloss over every instance of reprisal and discrimination. Those who speak up on my behalf suffer reprisals themselves. Such actions intimidate other witnesses into silence. When an internal review was conducted regarding my complaints about unethical human resources activities, one of the reviewers was my supervisor's supervisor, who was implicated in covering up reprisals, himself. When I offered documentary evidence to the reviewers, my offer was refused. Not surprisingly, the review team found no evidence of wrong action on the part of USDA. I am skeptical that USDA officials could find a horse if they were riding it.

The reprisal atmosphere at USDA results in substantial cost to the public as well as the civil rights complainant. In September, 1999, USDA put me, involuntarily, on administrative leave, where I have remained for the past year, at taxpayer expense. I do not enjoy being on paid leave. I want to work. But, I don't want to work in an atmosphere of threats and abuse. I once dreamed of serving my country the way Mr. Smith once dreamed of it. But, like Smith, I have also been driven to the brink of despair.

The current environment at USDA is analogous to the environment that existed in the Soviet Union at the height of the Cold War. If one dares to speak out for human rights, one is labeled insane and driven into exile. It is repugnant to those who value the Constitutional rights that so many people, including my father, fought to protect. My father is retired now, and I wonder if he will live long enough to see his daughter enjoy the rights he fought for in the Alps of Italy a half century ago. Now, I am fighting for those rights, in a different way.

Senators, I hope that you and the other members of Congress will take action now to protect civil rights and, in the process, to ensure that the American people are served honestly and capably.

Sincerely,

Linda M. Lewis

Linda M. Lewis
Emergency Programs Specialist
Food Safety and Inspection Service
U.S. Department of Agriculture

Home Address: 8710 Hayshed Lane, #302, Columbia, MD 21045
Telephone: (410) 715-9905

Attached: Letter of Commendation from the State of Colorado, Ted Medley

STATE OF COLORADO

OFFICE OF EMERGENCY MANAGEMENT
Tommy F. Grier, Jr. - Director

DEPARTMENT OF LOCAL AFFAIRS
Division of Local Government

Bill Owens
Governor

Bob Brooks
Executive Director

January 26, 2000

To Whom It May Concern:

LETTER OF COMMENDATION FOR MS. LINDA LEWIS

I have worked closely with Ms. Linda Lewis for the past six years in drafting, staffing and subsequently refining a Chemical Stockpile Emergency Preparedness Recovery Plan for Pueblo Chemical Depot in Pueblo, Colorado. The Plan provides emergency management personnel with operational guidance to effectively and expeditiously manage recovery activities in the aftermath of a chemical event if mustard agent escapes the depot boundary. One purpose of the plan is ensure a coordinated response by local, State, and Federal agencies and define the linkages between them. Ms. Lewis has played the key role in planning for the integration of U.S. Department of Agriculture emergency response actions with local, State and Federal agencies. She displays the characteristics of leadership, comprehensive knowledge, enthusiasm, professional attitude and facilitating language, which combined to make her a valued member of the Colorado Team.

Ms. Lewis has earned the respect of the Colorado Team because she is a person of great personal and professional integrity who is void of selfish pursuits. Her writing is clear and concise. Her speaking ability reflects good brains, good instinct and the ability to address any situation with an open mind and sensitivity to new and imaginative solutions.

Ms. Lewis's enviable record of achievement in Colorado over the past six years, coupled with her commitment to something greater than herself and her own self-interest, cause me to request that she be recognized or her outstanding contributions to the Colorado Team.

Sincerely,

Ted Medley
Colorado CSEPP Exercise and Training Officer

15075 South Golden Road, Golden, Colorado 80401-3979 (303) 273-1622 FAX (303) 273-1795 TDD (303) 273-1794

AFFIDAVIT

FOR THE RECORD OF THE SEPTEMBER 12, 2000 SENATE AGRICULTURE OVERSITE COMMITTEE HEARING

Commonwealth of Virginia

County of Fairfax

I, Arun C. Basu, age 68, race Asian American, make this statement freely and voluntarily for the record of the September 12, 2000 Senate Agriculture, Nutrition, and Forestry Committee Oversight Hearing on Civil Rights in the United States Department of Agriculture. I understand that this statement is not confidential and may be shown to interested parties. I hereby solemnly swear:

I have been employed by the United States Department of Agriculture (USDA), Natural Resources Conservation Service since May, 1980 and have been in the position of as Director, Civil Rights Division, GM 360, grade- 15, since May, 1980.I am a participant of the South Asian EEO Class Complaint filed against the USDA in 1999, I have filed individual EEO complaints for denial of promotion(at least 37 times) and non-selection, continued reprisals, harassment, and intimidation because of my race, national origin, age, and religion. Currently, I am the Lead Class Agent for the Arun C. Basu et al. v. Secretary of Agriculture class action complaint. It has been my experience that the USDA routinely rules against the complainant without providing the due process. The USDA mandates the complainant to follow each step of the administrative process in filing EEO complaints. Whereas, the Office of Civil Rights, USDA, blatantly ignores the requirements it has to follow in processing employee EEO complaints. This is simply because, there is **NO ACCOUNTABILITY** in the USDA, for violation of civil rights.

I wish to present for the record the following statements regarding USDA's failure to treat and manage employees fairly and equitably when it comes to opportunities for career advancement and or promotion of minorities who are neither black nor women.

As an Asian American, I raise to your level the continued acts of reprisals, intimidation, and harassment against me by the top level management officials of the Natural Resources Conservation Service (NRCS), USDA. The agency top management officials (namely the Chief and the Associate Chief) have launched the continuing venomous racial assault against me since I raised issues of racial discrimination regarding employment practices of the Agency.

I believe that I am both capable and qualified for career promotion where I am employed. The late Secretary of Agriculture, Mr. Edward Madigan's letter of July 29, 1992 (copy enclosed), adequately speaks of my professional abilities to enter the Senior Executive Service (SES) cadre. Subsequently, upon selection I successfully completed the SES training and was certified in September,1993, by the U.S. Office of Personnel Management as qualified SES graduate for career appointment to SES positions.

Initials

In 1992, I received the " Distinguished Service Award" for my career -related contributions in USDA. Throughout my career I have received "superior " or "outstanding" performance ratings and received "outstanding" performance ratings for 1991, 1992, 1993, 1994, 1995, 1996, 1998, and 1999.

Mr. Pearlie Reed (black male), Chief, NRCS, along with Mr. Paul Johnson (former Chief), has filled more than 30 SES vacancies in NRCS through noncompetitive selection of SES graduates since 1995. But the racial bias of the Chief and other senior management officials in NRCS against Asian Americans, appears to have proved as significant barriers for my career advancement.

Mr. Pearlie Reed, has placed more than ten SES graduates (whites and blacks)between March, 1998, and June, 2000, in different NRCS-SES management positions and despite my qualifications and job performance evaluations he has continued the reprisals against me and treated me each time, as "unqualified". I have not only been reprised against and denied career advancement opportunities because of my race and national origin, but I have been targeted for intimidation through investigations and harassment for seeking professional career advancement.

In fact, on July 2, 1998, the NRCS Chief and other NRCS management officials reprised in vengeance on false charges of wrongdoing and removed me from my former supervisory position. In addition, ever since that date I am being held as a hostage in this land of the free by issuing a letter of adverse action against me and making it part of my personal professional file. This action was taken in order to deprive me of any future promotional opportunities and/or seeking career promotions in positions outside this Agency.

I always believed that fairness and equity is for all people regardless of their color or ethnicity. Mr. Dan Glickman, Secretary of Agriculture, has repeatedly stated that every senior management personnel under his supervision will assist to carry out his promise that all employees be treated fairly, equitably, and with dignity and respect. I bring this to your attention with the hope that I may not have to face such continuing racial injustices in the future. And, therefore, I respectfully request that your Senate Committee will take immediate actions to eradicate such abuse of power, so that ordinary employees like me do not have to face racial abuses and continuing discrimination in this great nation of ours.

Arun C. Basu, Ph.D.
September 22, 2000

Subscribed and Sworn before me
at Washington, D.C.
On this 22nd day of September, 2000
Initials

Valerie M. Catlett
Notary Public
District of Columbia
My Commission Expires Mar. 31, 2005

ORGANIZATION OF SOUTH ASIAN AMERICANS IN AGRICULTURE(OSAAA)

00 SEP -8 PM 3:39

September 6, 2000
12008 Holly Leaf Court
Great Falls, VA.22066

Honorable Richard G. Lugar
United States Senator
306 Hart Senate Office Building
Washington, D.C. 20510-1401

Dear Senator Lugar:

In my January 12, 2000, letter to President Clinton (copy enclosed), I informed him about employment discrimination in the U.S. Department of Agriculture (USDA) and the plight of Asian American employees as a result thereof. I also informed him about the deplorable and unacceptable position of the Office of Civil Rights, USDA, and its indifferent attitude in dealing with employee equal employment opportunity (EEO) class complaints.

The purpose of this letter is to urge you to hold a Senate hearing into the management of EEO in the U.S. Department of Agriculture.

On June 29, 2000, Mr. Dan Glickman, Secretary of Agriculture, at his civil rights forum in USDA stated, "We have made it a policy that every employee and customer be treated fairly--we put civil rights at USDA on the map--we made civil rights enforcement a priority--and nobody can take that away. This is the standard we have set against which all future managers will be measured."

Despite the call for accountability, treating employees and customers with dignity and respect, nothing has really changed and reprisals and discrimination against employees continue unabated in USDA. I firmly believe that every employee in USDA is basically honest regardless of his/her race, color, gender, national origin, religion, or sexual orientation. By nature he/she wants to contribute and make an honest living. He/she wants to be recognized and above all to be treated fairly. Most employees do not file discrimination complaints or grievances for kicks or fun.

However, at individual agency level when an employee files an EEO complaint, the entire administration lines up behind the defendant (supervisor/manager), without even giving a cursory look at the merits of the complaint. They assume that the complainant is wrong and the entire machinery looks for the opportunity to reprimand or discipline the complainant rather than the defendant. This is wrong. The king can do no wrong policy is not valid under any circumstances. Labeling a complainant as a "trouble maker" is the rule in USDA, and as such, he/she is routinely subjected to reprisals and retaliations.

USDA employs me for more than 30 years. During these years I have learned that changing USDA can only be accomplished through actions of congressional committees or by the President of the United States. The management of EEO complaints is yet another sad story in USDA. For example,

- The March 10, 2000, USDA Office of Inspector General Audit Report (OIG Report 60801-3-Hq) regarding the management of employment complaints showed that the Office of Civil Rights, which is headed by Ms. Rosalind Gray, has failed it's responsibility for managing employee complaints. The report also made it clear that complaints have not received due care in the past and, the Inspector General concluded his summary by questioning whether future complaints of discrimination in employment will receive due care.

- OIG Report 60801-3-Hq showed that much of the statistical data that Ms. Gray's Office used to infer that the Department was doing a good job in managing complaints was either inaccurate or improperly interpreted.

- Ms. Gray in her letter of July 22, 2000, addressed to Senator Barbara Boxer of California stated that " any allegations of discrimination found to have merit will be dealt with expeditiously." In making that statement Ms. Gray was neither accurate nor serious. Ms. Gray subsequently admitted, in response to the Office of Inspector General's findings, that "CR (Civil Rights) has been inefficient." Ms. Gray further stated that "Generally, employees have been placed in CR (Civil Rights) for reasons other than their qualifications to process employment complaints"(OIG 6081-3-Hq, Page 53).

Beyond the inefficiency of the Office of Civil Rights, the Inspector General also found that there are questions of due care in managing employee EEO complaints. This is serious. If the USDA Office of Civil Rights is inefficient and the employees of those office lack qualifications, then how can Ms. Gray really believe that complaints will be processed "expeditiously"? Even worse, if qualifications are lacking in her office, then how can she determine which employee complaints have " merit"? The inefficiency of the Office of Civil Rights and it's failure to provide due care opens up the possibility that bias existed in making final decisions on employee complaints.

During the period November, 1998 through November, 1999, approximately 200 formal EEO complaints were filed by African Americans alone in USDA. Please bear in mind that those are formal complaints, and formal complaints only occur when the Department has failed to resolve the complaints in the informal stages. Likewise, another two to three hundred EEO discrimination complaints were also filed by other minority and female employees mostly of Asian and /or Hispanic origin. This shows clearly that something is wrong in USDA, when that employees of different racial- ethnic origin in such a short time have filed many complaints. Obviously, there are deep, entrenched, and widespread discrimination against African Americans, Hispanics, Asian Americans, Females and others.

Discrimination in the Department of Agriculture is not just against one single group. Minority citizens are recognizing that they are all affected by discrimination and they are coordinating their efforts to combat "The Last Plantation". During the week of October 9, 2000, all minority and women employees will gather for a press conference to convey the condition of equal employment opportunity in USDA. I hope you can join us at the press conference. I am also enclosing a copy of the initial announcement of the press conference for your information.

The situation in the Department of Agriculture has become a true American disaster. Hence in closing, I urge you again to bring about a Senate hearing into the management of equal employment opportunity in the U.S. Department of Agriculture.

Respectfully yours,

Arun C. Basu
President, OSAAA

Cc: Mr. Lawrence Lucas, President, Coalition of Minority Employees in USDA, Room 240-E, Whitten Building, U.S. Department of Agriculture, Washington, D.C. 20250

12008 Holly Leaf Court
Great Falls, VA. 22066

January 12, 2000

President William J.Clinton
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear President Clinton:

We commend you for your commitment and continued support for minorities in every aspect of your presidency, and for your leadership to encourage Americans to have open and honest dialogues about the issue of race in America. However, as important as the need is for dialogues with the citizens of this great nation, we believe that action to eliminate discrimination is much needed within the U.S. government, one of the largest employers in the country.

As you know, the lack of compliance with Civil Rights Laws in the USDA is well documented in the recent Civil Rights Action Team Report by the USDA. The plight of minority farmers and employees who have been discriminated against by disparate treatment, reprisals, and related systemic problems within USDA has been brought to your attention by protests and articles in the news media.

In spite of the best efforts of the Secretary's Civil Rights Implementation Team and assurances by Secretary Glickman that he will not tolerate reprisals and discrimination, these practices continue unabated at USDA. Despite the call for accountability, treating customers and employees with dignity and respect, and the removal of culpable managers, nothing has really changed at USDA. The glass ceiling persists for Asian Pacific Americans, Hispanics, and American Indian or Alaskan Native employees. For these groups, racial justice and equity is an illusion within USDA.

Of particular concern is the apparent purge of South Asian American employees in agencies like the Food Safety Inspection Service (FSIS) and the Natural Resources Conservation Service (NRCS). And, highly qualified talented Asians are not only being denied opportunities, but are targeted for intimidation through investigations and harassment for seeking professional career advancement. We are concerned that the targeting of Asian Americans in USDA is a process that starts off tainted by issues of race and national origin. We know there is a racial agenda here, and even all efforts to resolve, counsel, and mediate a class action complaint of employees of South Asian origin in USDA have been ignored by the Office of Civil Rights, USDA.

We believe that Civil Rights is for all people regardless of their color or ethnicity. We hope that your office will assist the Secretary to carry out his promise that all employees be treated fairly, equitably, and with dignity and respect. As you have so eloquently stated in your inaugural speech that our workforce should reflect America, your attention to this matter will be greatly appreciated.

Respectfully,

Arun C. Basu, Ph.D.
President, Organization of South Asian
Americans in Agriculture (OSAAA)

http://www.mlode.com/~aspencer/20000831_shoes_flyer.html

U.S. Department of Agriculture
Coalition of Minority Employees

Chapter Presidents Class Agents Employees Unions Employee Groups

PRESS CONFERENCE

A SHOW OF SOLIDARITY AGAINST CONTINUED OPPRESSION OF CIVIL RIGHTS AT USDA.

" WALK IN OUR SHOES "

THE WHITE HOUSE
Pennsylvania Avenue (facing Farragut Park)
Washington, DC

WEDNESDAY - OCTOBER 11, 2000 ~~ 11:00 AM - 12:00 NOON

Send a pair of shoes along with your Name, State and USDA Agency guilty of the discrimination and those of the "*Silent Victims*," husbands, wives, and children. Enclose signed affidavits or letters to President Clinton and to Vice President Gore describing your experiences. If you desire, forward shoes for each act of discrimination no later than October 1, 2000 to:

Shiloh Temple
1275 North Pulaski Highway
Elkton, MD 21921

Contact: Lawrence Lucas, President
USDA Coalition of Minority Employees, (856) 910-2399

We have suffered too long in silence and fear, come join us!

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

JUL 29 1992

Mr. Arun C. Basu
7314 South View Court
Fairfax, Virginia 22039

Dear Mr. Basu:

Congratulations on your selection as one of 72 candidates in the Standard Track of USDA's Senior Executive Service Candidate Development Program (SESCDP). As you have probably heard, more than 1,100 qualified individuals from almost every agency in USDA, many departments of the Federal Government, and the private sector applied for the program. Competition was very keen, and you should take pride in the high regard in which your application was held by the evaluation panels.

The USDA SESCDP is an important part of our succession planning program. It will provide a pool of highly qualified individuals from which the future leadership of the Department will be drawn. The active participation of 85 senior executives in the evaluation and selection process underscores the importance of the program and our Department-wide commitment to your training and your future as a leader in USDA.

Again, congratulations on your selection. I look forward to observing your progress and to working with you in the future.

Sincerely,

Edward Madigan

Edward Madigan
Secretary

Statement

Dr. George Pugh, a retired African-American, GS-14,Veterinary Medical Officer with the U.S. Department of Agriculture, Agricultural Research Service, stationed at the USDA, National Animal Disease Center, Ames, Iowa for over 30 years, and a former EEO/CR counselor; told me on December, 28, 1999 that Dr. Arthur Davis, Chief of Pathobiology Laboratory, USDA, APHIS, VS, National Veterinary Services Laboratory, Ames, Iowa, told him that " The USDA, APHIS management superiors above him at USDA,APHIS,VS and the NVSL told him not to select me for the Head of General Pathology Pathology Investigations Section at NVSL but to select Dr. Mark Hall instead because had been perceived by management and the other white veterinarians at NVSL and Pathobiology Lab as too large and intimidating, and that I had made trouble for other pathologists at PL in the past". The white pathologists he was referring to include Dr. Allen Jenny and the deceased Dr. Dennis Saari. I had filed an EEO/CR complaint in 1989 in which Dr. Jenny was Head of GPPI Section and was determined to be a management discriminator. I had previously complained to Dr. Davis when he was Head of GPPI Section in 1991 and 1992, about incidences involving Dr. Saari concealing research slides from me that were directed by Dr. Davis to be shared with me on a joint research project involving tuberculosis research at a dairy in the southwest United States. I remember Hillside dairy as the name of the site where tissue specimens were collected. After a year of

complaining about not receiving my designated tissue specimens, I discovered over 700 slides from the project located in Dr. Saari's office and I immeadiately notified Dr. Davis and he acknowledged that my accusations about deceit, insubordination and probable racial discrimination by Dr. Saari, were well founded but no disciplinary action was taken by Dr. Davis against Dr. Saari for his discriminatory, insubordinate and outrageously defiant actions against me.

This information was psychologically devastating for me because unfortunately it just further confirms the allegations I made in my original complaint filed in 1998 that my nonselection for a position that I was obviously qualified for based not only on my aquired professional technical and management skills, knowledge, training, ability as well as my cumulative civilian and military veterinary medical and management skills; was denied due to USDA, APHIS, VS, and NVSL management racial discrimination, retaliation and reprisal thus penalizing another competent, skilled, motivated and experienced African-American male employee,(me), an opportunity to advance in my career based on racial discrimination, retaliation and reprisal with the resulting obvious adverse impact and dispartate on my professional career at USDA, APHIS, VS, NVSL and PL. The physical, social and psychological stress caused by my mistreatment at USDA, APHIS, VS, NVSL and PL, has led to the severe deterioration of my family and matrimonial life in that my beloved wife of 24 years, Ellevese, informed me recently that based on the strain that my struggles with USDA have inflicted on our marriage

and home life, she has enlisted the services of an attorney and intends to seek a divorce.

I notified the following individuals about Dr. Davis' admission concerning USDA, APHIS, VS management's illegal and discriminatory instructions concerning my nonselection for the positions I applied for at NVSL and the Center for Veterinary Biologics in 1998 in spite of the admonitions against such illegal activities given to all USDA managers and staff by Secretary Dan Glickman and Undersecretary Mike Dunne in the required EEO/CR video entitled " A Conversation on Civil Rights"; and they include my attorney John Haraldson, Dimas Gonzalez-Santos, Lucious Chieves, Dr. William Taylor of NVSL , as well as Chris Sikes and Lauren Hill of the USDA, EEO/CR, Civil Rights Enforcement and Compliance Staff of Riverdale, MD .

In my opinion, my mistreatment at the hands of USDA management has cost me too much already.

Arach J Wilson

Arach J Wilson, DVM,MS

USDA,APHIS,VS,NVSL,PL,GPPI

6 February, 2000

Statement

During a discussion with my supervisor, Dr. Mark Hall, Head of General Pathology Pathology Investigations Section of USDA, APHIS, VS, NVSL, Pathobiology Lab on June 3, 1999 in which Dr. Hall made the astounding comment to me that " People like you who file EEO/CR complaints against USDA management should be careful since the people filed against may decide to come back after you for filing against them." He said it in such a manner that I perceived it as an implied threat of reprisal or possible retaliation from him because of my USDA, EEO/CR Complaint #990296, regarding the position he was "selected" for.

During this same conversation, Dr. Hall said to me in what I perceived to be a belligerent and intimidating tone, the following statement; " Am I going to have to get my lawyer after you since you have a formal EEO/CR complaint filed? Is this the way we are going to have to communicate through our lawyers?" I perceived this also as an implied threat of probable retaliation and/or reprisal via possible legal action that may be initiated against me by his attorney because of my USDA,EEO/CR formal complaint.

During the same conversation, Dr. Hall stated quite loudly and emphatically in my office that " I am the boss of PL-GPPI now and thus the final authority on all work matters and if I say that work on either of your current research projects such as Immunohistochemistry with Listeria monocytogenes monoclonal antibody in Bovine Brains; Distance Learning Telemedicine Applications for USDA, APHIS, VS for Dr. Chester Gipson and

the Emergency Management Operations Center Project; as well as my NVSL-CVB, EEO/CR Advisory Committee duties as Outreach Special Emphasis Program Coordinator to Historically Black Universities and Colleges such as Tuskegee University; is to stop irregardless if it was started before I took over as Head of PL/GPPI, it must stop because my word is final!" He said in such an angry, confrontational and belligerent manner that I perceived it as an implied threat to take away my my developmental work with these worthwhile projects based on my filing of a formal EEO/CR complaint. During this same conversation, Dr. Hall made unfounded accusations from sources that he repeatedly refused to name that;" I was not getting my work done because of my upcoming EEO/CR, Outreach- SEP trip to Tuskegee University!" Dr. Hall still refused to name my accusers when asked several times by me. I perceived this as a direct threat toward my performance evaluation based on reprisal and retaliation for my EEO/CR complaint as well as overt intimidation.

Dr. Hall has repeatedly refused to approve USDA sponsored management and leadership training classes I applied for with various classes offered byUSDA, HRDC or the Office of Civil Rights. He would say that he felt that the classes I asked for would fail to meet my needs even when funding for travel and tuition were available. I felt unjustly stifled and discriminated against since other USDA,APHIS, VS,NVSL were allowed to attend these free courses.

Dr. Hall told the Pathobiology Lab Secretary, Ms. Sue Nuscz, on May, 28,1999 that I could not go on a scheduled EEO/CR SEP Outreach trip, funded by

Tuskegee University until I found a replacement on the duty roster for my scheduled secondary backup tuberculosis histopathology duty in June,1999. Both Drs. Hall and Davis implied in separate somewhat intimidating conversations with me before my June 1999 trip to Tuskegee University that based on e-mail messages they received from senior USDA,APHIS,VS management, that they were unhappy and somewhat unsupportive of my EEO/CR, Outreach and USDA, Distance Learning Telemedicine,(DLT), activities with Tuskegee University and other Historically Black Universities and Colleges,(HBUCs).

Dr. Hall has sent me several intimidating e-mail messages concerning subjects such as my back-up T.B. histopathology duty while I was to be away at Tuskegee University, and his refusal to approve my formal submissionof an abstract to the American Association of Veterinary Laboratory Diagnosticians,(AAVLD), U.S.Animal Health Association,(USAHA), meeting in October, 1999, concerning my previous and future work with Listeria monocytogenes; all these intimidating and suspect e-mail messages were sent in a strange and peculiar format whereby they could not be printed or forwarded for other personnel than myself to review. Originally I thought it was just an oversight with the first message in this strange format but they kept occurring with the aforementioned sensitive subjects and Drs. Hall and Davis had commented that Dr. Hall was quite knowledgable of computers and most types of word processing software thus I am certain this tactic was no accident but was done most likely intimidate me on the

management positions taken on these issues. I also received a similar type message from Dr. Hall on June 5, 1999 about a requirement to notify him personally whenever I was to be away from the lab during normal business hours eventhough the other white personnel at PL-GPPI only had to use the sign-out board in the front office of PL.

These actions were perceived as intimidating and hostile to me and I felt that I was being singled out by USDA,APHIS,VS management because of my EEO/CR activities as well as my previous and current USDA,EEO,CR complaints.

Dr. Hall admitted to me in June 1999 that "He felt that it was wrong that ~~the wrong~~ that ~~such~~ past discriminatory and hostile workplace climate toward me had been allowed to persist toward me at USDA,APHIS,VS,NVSL, PL,GPPI such that I could not get routine requests done such as histotechnology support for my immunohistochemistry,(IHC),research with Listeria monocytogenes that had gone idle for almost 2 years after the original request and I was told by management that but due to the current manpower situation that my Listeria IHC requests would have to wait." What I find atrocious is that the other white veterinarians at PL or NVSL have never been treated this way or had their work neglected. The only reason I can imagine that USDA, APHIS management would allow this situation to exist with research on such a timely foodborne zoonotic pathogen conducted by an African-American researcher must be my race as well as retaliation and reprisal for my EEO/CR activities and complaint

I currently have 2 formal developmental research proposal requests for work involving Listeria monocytogenes and DLT technology applications within USDA,APHIS that have not been acted upon because the Management Support Staff,(MSS), at NVSL,PL has not "gotten around to putting my proposals into the restricted and prescribed PL:CO format that only management and the MSS have access to. I have told Drs. Davis and Hall as well as Mrs. Sue Nuscz, the head of the NVSL, PL, MSS staff about this problem but no action has been taken for over a year on my requests. I don't know why it is taking so long for my requests to be processed.

I know that the other white veterinarians at PL that have developmental research proposal requests that require that they be put in the required PL:CO format for approval don't have this problem. I'm curious as to why only I have this problem and the other white veterinarians at NVSL, PL don't have this problem?

Dr. Hall also told me in our conversation on June 3, 1999 that "I will try to treat everyone fair but not everyone equal." I wonder what he means by that statement?

I have asked Dr. Hall, starting on June 3,1999, several times if he had seen the video and signed the mandatory attendance sheet for the EEO/CR video titled "A Conversation on Civil Rights" narrated by Secretary Dan Glickman and Assistant Secretary Micheal Dunne in 1998 and if he understood their message about prohibitions and admonitions about racial discrimination, reprisal, retaliation and intimidation toward EEO/CR complaintants when they

AFFIDAVIT

FOR THE RECORD OF THE SEPTEMBER 12, 2000 SENATE AFRICULTURE OVERSITE COMMITTEE HEARING

State of Georgia

County of Fulton

I, June Douglas Outdoor Recreation Planner, GS-023-9, Recreation Unit, Region 8, U.S. Forest Service, U.S. Department of Agriculture, Atlanta, Georgia, make the following statement freely and voluntarily for the record of the September 12, 2000 Senate Agriculture, Nutrition, and Forestry Committee Oversite Hearing on Civil Rights in the United States Department of Agriculture. I understand that this statement is not confidential and may be shown to interested parties. I hereby solemnly swear:

I have a Masters Degree in Forestry, and I have been working for the Forest Service for eleven years. I have filed individual EEO Complaints, and I am the Class Agent for the Region 8 Class Action Complaint against Elizabeth Estill, Regional Forester; for bringing a hangman's noose into the workplace. Many African Americans viewed her insensitive act as intimidating and threatening.

I transferred to the Southern Region's Regional Office as a GS-9 Outdoor Recreation Planner in July 1998. I was given little to no work to do. I took the initiative and tried to develop work for my position but I was unsuccessful. I complained to my supervisor, Dave Holland, and management; but I was basically ignored. After a while I start hearing comments that I was not performing. Then, on my mid-year evaluation an Acting Unit Leader, Larry Locket, tried to give me a bad evaluation, so I filed my first EEO complaint, because I felt I was being set-up.

My current supervisor is Ann Christensen, and she picked up where my previous supervisor left off. She assigns work in a way that sets me up for failure. For example, she assigned me a project that require extensive travel, even though two days prior she asked me if I could do that project, and I told her I could not because of the extensive travel, and I have a young child in school. When I asked her why she assign me work that she knows I could not accomplish she said, "You just have to choose between your daughter or your job." I have written many letters, in this Region, to the Deputy Regional Foresters, the Civil Rights Director and the Employee Relation Director; describing the discrimination,

harassment and reprisal action that I am receiving with no relief. I have asked for a temporary reassignment to another unit until my case is resolved, but that was not granted.

Attempts were made to settle both my Individual and Class EEO complaints. However, the final offer my management, Elizabeth Estill, was for me to drop my Individual EEO complaints, settle the Class Complaint under management terms, take a reassignment for a year then resign; or stay at my current job then be put on a PIP. I declined the settlement agreement and I am being threatened with a PIP, even though my supervisor did not indicate to me that my performance was unsatisfactory.

There is a reoccurring tactic that is applied to Class Agents and other employees who file Individual EEO complaints. The tactic is to apply pressure through harassment, reprisal, fabrication of stories, etc., until that employee settles their case, in the Agency's favor; or that employee is terminated. There are many Forest Service rules and regulations that address discrimination, and how it will not be tolerated in this agency. One of the most recent letter was from Chief, Mike Dombeck, dated February 28, 2000; where he states that he will be at the forefront in creating and maintaining a work environment where every employee is free from discrimination or harassment on the basis of race, color, etc. He also states in the same letter, " In this Agency, we will not tolerate discrimination, harassment, or reprisal." However, the discrimination still goes on. Especially for individuals that files an EEO complaint.

When management engage in illegal discrimination acts, by allowing it to continue with their full knowledge, they are going against the policy of this Agency. They know it, and they continue to do it, to see if they can get away with it <u>again</u>. Management must be made accountable for perpetuating discrimination acts by allowing it to continue. The EEO process is a very slow process, and that is where management has the opportunity to continue to apply pressure to an employee until they quit, is fired, or drop the EEO complaint.

I would like to see new laws written to protect the employee that has filed an EEO Complaint. For example, an employee would not be fired, forced to resign or retire, demoted, or reassigned, while they have a valid open EEO complaint. This would force management to deal with the problem of discrimination and not just get rid of the employee that filed the EEO complaint. If possible, I would like to be part of the development of such a law.

June Douglas
September 15, 2000

SUBSCRIVED AND SWORN
BEFORE ME AT ATLANTA, GEORGIA
ON THIS 15TH DAY OF SEPTEMBER, 2000

Bradley Adam Gordon, Senior
Notary Public, Fulton County, Georgia
My Commission Expires July 19, 2004

AFFIDAVIT

I, Dr. Arach J. Wilson, age 47, date of birth, January 13,1953, race African American, father of three, former field grade officer, unit commander,and Gulf War Veteran with 23 years of faithful, patriotic service in the U.S.Army Reserve; make this statement freely and voluntarily for the record of the September 12, 2000 Senate Agriculture, Nutrition and Forestry Committee Oversite Hearing on Civil Rights in the United States Department of Agriculture. I understand that this statement is not confidential and may be shown to interested parties. I hereby solemly swear.

I have been employed by the United States Department of Agriculture,(USDA), since April, 1984, after having completed a four year tour of active duty as a Captain in the U.S. Army Veterinary Corps stationed at the U.S. Army Natick Research and Development Laboratories in Natick, MA after I graduated as a Doctor of Veterinary Medicine from Tuskegee Institute, Tuskegee, AL in May,1979.

My first USDA assignment was as a Supervisory Veterinary Medical Officer,SVMO, supervising the USDA, Food Safety Inspection Service,(FSIS), inspectors on the Humphrey, NE Mini-Circuit stationed in Norfolk,NE. On July 23,1984, I was re-assigned as a VMO-Pathology Investigator in the General Pathology-Pathology Investigations Section(GPPI), of Pathobiology Laboratory,(PL), at the USDA,Animal and Plant Health Inspection Service,(APHIS),Veterinary Services,(VS),National Veterinary Services Laboratory,(NVSL), located in Ames,IA, where I have worked for the last sixteen years of my USDA career.

Unfortunately during my sixteen years at USDA,APHIS,VS,NVSL,PL,GPPI, I have suffered signifigant racial discrimination, retaliation, reprisal, intimidation, harassment, humiliation and indignation at the hands of USDA,APHIS,VS management personnel and various fellow co-workers. I have and continue to be a victim of a hostile work environment toward African-American USDA employees.

These actions that were all well documented and reported to my immeadiate superiors, were met with indifference and at numerous times hostility toward me and unfortunately sometimes my family members when the opportunity arose, by specific perpetrators.

The discriminatory actions have consisted of such illegal and prohibited acts as retaliation, reprisal and intimidation for filing informal and formal complaints of discrimination in promotion, training, research funding, use of derogatory racial acts & slurs toward me and my family, reporting professional misconduct by co-workers and members of management toward me and other minority groups members that have worked at Pathbiology Laboratory.

My records show numerous times that I have complained to USDA,APHIS management including USDA,Civil Rights,EEO-CR, Staff personnel with little success. I filed informal complaints, my original in 1990 and a subsequent formal one,(USDA,EOCR Case990296 that is long overdue for formal investigation and settlement),in 1998,based on prohibited and illegal, racially motivated, retaliation, reprisal and intimidation. I have recently tried formal mediation with USDA,APHIS and was stonewalled when management refused to mediate in good faith. My most recent attempts to settle my case through Secretary Glickman's new policy of alternative dispute resolution through my representative Lawrence Lucas, has been met with indifference and no response from USDA,APHIS Management. Few alternatives have been left to me by an oppressive USDA Management such that I have resorted to becoming a Class Agent in the Reed vs Glickman and member of the Spencer vs Glickman African-American Class Actions.

Even though I have presented evidence on numerous occassions to USDA,EO-CR staff personnel of USDA management admissons of wrongdoing concerning my case, to me and other former USDA scientists, no action has been taken to investigate my allegations and those of other co-workers familiar with my situation and who are suffering similar discrimination as I am at the hands of USDA,APHIS Management; in spite of all the mandatory USDA Civil Rights Training and "Surveys" with hollow threats of discipline or dismissal for chronic discriminators resulting in little action other than "disciplinary promotions" in some cases. Senior USDA,APHIS and VS Management personnel, some now retired, refused to be interviewed or respond in 1998 to requests from my USDA,APHIS,VS, EO-CR counselor, Ms. Ana Parada, of Golden,CO, in the initial informal complaint stage of my latest EO-CR complaint, eventhough many of these same senior management personnel were primary discriminators in my case.They took an oath to obey and uphold all USDA, EO-CR regulations and were most likely paid monetary bonuses as prescribed by USDA policy for recieving a "satisfactory"rating for their Civil Rights " achievements". As a loyal,patriotic, taxpaying,God fearing, veteran USDA employee who has

repeatedly put his life on the line at home and abroad to protect the freedoms that these and other USDA Management discriminators enjoy along with all the other good deserving, law abiding, non-discriminating public; I consider it an outrage that an organization such as USDA, does not remove and punish such disobedient discriminatory employees and make things right with the EO-CR complaintants by mandating that their cases be properly investigated and the employees discriminated against be made justly whole. It may not be obvious to the committee members, but my co-workers and family members are constantly aware of the tremendous physical,medical, psychological,financial and spiritual toll this long,drawn out, unjust ordeal has taken on me and my family, so much so, that it has even threatened to lead to the dissolution of my marriage of twenty-five years to my beloved wife Ellevese.

I am still dumfounded and anguished by the astonishingly callous,belligerent, menacing,disingenuous and indifferent attitude consistently taken by USDA Management and EO-CR staff personnel toward acknowledging,processing investigating, earnestly mediating and justly resolving the numerous discrimination complaints and concerns especially with regard to it's competent, loyal, patriotic African-American employees such as myself.

In closing, I pledge to the members of this U.S.Senate Agriculture Oversight Committee on Civil Rights at the USDA, to make available to you on request, any relevant, specific personal testimony or records in my pocession that you may further require to authenticate or expand on the allegations that I and other African-American employees have brought before your committee.

Arach J. Wilson DVM,MS

Taken this Day,September,21,2000

Arach J. Wilson,DVM,MS
USDA,APHIS,VS,NVSL-CVB
Pathobiology Laboratory
Box 844
Ames,IA 50010
(515)663-7922
E-mail Arach Wilson@usda.gov

AFFIDAVIT

FOR THE RECORD OF THE SEPTEMBER 12, 2000 SENATE AGRICULTURE COMMITTEE HEARING

State of California

County of ~~Stanislaus~~ Tuolumne

I, Allen Patrick Spencer, age 62, date of birth May 21, 1938, race African American, make this statement freely and voluntarily for the record of the September 12, 2000 Senate Agriculture, Nutrition, and Forestry Committee Oversite Hearing on Civil Rights in the United States Department of Agriculture. I understand that this statement is not confidential and may be shown to interested parties. I hereby solemnly swear:

I have been employed by the United States Department of Agriculture (USDA), Forest Service since August, 1976 and have been in the position of Supervisory Information Systems Officer, GS-334, grade GS-11 since 1979. I was a participant of the *Black Class Complaint* filed against the USDA-Forest Service in 1987, I have filed individual complaints, and I am currently the Lead Class Agent for the *Spencer et al. v. Department of Agriculture* class action complaint. It has been my experience that the USDA, simply rules against the complainant without providing due process. They take extraordinary steps to provide incomplete investigations and case records that deny due process for the complainant. Time and financial resources are on the side of USDA, and USDA uses those resources to the maximum to defeat complaints, regardless of the merits of the complaints.

I wish to present for the record the following statements and recommendations regarding USDA's failure to fairly and equitably manage employee equal employment opportunity (EEO) individual and class complaints. I am also submitting my recommendation that the President of the United States executes an Executive Order to reform Equal Employment Opportunity, Public Service, Organization, and Accountability In the United States Department of Agriculture. Additionally, I request that there be a review and modification of all USDA decisions made in favor of the USDA regarding individual and class complaints covering the past five years. This is absolutely necessary in order to provide justice for employees, prevent or significantly reduce further complaints, and to contribute to solving the EEO problems within the USDA.

As illustrated by the testimony of Mr. Roger C. Viadero, Inspector General, and as substantiated by his Report on USDA Management of Employee Complaints (Audit Report 60801-3-Hq, March 2000), there are severe problems with internal employee EEO. Furthermore,

Initials APK

I state that the testimony of Mr. Charles Rawls, Mr. Paul Fiddick, and Ms. Rosalind Gray sequentially showed ***deliberate indifference*** towards employee EEO. They trivialized employee complaints and ignored the resulting serious damage to employees. Most seriously, they provided no meaningful information regarding the unacceptable number of ***employee class EEO complaints***, or how such class complaints are managed.

It is clear that both individual and class complaints have not received due care in the past and will not receive due care in the future unless strong measures are taken. Most troubling is the high probability that USDA has made final decisions in their own favor and against individual and class complaints, even though such complaints had merit. The employees and the classes did not receive justice. This is the primary cause for repeat complaints by the employees.

As an example of how reprisals arise, I am submitting a Forest Service letter dated November 23, 1987 as Exhibit 1. Even back then it took an EEO complaint and more than three years of hard work to get the Forest Service to issue such a letter. I also swear that after that EEO activity, agency officials denied me promotion and advancement opportunities and repeatedly reprised against me from that day to the present and no official has been punished for their reprisal actions. It is the agency official's mean spirited efforts to "teach the boy a lesson" or "give him a whipping" that led to subsequent complaints. Thus, as agency officials reprise, it logically follows that further complaints are filed.

As a long term remedy, I respectfully request intervention by the President of the United States through the issuance of an Executive Order. I am submitting for the record, as Exhibit 2, a draft of such an Executive Order. The rationale of the Executive Order is as follows:

In Secretary Daniel Glickman's June 29, 2000 speech *"On Civil Rights 2000: A Continuing Journey"*, he stated

> **...establishing policy means nothing without meaningful execution. But because USDA is a very decentralized organization -- much more so than most federal agencies and federal departments. Very few places in the government are organized like we are here in the USDA.**

The USDA has manifestly failed in regards to EEO and civil rights (CR) for it's employees and the public it is supposed to serve. It is concluded that a fundamental barrier to meeting the intents of EEO and CR in the USDA are the archaic organizational structures and lines of authority that were established more than one hundred years ago. The structure and lines of authority prevents EEO and CR from becoming a reality. EEO and CR policy and

Initials

direction that go from the President to the Secretary of Agriculture seldom, if ever, become a reality at headquarters, regional offices, ground, and remote stations.

"The USDA is a Confederation of Agencies" (Mr. Paul Fiddick, June 21, 2000, Washington, DC). Such an organizational structure clearly usurps the President's and the Secretary's ability to carry out policy among the "Confederates". Additionally, each "Confederate" agency has it's own manner in which they achieve the "non-coercive will to conform". Such a concept of control has been applied effectively to "mission oriented" functions. However, almost all, if not all of the "Confederate" agencies do not apply that concept to the functions of EEO and CR. Thus, the USDA has become a conglomeration of chaotic and failed "Confederate" agencies in regards to equal employment opportunity and civil rights.

The absolute power of agency officials at all levels and remote offices to determine the level of EEO and CR has deprived employees of EEO and civil rights; subjects them to demeaning, disrespectful treatment; and allows the creation of barriers to their standing and opportunity for advancement. Our citizens who are supposed to receive services from the USDA have not only been treated with disrespect, they have also suffered serious economic losses due to biased and differential treatment from USDA agency officials.

With the extensive hierarchical management layers and incoherent lines of authority, it is virtually impossible for any President or Secretary of Agriculture to enforce EEO and CR law, policy, and directives. It is an out of control situation. I believe that, if we cannot reform those structures and authorities, we will never attain our goal of fairness and respect in the workforce or for the public we serve unless there is strong executive action from the President of the United States. Therefore, it is urgently and respectfully requested that the draft Executive Order, enclosed as Exhibit 2, be implemented by the President of the United States.

Allen Patrick Spencer

Allen Patrick Spencer
September 15, 2000

SUBSCRIBED AND SWORN
BEFORE ME AT SONORA, CALIFORNIA, County of Tuolumne
ON ~~THIS 15th DAY~~ OF SEPTEMBER, 2000

SONA A. JONES
Commission # 1200614
Notary Public - California
Tuolumne County
My Comm. Expires Nov 30, 2002

Initials

United States Department of Agriculture | Forest Service | WO

Caring for the Land and Serving People

Reply to: 1760

Date: NOV 23 1987

Subject: EEO Complaint – Allen P. Spencer

To: The Record

Upon further review of the EEO complaint filed by Allen P. Spencer, it has been determined that the April 5, 1984, report, "Review of the Stanislaus National Forest Computer Services" should be destroyed, since there is evidence to show that Forest Supervisor Blaine Cornell provided selected employees' names to the review team and only those employees were interviewed. The record indicates there were employees with differing opinions who were not interviewed.

Region 5 Information Systems Management has been instructed to destroy the April 5, 1984, report signed by Ernest T. Tolin.

R. Dale Nelson

R. DALE NELSON, Chief
Employee Relations and Labor-
Management Relations Branch
Personnel and Civil Rights Staff

Hhentemann:pjf:DG:11/17/87

cc: R-5
cc UP

confirmed w/ L. Bennett -R-5
11-23-87
H. Hentemann

Exhibit 1

EXECUTIVE ORDER DRAFT SEPTEMBER, 2000
EQUAL EMPLOYMENT OPPORTUNITY, PUBLIC SERVICE, ORGANIZATION, AND ACCOUNTABILITY IN THE UNITED STATES DEPARTMENT OF AGRICULTURE

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve equal employment opportunity, civil rights, and equitable services to the public in the United States Department of Agriculture, it is hereby ordered as follows:

Section 1. Goals. It is hereby declared that it is the policy of the President that there shall be equality of treatment and opportunity for all employees and all customers of the Department of Agriculture; that there be organizational structure and lines of authority that ensures this policy is implemented and maintained at all levels; that the Secretary of Agriculture is directed to adopt measures to make this policy a reality, and that all agency officials at all levels be held accountable for the full implementation and maintenance of this policy.

Section 2. President's Advisory Council. There shall be created an Advisory Council to be known as the Council on Equality, Organization, and Accountability in the Department of Agriculture, which shall be composed of twelve members to be designated by the President. The Council shall include members of the public and the federal government who have (1) a history of experience with organizational, civil rights, and accountability issues; (2) are members of civic associations and other organizations representing one or more distinct communities; (3) and have such other experience as the President deems appropriate.

Section 3. Authority. The Council is authorized on behalf of the President to examine the structure, lines of authority, rules, procedures and practices of the Department of Agriculture in order to determine in what respect they may be altered or improved, including the removal of authorities, with a view to carrying out the policy of this order. The Council shall confer and advise the Secretary of Agriculture and shall make such recommendations to the President and to said Secretary as in the judgment of the Council will effectuate the policy hereof.

Section 4. Resources. The Department of Agriculture is authorized and directed to cooperate with the Council in its work, and to furnish the Council such information or the services of such persons as the Council may require in the performance of its duties. When requested by the Council, persons in the Department shall testify before the Council and shall make available for use of the Council such documents and other information as the Council may require.

Section 5. Duration of the Council. The Council shall continue to exist until such time as the President shall terminate its existence by Executive order.

Section 6. Judicial Review. This order does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, it's agencies, officers, employees, or any person.

"PRESIDENT OF THE UNITED STATES"

Exhibit 2

THE WHITEHOUSE
September, 2000

General remedies for *Spencer et al.* -- September 10, 2000, 2:30 PM Pacific Time

1. Retention of a forensic economist to provide an in-depth, comprehensive analysis of the state of African Americans Department-wide. The analysis shall include, but not be limited to, trend analysis, analysis of positions by series and grade, geographic location, type of positions, agency, etc. Analysis shall not be limited to PATCO (Professional, Administrative, Technical, Clerical, Other) categories.

2. Actions to remedy disparities shall include reaching parity in, but not be limited to, mission oriented positions, supervisory and managerial positions, PATCO categories, and in all series and grades. Actions shall not be limited to PATCO categories.

3. Establishment of a monitoring team consisting of one agency official, USDA Coalition of Minority Employees executive, two class agents, and two civilian members.

4. Creation, implementation, and execution of a Department-wide plan to increase hiring, a special training program, and promotion of African Americans with the objective of reaching parity.. Includes recruiting, special training, and mentoring of qualified African Americans, and other actions to ensure success. Outside recruitment shall not preclude the promotion or selection of qualified USDA African American employees.

5. Creation of an individual claims process to review the claims and provide class members who allege or have alleged differential treatment in training, promotions, and other related terms and conditions of employment, and to provide damages for these class members. At the option of the individual class member, this will include review and resolution of claims that have been removed from the internal EEO complaint processing system. This process shall include the services of the forensic economist for review and analysis of individual claims. The process and participants shall not be anonymous.

6. Creation of a Department-wide team of USDA Civil Rights Enforcement Officials, with oversight from the monitoring committee, responsible for implementing the terms of this agreement, including the removal of employees found to have violated Title VII. This team will serve under the direction of the USDA Secretary.

7. Defining, through Departmental Directives, and with specificity equivalent to other forms of misconduct detrimental to the Department, employee misconduct as including EEO violations with the application of appropriate disciplinary action.

8. Payment of damages and fees to the lead class representatives and technical advisors.

9. Payment of reasonable attorney's fees and costs.

10. Other remedies as determined to be effective in eliminating discrimination and reprisal and for compensating agents, class members, and technical advisors.

AFFIDAVIT

September 21, 2000

Chairman D. Lugar
U. S. Senate Agriculture, Nutrition, and Forestry Committee
Russell Senate Office Building
Washington, D.C. 20510

Dear: Chairman D. Lugar:

I, Barbara Ann Reed, GS-6, Secretary, Cooperative Forestry Staff, Forest Service, U.S. Department of Agriculture, do hereby solemnly swear:

I am an African American female. I have been employed with the Forest Service for 7 years. I initially sought EEO counseling on December 5, 1997. I have 6 complaints still pending.

All of the following complaints have been filed because of race and reprisal from my initial complaint filed in December 1997 and Joyce Kelly's complaint which I was a witness to in June 1997.

EEO Complaint #1 was filed in December 1997. was filed against The National Forest System Deputy Chief Robert Joslin and Susan Yonts-Shepard my second line supervisor regarding denial of promotion, interference in selection of a position I applied for (not selected), and non-communication. **Reprisal due to my EEO status.**

Complaint #2 was filed against The National Forest System Deputy Chief Robert Joslin and the Director of Ecosystem Management and Coordination Staff, Christopher Risbrudt and Pamela Kelty was involved in the reassignment decision of myself and Joyce Kelly (my supervisor at the time). **Reprisal due to my EEO status.** Susan Yonts-Shepard (white female) was not affected by the reassignment decision (see SF-52 for each of us). Please note that just before Mr. Robert Joslin accepted the position of Deputy Chief for NFS **(Disciplinary Promotion)**, he was the Regional Forester of Region 8, Atlanta, Georgia. He was implicated in a Class Action EEO complaint there that concerned an issue African American employees issue of reassignment, downgrading of position, of several parties due to filing EEO complaints against him and within his area and involved him.

EEO Complaint # 3, was filed when Ms. Pam Kelty my supervisor, Mr. Hugh Maxwell, Employee Relations Specialist who was discussing Joyce Kelly complaint and mine with

Ms. Pamela Kelty. I had previously requested under Freedom of Information Act (FOIA) the finds of Ms. Brenda Kindrat an APHIS Investigator findings of reprisal against us, which was part of Ms. Kelly's whistle blow complaint. Ms.Pamela Kelty and Hugh Maxwell was at a public elevator outside of Human Resources Office discussion our cases and was overheard by two witnesses calling me "bitchy". **Reprisal due to my EEO status.** Mr. Hugh Maxell also stated that I should be worried about my leave instead of a FOIA request, which I know I was not entitled to. Ms. Pamela Kelty had no business to bring up my personal leave record, which was not the issue. (See EEO mediation report where Mr. Hugh Maxwell admitted he said the word "bitchy" which he said was no was derogatory, it was just a common expression.

Complaint # 4: This complaint was filed due to non-selection to a position I applied for in the Undersecretary for Natural Resources Office (Secretary of Agriculture's Office). I selected to be interviewed. I went on the interview and I stated to Ms. Margaret Wetherald that I just being in my new staff about three weeks would she prefer to talk to my previous supervisor (Joyce Kelly) or my new supervisor (Pamela Kelty). She stated she would like to talk to Ms. Kelly. Upon talking to Ms. Kelly she stated to her that I was her qualified and her top choice. About two weeks later I was informed that the position was cancelled and be readvertised. I applied again and was not selected because the reason given was that I was untruthful about my supervisor which raised the issue of dishonesty and I was not the best qualified. **Reprisal due to my EEO status.**

In summary the issues involved were:

1. Delayed my performance rating and detached her performance bonus, and reduced my performance bonus amount.
2. Denied and failed to promotion me.
3. Refused to communicate with me.
4. Interfered with the job selection process.
5. Reassigned me to a less favorable staff.
6. Reduced my duties.
7. Changed my supervisor to one that had prior EEO complaint filed and won against her.
8. Denied my request for a desk audit for my position.
9. Denied me training.

For the record, Mr. Joslin, one of the parties, had been transferred to our office from Atlanta, Georgia, in April 1997. When Mr. Joslin came to Washington, DC, there had been a class action filed against him in Atlanta, Georgia (Region 8). As a relief, he had been sent to Washington, DC and promoted from Regional Forester to Deputy

Chief (Disciplinary promotion). The class action further stated "He had tended to have maintained and continued to maintain a practice, policy, custom and/or usage of failing to evaluate Black employees' performance fairly resulting in the failure to grant them performance appraisals on an equal basis as White employees."

"Mr. Robert Joslin have maintained and continue to maintain a practice, policy custom and/or usage of implementing reorganizations that result in African American employees losing status, duties, and functions with resulting loss of opportunities for career advancement. The reorganizations generally result in the described losses for Black employees to a greater extent than White employees."

He continued to same practices when he came to Washington, DC.

When Mr. Robert Joslin retired Ms. Gloria Manning was acting Deputy Chief until the position was filled. She finished implementing the reassignment and carried on the reprisal. The NFFE Union was not involved in its totality. They could not get all documentation they requested.

Mr. Christopher Risburdt and Ms. Pam Kelty involvement from my complaint. Their knowledge of my complaint is extensive. And also they both had two prior EEO complaints that were filed and settled against them in 1997. Mr. Robert Joslin was involved with the settlement of these complaints and was aware that these two individuals had complaints against them but he still reassigned Joyce Kelly and myself to this staff and under them.

Complaint #5: USDA, Forest Service withholding my request for Freedom of Information Act (FOIA) documents.

Complaint #6: Denial of my application for the leave donor program after I was under doctors care for insomnia and anxiety due to the stress and reprisal. USDA, Forest Service wanted me to sign a release of information statement given them permission to ask my doctor what I discussed with him. This is violation of my personal information.

As of this date I am still experiencing retaliation and reprisal from Management.

Signature: Barbara A. Reed_____ Date: September 21, 2000_____

1121 S. Wakefield St., #21
Arlington, Virginia 22204

CERTIFIED MAIL October 18, 2000

Chairman D. Lugar
US Senate Agriculture,Nutrition & Forestry Commission
Russell Senate Office Buiilding
Washington, D.C. 20510

Subj: Senate Hearing, USDA, Discrimination – Extended Public Input Opportunity

Re: Input by Undersigned dated September 18, 2000 – Error: Page 2 of 3, par l, lines 8 & 9

Dear Mr. Chairman:

Inadvertent Error: Time should read 180 hours (5 work weeks) instead of 2.5 months. Please denote change in subject complaint letter & reconcile where indicated..

Thank you.

Thelton W. McCorcle, DVM
Federal Veterinary Medical Officer

2507 Middlebrook Lane
Auburn, AL 36832

334/887-8514

Cf2E.

CERTIFIED MAIL (7099 3220 0003 6665 8934) September 17, 2000

Chairman D. Lugar
U.S. Senate Agriculture, Nutrition & Forestry Commission
Russell Senate Office Building
Washington, D.C. 20510

SENATE HEARINGS, USDA DISCRIMINATION (EO/CR COMPLAINT) – PUBLIC INPUT OPPORTUNITY *(Extension Deadline September 22, 2000)*

Dear Mr. Chairman and/or Committee Member(s):

For the past ten years I have been stationed by Veterinary Services, USDA, in the State of Alabama. Since July 10, 1997 – I have remained on a "shelf" (in exile) at Tuskegee University on a "temporary" yet "terminated" (August 28, 1997) assignment as part of my supervisor's continuing deceitful practices that include image building of me by distortion and frank prevarications; his publically declared goal since 1995 has been that of terminating my employment My "history" is the one he attempts to write. At Tuskegee University, without a job description, performance standards or support, I have been on "standby" for three years performing only menial and manual (nonprofessional) jobs, i.e. moving furniture, hauling trash, etc. I am goal and work oriented, so exile has been especially detrimental to me psychologically. During this time period I have continued to be rated "successful" from a past job description and its performance elements that lack any application to the "temporary" (now 3+ year) assignment". The Area Veterinarian in Charge (AVIC)-Alabama has wasted already three years of my time and three years of taxpayers dollars.

My mailed request for professional training for CY 2000 went unacknowledged by the AVIC. Since 1994 I have not been on the receiving end of favorable actions for either training or assignments, except (a first- & last in 20+ years!) four-week 1995 Colorado assignment that was designed as a "set up". There, I performed alone (why alone?) in addressing an epidemic in the Grand Junction Area/ I worked a (documented) equivalent of 2.5 duty months in four weeks.. (During the fourth week I logged 101.5 duty hours). For the dedicated effort I was awarded an adverse performance appraisal, a performance improvement plan (and its subsequent extension), and conduct charges. All were fabricated in a conspiratorial act involving the Area Veterinarian in Charge – Alabama (& perhaps the Alabama State Veterinarian with his close relationship with the former Deputy Administrator, VS), & the Area Veterinarian in Charge-Colorado. Although efforts were made to stonewall requests for work documents that I needed for my defense, I did obtain sufficient documentation from other sources to successfully defend myself. The development of the Report of Investigation by a USDA-RMSES "investigator" served as basis for the conduct charges. With my subsequent "exoneration" from the performance(?) and conduct charges(!) there are indices that he was incompetent and/or complicit in the fabrication of the conduct charges. (The "investigator" certainly wasted a lot of taxpayers dollars in his travels and stays in Colorado & Alabama to prepare his unsuccessful case). However the Area Veterinarian – Alabama, a member of a USDA support cliché, has continued in his maltreatment of me. Five years has been a very long time! There are indices that the former Deputy Administor supported both the Alabama AVIC & State Veterinarian, hence the entanglement of the Deputy Admintrator's Directors when the two AVICs "plan" to terminate me aborted.. The State Veterinarian needed my position for his employee. *(In 1994 I was pressured to apply for a BUY OUT & since then, to retire).*

In 1996 efforts made to address "irregularities" of the AVIC through USDA's CREC. These efforts were blocked by "management". Reportedly (confidential contact point available),my file was removed from CREC "to keep (me) from getting fired". Two separate but again futile attempts ('95 & '97) were made to address grievances through another avenue open to employees, viz. Atlanta USDA's Office of EO/CR. Reportedly, an upper echelon manager informed the EO/CR officials that he would "take care of (my) case". The avenues supposedly open to employees in USDA to redress grievances are controlled & manipulated by "upper management" and to the detriment of an employee. In my experience these avenues seem to serve only as a bulwark for damage control (information gathering for massaging by attorneys & human relation specialists, & where power "makes" everything come out "all right"?) USDA heralds The Secretary's mandate-- all employees are to be treated with fairness, respect, equality & dignity. For me the mandate has been & remains political hogwash.

Chairman – Senate Hearings (USDA-EO/CR)
September 17, 2000

For these past ten years in Alabama and especially between '94 & '97 I have "contributed/donated" (non-reimbursed personal time) that has averaged about 2.5 work months a year (documented). The AVIC informed me that it "won't do you any good" to apply for either compensatory or overtime. Until the last two years notice of official action on sick (S/L) and annual leave (A/L) applications was not given to me, such to preclude advanced planning for leave; to take leave otherwise and without directly contacting the AVIC on whether or not he had approved the application, I was left at times in a precarious or beggarly position. For the first 6 months of a CY ('93 or '94) I worked an equivalent of 2.5 work months as Acting AVIC (his job) while in the same period "contributing/donating" another 2.5 work months of personal time to meet job demands in my assigned area. In another or the same time period I forfeited 50 hours of lose-or-use A/L because of "game playing" by the AVIC. On another occasion I was assigned a so-called Foreign Animal Disease "Suspect" investigation to be made on Thanksgiving Day; where case screening at the O/AVIC was so weak that I made a the very long trip to see starving horses. (I was assigned the inves-vestigation while on Use or Lose Leave; this overtime/holiday work went unpaid & I lost one leave day)). On another day I was contacted and called out from a Christmas Party at Tuskegee University to travel long distance to remove a head from a dead 'anthrax suspect" bull for return to the Diagnostic Lab for inprocess-ing; such activity is the responsibility of the practitioner, not a federal VMO. (Foregoing the Christmas Party I had to return my wife home, then complete travel to remove a head & deliver it to the Laboratory). For too many years I was utilized not as a professional but as a technician; I performed AHT (animal health technician) duties both in the field and at stockyards (performing card tests for Brucellosis) Such activities are not a part of the job description. On another occasion I was assigned by the State Veterinarian to park at a garbage dump for two hot days to "watch for" incoming trucks with dead chickens that might be illegally transported; no deliveries were made. I drive a field turn-in GOV: the Odometer: reads 171,000 miles). Incidents of harassment and discrimination (all documented) are too numerous to list on 3 pages.

On the charges, allegations & rebuttals earlier & timely input was made within the Agency and I continued to be subjected to administrative delays such to suggest stonewalling & whitewashing (cover up) by the Agency, i.e. three years to "resolve" conduct charges. Again, I began to address grievances with document-reports (Sep-Dec 99) to the Administrator, USDA. He initially and at later dates wrote that I would be contacted "soon"; however a year has passed without contact, and it has been five months (April 2000) since I received his last letter. Noteworthy is that (& contrary to recommendations for an independent investigator, & after I had already submitted documents, some sensitive) the Administrator did redirect the materials back to the Agency for another "IN HOUSE" review and evaluation, again by USDA-RMSES; and a Human Relation Specialist (?), one who works at Office of the Director, Eastern Region, VS, USDA. (Some of the material directly involves both RMSES and Regional employees who will have a decided "interest" in the outcome of the "evaluations"). The Agency is again in control of "the smoking gun".. .

The allegations/charges I have made have been substantuated/supported by documentation since 1995 to date. The reports cover the following allegations/charges: Oppressive Discrimination; Harassment; Re-taliation; Abuse of Process & Power; Civil (Criminal?) Conspiracy; Work Interference (to include loss of professional duties in an assignment to work without a job description and where manual labor impacts on me physically at age 60+);Deflamation; Physical Injury (I was "dumped" at a bus station in Colorado for return home with heavy luggage and the bus stop at the airport was remote from Delta. On my return home I had corrective surgery for an inguinal hernia); Psychological Impacts (to include an extended medical period of three months following sustained harassment, and ongoing now for three years where I have worked in a temporary/terminated assignment without a job description); "Doctoring" of Documents & Re-ports; Waste of Resources; Affidavit Falsification; False Statements in Official Correspondence; Endanger-ment to Health & Welfare; False (Fabricated) Conduct & Performance Charges (& withholding documents requested for defense); Theft of Time (Abuse of Personal Time); Theft of Money (Nonpayment of Receipts from Official Work); Deceitful Acts (to adversely impact on my personal and professional life); Blocking of Grievance Avenues (USDA's EO/CR - Atlanta; & USDA-CREC); Administrative Delays (by Design? i.e. ignoring ?--& very, very slow administrative response to input of documented allegations), Etc.

Chairman – Senate Hearings (USDA-EO/CR)
September 17, 2000

After review of the foregone paragraph the reader will probably think he/she is dealing with a nut? Noteworthy is that I have SURVIVED for FIVE years!—so far. (From my experiences I can well see how "Violence In the Workplace" might occur). Recommended contact points for a brief overview on the modus operandi of both the Alabama Area Veterinarian in Charge and the Alabama State Veterinarian (and me) can provide you with insights that might be different from an "In-House" version. Contacts include DR. CARL WILSON, ROUTE F, BOX 37, EVERGREEN, AL 36401: 334/578-2450 (Former Associate State Veterinarian); MR. BOB PRUITT, 15 ROLLING ACRES, HOPEHULL, AL 36042 - 334/288-0275 (Former Head, Livestock Investigations & Enforcement, State Department of Agriculture); MR. ED LACKEY, RT. 2, BOX 447-A, TALLASEE, AL 36078 – 334/727-1870 (Former State Animal Health Technician); MR. CASE NOORDERMEER, USDA, APHIS, VS, 7049 County Road 48,LAFAYETTE, AL 36832 – 334/864-8235 (Federal Animal Health Technician); DR BILL JOHNSON, STATE DEPARTMENT OF PUBLIC HEALTH, DIVISION OF EPIDEMIOLOGY, 434 MONROE STREET, MONTGOMERY, AL 36130-1701 – 334/613-5347 (Former State Veterinary Medical Officer). Note: The two AHTs mentioned above worked with me. (Longer reference/witness lists are available).

Requests/recommendations/suggestions are as follows:

1. Obtain photocopies of all documentation forwarded by me to the Administrator, MRP, USDA & assign an independent investigator to review and evaluate the material. (If needed I have an extra set of the material on file. Unavailable are important CY 95 records on file at O/AVIC, Colorado).

2. "Let Me Play" is a Story of Charlie Sifford, the first Black PGF Golfer. He had a very hard time breaking through the Barrier of Discrimination.. "Let Me Play"-- I am in dire need of proper (professional) employment at a very early date. I retired in 1993 as a Colonel , US Army Reserve, & a member of a Civil Affairs Battalion under command of DA, HQ, 361st Civil Affairs Brigade, & DA, US Army Special Operations, Fort Bragg I received Certificates of Outstanding Recognition (Operation Cobra Gold, Thailand '92 & '93) & The Army Commendation Medal (Hurricane Andrew Disaster Relief Operation, Florida, '92). Additionally I have worked in Ecuador, Panama, Costa Rica, Korea, Germany & Yugoslavia. I would be very interested in assignments to underdeveloped countries or an Out Reach Program. Give me the opportunity for work that is meaningful and contributory. "Let Me Play"!

3. Determine the justifcation of "management" in blocking employee efforts to address grievances through USDA's Office of EO/CR (Atlanta) and USDA's CREC. Such managerial "obstacles" and influence should be eliminated such to allow the employee due process through avenues provided by law. After being unjustly barred in the past, can time limits be extended under the circumstances such to allow me the opportunity to address grievances through due-process avenues previously blocked?

I received a belated (Sep 14) notice on your Senate Hearing and from an indirect source. As a past (three-year) member of a Regional EO/.CR Advisory Committee, insights were gained on VS EO/CR "deficiencies" Recommend future attention be given to mandating distribution of notices on such Hearings to all employees. There are others with stories to tell. Thank you..

Thelton W. McCorcle, DVM
Federal Veterinary Medical Officer & Foreign Animal Disease Diagnostician
USDA, APHIS, VS – Auburn, AL

H: 334/887-8514 Beeper: 334/269-7010
O: 334/727-8119 (Office of Dr. Saul T. Wilson)

2507 Middlebrook Lane
Auburn,. AL 36832

SUBJECT: TEMPORARY ASSIGNMENT THELTON McCORCLE

TO: CHECTOR

(1)

PER YOUR REQUEST, I AM CANCELLING THE TEMPORARY ASSIGNMENT OF DR THELTON McCORCLE TO ASSIST TUSKEGEE UNIVERSITY. (ENCL #1) PERHAPS YOU AND EVERYONE SHOULD CAREFULLY READ MY ATTACHED LETTER OF JULY 30, 1997 (ENCL #2) REGARDING THE TEMPORARY ASSIGNMENT. THEN READ THE ATTACHED LETTERS FROM DR McCORCLE REGARDING DR McCORCLE'S ACCOMPLISHMENTS. (ENCL #3)

Draft Letter by AVIC to former Director.

SINCE YOUR LETTER OF JULY 25 AND DEAL ALLEN'S COMMENTS TO DR McCORCLE OF AUG 20, 1997, AND MY SUBSEQUENT CONVERSATION WITH JOHN CUFFEE OF AUG 22, I HAVE ASSIGNED DR McCORCLE ANY AND ALL STRICTLY USDA AUDITS IN HIS ASSIGNED SECTION, INCLUDING A PAY ASSIGNMENT, PER ATTACHED LETTER. (ENCL 4)

DR GIPSON, SINCE DR ALLEN HAS VOICED THAT HE DOESN'T WANT DR McCORCLE INVOLVED WITH

12

STATE / FEDERAL COOP. PROGRAMS AND KNOWING THE CAPABILITIES OF ~~THE~~ DR MCCORCLE ~~AND~~ I AM IN A DILEMA. YOU AND I KNOW THAT DR MCCORCLE IS PUSHING ME TO MAKE HIS DAILY SCHEDULE OF WHAT I EXPECT HIM TO DO EACH AND EVERY DAY. HE ~~WILL~~ HAS NOT NOR ~~NOT~~ ACCEPT THE ~~JOB~~ UMO POSITION DESCRIPTION NOR JOB STANDARD REGARDING PLANNING AND ORGANIZING SECTION ACTIVITY. I DO NOT HAVE A UMO SECTION IN ALABAMA THAT ALLOWS FOR THE UMO TO PERFORM STRICTLY FEDERAL ACTIVITY THEREFORE I SUGGEST THAT YOU FIND AN ASSIGNMENT FOR DR MCCORCLE THAT ALLOWS HIM TO WORK STRICTLY FEDERAL ACTIVITY WITH ASSIGNMENTS THAT ARE SPECIFIC FOR SUCH EACH DAY. ~~FURTHER~~

LIE!

FURTHER, DUE TO BUDGET CUTS AND DECREASE IN BRUCELLOSIS ACTIVITY, I WILL RELINQUISH A VMO POSITION IN THE FY98 BUDGET CYCLE, SPECIFICALLY THE SECTION ASSIGNED TO DR MCCORCLE. SINCE I PERSONALLY WORKED THE MCCORCLE SECTION FROM 1978-1990, I KNOW THE ACTIVITY OF THE SECTION AND CAN EASILY SHIFT VMO ASSIGNMENTS TO COVER THE SECTION.

DR GIPSON YOU AND I HAVE LET AN "AGENCY KNOW" PROBLEM EMPLOYEE PRACTICALLY DESTROY A WAS BENEFICIAL WORKING RELATIONSHIP BETWEEN YOU AND I, WHICH I MISS. HE HAS SLANDERED ME, SOME OF MY STAFF, THE STATE VETERINARIAN BOTH VERBALLY AND IN WRITING. DO WE EQUAL RIGHTS?

September 22, 2000

The Honorable Richard Lugar
U. S. Senate Agriculture,
Nutrition, and Forestry Committee
Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Lugar:
Please find my testimony that I would like included with proceedings from the hearing about civil rights in USDA held on Tuesday September 12, 2000.

Thank you,

Charles Phillip Brent

Charles Phillip Brent

District of Columbia: SS
Subscribed and Sworn to before me this 22nd
day of September 20 00
Notary Public, D.C.
My Commission Expires March 14, 2005

Our nation's premier economic research group deserves this accolade probably because it houses the largest collection of economists under one roof anywhere in the government, the United States or in the World. This group currently has 500 employees and 300 of them are economists.

Who is the group? The President's Council of Economic Advisors? No. University of Chicago? No. The Federal Reserve Board? No. The answer is USDA's Economic Research Service. The Economic Research Service (ERS) headquarters is located in Washington, DC. It has no other satellite offices.

As of this writing, only seven black permanent full-time economists are employed by ERS. Approximately 250 of those 300 economists in ERS have permanent full-time status. Currently a total of 95 blacks work in ERS. The rest are Hispanics, American Indian, Asians and Whites. No African American economist has ever been promoted to manager in the 32-year history of ERS. Even when black candidates fit the "Ph.D.- from-Ivy-Leauge-agriculatural-land-grant-university" criteria, they can only make "Acting" manager until another White candidate is found. Though few in number there have been enough economists that have come through here in 32 years to make-the-grade.

I, Charles Phillip Brent, am an African of the Diaspora. I was born and raised in the United States of America and am one of the seven black permanent full-time economists employed by ERS. I am also one of the founding charter members and immediate past co-president of the support group known as BPERS (Black Professional at ERS.)

I write to tell you of my experience and precisely how USDA's Economic Research Service violates the civil rights of a black professional economic researcher at the turn of this century.

The first way is to simply isolate the researcher. This causes stress and a feeling of being disconnected from colleagues. To ignore a person is perhaps the worse psychological torture one human can mentally inflict on another. I myself feel isolated. I feel isolated because I regularly was not given duties for weeks or months at a time over a period of nine years. So the first way is white managers in ERS utilize employment practices that force blacks to find research projects on their own (given little real assistance) and make blacks work alone or with only one other person. Management generally groups whites in threes or fours or more.

The second way is to use management practices and threats to force a black researcher to work on only one or two projects at a time while giving white researchers three, four or more high-visibility projects at a time. The result is that promotions are slower in coming because the volume of work produced from black researchers is artificially kept lower than white researchers. I too have suffered this from ERS.

The third way is to give the researcher disproportionately large data gathering and data manipulating responsibilities. In other words, keep blacks doing data work. This has the effect of limiting the scope of assignments necessary to receive a promotion. It also retards development of their analytical, writing and presentation skills.
In the professional economic research community at ERS being labeled a data person stigmatizes a researcher. For years managers and colleagues repeatedly tried to force me into a data role. I resisted. Management retaliated.

These are examples of other recent activities occurring in USDA's ERS:
Credit card fraud. ERS punished only blacks.
ERS is specifically singled-out by name in the nationwide class action on behalf of all African American employees of USDA.
Number of EEO claims filed against ERS with Office of Civil Rights increases.
ERS employee (division level I believe) used the N-word during a civil rights training/sensitivity session.
A less-qualified white female was promoted over a more qualified black male. The black male literally had twice the education of the white female. Literally.

Another activity occurring regarding civil rights and USDA and ERS:
USDA Coalition of Minority Employees Press Conference on Capitol Hill held near U.S. Senate building, Washington, DC. 11:00 a.m. June 21, 2000. For a report see Washington Post newspaper dated Thursday, June 22, 2000; Page A23. CNN also video-taped the press conference.
List of Speakers:
Lawrence Lucas, President USDA Coalition of Minority Employees
Congresswoman Patsy Mink (D) Hawaii
Ms. Kim Anderson, Deputy Legislative Aide to Sen. Chuck Robb (D) Virginia
Leroy Warren, NAACP
John Boyd, Founder National Black Farmers Association (NBFA)
Mr. Mike Rise, Chief Legislative Aide to Congressman A. Wynn (D) Maryland
Gerald Reed, President, Blacks in Government (BIG)
Ms. Cathy Pirelda?, USDA Coalition of Minority Employees?
Ms. Lisa Donnelly, Lead Agent, Women's Class Action
Mr. Joe Sedillo, Lead agent, Hispanic Class Action
Mr. Arin Bassoon (phonetically spelled) , Lead Agent, Asian Class Action
Ms. Barbara Reed, Lead Agent, Abeyance (disparate treatment) Class Action
Mr. Allen Spencer, Lead agent, African American Class Action

Respectfully submitted, Charles Phillip Brent Charles Phillip Brent

District of Columbia: SS
Subscribed and Sworn to before me this 22nd
2 day of Sept 2000

Notary Public, D.C.
My Commission Expires Nov 14, 2005

John R. Vann
2830 Wilkinson Mill Court
Marietta, GA 30068
e-mail: *jrvann@bellsouth.net*

September 18, 2000

Chairman Richard G. Lugar, U. S. Senate
Agriculture, Nutrition, and Forestry Committee
Russell Senate Office Building
Washington, D.C. 20510

Sir:

Enclosed is a notarized copy of one of several complaints I filed within the last three years against the U. S. Forest Service. The complaint was filed after an incident involving the displaying of a hangman's noose in the Regional Forester's Conference Room in Atlanta, Georgia.

If you need additional information, please feel free to call me at 770-977-5410 (home) or send me an e-mail.

John R. Vann
Director of Soil, Water and Air
U. S. Forest Service, Region 8

Enclosure

October 24, 1999

Daniel R. Glickman, Secretary
U.S. Department of Agriculture
1400 Independence Avenue, SW
Room 200A
Washington, D. C. 20250

Dear Mr. Glickman:

This letter serves as notification that I am filling an EEO complaint against Elizabeth Estill, Regional Forester of the Southern Region for displaying inappropriate behavior as the senior official in the Southern Region.

The act committed by the Regional Forester was transporting and displaying a hangman's noose in the workplace, in the Regional Forester's Conference Room, for four consecutive days.

An assessment of the African American employees across the Regions illustrates that she shows no authentic remorse for her action. It is my belief that the bases for this act were:

1. To intimidate me because of my race (African American)
2. To create a hostile work environment which constructively discharges me by making the workplace so hostile that I would have no other choice but to either resign or retire
3. Reprisal because of prior EEO activities

Acts of reprisal occur in the Forest Service daily. The system is geared in such a way that a wide range of supervisors and co-workers aid in carrying out the reprisal acts. This is done by simply alienating the employee and depicting them as persons that management has labeled as trouble makers, and others must distance themselves from those targeted employees. The following 9 unit leaders were present when the hangman's noose which offended me was displayed:

1. Gary Pierson, Planning Unit Leader
2. Steve Weaver, Silviculture Unit Leader
3. Michael Sparks, Forest Health Unit Leader
4. Tom Dardin, Fish, Wildlife & Range Unit Leader
5. Tom Chappell, Engineering Unit Leader
6. Yvonne Turner, Unit Leader
7. Ann Christensen, Recreation & Communication Unite Leader
8. Therman Harp, Land & Mineral Unite Leader
9. Elizabeth McMullen, Geometronics Unit Leader

This type of behavior by the Regional Forester sends the wrong message to other White managers listed above.

The relief I am seeking includes:

1. GS-15 Step 10, high 3, for retirement
2. $2,500,000 which includes compensatory damages, punitive damages, mental anguish, emotional stress, and denial of compensation over the years
3. Additionally, I am asking that attorney's fees are paid in full and an action plan by the agency is put in place to correct this abusive behavior against all minorities

I look forward to the assignment of a counselor and an amicable resolution to the problem. Thank you very much for your immediate attention to this complaint.

Sincerely,

John R. Vann

cc: The Honorable Sanford Bishop, U.S. House of Representatives
Mr. Mike Dombeck, Chief U.S. Forest Service
Mr. Al Gore, Vice President of the U.S.
The Honorable Johnny Isakson, United States Senate
The Honorable John Lewis, U.S. House of Representatives
Mr. Jim Lyons, Deputy Secretary NRE
The Honorable Cynthia A. McKinney, U.S. House of Representatives
The Honorable Bennie Thompson, U.S. House of Representatives

Melodie Kennebrew
Notary Public, Fulton County, Georgia
My Commission Expires May 24, 2004

September 7, 2000

The Honorable Richard Lugar, Chairman
Committee on Agriculture, Nutrition and
Forestry

Sharon Mavity
722 3rd St, SW
Sidney, MT 59270

The Honorable Richard Lugar:

My name is Sharon Lee Mavity, I am a 64 year old mother of six sons, grandmother of fifteen. I married my husband Glenn Earl Mavity Jr. after his return from the Korean war. We returned to the ranch to work, make our home and raise our sons. In the late 1960's my husbands parents retired making us the third generation of Mavitys on land that was handed down from his grandfather in 1906.

On March 21, 1997 I filed a civil rights discrimination complaint against the USDA/FSA for discriminatory action taken against me on the basis of sex (female) age (61) and reprisal, in denying me the right to participate in Federally assisted programs and other beneficial services offered by the USDA/FSA.

In a letter to me dated December 31, 1998 Rosalind D. Gray, Director Office of Civil Rights determined that FSA acted within its regulations in providing loan servicing and that a review and analysis of the case information did not permit a determination that FSA discriminated against me.

February 1, 1999 I executed my rights as outlined in Section 741 requesting a docket number and to proceed with the Administrative Law Judge process.

August 25, 1999 Rosalind Gray overturned her previous finding of no discrimination stating "There is evidence that Mrs Mavity was treated differently than other applicants with regard to her sex and age."

The Administrative Law Judge refused to give persuasive weight to Ms Gray's August 25, 1999 determination in May 2000. My counsel dismissed Administrative Law Judge proceedings to take my case directly into Federal Court. At the same time the Office of Civil Rights agreed to Alternative Dispute Resolution (ADR) as an alternative to Federal Court litigation. The case was sent to USDA'S Office of General Counsel for approval of Alternative Dispute Resolution.

My counsel has made several phone calls to the Office of Civil Rights and USDA'S office regarding the status of my case; Office of General Counsel has not responded to Alternative Dispute Resolution even though four months have gone by.

Each day, I look out my door to see the land that had been in our family for ninety four years. It sickens me to know that the United States Department of Agriculture, Farm Service Agency the very same agency that was developed to side the American Farmer, is systematically exterminating select groups of farmers and ranchers such as women like myself.

Must I continue to suffer in not having my case resolved?

Sincerely,

Sharon Mavity

Enclosures

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

Sharon Mavity,	§	
	§	
	§	
Charging Party,	§	
	§	
	§	
v.	§	**USDA DOCKET NO.: 1076**
	§	**HUDALJ No.: 99-12-NA**
	§	
The Secretary, Dan Glickman	§	
United States Department of Agriculture	§	
	§	
	§	
Respondent Agency.	§	

POSITION STATEMENT

Summary:

The processing of this complaint is authorized by section 741, of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, enacted in Division A section 101 (a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105-277 (herein referred to as § 741).

On December 22, 1988, the complainant applied for settlement of indebtedness. The agency approved her application on December 13, 1990, almost two years later. The complainant exercised her buyback option on March 3, 1993. There were delays in the appraisal process that in effect had a prejudicial effect on the complainant. The price of the farm when the process was finished was too high for the complainant's financial resources. The complainant filed a discrimination complaint with the U.S. Department of Agriculture (USDA) on March 21, 1997. The complainant's file was reviewed by the Office of Civil Rights (CR) of USDA to determine if the complainant meet the eligibility requirements to have her complaint considered under § 741. On May 10, 1999, the complaint was determined to be eligible for consideration under the process contained in § 741. On February 5, 1999, the complainant requested a hearing before an Administrative Law Judge.

According to the provisions of § 741, CR is now submitting its report on the position of the Director on whether the complaint is eligible for processing under § 741 and whether the complaint has merit.

Eligibility:

In order to be eligible for consideration under § 741, a complaint must:

1. be a non-employment complaint;
2. have been filed prior to July 1, 1997;
3. have alleged discrimination by USDA occurring between January 1, 1981 and December 31, 1996;
4. alleging a violation of:
   (a) the Equal Credit Opportunity Act (ECOA) in the administration of a:
      i. Farm Ownership Loan
      ii. Farm Operating Loan
      iii. Emergency Loan
      iv. Rural Housing Loan;
   (2) Commodity Program or Disaster Assistance Program

The complaint is eligible for consideration under § 741. The complaint is a non-employment complaint. The complaint was filed with USDA on March 21, 1997. The complaint alleged a violation of the Equal Credit Opportunity Act (ECOA). The alleged discrimination took place from 1988 to 1997.

Based on the aforementioned, the complaint is eligible for consideration under the provisions of § 741.

Merits of the Case:

While CR has concluded that the complaint is eligible for consideration under the provisions of § 741, we have determined that the complaint has merit.

Mrs. Mavity applied for benefits under the Loan Servicing program to refinance her debts. Mrs. Mavity alleged that she was discriminated on the following bases covered in the ECOA: sex (female) and age (61). CR's regulations offer protection from discrimination based on those bases. We will address the merits of the complaint under the covered basis.

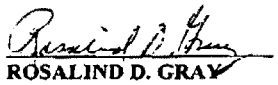
The complainant alleged that the Agency, Farm Service Agency (FSA), mishandled her leaseback/buyback application and misinformed her about her rights and responsibilities under the program and failed to honor the agreement to include her land into the Conservation Resources program. On several occasions the Agency delayed the processing of the complainant's applications. In 1988 the Agency delayed the processing

of the complainant's request for indebtedness settlement and in 1993 they delayed the processing of her leaseback/buyback request. The agency did not keep a complete case file for the complainant. In addition, the investigator in this case found that the Agency failed to inform the complainant of all the requirements of the Leaseback-Buyback program at the time she entered into the agreement with the Agency. All the options available to the complainant were not discussed. The regulations were not followed to determine the price of the lease. And as mentioned before, when the complainant exercised her buyback option on March 3, 1993, there were delays in the appraisal process that in effect had a prejudicial effect on the complainant. The price of the farm when the process was finished was too high for the complainant's financial resources.

According to the investigator of the case there were numerous errors in the handling of the complainant's case. Adverse decisions were made and the complainant was not provided appeal rights or review rights.

The Agency's position was that the fact that they made mistakes does not necessarily mean that they discriminated against the complainant, but the investigator found that these mistakes were not happening routinely to other farmers.

Based on the review of the documents in the file and the Report of Investigation, we believe that the complaint has merit. There is evidence that Mrs. Mavity was treated differently than other applicants with regard to her sex and age.



ROSALIND D. GRAY
Director, Civil Rights

Dated: August 25, 1999

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE JUDGES

Sharon Mavity,	§	
	§	
	§	
Charging Party,	§	
	§	
	§	
v.	§	**USDA DOCKET No.: 1076**
	§	**HUDALJ No.: 99-12-NA**
	§	
The Secretary, Dan Glickman	§	
United States Department of Agriculture,	§	
	§	
	§	
Respondent Agency.	§	

CERTIFICATE OF SERVICE

I hereby certify that copies of this Position Statement issued by Rosalind D. Gray, Director, Civil Rights, were sent to the following parties on this 25th day of August 1999, in the manner indicated:

Rosalind D. Gray
ROSALIND D. GRAY
Director, Civil Rights

Certified Mail:

Certified Receipt No.: P 093 179 654
Sam E. Taylor, Case Manager
Tuttle Taylor & Heron
Suite 407 West
1025 Thomas Jefferson Street, N.W.
Washington, DC 20007-5201

Via Hand Delivery:

Alan W. Heifetz
Chief Administrative Law Judge
U.S. Department of Housing and
Urban Development,
Office of Administrative Law Judges
409 Third Street, SW, Suite 320
Washington, DC 20024

Regular Mail:

David H. Harris, Jr.
Associate General Counsel, Civil Rights
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250-9410

Sharon Mavity
RR # 1, Box 25
Lambert, Mt 59243

September 7, 2000

The Honorable Richard Lugar, Chairman
Committee on Agriculture, Nutrition and
Forestry

Kathy Mavity
328 Montgomery Road
Gillette, WY 82716

The Honorable Richard Lugar:

My name is Kathryn Ann Mavity, my mother-in-law Sharon Lee Mavity filed a civil rights discrimination complaint against USDA/FSA officials and employees on March 21,1997. Despite Secretary Glickmans memorandum dated April 22, 1997 and a Civil Rights Referral letter written March 28, 1997 from Mr. Jeremy Wu stating "Due to the filing of this formal complaint, all pending litigation **and adverse action against the complainant should be held in abeyance**." USDA/FSA officials and employees proceeded with the sale of Sharon's inventory property, selling it to a husband and wife who were determined to be qualified as a beginning farmer on September 23, 1997.

When the Mavity property was advertised for sale to Beginning Farmers and Ranchers. I saw this as our last chance to save the ranch that had been in Mavity family since 1906. I went to the USDA/FSA office and obtained the application packet for the Beginning Farmer determination. Due to the complexity of the documents I returned to the FSA office, asked for assistance and was directed to the County Executive Director Lloyd Keller who informed me that he could not assist me with the application packet. Mr Keller stated that I needed to speak with the Ag Credit Specialist Mr. Pat Turner being this was his area of expertise. Mr Keller approached Mr. Turner stating that I needed his assistance, Mr. Turners reply was that he was unavailable to assist me. Mr Keller then stated he would make copies of the paperwork I had with me. I returned a day or so later, asked for assistance and was again told Mr. Turner was unavailable. On March 25, 1997 the last day the application could be submitted I returned again seeking Mr. Turner's assistance he was still unavailable to assist me so the Program Assistant for Farm Loan Programs reviewed the application for completeness and accepted the application packet.

Two days later on March 27, 1997 my husband received a letter from the County Committee which denied him the ability to participate in the Beginning Farmer Program. Stating "More specifically FmHA Instruction 1943.12 (a) (3) states that an individual must have sufficient applicable education and/or on the job training or farming experience in managing a farm or ranch which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation. FmHA Instruction 1943.12 (a) (8) states that an individual must have operated a farm or ranch for a least 3 years." My husband Cody was the fourth generation of Mavity's born and raised on that land.

During the process of helping my mother-in-law gather needed documentation for her civil rights discrimination complaint, we visited the Richland County Court House on July 2, 1998 where we discovered **current longstanding judgements** on file to the State of Montana. These judgements were against the individual who was determined by the County Committee to be the eligible qualified Beginning Farmer, to purchase the Mavity property despite the judgements. He had made no honest attempt to satisfy these longstanding judgements until after the signing of the quiet claim deed. On file was also the deed for his purchase of several additional sections of land 45 days after USDA/FSA funded his purchase of the Mavity property.

USDA/FSA assisted and made exceptions for this individual to purchase my mother-in-laws inventory .Due to the discriminatory actions and acts of reprisal committed against the Mavity family by USDA/FSA employees and officials, we have suffered the loss of our home and my husband and son's heritage.

On July 21, 1998 nineteen days from the date I knew of the discriminatory acts committed, I filed my civil rights discrimination complaint. More than two years have passed since my filing with the Office of Civil Rights. I have yet to receive an acknowledgment letter let alone be advised of the status and action taken on my complaint.

Supporting documentation is available upon your request. Thank you for your time.

Sincerely,

Kathy Mavity

PREPARED BY Ann Lowe
DATE 9-8-00

Honorable Senator Richard D. Lugar

Dear Honorable Senator Lugar,

We have been on a Roller Coaster ride with Farmers Home Administration since recieving disaster loans from them in 1978-79-80 & 81.

Beginning in 1982 trying to get them to settle with us. Even offering to convey the property to them in 1983

We have been thru a bankruptcy, 2 civil court cases, 12 years of the administrative appeals process and now since April 10, 1997 filing with the Office of Civil Rights, Statue of Limitation with no results.

In 1984 the agency took our livestock some machinery, lost the Jones ranch our rental property followed a ~~lost~~ loss too!

In 1989 we were offered a net recovery buyout under the Dollars program and the agency took that away too.

Since 1997 they have taken offsets and have started the foreclosure process even tough we had filed a Civil Rights Claim on 4-10-97.

My health has not been good. I am a cancer survior since 1983 and have

PREPARED BY
DATE

been diagnosed with the Post Polio Syndrome as I had polio as a Child.

My Husband Clinton of 38 years has gone over the edge. The stress + pure Hell.

I have had to file a restraining order against him. The Judge issued an Order of Protection from the bench on August 24, 2000 for my safety.

Please, I pray you can help me to settle this terrible injustice done.

MHa has broken families apart and caused suicides across rural America's Please don't let us be another statistic.

Sincerely & Grateful
Yours.
Rosemary Lowe

TREMONT MANAGEMENT GROUP
318 Route 202/206
P.O. Box 401
Pluckemin, New Jersey 07978
(908) 658-9100 Fax (908) 658-9106

September 6, 2000

USDA
Office of Civil Rights
Program Investigations Division
1400 Independence Avenue, Southwest
Mail Stop 9430
Washington, DC 20250-9430

RE: DISCRIMINATION COMPLAINTS – vs – PENNSYLVANIA OFFICE OF RURAL DEVELOPMENT ET ALS

Dear Sir/Madam:

Complainants: Deborah P. Richards ("Mrs. Richards"); John C. Schumacher ("Schumacher"); Geneton, Inc. ("Geneton"), a New Jersey corporation; Tremont Management Group, Inc. ("Tremont"), a New Jersey corporation; and, Penway Enterprises Limited ("Penway"), a New Jersey limited partnership; individually and jointly hereby formally charge continuing acts of discrimination in violation of Complainants' civil rights,

AGAINST,

Defendants: Pennsylvania Office of Rural Development (the "State Office"); Gary A. Rothrock ("Rothrock"), MFH/CF Program Director; Walter Aicher ("Aicher"), former District Director of the Rural Development Office in Allentown, Pennsylvania; and, John Doe and Jane Doe, at this time unidentified participants along with the named Defendants in the acts of discrimination committed by the Defendants against the Complainants in violation of Complainants' civil rights.

The Complainants incorporate by reference herein and make a part hereof a certain Discrimination Complaint (the "Discrimination Complaint") dated May 1, 1995, made by the Complainants herein, Mrs. Richards and Tremont, against the State Office, Rothrock, Aicher and other unidentified Rural Development personnel. The Discrimination

Complaint is on record in the United States Department of Agriculture ("USDA"), Office of Civil Rights as Case Number 950105-655, and a copy is attached hereto as Exhibit A.

The Discrimination Complaint has been pending for more than five years in the USDA Office of Civil Rights, and to the best of their knowledge Complainants are not aware of any action having been taken by USDA on the violations of civil rights and discrimination issues raised therein. In fact, it appears the Discrimination Complaint has been moved about within the USDA offices during the past five years in such a manner that neither Mrs. Richards nor Tremont has been able to obtain any information regarding its status. The failure of the USDA to address the issues raised in the Discrimination Complaint within the past five years has enabled and encouraged the Defendants named therein to perpetuate and exacerbate their discriminatory conduct toward Mrs. Richards and Tremont up to the present time. Further, the State Office, Rothrock, Aicher and others have escalated and broadened their discriminatory conduct during the past five years by engaging in additional acts of discrimination not only against Mrs. Richards and Tremont, but also against Schumacher, Geneton and Penway as well as against the families and business associates of both Mrs. Richards and Schumacher, all in violation of the Complainants' civil rights as hereinafter described.

In or about April 1994, the State Office, Rothrock and Aicher caused Tremont and Penway to be notified in writing that no further Management Plans and Management Agreements between Penway and Tremont would be approved by the Defendants. From April 1994 to the present time the State Office, Rothrock and Aicher have failed and refused to provide any of the services to Penway that are required by Rural Development rules and servicing guidelines. In addition to refusing to provide any services to Penway or approve any more Management Plans and Management Agreements between Penway and Tremont from April 1994 to the present time, Defendants have failed and refused to allow Tremont to submit any annual operating budgets on behalf of Penway, have failed and refused to review the conduct of the business affairs of the Penway project in any way and have intentionally abandoned altogether the servicing of the Penway project contrary to Rural Development rules and servicing guidelines. The acts of the State Office, Rothrock and Aicher as hereinabove described were not undertaken for the purpose of remedying defaults on the Penway project or for any other legitimate purpose, but rather they were undertaken by the Defendants for the purpose of discriminating against Mrs. Richards on account of her marital and family status and against Schumacher on account of his business association with Mrs. Richards. The Defendants intended and still intend to achieve their discriminatory purpose against the Complainants by eliminating Geneton as a general partner of Penway, by eliminating Tremont as the management agent for Penway, by eliminating Mrs. Richards from any involvement or connection with the Penway project ownership or management because of her marital and family status and by eliminating Schumacher from any involvement or connection with the Penway project ownership or management because of his business association with Mrs. Richards.

The Defendants were at all relevant times aware and still are aware that Geneton is the managing general partner of Penway, that Mrs. Richards is an officer of and shareholder in Geneton and that Schumacher is the president of Geneton. By purposely refusing to service the Penway project from April 1994 to the present time, the State Office, Rothrock and Aicher knew and intended that Penway would be unable to obtain rent increases that were needed to pay its operating and maintenance expenses on an ongoing basis, including but not limited to real estate taxes on the project. These actions by the State Office, Rothrock and Aicher did in fact cause Penway to be unable to pay its real estate taxes as well as many of its other operating and maintenance expenses. Penway was intentionally cast adrift by the Defendants, and as a result the Penway project and its owners have sustained irreparable harm. All of this occurred because of the Defendants' intent to commit acts of discrimination against Mrs. Richards on account of her marital and family status and Defendants' intent to damage the other Complainants because of their connections with Mrs. Richards.

As set forth in the Discrimination Complaint (Exhibit A), the genesis of the discriminatory conduct by the Defendants was and still is the marital and family status of Mrs. Richards. Mrs. Richards was and still is the wife of Daniel D. Richards ("Mr. Richards"), a general partner in Penway, and Mrs. Richards' marital and family status continues to be the primary basis for the Defendants' continuing discriminatory conduct against Mrs. Richards and the other Complainants. In or about May of 1994, the State Office, Rothrock and Aicher made defamatory references to the character, honesty and integrity of Mrs. Richards all because of her marital and family status in an effort to discredit Mrs. Richards and thereby interfere with her involvement in Penway in her capacity as an officer and shareholder of Geneton, the managing general partner of Penway, and in her capacity as president of Tremont, the management agent for Penway. In May of 1994, the State Office, Rothrock and Aicher accused Mrs. Richards of complicity in the misappropriation of Penway project funds merely because she was the wife of Mr. Richards, and said Defendants stated orally and in writing that additional financial misappropriations from the Penway project were likely to occur so long as Mrs. Richards remained married to Mr. Richards and so long as she continued to be involved or connected in any way with the Penway project. The dissemination to others of these false, defamatory and discriminatory accusations by the State Office, Rothrock and Aicher against Mrs. Richards personally and in her capacity as an officer and shareholder in both Geneton and Penway has continued from May of 1994 up to the present time.

The Defendants'discriminatory conduct and acts against Mrs. Richards and the other Complainants are clearly manifested by Defendants continuing to refuse to allow Penway to do any of the following so long as Mrs. Richards and her family and Schumacher and his family are involved in any way with the Penway project: enter into a Management Agreement with Tremont; submit proposed annual budgets; propose needed project rent increases; benefit from appropriate Rural Development services as set forth in Rural Development servicing guidelines; and, interact or communicate in any reasonable way

with any personnel in the Rural Development State or District Offices. This discriminatory conduct against Mrs. Richards and Schumacher has had financial and other negative impacts on Penway, Penway's investors, Geneton, Tremont and the children of both Mrs. Richards and Schumacher. By virtue of their acts of discrimination against the Complainants the Defendants have jeopardized the interests, safety and well-being of the tenants in the Penway project, have interfered with and damaged the financial interests of the owners of Penway and have failed to safeguard the value of the Penway property.

In April of 2000, the Defendants contrived and conspired to undertake an action of reprisal against Complainants as an additional means of discrimination by fabricating grounds that would enable the Defendants to commence a Rural Development procedure to accelerate the debt of Penway to Rural Development. The Defendants did in fact accomplish this undertaking by filing and serving upon the Complainants a Notice of Acceleration of Debt dated April 26, 2000 (the "Notice"). The Defendants decided to file and serve the Notice as a means of discrimination, because Mrs. Richards has remained married to Mr. Richards and because Schumacher has continued his business association with Mrs. Richards, Penway and Tremont. Although all the grounds for acceleration of debt that are set forth in the Notice are either specious or fabricated, one of the most outrageous is a charge related to an unauthorized withdrawal of project Reserve Funds by Mr. Richards in 1990. It is well documented that Mr. Richards did make an unauthorized withdrawal from project Reserve Funds in or about 1990. However, that act by Mr. Richards was a compliance violation committed by him alone, and it is not attributable to the project, to the owners of the project or to any of the Complainants herein. Defendants are well aware that they have made well documented assurances and representations to the Complainants on behalf of Defendants and on behalf of USDA that Mr. Richards' act is attributable to him alone and that his act would not have a negative legal consequence or any negative consequence whatsoever on the project, on the project's owners or on any of the Complainants herein. Also, Defendants have acted in furtherance of their assurances and representations. Defendants are well aware that the Complainants have relied on and acted in accordance with the assurances, representations and acts of Defendants, which were made by Defendants on behalf of themselves and on behalf of USDA numerous times commencing in or about late 1990 and early 1991. Consequently, those assurances, representations and acts by the Defendants are binding upon the Defendants and upon USDA, and they are conclusive of the issue.

Several months prior to the service of the Notice on Penway the Defendants, in an attempt to provide some semblance of documentary evidence to support the Notice, contacted Marcella Duld ("Duld"), Rural Development Specialist at the Lehigh Office, and ordered Duld to conduct a compliance review on the Penway project. Duld thereupon contacted Mrs. Richards and scheduled a date in March 2000, to appear at Tremont's

office and conduct a compliance review of Penway's records. Mrs. Richards agreed to meet with Duld for that purpose. During her scheduled meeting with Mrs. Richards Duld told Mrs. Richards that she was not sure why she (Duld) was doing the compliance review at all, because her District Office did not have a file on Penway. Duld also told Mrs. Richards that when she called Rothrock at the State Office and informed him that she did not even have a file to work from, Rothrock ordered her to just go through the motions of a compliance review so the State Office could then represent that it had done what it was supposed to do under Rural Development rules and guidelines. Clearly, the Defendants intended to use and have in fact used the sham compliance review conducted by Duld on the Penway project as cover-up evidence to demonstrate that servicing had been taking place at least in some respects on the Penway project over the past five years, when the truth is that there has been no servicing at all. The Defendants know they have made an intentionally false representation in this regard and by so doing they have committed malfeasance. The Defendants contrived and perpetuated this false representation, however, in the expectation that no one would review the State and District Office servicing records on the Penway project too closely and discover the truth.

Of further note, the Defendants are permitting, sanctioning and fostering (as in New Jersey) property management of 515 projects throughout Pennsylvania without the involvement of a licensed Pennsylvania Real Estate Broker in violation of Pennsylvania law. This is a situation that must be brought to the attention of the Pennsylvania Real Estate Commission forthwith.

Serious civil rights violations have been committed by the Defendants, particularly in the area of discrimination based upon marital and family status. These violations continue to the present time against Mrs. Richards, Schumacher, Tremont, Geneton and Penway and are manifested by: the Defendants' refusal to provide servicing of any kind to the Penway project so long as Mrs. Richards and Schumacher remain associated with the ownership or management of Penway; the Defendants' professed intent to inflict financial damage upon the owners of Penway by seeking to foreclose on the project with the primary objective being to "write-down" all or a substantial portion of the government mortgage; and, the Defendants' professed intent to disrupt and damage the personal support systems of Mrs. Richards and Schumacher in order to make it more difficult for them to manage and provide appropriate and essential services to the tenants of Penway.

Complainants reserve the right to amend this complaint as other information in their possession is verified, particularly regarding but not limited to: a conspiracy formed between and among these Defendants and representatives of the New Jersey Office of Rural Development to discriminate against Mrs. Richards and the other Complainants because of "whistleblower" actions against both State Offices on illegal property management; intentional and fraudulent steering of projects to certain owners and managers by both State Offices; attempts by both State Offices to wrongfully seize funds and equities from projects in which Mrs. Richards and the other Complainants are involved; and, the conspiratorial intent of both State Offices to foreclose on projects in which Mrs. Richards and the other Complainants are involved in order to "write-down"

all or a portion of those mortgages and thereby inflict damaging tax consequences on the owners of the projects.

Complainants demand that appropriate measures be taken on their complaints in this forum prior to the initiation of any action for relief in Federal Court.

SUBMITTED BY: _____
DEBORAH P. RICHARDS, Individually and as President of Tremont and as Vice-president of Geneton, the managing general partner of Penway

_____
JOHN C. SCHUMACHER, Individually and as Vice-president of Tremont and as President of Geneton, the managing general partner of Penway

cc: Harmon H. Lookhoff, Esq.
Nixon Peabody LLP
Pennsylvania Rural Development

EXHIBIT A

TREMONT MANAGEMENT GROUP
186 CENTER STREET
P.O. BOX 5220
CLINTON, NEW JERSEY 08809
(908) 730-8272

May 1, 1995

United States Department of Agriculture
OCRE
PCAD
Room 1371 South
Washington D.C. 20250

United States Department of Agriculture
OCRE
ECAD
Room 1336 South
Washington D.C. 20250

RE: DISCRIMINATION COMPLAINT
Deborah Richards and Tremont Management Group, Inc
vs. Farmers Home Administration, et als.

Dear Sir/Madam:

Deborah Richards and Tremont Management Group, Inc. ("Tremont"), a New Jersey corporation, intend to file an action in Federal District Court charging discrimination against Farmers Home Administration ("FmHA") (now known as "RECD"), a Division of the United States Department of Agriculture and certain individuals employed by FmHA.

More particularly, the complaints of Deborah Richards and Tremont will be made against the FmHA Pennsylvania State Office in Harrisburg Pennsylvania, against the FmHA District Office in Allentown, Pennsylvania and against certain individuals employed by FmHA including: Gary Rothrock, Chief of Multi-Family Housing in Harrisburg, Pennsylvania; Walter Aicher, District Director of the Allentown Office in Pennsylvania; and against certain unnamed individuals referred to at this time as John Doe and Jane Doe.

Additionally, it will be charged that certain of the individuals identified above, namely, Gary Rothrock and Walter Aicher, entered into a conspiracy and plan with others, including a representative and/or representatives of a residential property management firm located in Pennsylvania, for the purpose of, (1) interfering with the contractual rights of Tremont, (2) interfering with the prospective contractual and economic relations of Tremont and Deborah Richards, (3) denying equal employment opportunities to Deborah Richards and to Tremont, (4) discriminating against Deborah

Richards on account of her gender and on account of her marital status, (5) defaming Deborah Richards and causing her embarrassment socially and in the business community and, (6) engaging in conduct causing deprivation of Deborah Richards' rights and a denial of her constitutional right to equal protection under the law.

Attached hereto is a summary of the facts supporting the charges of Deborah Richards and Tremont.

This submission is made in order to comply with any rules and regulations which may require exhaustion of administrative remedies prior to the commencement of court proceedings. Please advise if further submissions are required to complete the administrative process.

TREMONT MANAGEMENT GROUP

BY: _____
DEBORAH P. RICHARDS,
President

_____
DEBORAH P. RICHARDS,
Individually

SUMMARY OF FACTS

For a period of approximately five (5) years prior to the month of November 1990, Deborah Richards worked on a part-time basis in the Tremont offices located in Clinton, New Jersey. During that period of time Tremont was totally owned and operated by Daniel D. Richards, the husband of Deborah Richards. Deborah Richards' part-time duties involved matters related to the occupancy and maintenance of multi-family residential rental properties managed by Tremont. These rental properties included and still include two (2) projects located in Pennsylvania and mortgaged to FmHA known as Penway Enterprises Limited ("Penway"), a 36 unit apartment complex for families in Wind Gap, Pennsylvania, and Forgold Associates Limited ("Forgold"), a 36 unit apartment complex for families in Bath, Pennsylvania.

Late in October 1990, Daniel Richards became ill and was unable to operate the business. As a result of this circumstance Deborah Richards took over the business of Tremont on a temporary basis.

Thereafter, sometime early in December 1990, Deborah Richards met with Walter Aicher, the Director of the FmHA District Office in Allentown, Pennsylvania, to discuss the management of the Penway and Forgold projects. At that meeting Walter Aicher and Deborah Richards discussed the fact that Daniel Richards, as the general partner of both Penway and Forgold, had made various loans during calendar years 1989 and 1990 from the operating and reserve accounts of Penway and Forgold, and that the aforesaid "loans" had not been repaid and had not been made in accordance with FmHA rules and regulations covering withdrawals from project operating and reserve accounts. During said meeting Walter Aicher urged Deborah Richards to take over complete control of Tremont for the purpose of maintaining cohesive ongoing management of the Penway and Forgold projects into the future. At that time Walter Aicher promised Deborah Richards that the FmHA District Office in Allentown, Pennsylvania would cooperate with her and with Tremont in every possible way in order to help insure successful ongoing management of both projects; and, further, that Deborah Richards would be able to call upon Walter Aicher and the FmHA District Office for whatever assistance she may require in light of the fact that she would be undertaking responsibility for management of the projects well into the future.

In reliance upon the promises and representations made by Walter Aicher as the FmHA District Director in Allentown, Pennsylvania, Deborah Richards agreed to take over Tremont and the management of the Penway and Forgold projects.

Soon thereafter, on January 17, 1991, Deborah Richards obtained ownership and control of all the capital stock of Tremont, and on that same date Deborah Richards became the president and sole operating officer of Tremont. Unbeknownst to Deborah Richards, however, at that same time Walter Aicher and Gary Rothrock, the FmHA Chief of Multi-Family Housing in Harrisburg, Pennsylvania, had implemented a plan to declare both the Penway and Forgold projects in default, foreclose on those projects and thereby remove Tremont as manager. At no time until sometime in June of 1993, when a notice from FmHA declaring both the Penway and Forgold projects to be in default on account of the loans made by the general partner in 1989 and 1990, was Deborah Richards ever aware that Walter Aicher and Gary Rothrock had been planning since December of 1990 to divest Tremont of the management of said projects.

Actually, Walter Aicher and others working in the FmHA District Office in Allentown Pennsylvania had been continually engaged since early in 1991 in conduct intended to undermine and destroy the efforts of Deborah Richards and Tremont to properly manage the Penway and Forgold projects. In that regard, personnel in the FmHA District Office in Allentown continually made and maintained improper contact with tenants occupying apartment units in Penway and Forgold by advising such tenants that Deborah Richards and Tremont were not performing management functions in accordance with FmHA procedures. In particular, on February 9, 1994, a Tenant in the Penway project, advised an employee of Tremont that an employee in the FmHA District Office in Allentown, Pennsylvania had told the Tenant that Deborah Richards gets angry with tenants on the phone because her job was being threatened by FmHA and that FmHA was aware of Deborah Richards' negative attitude toward the tenants. The FmHA employee further interfered with the tenancy relationship between Penway and the Tenant by advising the Tenant that Deborah Richards undoubtedly did not want to allow an early termination of the Tenant's lease, because Deborah Richards and the project were having problems.

On May 17, 1994, Deborah Richards appeared as a witness in an administrative hearing in Bloomsburg, Pennsylvania. The administrative hearing was held by the National Appeals Staff of the Department of Agriculture for the purpose of reviewing a decision by FmHA to accelerate the FmHA mortgage on the Penway project towards foreclosure on account of an alleged default. Also present at the hearing were Daniel Richards, a general partner of Penway, John Schumacher, president of Geneton, Inc. the managing general partner of Penway, Darlene Kocher, an observer from the FmHA National Appeals Staff, Gary Rothrock and Walter Aicher.

Prior to the aforesaid hearing Gary Rothrock and Walter Aicher submitted a preamble and exhibits on behalf of FmHA. The preamble

contained disparaging and, in fact, defamatory references to the character, honesty and integrity of Deborah Richards. The language of the preamble was composed jointly by Gary Rothrock and Walter Aicher. That language specifically accused Deborah Richards of complicity in the misappropriation of Penway project funds, and it further alleged that in the event Deborah Richards should be allowed to remain in control of the management of the project, additional financial misappropriations would continue to occur.

During the hearing on May 17, 1994, Walter Aicher admitted that the language in the preamble concerning Deborah Richards was intentionally inserted in the documents which were to be reviewed at the hearing. Walter Aicher also admitted that there was no evidence whatsoever to support said language and that he had purposely induced Deborah Richards in December of 1990 to involve herself in the management of Tremont in order to use her for sufficient time to enable Aicher and Rothrock to get rid of the general partners of Penway and Forgold and Deborah Richards and Tremont as well.

Subsequently, in or about December 1994, Forgold entered into a letter of intent with a prospective buyer of Forgold's 36 unit project located in Bath Pennsylvania. The letter of intent contained a stipulation that any transfer of ownership of said project was to be subject to FmHA approval. Shortly after the letter of intent was executed, Tremont and Deborah Richards advised the prospective buyer and the managing general partner of Forgold that Tremont would be interested in managing the Forgold project in the event a transfer of ownership took place. Recently, however, Deborah Richards and Tremont have discovered that Gary Rothrock, Walter Aicher and others within FmHA have determined that Tremont would not be approved by FmHA to manage the Forgold project in the event of a change of ownership. This determination was made because of Deborah Richards' gender and marital status and because of the intention of Gary Rothrock and Walter Aicher to further their attempts to discredit Deborah Richards and Tremont.

Gary Rothrock and Walter Aicher have implemented their plan to discredit Deborah Richards and Tremont by communicating false and defamatory comments and materials to third persons regarding the character, honesty, integrity and abilities of Deborah Richards and regarding the management record of Tremont. All of these actions by Gary Rothrock, Walter Aicher and other FmHA personnel have been done intentionally in order to discriminate against and interfere with the constitutional rights and business activities of Deborah Richards and Tremont, and these acts have in fact caused deprivation of the rights of Deborah Richards and Tremont.

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September 15, 2000

Richard G. Lugar
United States Senator
306 Hart Senate Office Building
Washington, DC 20510

RE: United States Department of Agriculture

Dear Senator Lugar:

A recent Associated Press release by Philip Brasher entitled, "Civil Rights Office Inept, Investigators Say," reports that a federal investigation has found the USDA Office of Civil Rights to be in total disarray, citing untended files with interns serving as adjudicators as part of an overall portrait of an inept, disorganized staff lacking in concern and accountability. The AP release also reports that you as chairman of the Senate Agriculture Committee said there was a lack of accountability in USDA "from the highest level of management to the county supervisor in the field." From our own experiences, we agree.

Enclosed is a copy of a Discrimination Complaint filed in the USDA Office of Civil Rights on September 7, 2000, against the Pennsylvania Office of Rural Development and others. Please note Exhibit A attached to that Complaint, which evidences a pending Discrimination Complaint filed in the USDA Office of Civil Rights more than five years ago under Case Number 950105-655. Numerous telephone calls and more than a dozen pieces of correspondence since May of 1995 demanding action have been met with one lame excuse after another by the Office of Civil Rights.

Also enclosed are copies of: a Discrimination Complaint filed in the USDA Office of Civil Rights on September 7, 2000, against the New Jersey Office of Rural Development and others; a letter dated September 6, 2000, from Tremont Management Group to United States Senators Lautenberg and Torricelli: and, a letter dated September 12, 2000, from Property Management Corporation to United States Senators Lautenberg and Torricelli (sent to each Senator under separate cover).

It appears that discrimination in many forms has become a serious endemic throughout USDA. We hope your committee will be able to address these matters effectively and expeditiously.

Respectfully,

DEBORAH P. RICHARDS
President

JOHN C. SCHUMACHER
Broker of Record

cc: Harmon H. Lookhoff, Esq.
Nixon Peabody LLP
NJ Rural Development
Derrick Waltz, Civil Rights Manager
PA Rural Development

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September 6, 2000

Frank R. Lautenberg
United States Senator
506 Hart Senate Office Building
Washington, DC 20510

Robert G. Torricelli
United States Senator
113 Dirksen Senate Office Building
Washington, DC 20510

RE: New Jersey Rural Development

Dear Senator Lautenberg and Senator Torricelli:

Regrettably we must inform you that the New Jersey State Office of Rural Development (A Division of the United States Department of Agriculture) is in shambles and is imperiling the health, safety and welfare of hundreds, perhaps thousands, of tenants living in affordable income multi-family rental projects operated throughout New Jersey under the Rural Development 515 Program.

The Rural Development State Office has implemented what is best described as rule or ruin measures in its administration of the 515 Program. Program rules and regulations are purposely being manipulated by State Office representatives to achieve whatever ends they may desire. Arbitrary and discriminatory application of rules and regulations, mishandling and loss of documents submitted by project owners and managers and fabricated reports on project compliance and maintenance issues are among the practices purposefully employed in order to harass and persecute those project owners and managers who are in disfavor with the State Office. In short, Rural Development rules, regulations and procedures are being used as weapons of oppression.

Enclosed is a copy of a Discrimination Complaint filed recently in the USDA Office of Civil Rights by Tremont and others. Tremont manages five multi-family rental projects under the Rural Development 515 Program in New Jersey. Those projects provide housing for more than 200 persons. Although the charges contained in the enclosed Discrimination Complaint are made solely on behalf of the named Complainants, many of the issues raised therein are alarmingly similar to problems being encountered by many other owners and managers of 515 projects in New Jersey.

Although the New Jersey State Office has a reputation of being among the least capable and worst performing of the Rural Development State Offices in the country, there appears to be no oversight provided from any source. Consequently, accountability for the "In Terroram" tactics they continue to employ causes the State Office little if any concern, and owners and managers throughout New Jersey are compelled to concentrate

more on defending themselves than on operating the business affairs of their projects and responding to the needs of tenants.

This is not an attempt at self-serving alarmism, nor do we seek your assistance in fighting our legal battles. Our legal representatives will see to it that our claims are heard and decided in appropriate forums. Nevertheless, there is a crisis brewing here that cannot be ignored. Public awareness is imperative, and we ask for your support and assistance in bringing the truth to light.

We also believe the time has come for media exposure. Public awareness through shows like 20/20, Dateline and 60 Minutes may prove invaluable in curbing State Office abuses and in heading off serious victimization of many tenants. The potential plight of the tenants is quite real. If allowed to continue, the actions of the State Office undoubtedly will savage the quality of life of the most vulnerable tenants living in projects operated under the 515 Program. Those who have been owners and managers of 515 projects for many years are keenly aware that many elderly, infirm, disabled, handicapped and otherwise disadvantaged tenants desperately require the special personal attention and empathy from owners and managers that no legislation, rules and regulations can ever adequately address. However, it is understandable that when those same owners and managers are attacked and their own personal support systems are threatened by incompetent and malevolent administration of the very program they serve, personal attention and empathy unfortunately but necessarily turns inward.

We believe many owners and managers of 515 projects throughout New Jersey will be willing to speak up and furnish details of State Office incompetence and abusive conduct provided reprisals are not in the offing. Assurances in that regard, therefore, must come from a reliable and trustworthy source.

On another note and as stated in the enclosed Discrimination Complaint, the State Office is condoning and even encouraging illegal activities in violation of New Jersey Real Estate Licensing Laws. Enclosed is a copy of a letter sent to the New Jersey Real Estate Commission in that regard.

We hope you can provide support in this matter.

Respectfully,

DEBORAH P. RICHARDS
President

JOHN C. SCHUMACHER
Broker of Record

cc: Harmon H. Lookhoff, Esq.
Nixon Peabody LLP
New Jersey Office of Rural Development

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September 6, 2000

USDA
Office of Civil Rights
Program Investigations Division
1400 Independence Avenue, Southwest
Mail Stop 9430
Washington, DC 20250-9430

RE: DISCRIMINATION COMPLAINTS - vs – NEW JERSEY OFFICE OF RURAL DEVELOPMENT ET ALS

Dear Sir/Madam:

Complainants: Deborah P. Richards ("Mrs. Richards"); John C. Schumacher ("Schumacher"); Geneton, Inc. ("Geneton"), a New Jersey corporation; Tremont Management Group, Inc. ("Tremont"), a New Jersey corporation; Briarwood Properties Limited ("Briarwood"), a New Jersey limited partnership; Highland Associates Limited ("Highland"), a New Jersey limited partnership; Oxford Heritage Manor, L.P. ("Oxford"), a New Jersey limited partnership; Washington Enterprises Limited ("Washington"), a New Jersey limited partnership; and, Trico Development Associates Limited Partnership ("Trico"), a New Jersey limited partnership; individually and jointly hereby formally charge continuing acts of discrimination in violation of Complainants' civil rights,

AGAINST,

Defendants: New Jersey Office of Rural Development (the "State Office"); Ernest R. Grunow, Jr. ("Grunow"), State Director of New Jersey Rural Development; George R. Hyatt, Jr. ("Hyatt"), MHF/CF Program Director; Nancy A. Kears ("Kears"), Rural Housing Programs Director; David H. Schmidt ("Schmidt"), Multi-Family Housing Servicing Specialist; and, John Doe and Jane Doe, at this time unidentified participants along with the named Defendants in the acts of discrimination committed by the Defendants against the Complainants in violation of Complainants' civil rights.

The primary basis for the acts of discrimination complained of herein against the Defendants is the marital and family status of Complainant, Mrs. Richards. Mrs. Richards was at all relevant times and still is the wife of Daniel D. Richards ("Mr. Richards"). Mr. Richards was at all relevant times and still is a general partner in Briarwood, Highland, Oxford and Trico. Until January 1991, Mr. Richards was president and sole shareholder of Geneton, the managing general partner of Briarwood, Highland, Oxford, Washington and Trico. Also, until January 1991, Mr. Richards was president and sole shareholder of Tremont, the management agent for Briarwood, Highland, Oxford, Washington and Trico. In January 1991, Mr. Richards resigned as an officer in both Geneton and Tremont, and he also relinquished his entire ownership interest in both Geneton and

Tremont at that time. Mr. Richards has never had an interest in or held a position as an officer in either Geneton or Tremont since January 1991.

After Mr. Richards relinquished all of his positions and interests in Geneton and Tremont, Mrs. Richards and Schumacher and their children took over the ownership and operation of both Geneton and Tremont. Mrs. Richards is currently president of Tremont and a vice-president of Geneton. Schumacher is currently president of Geneton and a vice-president of Tremont. Schumacher is a licensed New Jersey Real Estate Broker, and he is the Broker of Record for Tremont. Mrs. Richards is a licensed New Jersey Salesperson. Consequently, inasmuch as both Schumacher and Mrs. Richards possess the requisite New Jersey Real Estate Licenses, Tremont has the legal right to be the property manager for Briarwood, Highland, Oxford, Washington and Trico in compliance with the New Jersey Real Estate Licensing Laws. This is not the case with many other Rural Development 515 projects in New Jersey as will be referred to later.

In or about January 1999, Mrs. Richards discovered that the Defendants, acting jointly and individually, planned to discriminate against her, because of her status as the wife of Mr. Richards. The Defendants planned to discriminate against Mrs. Richards and they have implemented and continued with that plan solely for the purpose of retaliating against Mr. Richards on account of his role in certain Rural Development compliance violations in 1989 and 1990 involving reserve accounts and operating accounts belonging to Briarwood, Highland, Oxford, Washington and Trico (sometimes referred to collectively as the "projects").

From January 1999, to the present time the Defendants, jointly and individually, have committed acts of discrimination against Mrs. Richards solely because of her marital and family status, and Defendants continue to do so to this time all in violation of Mrs. Richards' civil rights. The purpose of the Defendants in continuing their discriminatory conduct against Mrs. Richards is to interfere with Mrs. Richards' position as an officer and shareholder in Geneton, the managing general partner of the projects, and to interfere with Mrs. Richards' position as an officer and shareholder in Tremont, the management agent for the projects. By so doing the Defendants intended and still intend to achieve their ultimate goal, which is to remove Mrs. Richards and any and all members of her family, remove Schumacher and any and all members of his family, remove Geneton and remove Tremont from any ownership or management connection with the projects. As a consequence of Defendants' continuing acts of discrimination against Mrs. Richards on account of her marital and family status the Defendants also have violated the civil rights of Mrs. Richards' children and of Schumacher and Schumacher's children. Also, the Defendants have committed tortious acts of interference with the lives and business affairs of the Complainants.

Attached hereto as Exhibit A and made a part hereof is a detailed account of the factual circumstances that caused Complainants to become aware of the Defendants' intent to discriminate against Mrs. Richards on account of her marital and family status and the Defendants' intent to thereby inflict damage upon Mrs. Richards and her children, upon Schumacher and his children, upon Geneton, upon Tremont and upon the projects. Exhibit A is also referred to as the "Hillside Manor Episode." (AT THIS JUNCTURE EXHIBIT A SHOULD BE EXAMINED IN ITS ENTIRETY BEFORE CONTINUING)

Subsequent to the Hillside Manor Episode the Defendants have continued to discriminate against Mrs. Richards on account of her marital and family status and have continued to discriminate against the other Complainants by: refusing to service the projects in compliance with Rural Development servicing guidelines; refusing to allow Tremont to manage the projects properly; fabricating maintenance and property condition assessment reports on the projects with the intent to deceive and create the false impression that the projects are out of compliance; and, intentionally transmitting the results of fabricated maintenance and property condition assessment reports on the projects to others, all for the purpose of inflicting damage upon Mrs. Richards and upon the other Complainants.

The acts of discrimination committed by the Defendants against Mrs. Richards because of her marital and family status have continued unabated from January 1999 to the present time. Unbeknownst to Mrs. Richards and the other Complainants until recently, the plan and conspiracy of the Defendants to discriminate against Mrs. Richards and to damage the other Complainants was developed by the Defendants prior to January 1999. An internal memorandum generated in the State Office in December 1998 has surfaced. That memorandum contains a reference to Defendants' intention to obtain certain language from a "Pat Sheridan" of the National Office that the State Office and the other Defendants would then be able to utilize in order to obtain a "permanent injunction of debarment" against Mrs. Richards and her children, Schumacher and his children, Tremont and all others participating with them. Also, another memorandum generated in the State Office in December 1998 has surfaced wherein the Defendants make the determination that Mr. Richards had previously conspired with Mrs. Richards to transfer all of his assets to her in order to make Mr. Richards judgment proof. That memorandum provides additional evidence of Defendants' scheme to lie in order to discriminate against Mrs. Richards, because the memorandum notes that in the event Defendants are able to make a successful attack on Mrs. Richards in the form of a permanent injunction of debarment they would then be able to effectively destroy her only source of income and thereby eliminate Mrs. Richards and the other Complainants from the Rural Development 515 Program.

Acts of discrimination by Defendants against Mrs. Richards because of her marital and family status from January 1999 to the present time are further evidenced by the Defendants' intentional failure and refusal to service the projects and by Defendants doing the following:

(1) Refusing to accept and review Proposed Budgets on the projects for 1998, 1999 and 2000.
(2) Refusing to review and accept Affirmative Fair Housing Marketing Plans submitted on the projects as far back as June 1995.
(3) Intentionally preparing and submitting fabricated maintenance reports on the projects and disseminating those fabricated reports to others at various times up to and including the month of August 2000.
(4) Refusing to allow Tremont to submit Management Plans and Management Agreements on the projects commencing in April 1999 and continuing to this time so long as Mrs. Richards remains involved with the business affairs of Geneton and Tremont and so long as she remains married to Mr. Richards.
(5) Maliciously and falsely accusing Mrs. Richards and the other Complainants of

misappropriation of funds belonging to Briarwood, Highland, Oxford and Washington.

(6) Intentionally utilizing specious and fabricated grounds to file a Notice of Acceleration of Debt dated August 11, 2000 against Briarwood, Highland, Oxford and Washington; and, intentionally contriving to file and actually filing such Notices against those four projects at the same time in an attempt to overwhelm the Complainants with legal problems and thereby interfere with the Complainants' ability to manage the projects and properly serve the needs of the tenants.

With respect to item (6) in the preceding paragraph it should be noted that each of the Notices filed against Briarwood, Highland, Oxford and Washington contains an unspecific charge of, "Misappropriation of project funds". Although that charge is indefinite and vague, Complainants will assume at this point that the charge refers to a number of unauthorized withdrawals made by Mr. Richards from the reserve and operating accounts of the projects during 1989 and 1990. It is well documented that Mr. Richards did make unauthorized withdrawals from the reserve and operating accounts of the projects in 1989 and 1990. However, those acts by Mr. Richards were compliance violations committed by him alone, and they are not attributable to the projects, to the owners of the projects or to any of the Complainants herein. Defendants are well aware that they have made well documented assurances and representations to the Complainants on behalf of Defendants and on behalf of USDA that Mr. Richards' acts are attributable to him alone and that his acts would not have negative legal consequences or any negative consequences whatsoever on the projects, on the projects' owners or on any of the Complainants herein. Also, Defendants have acted in furtherance of their assurances and representations. Defendants are well aware that the Complainants have relied on and acted in accordance with the assurances, representations and acts of Defendants, which were made by Defendants on behalf of themselves and on behalf of USDA numerous times commencing in or about late 1990 and early 1991. Consequently, those assurances, representations and acts by the Defendants are binding upon the Defendants and upon USDA, and they are conclusive of the issue.

Additionally, with respect to the Notice of Acceleration of Debt filed against Briarwood, Highland, Oxford and Washington referred to in the abovementioned item (6), Defendants fabricated project maintenance reports stemming from inspections conducted on the projects by State Office representatives on June 1 and June 2, 1998. According to tape recorded representations made on May 6, 1999 by Schmidt (who was one of the inspectors on June 1 and June 2, 1998) those inspections were authorized and conducted by the State Office solely for the purpose of assessing the federal government's security position on the projects (See Exhibit A, page 8). Schmidt assured everyone present on May 6, 1999 that those inspections were absolutely not being conducted by the State Office for the purpose of determining the state of maintenance compliance on the projects and making recommendations regarding repairs. Schmidt went on to assure everyone present on May 6, 1999 that since no report on the inspections had been furnished nor ever would be furnished to Tremont, Tremont was under no obligation to respond. Interestingly, on June 16, 1998 (two weeks after the June 1 and June 2, 1998 inspections were conducted by the State Office on Briarwood, Highland, Oxford and Washington), Schumacher sent a certified letter to Hyatt wherein Schumacher stated that having been present himself during those inspections he (Schumacher), "was pleased with the general condition of the apartment units and with the commentary of the

tenants." Schumacher went on to state that he would like to meet with Hyatt "in the near future" to discuss some thoughts Schumacher had with respect to project improvements. Neither Hyatt nor anyone else at the State Office has ever replied to Schumacher's letter.

Defendants also have utilized the Notice of Acceleration of Debt filed against the Highland and Washington projects in an attempt to conceal their intentional disregard of serious maintenance problems on those projects that were called to Defendants' attention in 1997. Highland and Washington are contiguous projects with an in common ingress and egress and a shared detention basin. In 1997 Tremont, as the manager of both Highland and Washington, requested the use of reserve funds from each project to bear the cost of removing and replacing certain designated areas of concrete sidewalks, steps and access ramps. After purposely delaying approval of Tremont's request for many months, notwithstanding the concerns Tremont continuously expressed regarding the safety and welfare of the tenants during that time, the State Office finally agreed in March of 1998 to allow some of the requested concrete repairs, but at the same time the State Office also denied in writing other requested concrete repairs without furnishing reasons therefor. Among the concrete repairs the State Office refused to permit were handicap access ramps in both projects and certain sidewalk areas in both projects. According to the inspection and proposal submitted by the repair contractor and according to "Loss Control Recommendations" made by the projects' property insurance company on November 7, 1997 all of the proposed concrete repairs that were rejected by the State Office were needed. This is a glaring example of the antipathy of the Defendants' toward the Complainants as well as the Defendants' total lack of concern for the safety and welfare of the tenants. Now the Defendants accuse Complainants of failing to comply with Section 504 of the Handicap Rehabilitation Act of 1973 on all the projects regarding handicap accessibility issues, when in reality it is the continuing failure and refusal of the Defendants to allow Tremont and the other Complainants to perform management and other project related functions that is responsible for any deficiencies in that regard. Several months ago Highland and Tremont were served with a copy of a complaint filed in the New Jersey Superior Court wherein the plaintiff has demanded damages for injuries he claims he sustained on March 25, 1998, when he was caused to fall in the area of a deteriorated sidewalk on the premises owned by Highland and managed by Tremont. The plaintiff in that lawsuit claims negligence against both Highland and Tremont. Highland and Tremont have informed their defense attorneys that the particular location where the plaintiff alleges he fell is a location that would have been repaired long before the date of the plaintiff's accident had it not been for the wrongful conduct of the State Office.

Admittedly, at this juncture the Complainants have little in the way of documentary evidence directly linking Defendants, Grunow, Hyatt and Kears, personally to the wrongful and damaging acts complained of herein. The documentary evidence against Defendant Schmidt, however, is overwhelming. Schmidt is a lower level employee with no apparent decision making power. Consequently, as he himself constantly points out, Schmidt has always followed and continues to follow the directions laid down for him by his superiors (Grunow, Hyatt and Kears). Administrative and court proceedings will determine whether Grunow, Hyatt and Kears will distance themselves from Schmidt and attempt to make Schmidt the scapegoat in the hope that they will be able to escape not only the blame for Schmidt's wrongful conduct but the taint of Schmidt's shattered credibility as well. In any event, once their claims against the Defendants surface in public forums, Complainants fully expect additional evidence of the Defendants' wrongdoing will be forthcoming from other owners and managers of 515 projects throughout New Jersey.

The evidence clearly demonstrates that the Defendants have determined to judge, and are attempting to convince others to judge, the integrity and character of Mrs. Richards and the other Complainants based upon the Defendants' interpretation and characterization of the actions of Mr. Richards that took place more than ten years ago. This kind of character assassination by Defendants is not only discriminatory, it is un-American and violates every known principle of fundamental fairness. By intentionally engaging in this form of discrimination the Defendants are attempting to confiscate and direct to others the projects' operating and reserve funds as well as the equity in the projects, all of which properly and legally belong to the owners of the projects.

The Defendants have also been motivated to continue to discriminate against Mrs. Richards and the other Complainants because of other factors. One such factor is the awareness of the State Office and the other Defendants that the Complainants know the State Office and the other Defendants are allowing illegal management of Rural Development 515 projects to take place throughout New Jersey. Complainants are in possession of documentary evidence that the State Office was advised in writing more than two years ago that the State Office was permitting, sanctioning and even fostering the management of 515 projects throughout New Jersey in direct violation of New Jersey law. That communication made it abundantly clear to the State Office that New Jersey law requires the management of all rental real estate in New Jersey to be under the active supervision of a licensed New Jersey Real Estate Broker. The State Office not only has failed and refused to rectify the rampant violations of this law that are taking place in the management of 515 projects in New Jersey, but it and the other Defendants have attempted to discriminate against Tremont, Schumacher and Mrs. Richards (who are among the very few managing 515 projects in New Jersey in compliance with New Jersey law), because Defendants fear that the "whistleblower" accusations the Complainants intend to make on the illegal property management issue will jeopardize the improper relationships that appear to exist between the Defendants and the parties who are engaging in the illegal property management activities. The time has now come to bring these illegal activities and the Defendants' participation therein to an end by bringing the facts to the attention of the New Jersey Real Estate Commission and other authorities.

Defendants are engaging in malfeasance and discriminatory conduct against the Complainants in order to achieve their desired ends. The preparation and distribution of intentionally fabricated maintenance reports on the projects, which were prepared by unqualified and untrained personnel at the direction of the Defendants in order to demonstrate that Rural Development mortgages on the projects are in jeopardy, was clearly planned and carried out by the Defendants in order to discriminate against Mrs. Richards and to damage her and the other Complainants. A glaring example of the Defendants' intentional fabrication of maintenance reports is clearly evident in the case of the Washington project, where the Defendants published and distributed a false report claiming that maintenance and repairs in excess of $500,000 are needed on that project. The Complainants are prepared to fully expose the frauds being perpetrated by the Defendants in the preparation, use and dissemination of those fabricated maintenance reports. Recent appraisals on the Briarwood, Oxford and Washington projects have been prepared by a licensed New Jersey Real Estate Appraiser, and recent property condition assessment reports on the Briarwood, Oxford and Washington projects have been prepared by a licensed New Jersey Architect. These reports will further corroborate Complainants' allegations concerning the maintenance reports that have been

fabricated by the Defendants. In fact, the preparation of those reports by the New Jersey Appraiser and Architect was authorized by the United States District Court.

Defendants have planned and implemented a somewhat different method of discriminating against Mrs. Richards and damaging her and the other Complainants with respect to the Trico project. Although they plan to file and serve a Notice of Acceleration of Debt on the Trico project, the Defendants have determined that as a precursor the best course is to first accuse Mrs. Richards and the other Complainants of various forms of mismanagement of Trico. To that end Defendants caused a letter dated August 16, 2000 to be sent to Tremont, wherein Defendants with fraudulent and malicious intent set forth false accusations concerning the management and maintenance of the Trico project, all in preparation for the filing and service of a Notice of Acceleration of Debt. The August 16, 2000 letter contains intentionally false and misleading comments on the management and maintenance of Trico including but not limited to: a fabricated maintenance report as of May 18, 2000 claiming unsatisfactory maintenance procedures by Tremont (in contradistinction to a report issued by the New Jersey Housing and Mortgage Finance Agency (HMFA) regarding a project maintenance and compliance inspection of Trico conducted by HMFA on June 16, 2000); fabricated accusations claiming that various costs such as project postage and project computer software programs are not project expenses; and, a conscious attempt to deceive Tremont and Mrs. Richards and circumvent a USDA Administrative Notice regarding "Resident Service Stipends". The Defendants intend that Administrative Notice deception to cause Trico and/or a tenant in the project to incur a financial penalty in excess of $25,000. The letter of August 16, 2000, also intentionally ignores the fact that the Trico Project Budgets for 1999 and 2000 have never been addressed by the State Office, that Tremont correspondence to the State Office on important project issues remain unanswered, that the State Office has failed and refused to process Affirmative Fair Housing Marketing Plans submitted by Tremont and that the State Office will not permit Tremont to submit a Management Plan and Management Agreement on Trico, all because of the Defendants' intent to continue their discriminatory conduct against Mrs. Richards on account of her marital and family status and their intent to inflict serious harm and damage upon the other Complainants.

By their actions the Defendants not only have damaged the reputations of Mrs. Richards and Schumacher by having communicated false and defamatory information concerning Mrs. Richards' and Schumacher's honesty and integrity to the owners of Hillside Manor , but the Defendants continue to this time to disseminate such false and defamatory information to the owners of Hillside Manor and to other persons involved in the Rural Development 515 Program in New Jersey.

Serious civil rights violations have been committed by the Defendants, particularly but not limited to discrimination based upon the marital and family status of Mrs. Richards. These violations continue to the present time against Mrs. Richards, Schumacher, Tremont, Geneton, Briarwood, Highland, Oxford, Washington and Trico and are manifested: by the Defendants' refusal to provide servicing of any kind to the Rural Development 515 projects in New Jersey; by the Defendants' refusal to acknowledge receipt of documents submitted by Tremont so long as Mrs. Richards and Schumacher remain associated with the ownership or management of those projects; by the Defendants' intentional infliction of financial damage and other personal harm upon the Complainants; by the Defendants' professed willingness to allow harm to be visited upon the

tenants in the projects if it will achieve Defendants' ends; and, by the Defendants' professed intention to inflict financial damage upon the owners of the projects by seeking to foreclose on the projects with the primary objective being to "write down" all or a substantial portion of the government mortgages in order to create serious tax problems for the owners.

A great many owners and managers of Rural Development projects in New Jersey are being oppressed by the State Office's improper, incompetent and unconscionable administration of the 515 Program in New Jersey. There is a consensus that New Jersey Rural Development is in disarray and that an immediate investigation of the State Office is imperative.

Because of the continuing discriminatory conduct of the State Office against Mrs. Richards, Schumacher, Tremont, Geneton and the New Jersey 515 projects, the Complainants have filed this complaint with the USDA Office of Civil Rights in order to pursue whatever remedies may be available in this forum. Nevertheless, it is inconceivable that in light of the extensive and insidious nature of the frauds and discriminatory conduct described herein and the financial and other damages caused thereby, charges will not have to be brought at some point in Federal Court for monetary damages against the individuals responsible for the continuing serious harm being inflicted upon the Complainants.

Complainants reserve the right to amend this complaint as other information in their possession is verified, particularly regarding but not limited to: a conspiracy formed between and among these Defendants and representatives of the Pennsylvania Office of Rural Development to discriminate against Mrs. Richards and the other Complainants because of "whistleblower" actions against both State Offices on illegal property management; intentional and fraudulent steering of projects to certain owners and managers by both State Offices; attempts by both State Offices to wrongfully seize funds and equities from projects in which Mrs. Richards and the other Complainants are involved; and, the conspiratorial intent of both State Offices to foreclose on projects in which Mrs. Richards and the other Complainants are involved in order to "write-down" all or a portion of those mortgages and thereby inflict damaging tax consequences on the owners of the projects.

SUBMITTED BY: _____

DEBORAH P. RICHARDS, Individually and as President of Tremont and as Vice-president of Geneton, the managing general partner for Briarwood, Highland, Oxford, Washington and Trico

cc: Harmon H. Lookhoff, Esq.
Nixon Peabody LLP
New Jersey Rural Development
Senator Frank R. Lautenberg
Senator Robert G. Torricelli

_____

JOHN C. SCHUMACHER, Indivdually and as Vice-president of Tremont and as President of Geneton, the managing general partner for Briarwood, Highland, Oxford, Washington and Trico

EXHIBIT A

HILLSIDE MANOR EPISODE

FACTUAL BACKGROUND

Tremont Management Group ("Tremont") was contacted sometime in or about August of 1998 by Nancy Paterson ("Paterson") of Property Management Services of New Jersey, the management agent for Hillside Manor. Hillside Manor is an eight unit senior citizen project located in Sussex, New Jersey and funded under the 515 Rural Rental Housing Program. Paterson told representatives of Tremont that Property Management Services would be terminating its management services for Hillside Manor at the end of 1998 and that Tremont had been recommended to fill the management position by David Schmidt ("Schmidt") of New Jersey Rural Development.

On December 31, 1998, after months of meetings and correspondence negotiating the terms and conditions of new management, Tremont entered into an agreement with the owner of Hillside Manor to assume management responsibilities for the project commencing in January of 1999. Thereafter, on January 6, 1999, Tremont sent a fully executed Management Plan and Management Agreement on Hillside Manor to Schmidt for approval by Rural Development.

On January 27, 1999, during a telephone conversation with Tremont's president, Deborah Richards ("Mrs. Richards"), Schmidt stated to Mrs. Richards that Rural Development had disapproved Tremont as the new management agent for Hillside Manor based upon, "the situation concerning your husband."

The next day, January 28, 1999, Schmidt sent a letter to Mrs. Richards advising her that Rural Development had denied Tremont's request to manage Hillside Manor for the following reasons:

" 1. There has been a lack of qualification and business integrity for project compliance of the following:

a. Adequate funding of project reserve accounts.

b. Submission of project energy audits.

c. Submission of acceptable project Affirmative Fair Housing Marketing Plans.

d. Updated project waiting lists and residential rental application.

e. Failure to answer requested information regarding 1996 actual budget concerns.

f. Failure to submit monthly budget reports beginning in November, 1997.

g. 1998 project budgets were not approved as requested information was not submitted.

h. 1999 proposed project budgets have not been submitted.

i. Failure to answer requested information regarding 1997 audit concerns.

2. A permanent injunction of debarment from participation in all Federal Housing Programs has been requested against Daniel Richards, Tremont Management Group, Inc., and others participating with them pursuant to the plea agreement between Daniel Richards and the United States Attorney."

Tremont received Schmidt's January 28, 1999 letter on February 1, 1999 and responded by letter that same day. In its response, Tremont provided evidence refuting the unsupportable broad-brushed allegations in item 1 of Schmidt's January 28, 1999 letter and demanded disclosure of the source of the "debarment" allegations in item 2 of that letter.

By letter dated February 9, 1999 (delivered to Rural Development by United Parcel Service on February 10, 1999), Tremont provided additional evidentiary materials refuting item 1 of Schmidt's January 28, 1999 letter. Also, in its letter of February 9, 1999, Tremont formally requested reconsideration of Rural Development's adverse decision on the management of Hillside Manor. Further, in its request for a reconsideration meeting, and in an effort to meet the unsupportable generalized allegations set forth in item 1 of Schmidt's January 28, 1999 letter, Tremont demanded that Rural Development produce the following at the reconsideration meeting:

1. All project energy audits submitted by Tremont and all Tremont letters forwarding said energy audits to Rural Development.

2. All Affirmative Fair Housing Marketing Plans submitted by Tremont to Rural Development, all Tremont letters forwarding said Plans and all copies of Rural Development's letters to Tremont concerning said Plans.

3. All responses by Tremont to Rural Development's requests for information regarding 1996 actual budget concerns.

4. All responses by Tremont to Rural Development's requests for information regarding proposed 1998 budgets.

5. A copy of the request for a permanent injunction of debarment made against Tremont and against others participating with Tremont as referred to in item 2 of Rural Development's letter of January 28, 1999.

6. All sources of information, including but not limited to, all writings furnished to and/or utilized by Rural Development in support of the facts set forth in item 2 of Rural Development's letter of January 28, 1999.

7. The names of all persons and/or entities to whom information relative to the facts set forth in item 2 of Rural Development's letter of January 28, 1999 was imparted through the Rural Development offices located at 790 Woodlane Road, Suite 22, Mount Holly, New Jersey 08060.

By letter dated February 25, 1999 Tremont advised Rural Development that Tremont had not yet received a notice scheduling a reconsideration meeting. Tremont requested that an expedited date be set for such a meeting.

By letter dated March 16, 1999 Tremont asked Rural Development why Tremont's prior requests of February 9, 1999 and February 25, 1999 for a reconsideration meeting on the management of Hilltop Manor were being ignored.

By letter dated April 2, 1999 Schmidt responded and denied that Rural Development had ever received Tremont's letter of February 9, 1999 requesting a reconsideration meeting. Schmidt, nevertheless, did acknowledge receipt of Tremont's letter of February 25, 1999 wherein Tremont clearly advised Rural Development that Tremont's letter of February 9, 1999 had been delivered to Rural Development's office by United Parcel Service ("UPS") on February 10, 1999. In his letter of April 2, 1999 Schmidt demanded proof that UPS had delivered Tremont's letter of February 9, 1999 to the Rural Development office.

By letter of April 8, 1999 directed to Schmidt, Tremont enclosed a copy of the UPS Shipping Document, which proved the February 9, 1999 letter from Tremont was delivered to Rural Development by UPS on February 10, 1999, and the delivery was acknowledged by a "K. Holden" of Rural Development at 9:25 a.m. on that date.

By letter dated April 26, 1999 Schmidt notified Tremont that a reconsideration meeting had been scheduled in the Rural Development office in Mount Holly, New Jersey on May 6, 1999 at 2:00 p.m. Schmidt's letter contained a cursory apology for the scheduling delay but offered no explanation, justification or apology for the three months it took to schedule the reconsideration meeting.

During February and March of 1999, there was a series of written correspondence between John C. Schumacher ("Schumacher"), the Real Estate Broker for Tremont, and Schmidt specifically related to the "debarment" issue raised in item 2 of Schmidt's letter of January 28, 1999. The first such piece of correspondence was a letter from Schumacher to Schmidt dated February 11, 1999 wherein Schumacher referenced Schmidt's letter of January 28, 1999 and asked that he be provided with a copy of the "request" that had been made to debar Tremont and others associated with Tremont from participation in federal programs. Schumacher also requested disclosure of the names of the persons affected by the debarment "request" and justification for such action.

By letter to Schumacher dated March 3, 1999 Schmidt responded that since no request had been made "by Rural Development to the National Office to debar Tremont Management and other associates," there were no persons affected and as a result there was no need for "justification" by Rural Development.

By letter of March 11, 1999 Schumacher replied to Schmidt's letter of March 3, 1999 and pointed out to Schmidt that he was not being responsive to Schumacher's request. Schumacher referred to the fact that he had not asked Schmidt for a copy of a request made by "Rural Development" to debar Tremont and others, but rather he had asked for a copy of the request that had in fact been made by someone as specifically and clearly stated in item 2 of Schmidt's letter of January 28, 1999.

Schmidt replied by letter of March 17, 1999, wherein he merely confirmed the comments contained in his letter of March 3, 1999, and he advised Schumacher there was no other information available on the subject.

Thereafter, in a letter to Schmidt dated March 29, 1999 Tremont submitted additional evidence refuting the generalized allegations in item 1 of Schmidt's letter of January 28, 1999. Tremont also referenced Schmidt's March 17, 1999 letter to Schumacher with respect to the debarment issue and accused Rural Development of utilizing falsified information regarding a "debarment request" as a basis to discriminate against Tremont, against Mrs. Richards and against others participating with Tremont. Tremont also accused Rural Development of using a fabricated "debarment request" as an improper basis to deny Tremont the right to manage Hillside Manor. Rural Development has never responded to those accusations by Tremont.

THE RECONSIDERATION MEETING

On May 6, 1999 at 2:00 p.m. Tremont's representatives appeared at Rural Development's office in Mount Holly, New Jersey prepared to review the Hillside Manor management issue with the New Jersey Rural Development decision makers. Appearing on behalf of Tremont were: John C. Schumacher ("Schumacher") as Real Estate Broker for Tremont and as president of Geneton, Inc., the managing general partner of all 515 Rural Rental Housing Projects managed by Tremont in New Jersey; Deborah P. Richards ("Mrs.

Richards") as president of Tremont; and Harmon H. Lookhoff, Esq. ("Lookhoff") as attorney representing Tremont.

David Schmidt ("Schmidt") met the Tremont representatives and stated he had been designated to appear on behalf of Rural Development. Schmidt thereupon ushered the Tremont representatives into a room for the purpose of conducting the reconsideration meeting on Hillside Manor.

Prior to commencement of the meeting, Lookhoff handed a tape recorder to Mrs. Richards and asked her to position the tape recorder on a table in the meeting room in order to record the proceedings. Mrs. Richards complied by placing the tape recorder on a table in the presence of Schmidt and Tremont's representatives. Consequently, the entire meeting, including a conversation by speaker-phone with David Spader, Esq. ("Spader") of the Rural Development Office of General Counsel ("OGC") in Harrisburg, Pennsylvania was tape recorded with the knowledge of Schmidt and the Tremont representatives.

The following account of what transpired at the reconsideration meeting is based upon the tape recorded statements made by Schmidt, Spader and the Tremont representatives.

At the outset, Schmidt informed Tremont's representatives that the Rural Development decision makers, namely, Ernest R. Grunow, Jr. ("Grunow"), George R. Hyatt, Jr. ("Hyatt") and Nancy A. Kears ("Kears"), all had been called to Washington D.C. "at special request on short notice" and were, therefore, unable to attend the reconsideration meeting. Schmidt said Grunow, Hyatt and Kears (the "decision makers") had determined that he (Schmidt) would have to obtain information from the Tremont representatives at the meeting and then pass that information along to the decision makers for their review. Schmidt did not produce any of the items demanded by Tremont in its letter of February 9, 1999, nor did Schmidt ever acknowledge Tremont's written demand that Rural Development produce those items at the reconsideration meeting.

The issue regarding a "permanent injunction of debarment", which was set forth as a reason for denial in Schmidt's letter of January 28, 1999, was addressed by the participants at the meeting. Schmidt admitted that during a telephone conversation with Mrs. Richards on January 27, 1999 he told Mrs. Richards Tremont's request to manage Hillside Manor was being denied by Rural Development on account of, "the situation concerning your husband." Schmidt then admitted that his statement in that regard to Mrs. Richards on January 27, 1999 was not a valid basis for Rural Development's denial of Tremont's request to manage Hillside Manor, and he also admitted that the language regarding "debarment" as set forth in item 2 of his letter of January 28, 1999 was not true. However, Schmidt quickly placed the entire blame for the false language in item 2 of his letter on his superiors by claiming that Hyatt and Kears had reviewed and approved the contents of his January 28, 1999 letter containing the false language prior to Schmidt signing and sending the letter to Tremont. Schmidt then claimed that David Spader, Esq. ("Spader"), an attorney with OGC in Harrisburg, Pennsylvania, had given "us" the

"debarment" language that Schmidt had inserted as item 2 in his letter of January 28, 1999. Schmidt never identified the persons who comprised the "us" he was referring to.

Then, on being questioned by Schumacher as to the reasons Schmidt sent letters to Schumacher evading Schumacher's requests for specific information regarding the "debarment" issue, Schmidt acknowledged he had sent those responses to Schumacher in an attempt to do something about the false language in item 2 of his letter of January 28, 1999. Upon being pressed further on the "debarment" issue, Schmidt claimed item 2 in his letter of January 28,1999 had been withdrawn and that, "I had better let my Office of General Counsel address this." Thereupon, Schmidt placed a telephone call to Spader of OGC and caused part of that call to take place via speaker phone in the meeting room to enable Schmidt as well as the Tremont representatives to participate in the call. (The speaker phone conversations involving Spader, Schmidt and the Tremont representatives were tape recorded, but although Schmidt was aware of that fact, it is unknown whether Schmidt had made Spader aware of the tape recording device.)

Upon being questioned by Lookhoff on the "debarment" reference in item 2 of Schmidt's letter of January 28, 1999, Spader admitted the reference was not true. Spader said that prior to a certain plea agreement entered in the United States District Court by Daniel Richards ("Mr. Richards"), the husband of Deborah Richards, in November of 1998, the New Jersey Rural Development office (the "State Office") had attempted to intervene in that plea by making a request and recommendation to the United States Attorney that a provision be inserted in Mr. Richards' plea agreement which would function as a "non-procurement debarment" against Mr. Richards, Mrs. Richards, Schumacher, Tremont and all their business associates. This provision was intended by the State Office to include and operate against the interests of Geneton, Inc.("Geneton") as managing general partner of the five Rural Development 515 projects being managed by Tremont in New Jersey, namely: Briarwood Properties Limited ("Briarwood"); Highland Associates Limited ("Highland"); Oxford Heritage Manor L.P. ("Oxford"); Washington Enterprises Limited ("Washington"); and, Trico Development Associates Limited Partnership ("Trico"). The State Office knows and has always known that Mrs. Richards is an officer and shareholder in Geneton and that Schumacher is an officer in Geneton. This was all done by the State Office as an intentional violation of the civil rights of Mrs. Richards and Schumacher. This discriminatory conduct by the State Office against Mrs. Richards and Schumacher was undertaken on account of Mrs. Richards' marital and family status and on account of Schumacher's continued business relationship with Mrs. Richards, Geneton, Briarwood, Highland, Oxford, Washington and Trico. The discriminatory conduct by the State Office was intended to interfere with and damage Mrs. Richards' and Schumacher's relationships with the Briarwood, Highland, Oxford, Washington and Trico projects and with the investors in those projects. Further, the discriminatory conduct by the State Office was directed toward and was intended to include and operate against the interests of Mrs. Richards' children, Schumacher's children and any and all others who work with Mrs. Richards and Schumacher or who are in any way involved in the business affairs of Mrs. Richards, Schumacher, Tremont, Geneton, Briarwood, Highland, Oxford, Washington and Trico. Spader stated that although the

recommendation and request for such a "non procurement program debarment" had in fact been made to the United States Attorney by the State Office, the United States Attorney had either rejected or not acted upon the State Office's request and recommendation. Further, according to Spader, because the United States Attorney had either refused or failed to act on the request and recommendation, the issue of debarment of Mr. Richards, of Tremont or of anyone connected with Tremont had been concluded, and as a consequence "debarment" was never made a part of Mr. Richards' plea agreement. Clearly, this was a fact known full well by Schmidt and the New Jersey Rural Development decision makers at the time of Schmidt's letter of January 28, 1999.

When the speaker phone call with Spader was concluded, Schmidt admitted knowing the "debarment" request had been initiated by his office by contacting an "Administrator" in Washington D.C. with the approval or sanction of OGC. Schmidt acknowledged he and others at the State Office believed Mr. Richards had wrongfully utilized project reserve funds on occasions after Mr. Richards was no longer associated with the business affairs of Tremont, thereby implicating Mrs. Richards, Schumacher and others in improper financial transactions that in fact never took place. Schmidt also admitted that Mr. Richards' prior involvements in the affairs of the projects and in the affairs of Tremont were utilized by the State Office in evaluating Tremont and its principals on an ongoing negative basis.

Schmidt produced what he referred to as a compilation of "servicing letters" on four of the five New Jersey 515 Rural Rental Housing projects managed by Tremont. Schmidt insisted that Kears had asked him to create the compilation of these "servicing letters" in an effort to support Rural Development's denial of Tremont's request to manage Hillside Manor. Schmidt said, "This compilation forms the basis for our decision in paragraph 1 of my letter of January 28, 1999" as to why Tremont's request for management was denied. Schmidt said, "This list comes from a review of our files and is a complete record of what was not submitted by Tremont on a timely basis."

Schumacher then said to Schmidt, "You set this up (the compilation) after the fact – first you denied it (the request to manage) then you sought ways to justify your decision after the fact, because you knew you could not use the debarment issue as a basis for denial. Schumacher asked Schmidt how he could have prepared his letter of January 28, 1999 without doing his compilation first. Schmidt replied that although Schumacher's observation in that respect was correct, he (Schmidt) had discussed everything first with the New Jersey Rural Development Housing Chief as well as with the Coordinator. Schmidt said, "I can't sign something like that (the letter of January 28, 1999) without the review of the State Director and the Housing Chief and the Coordinator."

Schmidt then alleged that Tremont had not performed adequate preventive and responsive maintenance on the 515 Rural Rental Housing projects it managed. At that point Mrs. Richards asked Schmidt to explain if that were truly the case why Tremont had never received a report from Rural Development on the results of a unit by unit inspection made by Schmidt and the State Office architect in the presence of Schumacher and Mr.

Richards in June of 1998 on the four projects that were the subjects of Schmidt's compilation of "servicing letters." Schmidt responded, "That was a unit by unit inspection required under the regulations for liquidation of the projects, and that is what we did, and that was done to assess the government's security position, not to make recommendations regarding repairs." Schmidt went on to say that since no report of the inspection was furnished to Tremont, Tremont was not required to respond.

Finally, Schmidt handed a copy of his compilation of servicing letters to Lookhoff for review by Tremont, and the "reconsideration meeting" was concluded.

Within a few days of the conclusion of the meeting Tremont's representatives and Tremont's attorney had an opportunity to examine the compilation of "servicing letters" provided by Schmidt. They all quickly realized the compilation was nothing more than a meaningless chronological listing of correspondence that had taken place between Tremont and the State Office regarding the four 515 Rural Rental Housing projects between 1994 and 1998. Consequently, the so called "compilation" was of no probative value in any context relating to Rural Development's denial of Tremont's request to manage Hillside Manor. At that point it became abundantly clear to Tremont that the submission of the "servicing letters" by Schmidt at the meeting was nothing more than a hasty contrivance devised to conceal the fact that Rural Development had nothing to support its allegations in item 1 of Schmidt's letter of January 28, 1999. Further, the submission obviously was timed not only to hide that fact, but was designed as well to create the illusion that Rural Development had made a good faith effort to investigate and disclose the specifics of the alleged compliance violations in response to Tremont's evidentiary submissions to the contrary.

Thereafter, by letter of June 7, 1999, Rural Development formally denied Tremont's request to manage Hillside Manor. Rural Development cited a review of what took place at the so-called "reconsideration meeting" of May 6,1999 together with items 1a-h in Schmidt's letter of January 28, 1999 as its reasons for the denial. In its letter of denial Rural Development advised Tremont of its right to appeal Rural Development's adverse decision to the National Appeals Division (NAD) of the United States Department of Agriculture (USDA). Further, Rural Development's letter informed Tremont of the USDA's prohibition of discrimination in all its programs and activities on the basis of "marital or family status" among other things.

COMMENTARY

Soon after it recognized the futility of attempting to generate a substantive response to the meaningless "servicing letters" produced by Schmidt at the reconsideration meeting, Tremont discovered the State Office had induced Tremont to involve itself in a review and appeal process that the rules and regulations of Rural Development specifically prohibit; namely, only the borrower or the borrower's representative can appeal a Rural Development decision. A Management Agent such as Tremont has no standing to appeal a Rural Development decision. Only when specifically authorized by the borrower may a

Management Agent represent the borrower in the borrower's appeal. The State Office was well aware that under Rural Development rules and regulations only the owner of Hillside Manor had the right to appeal the State Office's adverse decision on management of the project. Notwithstanding this knowledge, the State Office caused Tremont to set aside a specific time frame for a meeting with the State Office decision makers at a substantial expense to Tremont, including the expense of legal representation. Further, the State Office compounded its manipulation of the Rural Development review and appeal process by inducing Tremont to appear at the State Office on May 6, 1999 at 2:00 p.m. for a meeting that none of the decision makers planned to attend. The truth of Schmidt's story that all three decision makers (Grunow, Hyatt and Kears) had been called to Washington D.C. suddenly on special request will be determined in future discovery proceedings in the appropriate forum. However, even if that story should prove to be true, at the very least a full explanation of why Tremont could not have been informed of that situation on a timely basis will be required.

The "debarment" debacle perpetrated by the State Office is clear evidence of discrimination and abuse of authority. When Schmidt told Mrs. Richards that the reason Tremont's request to manage Hillside Manor was denied was because of, "the situation involving your husband," and then compounded that fabrication by sending the letter of January 28, 1999, Schmidt and his "decision making" superiors all knew: (1) they themselves had requested the United States Attorney's Office to include a "non-procurement debarment" against Tremont and others involved with Tremont in Mr. Richards' plea agreement; (2) the "debarment" request from the State Office had been rejected or ignored by the United States Attorney's Office; (3) "debarment" was never made a part of Mr. Richards' plea agreement; (4) the language in item 2 of Schmidt's letter of January 28, 1999 creating the illusion that a viable "debarment request" was pending against Tremont and others participating with Tremont was false; and (5) "debarment" could not be utilized under any circumstances as a basis to deny Tremont the right to manage Hillside Manor. In fact, it was only when they were confronted by Tremont's persistent questioning that the State officials attempted to distance themselves from their "debarment" misrepresentations.

It is now clear that it was the representatives of the State Office all along who were behind the "debarment" attack on Tremont, on Mrs. Richards and her children, on Schumacher and his children and on any others associated with Tremont, Geneton and the five Rural Development 515 projects managed by Tremont in New Jersey. This being the case, there is a question as to how Schmidt and his superiors at the State Office contrived a response to Schumacher's letter of February 11, 1999 wherein Schumacher had sought a copy of the "debarment" request, a list of the persons affected thereby and justification for the actions. Rather than reply to Schumacher candidly and expeditiously, the State Office delayed for almost three weeks. Then, knowing Schmidt's oral comments to Mrs. Richards on January 27, 1999 and the comments in item 2 of Schmidt's letter of January 28, 1999 could not be used to justify a denial of Tremont's request to manage Hillside Manor, the State Office chose to employ deceptive and misleading tactics by responding to Schumacher in a fashion that constituted an obvious attempt to skirt the truth. In the

January 28, 1999 letter signed by Schmidt and approved by his decision making superiors, the State Office responded to Schumacher by stating…"no request has been made by Rural Development to the National Office to debar Tremont Management and other associates." This was clearly contrived language. Technically the response was not inaccurate, because the State Office's request for "debarment" had been made to the United States Attorney's Office, not to the National Office. However, it is obvious to any reasonable person that taken in context the statement was untruthful, because it was designed to mislead Schumacher in a manner calculated to hide the truth. The State Office was well aware it had made the "debarment" request, albeit not to the National Office but to the United States Attorney. Rather than make a forthright disclosure, the State Office sought to evade the unpleasant consequences of making a truthful admission and chose instead to make a response calculated at best to be evasive. Not being satisfied with the answer he received from the State Office, however, Schumacher probed the issue again in his letter of March 11, 1999. This time the State Office responded quickly by letter of March 17, 1999, and compounded its initial determination to avoid a truthful disclosure by falsely and reprehensibly assuring Schumacher there was,.."no further specific information on the subject matter…"

Prior to late January of 1999 the principals of Tremont and the owners of the 515 Rural Rental Housing projects managed by Tremont believed they had developed a positive working relationship with the State Office, which in turn benefited the project residents as intended by the 515 Program. Because it believed it had a positive working relationship with the State Office, Tremont agreed to undertake the management of Hillside Manor without any inkling its request to manage that project would be denied. At the end of January, 1999, however, the principals of Tremont and the owners of the projects became alerted to the deceit and treachery prevalent at the State Office. Even though the State Office was fully aware that none of the principals of Tremont had any involvement in the matters that resulted in a court action being brought by the United States Attorney against Mr. Richards , the State Office, nevertheless, attempted to interject a provision in Mr. Richards' plea agreement that was intended to damage Tremont, the principals of Tremont, their children and others involved with Tremont. Those actions of the State Office were undertaken in bad faith and constitute discrimination, a betrayal of trust and a significant abuse of power. The discriminatory conduct and abuses of power by the State Office continue to the present time.

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September 12, 2000

Frank R Lautenberg,
United States Senator
506 Hart Senate Office Building
Washington, DC 20510

Dear Senator Lautenberg:

I am the General Partner and Managing Agent of a New Jersey Limited Partnership situated in Monmouth Junction, New Jersey. This is a 40 unit family project serviced by the United States Department of Agriculture (USDA).

I am seeking your help to overcome the discriminatory policies of the USDA offices in New Jersey. The majority of the staff at their offices and this includes the State office in Mt. Holly is incompetent, poorly trained, arrogant and always ready to treat the borrowers and managing agents like enemies of the government. I am specifically referring to:
Nancy A. Kears, Rural Housing Programs Director
Donna O'Brien, Rural Development Specialist
George Hyatt Jr., MHF/CF Program Director

Many phone conversations with the State Director have not helped my plight instead I feel that I am being more maligned that ever.

The problems that I and many other borrowers are encountering are as follows:
Budget Approval can take one to two years.
Rent Increase / Once a year I submit a rent increase for approval along with the budget for the forth coming year. Ms. Donna O'Brien deliberately stalls the approval so that I am approved for a rent increase every other year.
Reserve Account Requests are not handled timely and it has become next to impossible to keep a reputable contractor in house.
There are many other problems that we all encounter on a daily basis.

The staff members of the USDA offices in New Jersey are dedicated to manipulating and misinterpreting the 515 program rules and regulations. The borrowers and managing agents are being persecuted and harassed. I believe that we are being treated this way so these government employees can further their own careers. (The more people they can discredit the better their office looks at the National level).

The 515 program in the State of New Jersey and our properties are in jeopardy but most important the people we service are also in jeopardy because we the owners and managers are spending valuable time defending ourselves to a persecuting USDA office and have less and less time for the tenants.

I have properties in other states and have never found it necessary to complain about these USDA offices, they are well structured and the staff willing to help and work with the borrowers.

I am asking for the assistance of your office to investigate and expose the oppressive tactics of the USDA in New Jersey.

Yours Very Truly,

Marie Wheaton

cc: Fred Thompson, Esq.

Frederick D. Huntley
P. O. Box 456
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(256) 574-2353

TigerTime83@aol.com

September 14, 2000

Senator Richard Lugar, Chairman
U.S. Senate Agriculture, Nutrition and Forestry Committee
Russell Senate Office Building
Washington, D.C. 20510

Re: Statement for Submission to Record of Senate Agriculture Hearing on USDA and Civil Rights–September 12, 2000

Dear Senator Lugar:

I am an African-American, and I am a former managerial employee with the USDA's Farm Service Agency. I have 13 years of managerial experience with the USDA; the last seven years of my experience with USDA were in the state of Ohio. I was forced to resign my employment with FSA in October 1997.

In early 1997, I applied twice for the position of Senior Loan Specialist in the National FSA Office in Washington, D.C. I was rejected twice, based solely on half-truth and insupportable innuendo, all produced in an effort to discriminate and retaliate against me. I was qualified for the position I sought in the FSA Loan-Making Division. I received a B.S. degree in Agricultural Business and Economics from Auburn University in 1983. By 1997, I had earned 20 hours toward a master's degree in Community Counseling. I had received six certificates from USDA recognizing my exemplary service to the agency.

The applicant selected for the Senior Loan Specialist position in 1997 had only five months of creditable service, far less than the one year of creditable service required for qualification according to the vacancy announcement. The selected applicant, Catherine Louise Quayle, had not completed even a community college degree. Mrs. Quayle had 15 years' experience with USDA. All but five months of that experience had been in clerical positions.

Statement to Sen. Lugar
Re: USDA & Civil Rights
September 14, 2000

Michael Hinton, the selecting official in the national FSA office, told me that I had been rejected for the position because of unfavorable recommendations from Ohio USDA state office personnel. I have since been able to discover that Ohio Farm Loan Chief David Drake and Assistant State Director for Rural Development, David Douglas, gave the unfavorable recommendations for my selection.

Michael Hinton never contacted my direct line supervisor in considering me for the promotion. He never contacted any of my listed references. Despite my education, training, experience and recognized service, I was never granted an interview.

No fair review of the facts or documents regarding my performance in Ohio supports these unfavorable recommendations. David Drake has never been my direct line supervisor. He has never prepared a performance appraisal for my work. He rarely ever came to the office for which I was responsible. Mr. Drake gave me an unfavorable recommendation solely because I had filed a formal complaint about the agency's failure to provide my office with full-time clerical assistance.

Mr. Drake failed to mention or explain to Mr. Hinton that I was performing my duties under extraordinary and unfair circumstances. At the time I assumed responsibility for the Ravenna, Ohio FSA office in 1997, I inherited the following:

a) Ohio's highest farm loan delinquency rate;

b) one of the two largest geographic areas in Ohio, and

c) Ohio's highest number of loans per employee in the office.

For 12 of the 24 months I was in charge of the Ravenna office, at least one of the three regular positions in the office was vacant. I was the only African-American Ag. Credit Manager in the state of Ohio, and the Agency placed these unbearable burdens upon me alone. No other Ag. Credit Manager in Ohio had to perform under such ridiculous circumstances.

As further proof that Mr. Drake sought to retaliate against me for engaging in protected activity, approximately six months after I had been rejected for the Senior Loan Specialist position, a subordinate employee in the Ravenna office was selected for employment as a Senior Loan Specialist in the Loan-Making Division in Washington. Mr. Drake gave a favorable recommendation in that selection. No one sought my recommendation as a former supervisor.

Statement to Sen. Lugar
Re: USDA & Civil Rights
September 14, 2000

That subordinate employee is African-American, but he had engaged in no protected activity in Ohio, despite the unbearable circumstances. He had less than three years of experience with USDA, and he did not even have loan-approval authority at the time of his selection. Yet now, he evaluates USDA loan-making programs across the country.

David Douglas had been my supervisor in 1995, when the agency was known as the Farmers' Home Administration. Mr. Douglas is personally associated with the selecting official's boss, James F. Radintz. Under oath, Mr. Hinton admitted that he contacted Mr. Douglas regarding my promotion at Mr. Radintz's suggestion. Mr. Hinton also stated that he contacted Mr. Douglas after Mr. Drake's unfavorable recommendation had been received.

In 1995, Mr. Douglas had rated my performance as "Fully Successful" and even noted that my performance "Exceed[ed] Fully Successful" in loan servicing. Yet, in 1997, two years after his supervision ended, Mr. Douglas gave me an unfavorable recommendation.

To further punish me for engaging in protected activity, Ohio FSA drastically increased supervision of my office and drastically increased my workload. I resigned my position as an Agriculture Credit Manager due to the hostile and unbearable working conditions, as any reasonable person would have done.

My greatest concern is that Ohio and national FSA office employees demonstrate no concern about violating my civil rights. Ohio FSA remains adamant that it will not fairly settle this matter, despite employees' conflicting statements under oath and a glaring lack of documentation for its position. Unless and until such defiance by FSA's supervisory and national employees is answered with decisive discipline, this defiance will continue unabated. Unless and until USDA is brought under the same equal employment opportunity procedures that the U.S. Office of Federal Contract Compliance Programs imposes upon private federal contractors, employee complaints will continue and will grow.

Thank you for your time and attention to this important matter.

Sincerely yours,

Frederick D. Huntley

Frederick D. Huntley

TESTIMONY

STATE OF CALIFORNIA

COUNTY OF STANISLAUS

Teresa M. McClung, being duly sworn, or having duly affirmed to tell the truth, stated personally before me:

That she is competent under the law to give this testimony and unless stated otherwise, has personal knowledge of the facts stated herein:

I am a landscape architect and forest planner, and a dedicated 19-year veteran of the USDA Forest Service. Two years ago two new managers were assigned to my work unit. After their arrival I became subject to discrimination, retaliation, and a hostile work environment which has persisted. With this testimony I am alerting the U.S. Senate Agriculture, Nutrition, and Forestry Committee of civil rights abuses at USDA as I have experienced them. The details of my allegations are described in my formal EEO complaints that are at USDA at this time. Because of my fear of further retaliation, I feel I can give none of these details in this testimony of public record.

The Forest Service recruited me as a Co-op Education student in 1979. Since that time I have received outstanding performance appraisals and multiple accolades from my superiors regarding the high quality of my work and my skill in project management and leadership. Prior to April 1998 my superiors considered me a prime candidate for increasingly responsible management positions and were actively assisting me to gain the training and exposure necessary to advance my career in that direction. In addition, during my tenure with the Agency I have served on our local Civil Rights Committee and have been praised for my actions to include people of all backgrounds and abilities in the Agency's local programs and services.

With this record of service and my own dedication to the USDA Forest Service, it has been extremely difficult for me to proceed through the EEO complaint process and bring allegations of discrimination, retaliation, and hostile work environment against the Agency when I became subjected to its darker side. I feel as though I have not only been discriminated and retaliated against, but that I have been deceived by an agency that I had held in very high esteem.

Two years ago I began experiencing discrimination and a hostile environment at my work unit. My coworkers and I sought informal resolution of this situation through group counseling to no avail. I requested formal mediation, which was denied by management. I filed informal complaints with the Agency's EEO Counselors over a year ago. When my managers learned of my EEO complaints I became the subject of repeated instances of retaliation and a continued hostile work environment. The Agency's own independent investigator confirmed that a hostile work environment did exist; yet nothing was done to remedy the situation. I was faced with continuing to endure the hostile environment or resigning my long-tenured position and losing my career in public service with the Agency.

To gain relief from the extreme stress that this work situation caused me I took unpaid leaves of absence, only to return to the same hostile work environment. I applied for several transfers within the Agency with no success. Finally, the constant retaliation and hostile work environment became so stressful that it had a significant negative impact on my children and my husband. At that point, I felt my only options were to resign or to take leave without pay and move out of the region with the hope that I could secure another position with the Agency in a location where civil rights abuses were not allowed to run rampant. With over nineteen years of my life dedicated to the Agency, resignation was not a reasonable or acceptable option. I put my faith in the hope that the Agency would not fail me and, at great personal sacrifice, I pursued the second option. This move, a direct result of the hostile work environment, required uprooting my children from their schools and friends. The move also necessitated my husband closing his business and making a significant career change.

I am submitting this testimony because I think that it is extremely important for the Committee and the Agency to understand the far-reaching negative impacts that individuals granted supervisory power by the agency can have when those individuals abuse the power. In my case, the abuse of power—the discrimination, retaliation, and hostile work environment—by my supervisors over the past two years has cost my family tens of thousands of dollars in lost salary, a lost business, attorney's fees, and major moving expenses. The monetary loss, though, pales in comparison to the loss of a promising career and the emotional upheaval of an entire family. No person should have to experience the debilitating stress of a hostile work environment and constant retaliation.

Sworn or affirmed before me on Sept. 21, 2000

Teresa M. McClung

Notary Public

WAYNE T. NORDSTROM
Commission # 1238704
Notary Public - California
Stanislaus County
My Comm. Expires Oct 19, 2003

VALENCIA, PÉREZ & ECHEVESTE

PUBLIC RELATIONS

September 19, 2000

The Honorable Dick Lugar
United States Senator
306 Hart Office Building
Washington, DC 20510
VIA FAX: 202-228-0360

RE: USDA CIVIL RIGHTS HEARINGS

Dear Sen. Lugar:

As you conduct civil rights hearings within the USDA, I would urge you to consider an apparent lack of sensitivity displayed to the national Hispanic community by the U.S. Forest Service as demonstrated by the recent cancellation of contract WO99-55.

Solicitation WO99-55 was issued by the Forest Service in March of 1999 to "educate and build awareness among under-served constituents about Forest Service goods and services." This solicitation was specifically created to address the agency's five-year strategic plan (1997-2002), which called for it to "develop strategies for engaging low-income and historically underserved communities." The contract called for the development of a pilot project in Los Angeles that "informs and invites participation in Forest Service programs" with the optional development of a national communications strategy and implementation of a Hispanic leadership centennial anniversary.

Our agency responded in good faith to the solicitation, working closely with the procurement officer to refine our proposal to meet the budgetary and program needs of the solicitation. We were notified that our proposal had been accepted as meeting requirements and would be considered for final consideration.

After submitting our proposal in April, 1999, and submitting several letters of extension, we did not hear from the Forest Service again for approximately 15 months. Despite repeated calls and letters, the agency was unresponsive to our request for information related to the status of the project. Finally, after a

pointed letter to the agency head on July 7, 2000 and several inquiries by Members of Congress, we were informed in writing on July 12, 2000 that "Once all technical and funding issues have been resolved, it is the intent of this agency to move forward with the contract award."

Two weeks after receiving the correspondence, we contacted the designated procurement officer by telephone to inquire about the status of the project. We were informed at this point that the contract had been cancelled due to budgetary limitations. We received written notification of that decision on August 26, 2000. We have subsequently filed a protest with GAO requesting a reissuance of the solicitation and reimbursement of our contract preparation costs.

The handling of this incident demands an explanation of several major questions that the agency has been unable to answer:

- Why did the Forest Service renege on its stated intention to address the Hispanic constituency?
- What progress has the Forest Service made in achieving the goals of its strategic initiative to serve underserved constituencies, specifically Hispanics?
- What percentage and what dollar amount of contract awards has the Forest Service awarded to Hispanics?
- Why did the life of this solicitation span two fiscal years without an award?
- Why was the Forest Service unresponsive in addressing the status of the project for some 15 months?

We believe the Forest Service has done a grave injustice to Hispanic citizens by failing to fulfill this contract and by continually failing to adequately address the needs of Hispanic Americans. Our concern now is not to win the contract, but to hold the Forest Service accountable for its apparent misdeeds.

SENATE HEARINGS, USDA DISCRIMINATION – ADDITIONAL PUBLIC INPUT OPPORTUNITY

TESTIMONY

Thank you Senator Lugar for your involvement and the opportunity to express my concerns and hurt of discriminatory treatment and practices at the US Department of Agriculture's Forest Service (FS).

My name is Margaree Williams and I am a resident of Prince George's County Maryland. I have served as Secretary, GS-7, for the Watershed and Air Management Staff of the Forest Service's Washington Office since May 2000. I began my work as an Operations Assistant, GS-4, in the Forest Service 13-years-ago.

There is and has existed within the agency a cultural mix of the "old boy network" and a "plantation mentality." This environment and/or false power fuels the survival of illegal practices of Nepotism, Disparate Treatment, Sexual Harassment, Hostile Work Environments, etc., throughout the agency. The leaders and managers of the agency are paid to structure, implement, and comply with the Laws, Regulations, Policies, and Directives set forth as a direct result of the Civil Rights Act.

The Old Boy Network: Communication barriers are put in place, and the decisions are made by a select few managers and leaders horizontally across the agency. These decisions represent the interest of that few. The values and views of the minority employees on their interests are under, and in most cases, not represented at all.

The Plantation Mentality: The Human Resource Managers and the Civil Rights Managers are set in place to protect the interest of the old boy network. The roles of these staffs are advocates and advisers to the abusers of the system with a clear understanding of how ineffective, unfair, and illegal the agency's' agreements, policies, and practices are in achieving Equal Employment Opportunities, Diversity Goals, Affirmative Actions, and Civil Rights of minority employees.

Let me briefly articulate one of my unlawful experiences in the Forest Service. From October 1994 until approximately March 1995, I served as an active Member to the Washington Office Restructuring Team chartered to develop alternatives to Executive Orders, budget reductions, and Congressional direction to reduce and restructure the Forest Service's Washington Office workforce by 25 percent.

The Civil Rights Impact Analysis revealed impacts of workforce reductions as follows:

"These data indicate that over half (63%) of the reductions from the current workforce are projected to occur at the GS 2-7 grade band. This represents a reduction of over one-half the clerical and technical positions that make up this grade band. Almost one-half of these positions are held by African American women and another third are held by non-minority women."

SENATE HEARINGS, USDA DISCRIMINATION – ADDITIONAL PUBLIC INPUT OPPORTUNITY

"Another grade band that will be disproportionately impacted is the GS 11/12 band which is projected to reduce by 29%. The majority of the reductions in this grade band are projected to occur in Administrative positions, rather than in Professional positions."

"These reductions will be accomplished through normal attrition, voluntary re-assignments to field locations, and if necessary, directed re-assignments, and Reductions-in Force (RIF)." "A reassignment process or a Reduction-in Force (RIF) which is based on seniority may have a disproportionate effect on women, minorities and persons with disabilities because these groups in general have less seniority."

Upon returning to my office I learned that the wife of my Director's previous Supervisor (White Female (GS/6) was placed in the Staff Secretary's position (GS/6-7) as my Supervisor. She was a displaced employee. I had acted as Staff Secretary to the staff on and off for 4 years and received a temporary promotion (Staff Secretary GS/7) the year before for 120 days and earned a Performance Rating of Outstanding and a monetary award.

I communicated the conflict and my concerns to the Staff Director and suggested that he consider the mitigation of any negative impacts by placing us under equal Supervision. I was told by the Director to *"do what I was supposed to do, and that I would have nothing to worry about."* My concerns were as follows:

Concern (1): Equal Opportunity - The FTE that the White Female occupied was a GS/6-7 and would be a non-competitive promotion to a GS/7 in one year. This staffing decision placed me at a disadvantage and denied me an equal opportunity to receive a promotion to Staff Secretary, GS/7.

Concern (2): Seniority - As my direct Supervisor, the White Female was in position to rate my performance. If one of our positions were abolished, or if there were a decision to RIF, the performance rating would be used, with everything else equal, as a means to calculate Length of Service, or Seniority. Her position posed a serious conflict of interest. If she rated higher then I, it would mean my job.

I received a rating of *Fully Satisfactory* and she received a rating of *Outstanding*. She was reassigned to another staff in *October of 1995*, and I resumed all GS-7 duties.

My questioning the Director's decision continued a history of abuse and harassment directly and indirectly from the staff members and the Director of the Watershed and Air Management staff.

Fact: Message from Director to Judy Humphrey, Classification, *January 28, 1997*;

SENATE HEARINGS, USDA DISCRIMINATION – ADDITIONAL PUBLIC INPUT OPPORTUNITY

"Margaree has been gradually assuming some of the new duties described in the PD, budget, purchasing, etc., since we lost 3 other people last year to downsizing. We formally had a budget analyst (12), a secretary GS-7 and a Clerk Typist GS-5. Margaree is now filling the void created by the departure of these folks. She continues to perform primarily as the Secretary to the Director and everything else that we need.

Fact: Memo to Arthur Bryant from Sheila Venson, Employee Relations, *November 12, 1997:*

"Margaree is single support staff person for groups of GS-14's (5) employees. She supporst (12) GS-13's and works for the Director, Art Bryant. For the past 2 yrs., had accretion of duties to serve as Director's Secretary who was a GS-7. Has asked for desk audits for the past 1 ½yrs. and Lee Eckerode was too busy. Margaree is upset and wants upgrade or reassignment.

As the result of a desk audit conducted in March 2000, I received a promotion to a GS-7 May 2000, 4 ½ years, later.

SOLUTIONS:

- Representation – There need for a mechanism built of diverse teams communicating vertically within and across agencies to monitor to ensure equal opportunity and multicultural diversity, rather than the leadership teams reporting to each other and passing the decisions down.

- Accountability – There is need for a Civil Rights Accountability procedure design written into the personal performance elements of all Supervisors and Program Managers. This procedure would track the actions taken from the first initial grievance in accordance to the procedure design and would require actions taken and signatures by all affected offices, e.g. Human Resource Management, Civil Rights, Local Unions, Supervisors, etc. This course of action would serve as a critical element of pass or fail. This documentation would also show the strengths and weaknesses in the grievance/complaint system.

Margaree Williams
MARGAREE WILLIAMS

SEP 22 2000
Date

September 21, 2000

The Honorable Richard G. Lugar
United States Senate
Washington, D.C. 20510

Dear Senator Lugar,

You recently conducted hearings on the civil rights problems at USDA. I would like to add my testimony to your committee's hearing on this matter.

The problems that have been well documented and brought forth to you are not just restricted to Black farmers and Black employees. The systemic problems at USDA are so entrenched and pervasive that they affected other groups such as the Asian Pacific Americans, American Indians and Hispanics as well. As long as the USDA continues to focus its attention as if this is primarily a Black and White issue at the exclusion of these other groups, then the problems and litigations will persist.

As a dedicated Asian American public servant with over twenty years of civil service, including one year in the White House, I am deeply troubled by the egregious discrimination that I have endured in my public service career at USDA.

Even though I was one of the original Civil Rights Implementation Team (CRIT) leaders that led efforts to provide implementation plans for many of the recommendations contained in USDA's Civil Rights Action Team Report (CRAT), I have been retaliated against by the man who led the CRAT effort. His associate was so egregious that she even over stepped her authority by calling my boss and ordering him to place me on AWOL if I did not report back to my duty station after she abruptly terminated my assignment to the Assistant Secretary for Administration's office.

I have filed a formal complaint relating to this terrible miscarriage of justice in December of 1997. Even though I have indicated that I would be amenable to ADR, the USDA has yet to resolve my case. Nearly three years have elapsed, and my case is still limbo. Is this justice? Is this fair?

Because I have filed a discrimination complaint, and because I am neither White nor Black, my agency head continues to reprise and retaliate against me. Since filing my complaint, I have been denied merit promotion opportunities on at least six occasions. Currently, I am in the process of filing another complaint with MSPB for the capricious and arbitrary manner in which USDA employs to fill vacancies. Three years ago, I applied for the Outreach Director's position, and was one of three finalists for the job. The selection was obviously a racial one because an African American was given the job. Ironically, he was not able to do the job, and has been dismissed after one year. USDA has been rotating African American directors through that office, and a new director has not been advertised.

Recently, they advertised for the Deputy Director of Outreach's position, and I applied for it. But to my amazement, I was informed that I was not qualified for the job even though I was best qualified for the Director's job! This is the kind of prohibited personnel practice that is so pervasive at USDA. Education, merit, and experience have nothing to do with it. Promotion and selection are seemingly based on color, and Asian Pacific Americans do not fit the Black and White paradigm.

Finally, I would like to comment on accountability. One way to ensure some measure of accountability would be to publish the names of the managers and officials who were found culpable of discrimination, reprisal, harassment and other misdeeds. Another would be to assess a percentage of the settlement agreement out of the culpable officials' pay. I can almost guarantee you that if this were implemented at USDA, almost all of the civil rights problems would be corrected.

As for the Secretary's public pronouncement of not tolerating reprisal, it continues unabated and no official who retaliates has yet to be removed. Furthermore, his recommendation to have the human resources division deal with accountability is akin to the fox guarding the chicken coop. Because the human resources divisions are under the administrator or the deputy administrator, how can there be true accountability of the officials on top because the fear of reprisal is always in the minds of the HR employees.

Thank you for this opportunity to share with you and your committee my personal tribulations and the abridgement of my civil rights at USDA.

Sincerely yours,

Mon S. Yee
2500 Damien Ave. #312
La Verne, CA 91750

Chairman D. Lugar, U.S. Senate Agriculture
Nutrition, and Forestry Committee
Russell Senate Office Building
Washington, D.C. 20510

September 21, 2000

Dear Chairman Lugar:

This is in response to the U.S. Senate Agriculture Committee's review of civil rights in USDA. I wish for this testimony to be entered into the public record.

The only way I can best describe my professional experience with USDA is to juxtaposition it with prior federal service. What I found to be successful performance in all other agencies I worked for (promoted from GS-3 to 13 in less than 6 years, FDA Commissioner's Award of Merit Recipient, Letter of Commendation from your Office, etc.) does not apply to this work environment. Competence, initiative and professionalism have no bearing in an environment of Jim Crow personnel management. At first I thought it was like being a Yankee in King Arthur's Court. However, I soon learned it was more of being an emancipated, modern-day African-American, trying to survive in an organization that vacillates between cutting edge agribusiness and the pre-civil war days of the 'Old South'. USDA's management has 'missed-out' on the cultural advances from the 1960's but demands top talent (usually women and minorities) to resolve programmatic, technological and scientific complexities. The result: management is out of sinq with the workforce; has difficulty relating to trends of the new world culture; and, top talent in key areas leave due to disenfranchisement.

We cannot survive as a plantation. It is not realistic for 'management owners' to continually circumvent merit promotion principles with an educated work force and not experience a serious backlash. Jim Crow management practices are the root cause of the untold conflict and complaints that are occurring. Those who do the work, want the credit, pay and leadership of programs. Management's goal in USDA has been to preserve a culture, not promote an organization. And though power stability is important, the power base has been so inflexible it has created instability throughout. To be acceptable, one must become an icon of the Old South (i.e. the good Negro, the subservient female, the plantation mistress, the business overlord). I see few content with these roles but persons culture-trapped without viable models for new behavior.

I could infuse this testimony with great emotionalism. I could hope that my words would enable you to comprehend the great personal (in addition to professional) abuse that I and my family have received from extremely vindictive individuals in this agency as a result of my not 'fitting' the traditional mold. Though we can instruct on team management - we are not valued team players. Though externally awarded, commendations elude us in this environment. Though I have personally been a National Merit Scholar, 'Who's Who', School Board Member, Church leader, Consultant to International Human Resource Conferences, etc., I receive (as other African American females) elusive judgements as not being able to 'cut-it'. There have been several rationalizations but no substantive reasons - other than being born Black.

I do not think this agency with calculated forethought pronounced judgments of inferiority upon me and other diversified colleagues (as expressed by individual USDA managers). I do, however, believe the organization has promulgated those behaviors by silently condoning actions; supporting wrongdoers through inaction; turning a deaf-ear to valid issues; and rewarding wrongdoers by ignoring their transgressions but punishing the victims for not being loyal. Well-educated minority leaders cause cultural dissonance - - they are not supposed to exist. Our mere presence defies the notion that only

Initials

Whites are true leaders. And such, the loyalty that many of us desire to have to an organization cannot exist in this environment of exploitation.

I will not beleaguer my personal case, only to say that I have been sexually assaulted, received implied threats my child would be raped; been manipulated out of promotions, awards and training, have had major work products go to Caucasion employees for major monetary awards. Recently, after filing an EEO suit, I was falsely accused of 'failure to follow instructions' with a 3-day suspension penalty. Though I proved the charges were false, I was told to prove it in court and there would be more coming if I got through those. To quote: "The government has unlimited funds - you don't". Oddly, a manager found guilty of tampering with employee's private credit accounts and sexual assault of a female didn't serve one day of suspension. And the individual who sexually assaulted me? Was fired, rehired and given a large monetary award.

Sadly, I must say I am not unique. During my 10 years with USDA, I have repeatedly seen top qualified African Americans maligned, attacked, abused, etc., with the single goal of eliminating them from the work place. Others who remain in the work environment are devoid of true influence or have received a label of having a bad attitude. A partial 'roll call' of African American women that I know of in USDA APHIS who have been 'knocked-off' the competitive edge or have, for the most part, gone elsewhere follows:

Dr. Bettina Helms-Thornell	Dana Mingo	Jean Gill	Jean Reese
Dr Marilyn White	Evelyn Lewis	Dr. Debra Beasley	Derevia Gray
Dr. Susan Hawkins	Evelyn Harnett	Betty Alfred	

These are the few of the many. But if you would like to hear from them and others, it can be arranged.

In reality, when reorganizations result in a majority of promotions for Caucasians in an area that is mostly a minority population, there is a problem. When top level management in the Washington, D.C. office is all Caucasian, there is a problem. When an agency would rather transfer all activities to predominately White areas of the country and refuse to recruit at local Universities and colleges for minority candidates, there is a problem. When the 'best and brightest' of minorities are run out, maligned and said not able to meet the political 'muster' of the agency, there is a problem. And when Caucasion male managers hide behind and use Caucasion females as 'plantation mistresses' to punish 'wayward' Black females, you have a problem that cannot be solved in-house.

The problem isn't with processes in the Office of Civil Rights or the individuals, per se. Civil Rights was used as a dumping ground for minorities who filed complaints. The mindset was, if they (minorities) have a problem with Whites, then let them solve it. There is a reason why a significant portion of the Civil Rights Office employees are Black. And now, that Office is being highlighted as the source of the problem, when in actuality, it too, is a symptom of the major one. Again, Blacks are being held accountable for actions that ultimately result from behaviors of White managers. I am not saying Civil Rights is efficient, but I am saying it was not designed to be. The Civil Rights Office does not have the power and therefore does not have control over USDA management. I would hope that Congress does not scapegoat OCR (though there are drastic improvements needed) but addresses the management cliques that perpetuate these problems. A few key questions to also ask are: why are the records of complaints, grievances and workplace violence incidences purged for management? Why are no records kept on individual managers and the monetary payouts the government has expended in the course of their career (i.e. is one person's wrongdoing really worth ½ million to the government?)? Why are there no public records of wrongdoing punished or mitigated by management? Why are their no public records of awards?

Initials

Finally: Why are top minorities who point out discrimination deemed as having a bad attitude? One of the arguments in the reconstruction South was that if a Negro had been beat, they shouldn't serve in Congress because they would not be fair to Whites. The same Jim Crow logic is used in USDA: if a Black has filed an EEO suit (despite the fact they were discriminated against) they have a bad attitude, they aren't a team player - they can't be a manager because managers never grieve against their 'own kind'. It's a Catch 22 - with no way to win.

My suggestions are simple and follow:

- Have all Civil Rights offices as a separate, combined USDA agency reporting to the Secretary. This new Office of Civil Rights should be imbued with special powers to enable final solutions of situations - not delays, continued reprisals and retaliation.
- Have the organizational performance of the Civil Rights office and its personnel reviewed by its customers - employees and external organizations, alike. These reviews should have direct impact on promotions, awards and firings.
- Create an on-line complaint submission process. I have had the USDA Civil Rights office refuse to take a complaint due to the level of the manager in question.
- Include mandatory compliance clauses for managers and employees for mediated agreements. I was the Conflict Mediator on a case and thought we had resolution. After all agreements were set, the manager arrogantly indicated he wasn't going to do anything, we couldn't make him. We couldn't.
- Have external processing of all Work Place Violence and Fraud, Waste and Abuse complaints. Work place violence investigations have been ignored because White managers were in question. The USDA Office of Inspector General has been returning investigations to the Agency to investigate themselves. Not only do they not 'find' anything, it only temporarily alleviates the situation - - with problems going unaddressed and festering into more major ones years later.
- Have a centralized career assessment and job placement center where the recruitment, evaluation and certification of candidates for promotion and selection is handled by neutral third party. Internal processes are too susceptible to manipulation.
- Finally, have an outplacement program for those who wish employment elsewhere. I have seen many times where Agency officials are not content to release employees to other organizations, but have a perverse need to permanently bind them under their punitive control. Again - not employment, ownership.

I heard a few days ago that racism imbrues the quality of our national character. As such, I can only hope that USDA gains new character for this next millenium.

Sincerely,

Penny E. Kriesch
USDA APHIS PPQ
4700 River Road
Riverdale, MD 20737

Initials

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GEORGE B. KEEPSEAGLE, et al.,	:	
Plaintiffs,	:	Case No. 1:99CV03119
v.	:	Judge Paul L. Friedman
DAN GLICKMAN, Secretary THE UNITED STATES DEPARTMENT OF AGRICULTURE,	:	
Defendant.	:	

MOTION FOR LEAVE TO FILE THIRD AMENDED CLASS ACTION COMPLAINT

COME NOW, the Plaintiffs and move for leave to file this Third Amended Class Action Complaint, pursuant to Fed. R. Civ. P. 15(a) and in support thereof submit the following points and authorities:

1. This pleading is identical to (1) Plaintiffs' Class Action Complaint (filed November 24, 1999), (2) Plaintiffs' First Amended Class Action Complaint (filed January 13, 2000), and (3) to Plaintiffs' Second Amended Class Action Complaint (filed March 13, 2000), but for the addition of 118 plaintiffs.

2. Plaintiffs' counsel contacted counsel for defendant who stated he will oppose said motion.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GEORGE B. KEEPSEAGLE, et al.,	:	
Plaintiffs,	:	Case No. 1:99CV03119
v.	:	Judge Paul L. Friedman
DAN GLICKMAN, Secretary THE UNITED STATES DEPARTMENT OF AGRICULTURE,	:	
Defendant.	:	

ORDER

WHEREAS on April 10, 2000, Plaintiffs filed a Motion for Leave to File Third Amended Class Action Complaint.

WHEREAS on _____, 2000 Defendant filed an opposition to said motion.

WHEREAS pursuant to Fed. R. Civ. P. 15 (a), leave shall be freely given when justice so requires,

NOW THEREFORE, it is ORDERED:

Plaintiffs' Motion for Leave to File Third Amended Class Action Complaint be, and is hereby, granted. The Clerk shall accept same for filing.

_____
JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

George B. Keepseagle P.O. Box 509 Fort Yates, ND 58538-0509	:	
and	:	
Luther Crasco HC 63 Box 5040 Dodson, MT 59524	:	
and	:	
John Fredericks P.O. Box 509 Halliday, ND 58636	:	Case Number: 1:99CV03119 Judge Paul L. Friedman
and	:	**THIRD AMENDED CLASS ACTION COMPLAINT**
Gene Cadotte P.O. Box 200 McLaughlin, SD 57642	:	[Containing 514 Plaintiffs/ Class Representatives]
and	:	
Basil Alkire Star Route Box 129 Fort Yates, ND 58538	:	
and	:	
ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, INCLUDING, BUT NOT LIMITED TO THE FOLLOWING INDIVIDUAL PLAINTIFFS:	:	
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"farm programs") defendant willfully discriminated against them. Loans were denied, provided late, or provided with less money than needed to adequately farm. Further, when, in response, plaintiffs filed (in writing or orally) discrimination complaints individually or through their Tribal Council with defendant, defendant failed, although required by, inter alia, the Civil Rights Act of 1964 and the Equal Credit Opportunity Act, to investigate the complaints. For example, when Native American farmers and ranchers filed complaints of discrimination with defendant, defendant willfully either (1) avoided processing or resolving the complaints (2) stretched the review process out over many years; (3) conducted a meaningless, or "ghost" investigation, or (4) failed to do anything.

These two acts: (1) the discrimination in denial of the application to participate in the farm program and (2) the failure to properly and timely investigate the discrimination complaints, deprived Native American farmers, inter alia, of equal and fair access to farm programs, and due process, resulting in substantial damages to them.

In May 1997, defendant's officials admitted that, in early 1983, the Reagan administration had quietly disbanded and dismantled the civil rights enforcement arm at the United States Department of Agriculture ("USDA") and that discrimination

relationship as a "beg to borrow" relationship that has caused him great stress, worry and financial harm.

4. Keepseagle has accumulated an insurmountable FmHA debt and involuntarily lost his land. He contends that these losses are the result of the discriminatory service provided by the FmHA - discriminatory because white farmers received better and more complete services.

5. Before Mr. Keepseagle travels over 30 miles to meet with an FmHA official, he must undertake certain tasks: (1) He must complete a series of complicated forms, by himself, then mail the forms to the FmHA official. He is not given any assistance in completing the forms and (2) He must complete a Farm Home Plan and a 5-Year Plan, by himself, again, without assistance, then mail the forms to the FmHA official. Keepseagle must have these steps completed before receiving any assistance from an FmHA official. Unfortunately, this is a common roadblock not only for him but for many Native Americans dealing with his FmHA office who have become used to negative and stressful procedures when trying to in conduct business with FmHA.

6. In 1995, Mr. Keepseagle lost about 50 calves due to scours; in 1996, Mr. Keepseagle lost about 50 calves due to a blizzard. Both years, his region was declared a disaster area; but in both years, no Native American rancher, including

"we're going to get you sooner or later" attitude with him because he is a Native American. His loan accounts, and the accounts of other Native Americans he knows, are not managed for success or graduation to the next credit level, but for failure, that is, foreclosure. Mr. Keepseagle does not know of any Native American farmer who has graduated to another credit level (commercial credit). The amount of land owned by Mr. Keepseagle continues to decrease, while his debt to FmHA grows. He is indebted to FmHA in excess of $300,000.

10. Mr. Keepseagle timely filed, either directly or through his Tribal Council, complaints to the defendant regarding these acts of discrimination, which were never acted on pursuant to the applicable law, causing him substantial damage.

* * *

11. Plaintiff and proposed Class Representative, Luther (Luke) Crasco ("Crasco") is a Native American rancher who resides in Dodson, Montana. Crasco is a member of the Assiniboine/Gros Ventre Indian Tribes on the Fort Belknap Indian Reservation. Crasco was born and raised on a ranch, where he honed his skills as a rancher under the tutelage of his father. Crasco entered the ranching business in 1974. Mr. Crasco owned 685 acres of land and leased 2,500 acres of land.

ranching operation, given its jagged and hilly terrain. Mr. Crasco would have reduced his operating expenses significantly - by at least $15,000 per year - had he had been able to purchase the sprinkler irrigation system. With sprinkler irrigation he could have increased his hay production. Without it, he was required to make annual supplemental purchases of hay in excess of $15,000, during the entirety of his business dealings with FmHA.

15. Crasco's relationship with Melvin Nielson was also strained by Nielson's overtly discriminatory conduct. Specifically, Nielson made disparaging remarks directed towards Crasco as a Native American.

16. Unfortunately, even though Nielson left in 1983 and the faces of the supervisors changed at the Phillips County FmHA office, the discriminatory treatment towards Crasco and other Native American ranchers remained. In 1983, Daryl Seely became the supervisor of that office. He made loosely veiled threats against Crasco, such as "any more cattle prices like this and we're gonna sell you out."

17. Prior to 1984, Crasco never was able to obtain loans for the full amount needed. Usually, he got enough money to purchase additional cattle but never enough for family and living expenses.

maintained the same level of insensitivity towards the Native American ranching community, and Crasco was subjected to derogatory comments and inefficient and untimely loan processing.

21. There was no Native American representation in either the Hill County or Phillips County FmHA office, at *any* level, despite the disproportionately high number of Native American ranchers that it was required to serve.

22. By 1991, the systematic and deliberate delays in loan processing, undercapitalization of Native American farm operations, and overt acts of discrimination had taken their toll on Crasco -- he could no longer keep his farm operation afloat. In November 1992, Crasco received a letter from FmHA notifying him that his loans were delinquent. Crasco sought primary loan servicing from FmHA, requesting to have his debt restructured in the form of a "write-down." Debt restructuring was a commonly used FmHA program, including, literally, thousands of white farmers and ranchers. Crasco's request was denied.

23. Crasco encountered numerous difficulties and no cooperation from FmHA while trying to service his debt after notice of his delinquency, which culminated in 1993 when he received a letter from FmHA notifying him of the decision to initiate a foreclosure action against him. Crasco appealed this

Berthold Indian Reservation in Halliday, North Dakota. He is a member of the Three Affiliated Tribes. Fredericks timely applied for various FmHA loan programs beginning the late 1970s and continuing until the early 1990s. He was the subject of blatant discriminatory practices of FmHA, including (1) refusal to provide appropriate loan services that were routinely accorded to white farmers, (2) delay in reviewing of his applications, while review of white farmers' applications were timely, and (3) refusal to review his timely filed complaints of discrimination, which complaints were never acted upon pursuant to the applicable law, all of which caused him substantial damages.

27. From 1978 through 1980, Fredericks obtained FmHA emergency loans (disaster and economic emergency) and an FmHA operating loan. At that time, Mr. Fredericks owned approximately 500 cows and 300 to 400 yearlings and planned to expand his operation to 500 yearlings, which would be sold and replaced each year. The loans obtained during this time period were subject to FmHA securing Mr. Fredericks cows without his consent and, in turn, resulted in severe financial difficulty.

28. Mr. Fredericks had to travel over 100 miles to meet with FmHA officials when there was an FmHA office approximately 35 miles away from his home. Mr. Fredericks did not receive assistance with any of his loan applications (even though part

preventing Native American farmers and ranchers from participating in FmHA programs.

31. On May 5, 1989, Fredericks appealed the decision to reject his application for primary loan servicing. On July 31, 1989, a hearing officer of the North Dakota Branch of the National Appeals Staff, upheld defendant's decision. However, Fredericks appealed the hearing officer's decision to the Director of the National Appeals Division which, on December 7, 1989, reversed defendant's decision.

32. On January 5, 1990, Fredericks resubmitted his application for primary loan servicing. Fredericks' application was then rejected again by FmHA on March 15, 1990. Frustrated by FmHA's stone-walling techniques, Fredericks had to abandon his efforts to get the loan servicing he was entitled to under the 1987 Act.

33. All of these FmHA events caused Mr. Fredericks devastating financial losses, a strain on his health (depression, sugar diabetes and weight gain) and a loss of faith in his government.

34. Mr. Fredericks timely filed, either directly or through his Tribal Council, complaints to the defendant concerning these acts of discrimination, which were never acted on pursuant to the applicable law causing him substantial damage.

* * *

these cattle quickly depleted Cadotte's loan funds and required him to borrow even more funds, with his land and machinery as collateral.

39. Cadotte applied for further FmHA operating loans in 1996 and 1997, but was denied.

40. Like other ranchers in South Dakota, Native American and non-Native American, Cadotte's operation was adversely affected by a blizzard in 1996. South Dakota was declared a disaster area, and in February of 1996, Cadotte applied for an FmHA disaster emergency loan. Cadotte had lost a substantial percentage of his herd - 35 calves and 25 cows - and his barn was nearly destroyed, due to the blizzard. He was determined to be eligible for emergency loans in June 1996 but then ran into a number of obstacles. Cadotte sought assistance from U.S. Senator Tom Daschle. After Daschle's intervention, FmHA approved a $30,000 emergency loan for Cadotte. However, FmHA later reneged on the approved amount and froze a portion of the money, holding that Cadotte's loan application was deficient.

41. In contrast to FmHA's treatment of Cadotte and similar treatment of other Native American ranchers, neighboring white ranchers received emergency loan funding, as well as operating loans, without difficulty.

42. Because Cadotte had annual land lease payments of $23,000, but FmHA never gave him a loan to cover this operating

North Dakota, on the Standing Rock Indian Reservation. Mr. Alkire timely applied for various FmHA farm loan programs with defendant between 1982 and 1987, but was the subject of willful and continuous racial discrimination, including denial of his applications for loans, and inappropriate loan servicing, causing him substantial damages.

47. In 1982, when Mr. Alkire began applying for FmHA loans. He was informed by the FmHA loan officer that he could qualify for a low interest (3%) loan that was available to ranchers, like him, who were first-time applicants. However, when Alkire completed the loan application, he was told that he could only receive a high-interest subordination loan. In addition, he was never told about the FmHA programs available to limited-resource farmers/ranchers like himself. The County Supervisor routinely provided this farm program information to white borrowers.

48. In the Fall of 1982, Alkire sold his calves in order to pay off the FmHA loan. When he took the proceeds to FmHA, the official would not accept the check, though no reason was given for this. To prevent interest on his outstanding loan from accruing, Mr. Alkire insisted that the FmHA accept the check. The check was then accepted, but never properly credited to his existing account. Instead, FmHA issued a new loan to Mr. Alkire for the same amount ($11,000), thereby causing his FmHA

the applicable law, causing him substantial damage.

54. Defendant, Dan Glickman, is Secretary of the United States Department of Agriculture ("USDA"), and is the federal official responsible for the administration of the statutes, regulations and programs which are the focus of this action.

HOW DEFENDANT IS ORGANIZED AND,
GENERALLY, THE GOVERNMENT PROGRAMS AT ISSUE

55. USDA's Farm Service Agency ("FSA") provides commodity program benefits (such as deficiency payments, price support loans, conservation reserve program ("CRP") benefits), disaster payments, farm loans and other farm credit benefits to U.S. farmers. The agency was created in 1994, as a result of a reorganization of USDA, primarily by the merger of the Agricultural Stabilization and Conservation Service ("ASCS", which previously had handled commodity program benefits, price support loans, CRP payments, disaster payments, and related services) with the Farmers' Home Administration ("FmHA", which previously had provided farm loans and other farm credit benefits).

56. FmHA was created decades ago to provide loans, credit and technical assistance for farmers. FmHA made loans directly to farmers or guaranteed the loans made to farmers by private, commercial lenders. These loans included "farm ownership", "operating", and "continuing assistance" loans, as well as loans

primary responsibility for coordinating USDA programs serving American Indians and Alaska Natives. The Director of Native American Programs is USDA's primary contact with tribal governments and their members.

HOW FARMERS (1) APPLIED FOR LOANS AND CREDIT WITH FmHA AND (2) APPLIED FOR PARTICIPATION IN OTHER FARM PROGRAMS WITH ASCS

60. Traditionally, when a farmer applied for any FmHA loan or program, he went to his county office (formerly the FmHA office), and filled out a Farm and Home Plan ("FHP", a financial plan for the farm), along with his or her loan application, which required the assistance and guidance of defendant's officials to complete. Assistance and guidance was critical because of the complexity of the programs and forms. This application process was done pursuant to regulations found at 7 C.F.R. § 1910, et seq. If the farmer needed an ASCS-type benefit or assistance, he worked with his County Executive Director ("CED") (who is an employee of the county committee paid by USDA) and county committee in applying for participation or benefits. The process was and is done pursuant to ASCS regulations (7 C.F.R. Part 700, et seq.) and Commodity Credit Corporation ("CCC") regulations (7 C.F.R. Part 1400, et seq.).

61. When the FmHA loan application with its supporting documents was completed, it was presented to the county committee. If approved, the loan was processed. The Equal Credit Opportunity

tration disbanded the Civil Rights investigative staff, and (2) that agency regulations and the provisions of the Civil Rights Act of 1964, et al. had been violated. In a January 5, 1999, New York Times article, Rosalind Gray, who succeeded Wright as head of the Office of Civil Rights, stated that USDA "would agree that its procedures in handling bias claims had been flawed." Further evidence of defendant's willful failure to investigate discrimination complaints is evident in the February 27, 1997, Office of Inspector General Report ("OIG Report"), and the February, 1997 Civil Rights Action Team Report ("CRAT Report"), both explained below.

64. The Department of Justice ("DOJ") was required to ensure that Federal agencies met their Title VI enforcement obligations and provide civil rights protection to persons filing discrimination complaints in the FSA programs. DOJ failed to ensure that defendant met its Title VI obligations.

65. Within USDA, The Policy Analysis and Coordination Center ("PACC"), an agency under the Assistant Secretary for Administration, was responsible for civil rights compliance and developing regulations for processing program discrimination complaints at USDA. See OIG Report at 4. OCREA was responsible for processing program discrimination complaints received by USDA from participants in FSA programs. See OIG Report at 4.

CR&SBUS was to forward the preliminary inquiry and its analysis to OCREA with its determination. These procedures were never properly followed.

69. USDA has codified regulations, 7 C.F.R. Part 15 - "Nondiscrimination," which states USDA's policy of nondiscrimination in federally assisted and conducted programs in compliance with Title VI of the Civil Rights Act of 1964. The regulations should have served as a basis for civil rights compliance and enforcement with respect to participants in FSA programs; however, defendant admits the regulations have long been and still are outdated and never reflected the departmental agencies, programs and laws. See OIG Report at 5.

70. USDA Regulation 4330-1, which is over 13 years old, dated June 27, 1986, set the departmental policy for program civil rights compliance reviews, but did not provide policy and guidance for processing program discrimination complaints. See OIG Report at 5.

71. On December 12, 1994, in a management alert to the then Office of Civil Rights Enforcement, defendant's Office of Inspector General (OIG) reported problems with how USDA received, processed, and resolved program discrimination complaints. OIG recommended that "a departmental regulation be promulgated that sets forth the authorities of the Office of Civil Rights Enforcement and that written procedures and controls be established

> The program discrimination complaint process at FSA lacks integrity, direction and accountability. The staff responsible for processing discrimination complaints receives little guidance from management, functions in the absence of any current position descriptions or internal procedures, and is beset with its own personnel EEO problems. The staff also processes discrimination complaints without a reliable tracking system to determine the status of the complaints and, apparently, without deadlines to resolve the complaints. The resulting climate of disorder has brought the complaint system within FSA to a near standstill. Little gets accomplished to resolve discrimination complaints or to make program managers aware of alleged problems within their programs. After developing our own data base of unresolved cases, we determined that as of January 27, 1997, FSA had an outstanding backlog of 241 complaints. OIG Report at 6 (emphasis added).

74. OIG found that the FSA staff responsible for processing the discrimination complaints consisted of two untrained and unqualified people:

> The FSA staff responsible for processing discrimination complaints, the Civil Rights and Small Business Utilization Staff (CR&SBUS)" has two full-time program specialists working to resolve program complaints. These program specialists are supplemented by an administrative assistant who provides secretarial support and two staff assistants who maintain case files and the tracking system. The two program specialists and the two staff assistants transferred to FSA from the civil rights staff of the former Farmer's Home Administration (FmHA) during the Department's reorganization in October 1995. The staff assistants have been performing analyses of the preliminary inquiries conducted on the complaints, although they are not trained or otherwise qualified to do so. None of the former FmHA employees with CR&SBUS have position descriptions to reflect their current duties and responsibilities, and none have received performance appraisals for fiscal year 1996. OIG Report at 6 (emphasis added).

> complainants has not responded to the Department's written notice regarding filing a claim for compensation. Office of Operations officials are negotiating a settlement with the remaining three complainants. OIG Report at 7-8.

80. OIG found improperly closed files and improper reviews, and many files with no documentation:

> We found that FSA improperly closed and forwarded 30 complaints to program managers, without notifying the Department (26 of 30 cases were closed under the old FmHA agency management). The civil rights staff concluded without first receiving concurrence from the Department that these cases were the result of "programmatic discrepancies" (i.e., agency error rather than civil rights violations). Without departmental concurrence with its findings, the agency may not have addressed the legitimate cases of discrimination. CREA has the responsibility to make final determination of program discrimination. FSA may recommend to CREA that cases be closed, but it does not have the authority to close these cases without concurrence from CREA. For example, we noted that in one instance FSA (the former FmHA) incorrectly concluded that a case had only programmatic concerns and closed the case without forwarding it to the Department. Only after a civil rights staff member complained, did FSA process the case as a civil rights discrimination case. The civil rights staff stated in a letter that the allegation of racial discrimination was overlooked. The mix-up was discussed with the Department, which determined that the case should be processed by the civil rights staff. For most of the <u>remaining cases, we found no documentation in the case files at FSA that the Department has reviewed these cases</u>. OIG Report at 8 (emphasis added).

81. OIG found 58% of the FSA civil rights complaint case files were over 1 year old and over 150 cases were almost two years old:

> [T]he average age of the 241 cases we consider open because they were not officially closed by the Department.

> [T]he listing of outstanding cases provided by CREA contained inaccurate information. In some instances we were unable to locate the case files at CREA that were on its outstanding case list. Without reviewing the case files, we were unable to verify the status of the complaints. Also, CREA and FSA had not reconciled their cases, and neither could inform us of the correct number of outstanding cases.
>
> CREA does not have controls in place to monitor and track discrimination complaints. When complaints are received they are logged in, given a case number, and after the agency forwards the preliminary inquiry to CREA, the case is assigned to one of its seven program specialists. There are no procedures to require the program specialists to follow up on overdue responses from the agency. We have found that CREA is not following up on discrimination cases it returned to FSA for conciliation or performance of a preliminary inquiry. CREA advises the agency that it has 90 days to complete its review, but it does not follow up with the agency to determine the status of the complaint. OIG Report at 9.

85. OIG surveyed 10 other USDA program agencies in addition to FSA, to determine the procedures used for processing program discrimination complaints and found the same problems. See OIG Report at 10-11.

86. OIG compiled a list of outstanding ("open") program discrimination complaints, as late as 1996, within the Department, totaling 271. See OIG Report at Attachment A.

87. At the same time that OIG released its report, a USDA Civil Rights Action Team released its report, dated February 1997, condemning defendant's lack of civil rights enforcement and accountability which, inter alia, was a cause of the drastic decline in the number of minority farmers:

to plant a small crop, usually without the fertilizer and other supplies necessary for the best yields. The farmer's profit is then reduced. CRAT Report at 15 (emphasis added).

90. CRAT found systematic mistreatment of minority farmers:

> If the farmer's promised FSA loan finally does arrive, it may have been arbitrarily reduced, leaving the farmer without enough money to repay suppliers and any mortgage or equipment debts. In some cases, the FSA loan never arrives, again leaving the farmer without means to repay debts. Further operating and disaster loans may be denied because of the farmer's debt load, making it impossible for the farmer to earn any money from the farm. As an alternative, the local FSA official might offer the farmer an opportunity to lease back the land with an option to buy it back later. The appraised value of the land is set very high, presumably to support the needed operating loans, but also making repurchase of the land beyond the limited-resource farmer's means. The land is lost finally and sold at auction, where it is bought by someone else at half the price being asked of the minority farmer. Often it is alleged that the person was a friend or relative of one of the FSA county officials. CRAT Report at 16 (emphasis added).

91. CRAT found insufficient oversight of farm credit to minorities:

> Currently, the Farm and Foreign Agricultural Services (FFAS) Mission Area, which manages the FSA program delivery system, provides ineffective oversight of the local delivery of farm credit services. CRAT Report at 16 (emphasis added).

92. CRAT found a lack of diversity in FSA program delivery structure:

> Because of the ways in which State and county committees are chosen and county offices are staffed, FSA lacks diversity in its program delivery structure. Federal EEO and Affirmative Employment laws and policies

96. CRAT found discrimination complaints at USDA were often ignored:

> Farmers who told the CRAT stories of discrimination and abuse by USDA agencies also described a complaints processing system which, if anything, often makes matters worse. They described a bureaucratic nightmare where, even after they receive a finding of discrimination, USDA refuses to pay damages. They charged USDA with forcing them into court to seek justice, rather than working with them to redress acknowledged grievances. They painfully described the toll these ongoing battles with USDA has taken on their families, and on their health. CRAT Report at 22-23.

97. CRAT found decisions favoring farmers routinely not enforced by USDA:

> However, many farmers, especially small farmers, who have managed to appeal their cases to FSA charge that even when decisions are overturned, local offices often do not honor the decision. They claim that decisions favoring farmers are simply 'not enforced.' CRAT Report at 23.

98. CRAT found a lack of USDA regulations for discrimination complaint processing:

> Program discrimination complaints generally fall within two categories: (1) programs conducted directly by a USDA agency, such as USDA loan programs, and (2) federal assisted programs, where USDA does not directly offer services to customers, but recipients of USDA funds do. The recipients must obey civil rights laws, and USDA can be sued under such laws as Title VI, the Rehabilitation Act, Title IX, the Equal Credit Opportunity Act, and others. CRAT members were informed by OGC that USDA presently has no published regulations with clear guidance on the process or time lines involved in program discrimination complaints. When a farmer does allege discrimination, "preliminary investigations" are typically conducted by the agency that has been charged with violating her or his right. CRAT Report at 24.

resource farmers directly affects the participation of minorities in USDA programs:

> Lack of diversity in the FSA county office delivery system directly affects participation of minority and female producers in USDA programs. Underrepresentation of minorities on county committees and on county staffs means minority and female producers hear less about programs and have a more difficult time participating in USDA programs because they lack specific information on available services.
>
> However, outreach efforts have failed on a much broader front than just the county committee system in FSA. USDA does not place a priority on serving the needs of small and limited-resource farmers and has not supported any coordinated effort to address this problem. The many mission areas and agencies within the Department have developed their own separate programs that may or may not be successful in responding to the real differences in scale and culture presented by minority and limited-resource customers.
>
> Minority and limited-resource farmers and ranchers reported they are not receiving the technical assistance they require. They said they are not receiving basic information about programs for which they might be eligible. They are not being helped to complete complicated application forms. They are not being helped to understand and meet eligibility requirements for programs. They are not receiving information about how their applications are handled and, if they are denied participation, why they were denied and how they might succeed in the future. When they do receive loans or other program benefits, they are not being helped to use those benefits most effectively to improve their operations.
>
> Some outreach efforts, like the consolidated Service Center approach to providing comprehensive services to USDA customers, have created new barriers. Their locations have not considered the needs of minority and limited-resource customers who may have difficulty in reaching more distant centers than customers with greater resources. Their services have not provided for cultural and language differences that

its responsibilities for agricultural, rural, and food and nutrition programs, interferes with delivery of needed services to American Indians. Program rules specifying particular forms of land ownership for eligibility prevent American Indians from access to assistance they need to develop their agriculture and conserve their land. CRAT Report at 28.

104. CRAT uncovered neglect of and bias against minorities by USDA, resulting in a loss of farmers' land and income.

> The recent Civil Rights listening-sessions revealed a general perception of apathy, neglect, and a negative bias towards all minorities on the part of most local USDA government officials directly involved in decision making for program delivery. A reporter at the recent listening session in Tulsa, OK. [sic] observed that minority farmer are not sure which condition "was worse -- being ignored by the USDA and missing potential opportunities or getting involved with its programs and facing a litany of abuses." Minority farmers have lost significant amounts of land and potential farm income as a result of discrimination of FSA programs and the programs of its predecessor agencies, ASCS and FmHA. Socially disadvantaged and minority farmers said USDA is part of a conspiracy to take their land and look to USDA for some kind of compensation for their loses. CRAT Report at 30.

105. CRAT found USDA the fifth worst (of 56 government agencies) in hiring minorities:

> According to the US Department of Labor, between 1990 and 2000, women, minorities, and immigrants will account for 80 percent of the United States labor force growth. The "Framework for Change: Work Force Diversity and Delivery of Programs," a USDA report released in 1990, found that USDA had a need to remedy under-representation in its workforce by providing equal employment and promotion opportunities for all employees. When this statement was made, USDA ranked 52 out of 56 Federal agencies in the employment of minorities, women, and individuals with disabilities. CRAT Report at 33.

> complaints. That means only a small percentage of USDA's civil rights staff works on civil rights issues relating to program delivery. According to the Commission, the 1994 civil rights reorganization was deficient because OCRE did not separate internal and external civil rights issues into separate offices. The Commission predicted that "a probable consequence is that USDA's Title VI enforcement program may suffer as OCRE responds to pressures to improve USDA's internal civil rights program." It recommended that USDA establish "two separate units, with different supervisory staff," one for internal and one for external civil rights issues. CRAT Report at 54.

110. CRAT found defendant's counsel hostile to civil rights, if not racist:

> The perception that the Office of the General Counsel [at USDA] is hostile to civil rights has been discussed earlier in this report. OGC's legal positions on civil right issues are perceived as insensitive at the least, and racist at worst. Correcting this problem is critical to the success of USDA's civil rights program. CRAT Report at 55.

111. CRAT found defendant's counsel often have no civil rights experience or education:

> However, the CRAT has found that attorneys who practice civil rights law at [USDA's] OGC are not required to have specialized experience or education in civil rights when they are hired. They acquire their civil rights experience on the job. In addition, most of OGC's lawyers working on civil rights issues work on non-civil-rights issues as well. CRAT Report at 55.

112. In sum, CRAT concluded that defendant does not support or enforce civil rights:

> USDA does not have the structure in place to support an effective civil rights program. The Assistant Secretary for Administration lacks authority and resources essential to ensure accountability among senior management ranks. There has been instability and

discrimination complaints had increased from 241 to 474 for FSA and from 530 to 984 for all of USDA.

116. On September 30, 1998, the USDA's Office of Inspector General released its "Report to the Secretary on Civil Rights Issues - Phase V" [hereinafter "OIG Report V"], which states, inter alia:

> a. We found that the Department [USDA], through CR [Office of Civil Rights], has not made significant progress in reducing the complaints backlog. Whereas the backlog stood at 1,088 complaints on November 1, 1997, it still remains at 616 complaints as of September 11, 1998. OIG Report V, cover letter to the Secretary.
>
> b. The backlog is not being resolved at a faster rate because CR itself has not attained the efficiency it needs to systematically reduce the caseload. Few of the deficiencies we noted in our previous reviews have been corrected. The office is still in disarray, providing no decisive leadership and making little attempt to correct the mistakes of the past. We noted with considerable concern that after 20 months, CR has made virtually no progress in implementing the corrective actions we thought essential to the viability of its operations. OIG Report V at i (emphasis added).
>
> c. Most conspicuous among the uncorrected problems is the continuing disorder within CR. The data base CR uses to report the status of cases is unreliable and full of error, and the files it keeps to store needed documentation are slovenly and unmanaged. Forty complaint files could not be found, and another 130 complaints that were listed in USDA agency files were not recorded in CR's data base. Management controls were so poor that we could not render an opinion on the quality of CR's investigations and adjudications. OIG Report V at iii (emphasis added).

EQUAL CREDIT OPPORTUNITY ACT AND
ADMINISTRATIVE PROCEDURE ACT

118. The Equal Credit Opportunity Act ("ECOA") is a detailed and exhaustive legislative directive unequivocal in its statutory intent to stamp out discrimination by any lender, anywhere, whether private, public, governmental or quasi-governmental.

ECOA states, inter alia:

> It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction - (1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);... 15 U.S.C. § 1691(a)(1).

ECOA provides for monetary relief to both individuals and class members who are damaged by creditors who violate the statute:

> Any creditor who fails to comply with any requirement imposed under this subchapter shall be liable to the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class. 15 U.S.C. § 1691e(a) (emphasis added)

Third, district courts are vested with the authority to provide equitable and declaratory relief:

> Upon application by an aggrieved applicant, the appropriate United States district court or any other court of competent jurisdiction may grant such equitable and declaratory relief as is necessary to enforce the requirements imposed

violation of plaintiffs' rights were equally egregious in both areas. Discrimination existed under both credit and non-credit programs, and neither offered Native American farmers an opportunity to appeal to a civil rights enforcement body to obtain relief. Further, in many instances, the calculation of loans under the credit program and payments or benefits under the non-credit programs were interdependent. For example, the amount of non-credit program benefits or program allotments that a farmer could receive for the crop of a commodity (such as cotton, corn, wheat, rice, peanuts, or tobacco) in a year required a review of his or her farming history, which, in turn, was directly related to the yield per acre the farmer cultivated, which was dependent on the amount of operating credit made available to the farmer.

STATUTE OF LIMITATIONS IS WAIVED

123. On October 21, 1998, the President signed into law the Omnibus Consolidated Appropriations Act for Fiscal Year 1999, P.L. 105-277, Div. A, § 101(a) [§ 741], 112 Stat. 2681 (Codified at 7 U.S.C. § 2279). This legislation contains the following provisions:

> Sec. [741]. Waiver of Statute of Limitations.
>
> (a) To the extent permitted by the Constitution, any civil action to obtain relief with respect to the discrimination alleged in an eligible complaint, if commenced not later than 2

proceeding in the Department of Agriculture under this section.

(e) As used in this section, the term "eligible complaint" means a nonemployment related complaint that was filed with the Department of Agriculture before July 1, 1997 and alleges discrimination at any time during the period beginning on January 1, 1981 and ending December 31, 1996—

(1) in violation of the Equal Credit Opportunity Act (15 U.S.C. 1691, et seq.) in administering—

(A) a farm ownership, farm operating, or emergency loan funded from the Agricultural Credit Insurance Program Account; or

(B) a housing program established under title V of the Housing Act of 1949; or

(2) in the administration of a commodity program or a disaster assistance program.

(f) This section shall apply in fiscal year 1999 and thereafter.

(g) The standard of review for judicial review of an agency action with respect to an eligible complaint is de novo review. Chapter 5 of title 5 of the United States Code shall apply with respect to an agency action under this section with respect to an eligible complaint, without regard to section 554(a)(1) of that title.

CLASS ACTION ALLEGATIONS

124. Plaintiffs bring this Class action on behalf of themselves, and all others similarly situated, for the purpose of asserting the claims alleged in this Complaint on a common basis.

plaintiffs' research and travel to county offices throughout the country, interviews with hundreds of farmers and ranchers, and review of defendant's reports, that during the period January 1, 1981, to November 24, 1999, USDA received at least 19,000 discrimination complaints on behalf of class members. Accordingly, plaintiffs are informed and believe, and on that basis allege, that the Class includes not less than 19,000 members. However, plaintiffs and members of the Class contend that many written complaints of discrimination were never properly docketed in defendant's "system" and therefore were never acknowledged by or responded to by defendant. For example, many complaints filed years ago in local and state offices are (because of the publicity generated in Pigford v. Glickman) only now being forwarded to USDA's offices in Washington, D.C. While plaintiffs believe the minimal number of cases is 19,000, without access to defendant's computerized list, plaintiffs have no further specific knowledge as to the exact number of complaints. Class members may be informed of the pendency of this Class action by published and broadcast notice; in addition, defendant has each Class member's farm number, address, application date and payment results on computer, and thus readily available.

128. Existence and Predominance of Common Questions Of Law and Fact. Fed. R. Civ. P. 23(a) and 23(b)(3). Common questions of law and fact exist as to all members of the Class and predominate

e) Whether defendant's actions violated plaintiffs' and Class members' rights under the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a);

f) Whether plaintiffs and Class members are entitled to (1) a declaration of their eligibility to receive damages or other monetary relief, (2) costs, (3) attorneys fees and (4) interest from the date they should have been paid to the actual date of payment; and

g) How any and all payments plaintiffs are declared eligible to receive should be equitably allocated among the Class.

These questions of law as to each Class member arose at the same time - following the release of the OIG Report and CRAT Report, in February, 1997, exposing for the first time, the institutional and systematic failure of the discrimination complaint process at USDA.

129. Typicality of Claims. Fed. R. Civ. P. 23(a)(3).

Plaintiffs' claims are typical of the claims of the members of the Class, all of whom have been denied equal access to credit or other program benefits and due process in the enforcement of their discrimination complaints, and have been subject to defendant's institutional and systematic failure to enforce the civil rights laws intended to benefit plaintiffs and members of the Class, due to defendant's arbitrary and unlawful actions.

130. Adequacy of Representation. Fed. R. Civ. P. 23(a)(4).

Counsel in Pigford. Sarah M. Vogel of the Wheeler Wolf Law Firm, is an experienced attorney in the field of agricultural and Tribal Law and has been practicing for nearly 30 years. James WM. Morrison of Wood, Bohm, Francis & Morrison has been practicing law for 25 years and is an experienced attorney in the field of civil rights. Finally, Joseph D. Gebhardt is an experienced attorney in the field of civil rights law and class action lawsuits involving discrimination of USDA employees. The interests of the members of the Class will be fairly and adequately protected by plaintiffs and their Lead Counsel and Of Counsel. Counsel for plaintiffs have signed retainer agreements with plaintiffs stating that in the event of a successful settlement or judgment (1) 100% of all monies received will go to plaintiffs and Class members; and (2) counsel will seek recovery of legal fees, expenses and costs under the Equal Credit Opportunity Act and the Equal Access To Justice Act.

131. Superiority. Fed. R. Civ. P. 23(b)(3). A Class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual litigation of Class members' claims regarding the defendant's institutional and systematic deprivation of their civil rights as described in this Complaint is impracticable. Even if any Class members could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual

tially impair or impede the ability of such non-party Class members to protect their interests; and

c) Defendant has acted on grounds generally applicable to the Class, thereby making appropriate final declaratory relief with respect to the Class as a whole.

COUNT I
(Declaratory Judgment)

133. Plaintiffs, on behalf of themselves and all others similarly situated, re-allege all paragraphs above as if fully set forth herein.

134. An actual controversy exists between plaintiffs and Class members and defendant as to their rights with respect to defendant's farm programs.

135. Plaintiffs and the Class pray that this Court declare and determine, pursuant to 28 U.S.C. § 2201, the rights of plaintiffs and Class members under defendant's farm programs including their right to equal credit, equal participation in farm programs, and their right to full and timely enforcement of racial discrimination complaints.

142. Plaintiffs and the Class pray defendant's actions be reversed as arbitrary, capricious, and abuse of discretion, and not in accordance with the law, pursuant to 5 U.S.C. § 706(2)(A), and in excess of defendant's statutory jurisdiction, pursuant to 5 U.S.C. § 706(2)(C).

143. As a direct and proximate result of defendant's acts, plaintiffs and the Class members sustained damages, including payments rightfully due plaintiffs and the Class members.

144. Plaintiffs pray for appropriate relief under the Administrative Procedure Act, including (1) compensation to plaintiffs and Class members for there having been no proper investigation of their complaints, and (2) specific performance with respect to their program benefits.

COUNT IV
(Violation of Title VI of the Civil Rights Act of 1964)

145. Plaintiffs, on behalf of themselves and all others similarly situated, reallege all paragraphs above as if fully set forth herein.

146. Defendant's acts constitute a violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

147. As a direct and proximate result of defendant's acts, plaintiffs and the Class members sustained damages.

(5) An Order granting plaintiffs' and the Class members' attorneys' fees and expenses pursuant to the Equal Credit Opportunity Act, and the Equal Access to Justice Act, costs of suit, and interest from date when plaintiffs and the Class members should have been paid to actual date of payment, and all other relief that the Court determines proper and fair.

Respectfully submitted,

April 10, 2000

By: _____

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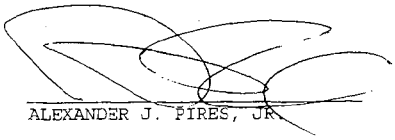
Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Third Amended Class Action Complaint was delivered by certified mail, this 10th day of April, 2000 to Neil Koslowe, U.S. Department of Justice, Special Litigation Counsel, Civil Division - Room 1036, P.O. Box 883, Washington, DC 20044.



ALEXANDER J. PIRES, JR.

USDA Forest Service
Region Five (California) Affidavits

January 10, 2000

Jo Ann Nelson - A female firefighter on the Stanislaus National Forest. Ms. Nelson had **negative sexual remarks made about her sleeping with the men on her fire crew**. When she filed a complaint, she was retaliated against in the manner of verbal abuse, lack of training, disciplinary actions and promotion. **Region Five refuses to mediate or settle her complaint.**

Gayle Nollau - A female fleet manager on the San Bernardino National Forest. Ms. Nollau has faced discrimination for several years. Her male counterparts throughout Region Five are a higher GS grade. When she raised the issue and filed a complaint her supervisor became hostile and abusive. **SHE LOST HER UNBORN CHILD DUE TO THE HOSTILE WORK ENVIRONMENT**. See attached doctor statement. **Region Five refuses to settle her complaint despite mediation attempts.**

Priscilla Peterson - A Hispanic female archaeologist on the Lassen National Forest. Ms. Peterson has been **sexually harassed, stalked, threatened and demeaned by men on the Plumas NF**. When she filed a complaint she was reprised against. Her complaint was settled during the 1997 Backlog. She has been reprised against by her current supervisor on the Lassen NF and has filed reprisal complaints. **Region Five refuses to stop the reprisal or settle her complaint.**

Henrietta Haaziq - A black female forestry technician on the Plumas National Forest. **Ms. Haaziq has endured racist and sexist remarks from the men in her department for years**. She has been isolated, shunned and ignored. She has received no training, work projects or awards, unlike the white males in her department. **The Region refuses to mediate or remove her from the hostile environment.**

Lesa L. Donnelly -- Class Agent for the sexual harassment/hostile work environment lawsuit known as Donnelly v. Glickman. Ms. Donnelly is known as **THE USDA POSTER CHILD FOR REPRISAL**. Her actions as class agency and CA Chapter Coalition President have resulted in Region Five management taking many reprisal actions against her. **She has endured investigations, disciplinary actions, poor performance ratings, demotions and loss of position, denied travel, training & awards, verbal abuse, threats and intimidation and has been stalked.** THE AGENCY REFUSES TO SETTLE THE CLASS ACTION LAWSUIT DESPITE YEARS OF NEGOTIATIONS.

Melissa Brookey - A female firefighter on the Plumas National Forest who was terminated from the Forest Service. Ms. Brookey was harassed, intimidated and threatened by her male coworkers. Plumas NF management would not stop the hostile environment despite numerous requests. **They trumped her up on false charges of theft**. In criminal proceedings **she was acquitted**. However, before she got to court, **she had a nervous breakdown due to Forest Service harassment and intimidation. The Agency would not accommodate her illness. She was fired on AWOL charges. THE AGENCY REFUSED TO MAKE A REASONABLE OFFER TO MAKE HER WHOLE.**

Cindy Jandt - A female firefighter from the Shasta-Trinity National Forest who quit the Forest Service because the hostile environment made her disabled. Ms. Jandt was sexually harassed. **Ms. Jandt had filthy sexual comments made to her on a daily basis by the male supervisor. She witnessed the Engine Captain spread mayonnaise on a female coworkers breasts.** She was constantly told she was not wanted on the fire crew. She asked management to stop the hostile environment and was not helped. Ms. Jandt was denied training, project work and awards. **Region Five refuses to mediate or resolve her complaint.**

Cathi Colehour - A female firefighter from the Shasta-Trinity National Forest who quit her job due to the sexually hostile work environment. **Ms. Colehour's supervisor, the Engine Captain, made constant sexual comments to her. He directed her to get on her knees and perform oral sex. He tried to coerce her into sex and grabbed her breast.** She witnessed her supervisor give preferential treatment to a female coworker with whom he had a sexual relationship. **When Ms. Colehour raised EEO issues she was reprimanded.** Ms. Colehour became extremely physically ill from the hostile environment and had to quit her job. **Region Five refuses to make a reasonable offer. The request for mediation and resolution was denied in 1999.**

Ginelle O'Connor - Class Agent in the sexual harassment/hostile work environment lawsuit known as Donnelly v. Glickman. **As a firefighter Ms. O'Connor was physically assaulted and threatened with rape by her fire crew members.** As a wildlife biologist she has been treated with disrespect. **She has been harassed, intimidated and bullied by male coworkers. As class agent she continues to be retaliated against on the Lassen National Forest in terms of travel, pay, and project work denied. As a disabled employee, she suffers reprisal in terms of reasonable accommodation.** SHE HAS RECENTLY FILED A CLASS ACTION COMPLAINT IN REGION FIVE FOR PEOPLE WITH DISABILITIES.

EMPLOYMENT DISCRIMINATION AFFIDAVIT FORMAT & CONTENTS

UNITED STATES DEPARTMENT OF AGRICULTURE - FOREST SERVICE

NAME AND PERSONAL PROFILE DATA

NAME: Jo Ann Julyan Nelson **TELEPHONE NUMBER:** 209-736-9158

ADDRESS: PO Box 1361, Angels Camp, CA 95222

EMPLOYER ADDRESS: USDA, Forest Service, Stanislaus National Forest, R-5

YEARS OF FEDERAL SERVICE: 11 **RACE, NATIONAL ORIGIN:** Caucasian

GENDER: female **AGE:** 35 **DO YOU HAVE A DISABILITY?** No

YEARS WITH FOREST SERVICE: 11 **DATE OF LAST PROMOTION:** 1993

PRESENT JOB TITLE AND GRADE LEVEL: GS-462-5 Forestry Tech, Fire Prevention Tech

EDUCATION AND TRAINING: some college/Firefighter

JOB SKILLS: Fire/Computer/Forestry/Animal Science

CURRENTLY WORK FOR THE FOREST SERVICE: Yes

SUMMARY AND CHRONOLOGY OF YOUR SPECIFIC CLAIM(S) OF DISCRIMINATION

WHAT SPECIFIC CLAIMS OF EMPLOYMENT DISCRIMINATION ARE YOU MAKING?
Sexual Harassment/Gender Discrimination/Hostile Work Environment/Reprisal

NAME(S), RACE, NATIONAL ORIGIN, TITLE(S), AND GRADE LEVEL OF THE INDIVIDUAL(S) WHOM YOU ARE ALLEGING TO HAVE ENGAGED IN EMPLOYMENT DISCRIMINATION AGAINST YOU:
Joanne Crow white female GS-11 Fire Management Officer Stanislaus NF Calaveras District
Glenn Gottschall white male GS-14 Deputy Forest Supervisor Stanislaus NF
Ben Del Villar male GS-15 Forest Supervisor Stanislaus NF

DELINEATE IN CHRONOLOGICAL ORDER YOUR ALLEGATIONS OF EMPLOYMENT DISCRIMINATION:

I've worked on the Calaveras District of the Stanislaus National Forest since 1995. I am a permanent seasonal employee. Prior to that I worked on the Stanislaus Hotshots, an elite firefighting team for 2 1/2 years.

There was an incident in 1997 in which untrue statements were made that I was having a sexual relationship with a male firefighter. My husband who also is a firefighter, overheard the comments. When the situation was investigated and dealt with, my supervisor, Joanne Crow made sexual comments about me. She told another male employee, the Acting Assistant Fire Management Officer, that I was promiscuous while I worked on the Hotshots team. She said I slept with almost every man on the team and that I deserved what I got. I was given documentation to confirm she said it. I filed a complaint, but was intimidated into dropping the complaint by upper level management. I believe Joanne Crow made the statements to damage my reputation as a firefighter.

Another female firefighter advised me that Ms. Crow stated that she was going to "get rid of all the unqualified women in fire". It is apparent that she prefers working with white males. I believe this is gender discrimination. To my personal knowledge Joanne Crow has harassed 4 other female firefighters and one female staff officer. Two of the firefighters quit because of the harassment. Management is aware of this and has not held her accountable for her actions. Three of the women advised me they would provide information to an investigator, but there has been no investigation.

After I filed the complaint the harassment and reprisal escalated. In 1999, Joanne Crow told me that if I didn't let her help me get another job outside of fire, I would have to "stay and suffer the consequences". I felt this was a blatant threat.

I was not treated the same as the men in my workgroup and other employees on the forest. I've been denied training and equipment needed to perform my job. I've been given adverse actions for minor incidents that my coworkers did not receive for similar actions. Ms. Crow has verbally abused and demeaned me in front of others and on the forest radio net. Ms. Crow has made physical threatening movements toward me, while yelling at me. She blocked my ability to leave the room while yelling at me. She told me she was not going to move or to change her attitude and behaviors toward me. I believe she is trying to harass me into leaving or quitting the Forest Service.

Ms. Crow gave me Leave Without Pay for the time I worked with my representative on my EEO complaint, violating 29 CFR 1614. She refused to send my timesheet to NFC and I was not paid timely. She refused to send my travel vouchers in timely. This was reprisal.

In August 1999, I applied for a promotion to a GS-6 Fire Prevention Tech. The male coworker who Ms. Crow has been giving preferential treatment to also applied for the job. My job qualifications are higher than the male coworker. However, he was selected for the position. I believe Ms. Crow pre-selected him. She made it clear she did not want me working for her. Therefore, I lost a promotion.

Joanne Crow's harassment and hostility toward me has placed me in a stressful work environment. This has created physical and emotional problems for me. I have had to seek treatment from a physician and therapist. I gave Ms. Crow a doctor's note to be on work-related stress leave. Ms

Crow denied my ability to use annual leave for the time off. The Assistant Fire Management Officer overrode her decision.
The situation working with Joanne Crow has become a continual nightmare. In order to harass me, she denies me the benefits that other employees are provided as a matter of normal business. **Because of her hostility and animosity toward me and her unequal treatment of me, I am considering quitting my job with the Forest Service.**

I have been financially, emotionally and physically harmed by Joanne Crow's behavior. It has affected my family life. I filed 6 EEO complaints. Management is non-responsive. I have no hope that my work situation will change or I will be compensated for my losses, as long as the Forest Service is able to make the decisions on my case.

DO YOU CONSIDER YOUR WORK AREA TO BE A "HOSTILE WORKING ENVIRONMENT"? Yes.

WHAT WAS THE AGENCY/MANAGEMENT RESPONSE(S) TO YOUR CHARGES OF EMPLOYMENT DISCRIMINATION? Non-responsive.

DELINEATE THE MAJOR FINDINGS OF THE EEO INVESTIGATOR ASSIGNED TO YOUR CASE: No investigation has been performed.

RESOLUTION OF YOUR EEO COMPLAINT(S)

WHAT HAS MANAGEMENT DONE TO RESOLVE OR IMPEDE THE RESOLUTION OF YOUR EEO CLAIMS OF DISCRIMINATION? The Coalition has been working with Regional Management to resolve my case. Management is not putting forth a good faith effort to settle.

WHAT WAS MANAGEMENT'S RESPONSE TO YOUR FILING OF ONE OR MORE EEO COMPLAINT? (List Each Complaint and the Date it Was Filed) A SEPARATE RESPONSE IS REQUIRED FOR EACH COMPLAINT FILED. Reprisal.

DELINEATE IN SPECIFIC DETAILS THE IMPACT ON YOUR CAREER FOR FILING AN EEO COMPLAINT(S). I'm considering quitting a permanent position with the Forest Service which will impact my career as a firefighter and will harm me financially.

MISCELLANEOUS ISSUES

DID YOU REQUEST CONGRESSIONAL ASSISTANCE AND WHAT RESULTS WERE ACHIEVED? No.

IMPORTANT ISSUES/CONCERNS RELATIVE TO YOUR FILING OF AN EEO COMPLAINT(S): N/A

OTHER VALUABLE OR SUBSTANTIVE DOCUMENTS AND/OR INFORMATION:
See attached letter from employee discussing my supervisor's sexually derogatory statements about me.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge

Jo Ann Julyan Nelson

United States Department of Agriculture

Forest Service

Stanislaus National Forest
19777 Greenley Road
Sonora, CA 95370-5909
(209) 532-3671
FAX: (209) 533-1890
TTY/TDD: (209) 533-0765
http://www.r5.pswfs.gov/stanislaus

File Code: 6100

Date: October 14, 1997

RE: Statement of facts

REF: Conversation between JoAnn Crowe and myself (summer of 1996) concerning a complaint filed by Joann Julyan-Nelson

TO: Investigation

FOR OFFICIAL USE ONLY!

Although I do not have the exact date and time when the conversation occurred, I remember the meeting well.

Joann Julyan had filed a complaint against (Mike) Hilderbrand, a member of the Stanislaus Hotshots. I understand that her husband, Eric Nelson, had heard a conversation between Mike and other members of the Hotshot group concerning a recent fire performance rating she had given to a trainee on the On-Call Fire crew. Mike was obviously not aware of Erics presence when making the statement. The statement I am aware that was said was, "pretty good rating,what's she doing --F!!king him?" Joann became aware of this statement from her husband.

My involvement in this case was providing Joann Julyan with support and advising her of contacts and direction.

The meeting in question between JoAnn Crowe and myself, was to (I assumed) get my opinion on the situation and recommendations. The conversation (on JoAnns part), went from a professional analysis to discussing (her) moral concerns and opinions. The most appalling and unjust statement that Ms. Crowe said was, "Jay Jay (Ms. Julyan), deserves what she gets...you know she was very promiscuous while a member of the hotshot crew." She continued, "I heard that she slept with a majority of the boys on the crew". I made some comments as to, no one deserves any unjust attacks on there character, especially when it does not affect their ability to perform their job.

Ms. Crowe also bantered about another female employee on the district, who also, in her opinion, was too promiscuous.

I offer this statement in support of JoAnn Julyan. This is written to the best of my knowledge and as accurate as possible. I would be available for an interview, at anytime, to clarify this statement.

Thank you

Lee J. Mortier
Forest Dispatcher

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Calaveras } ss

On 12/15/99 (Date), before me, Terry L. Reynoso (notary)

(Name and Title of Notary Public)

personally appeared Joann Nelson

(Name(s) of Signer(s))

personally known to me

X proved to me on the basis of satisfactory evidence

TERRY L. REYNOSO
Commission # 1220169
Notary Public - California
Calaveras County
My Comm. Expires May 20, 2003

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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EMPLOYMENT DISCRIMINATION AFFIDAVIT FORMAT & CONTENTS

UNITED STATES DEPARTMENT OF AGRICULTURE - FOREST SERVICE

NAME AND PERSONAL PROFILE DATA

NAME: Gayle Nollau **TELEPHONE NUMBER:** 909-338-2208

ADDRESS: 545 Shady Dell, Crestline, CA 92325

EMPLOYER ADDRESS: USDA, Forest Service, R5, San Bernardino National Forest

YEARS OF FEDERAL SERVICE: 16 **RACE, NATIONAL ORIGIN:** caucasion

GENDER: female **AGE:** 43 **DO YOU HAVE A DISABILITY?** No
No

YEARS WITH FOREST SERVICE: 16 **DATE OF LAST PROMOTION:** 1993

PRESENT JOB TITLE AND GRADE LEVEL: GS-2150-09 Fleet Equipment Specialist

EDUCATION AND TRAINING: Associate of Arts Degree

JOB SKILLS: fleet management/computer & data base management/fire science/mechanics/budget

CURRENTLY WORK FOR THE FOREST SERVICE: yes

SUMMARY AND CHRONOLOGY OF YOUR SPECIFIC CLAIM(S) OF DISCRIMINATION

WHAT SPECIFIC CLAIMS OF EMPLOYMENT DISCRIMINATION ARE YOU MAKING?
Discrimination based on sex (female) & Equal Pay Act

NAME(S), RACE, NATIONAL ORIGIN, TITLE(S), AND GRADE LEVEL OF THE INDIVIDUAL(S) WHOM YOU ARE ALLEGING TO HAVE ENGAGED IN EMPLOYMENT DISCRIMINATION AGAINST YOU:
Gene Zimmerman white male San Bernardino National Forest Supervisor
Bill Crane white male First Line Supervisor

DELINEATE IN CHRONOLOGICAL ORDER YOUR ALLEGATIONS OF EMPLOYMENT DISCRIMINATION:

I am being discriminated against because of my gender.

I received the GS-2150-9 Fleet Equipment Specialist position under the Bernardi Consent Decree for the hiring and promotion of women in Region Five, (California) of the Forest Service. The position was established as an upward mobility opportunity for women. However, when the Bernardi Consent Decree ended, women lost the opportunities to train and promote. This effected my ability to promote into the job for which I had been trained.

As the GS-9 Fleet Equipment Specialist on the San Bernardino National Forest, my job was to assist the GS-11 Fleet Manager in all aspects of the job. This helped the Fleet Manager and provided me upward

mobility training. When the Fleet Manager retired in 1996, I was required to perform his job at a lower grade. I received a temporary 3 month promotion to the GS-11. After the three months, I was placed back in my GS-9 position, but I have been required to perform the job for the last three years at the lower grade level.

When I requested the GS-11, I was denied it. The other male Fleet Managers in Region 5 are all GS-11 grades. I perform the same level of work.

I requested a desk audit. My supervisor, Bill Crane provided false information about my duties and responsibilities to deliberately prevent me from receiving the GS-11 upgrade. The classification was done improperly and I was refused the upgrade.

Within the last two years at least five management positions have been filled. Each position has been filled with a man.

As reprisal for filing my EEO complaint, Mr. Crane refused to fill the position of my shop clerk when it became vacant. The male Fleet Managers in R5 have assistance in performing their jobs. Two other female Fleet Managers and myself have no assistance. Doing the job with no help increased my stress and had an adverse affect on my health and the health of my unborn child.

My supervisor, Bill Crane, started harassing me and was verbally abusive after I asked for the desk audit. Mr. Crane verbally demeaned me in front of others. He yelled at me in front of others. Other times he would refuse to communicate with me at all. My environment became very hostile. On more than one occasion he made me cry and leave the room.

Mr. Crane knew I was pregnant during the time period he was harassing me and treating me differently. I was under extreme stress, depression and anxiety. I had a miscarriage. I believe the miscarriage was due to the hostile work environment. My therapist, Ginger Gabriel, Ph.D. provided a letter regarding the effect of the work environment on my miscarriage. Dr. Gabriel references the American Bar Association's 1990 study identifying stress due to gender bias and the stressful work environment as a potential cause for a stress-induced miscarriage.

I've continued to perform the work at a lower grade level. The desk audit remained in error. In April 1999, I contacted USDA Coalition president, Lesa Donnelly. The Forest Service refused to acknowledge the appeal on my desk audit classification. Ms. Donnelly contacted the Washington Office and Region Five agreed to mediate my complaint. The Forest Supervisor refused to settle. Ms. Donnelly notified the Washington Office again and Region Five starting negotiating a settlement. I am waiting for a response from the Regional Office on my settlement request. I have been physically, emotionally and financially harmed. The Forest Service has never held the men accountable for harassing me, treating me differently based on my gender and for reprising against me for filing an EEO complaint.

DO YOU CONSIDER YOUR WORK AREA TO BE A "HOSTILE WORKING ENVIRONMENT"? yes

WHAT WAS THE AGENCY/MANAGEMENT RESPONSE(S) TO YOUR CHARGES OF EMPLOYMENT DISCRIMINATION? The USDA, Forest Service was completely non-responsive. My supervisor reprised against me. I am currently negotiating for settlement. The Agency agreed to mediation only because Lesa Donnelly, the R5 Coalition President intervened on my behalf with the Washington Office.

DELINEATE THE MAJOR FINDINGS OF THE EEO INVESTIGATOR ASSIGNED TO YOUR CASE: No findings yet. The investigation was in June 1999.

RESOLUTION OF YOUR EEO COMPLAINT(S)

WHAT HAS MANAGEMENT DONE TO RESOLVE OR IMPEDE THE RESOLUTION OF YOUR EEO CLAIMS OF DISCRIMINATION? I attended a mediation with my representative in October 1999. The Forest Supervisor was the respooding official. He admitted that he did not come to the mediation prepared and refused to resolve the case because, in his words, he did not have enough information because he had not talked with his personnel. It was a waste of time and money.

WHAT WAS MANAGEMENT'S RESPONSE TO YOUR FILING OF ONE OR MORE EEO COMPLAINT? (List Each Complaint and the Date it Was Filed) A SEPARATE RESPONSE IS REQUIRED FOR EACH COMPLAINT FILED. Reprisal against me

DELINEATE IN SPECIFIC DETAILS THE IMPACT ON YOUR CAREER FOR FILING AN EEO COMPLAINT(S). My request for a desk audit and reclassification was sabotaged by my supervisor. Management would not allow me to have an appealed audit.

MISCELLANEOUS ISSUES

DID YOU REQUEST CONGRESSIONAL ASSISTANCE AND WHAT RESULTS WERE ACHIEVED? I requested assistance from the USDA Coalition of Minority Employees. If the Coalition had not assisted I would not be in negotiation for settlement because the Agency was non-responsive

IMPORTANT ISSUES/CONCERNS RELATIVE TO YOUR FILING OF AN EEO COMPLAINT(S): The EEO Investigator would not allow me to provide information in my affidavit that I believed to be pertinent to my case. He refused to allow me to document the health effects of the stress related problems that were a result of the harassment. My representative had to contact him and demand he do his job correctly under Title VII and USDA policy

OTHER VALUABLE OR SUBSTANTIVE DOCUMENTS AND/OR INFORMATION:
The attached statements from my doctor discusses the ramifications of the hostile working conditions I was in, i.e. the miscarriage of my unborn child.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Gayle L. Nollan

Gayle L. Nollan

I will have a notary public sign this
& returned to you by Thursday, Dec 16, 1999.

Ginger Gabriel, Ph.D., MFT
Calif. License #MFC31925
Dr. Ginger Gabriel Counseling
P.O. Box 4425
Crestline, CA 92325
909-338-7008

Evaluation

Gayle L. Nollau
DOB: 5/6/56

1. General Observations:
   Gayle began counseling to talk about job related stress. Gayle seems to feel that her current boss is undermining her leadership by attitude and words. Gayle comes to counseling after work and often appears anxious about the work situation. She generally looks tired in sessions. However, she is neat and well groomed.

2. Presenting Issue:
   Gayle began coming in for counseling before she even knew she was pregnant. When she found out she was pregnant she expressed concern for the baby due to the "hostile work environment" she was forced to spend most of her day. She gave several examples of distress over harassment, she felt was meant to keep her in her place at work. She struggles with knowing that she is not only doing her work well, but that she is carrying the load of a GS 11 supervisor. She stressed over what she considered poor decisions made over her head. She believed that there was plenty of work for both her and Patti and that the decision to let Patti go right when Gayle's baby was to be born caused endless stress for Gayle. With a new baby she was expected to do all her own work and assume Patti's also.
   Gayle lost her baby due to a miscarriage. I believe that if she had been in a work friendly environment she might not have lost the baby. One study has shown that women who log many hours at the office during the first trimester of pregnancy may have a greater risk of miscarriage. A "stressful work environment" usually includes "the existence of political intrigue and 'backbiting', lack of opportunity for advancement, advancement not determined by quality of work, and lack of respect by superiors." Stress due to gender bias was also cited in this report as possibly leading to a stress-induced miscarriage. (Survey conducted by American Bar Association in 1990.) Gayle has cited all the above as she has struggled with work-related-depression and anxiety.

Two years ago her boss retired. Under that leadership she believed that she was in an upward mobile position. She attended night classes to further her education in order to be in position for promotion. She was told she was GS 11 potential. She believes that she does the work of a GS11, with the pay and respect of a GS 9 position. She believes that the reason she has not been promoted is due to gender bias, not ability.

3. Past history:
   Gayle has struggled with lack of support with new boss. She firmly believes that several male staff members lack confidence in her as a female manager and will not promote her due to her gender.

4. Mental Status Exam

   A. Attitude and Behavior: Gayle believes that she not only does her job well, but that she has been required to wear the hat of a GS 11, but be remunerated at a GS 9 level. She believes that the attitude of her boss toward her has depleted her self-esteem.

   B. Intellectual Functioning/Sensorium: Gayle appears to be highly intelligent but seems unable to rise above what she considers to be a hostile work environment.

   C. Affective status: Gayle seems to experience work-related depression, anxiety and stress on a daily basis. She is able to identify varying emotions and seems able to identify correctly the emotions of others. When she comes in for counseling with her family, I am aware of the family's strength and deep caring for each other.

   D. Reality Contact: The client seems to be able to stay in touch with current reality. At work she directly communicates with the three mechanics on a regular basis and keeps track of 300 pieces of equipment.

5. Current level of function: GAF:65

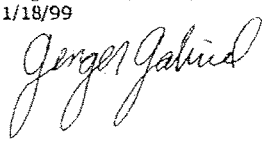
6. Current Medications: none

7. Diagnosis: (DSM IV)
   Axis I 309.28

8. Prognosis: I believe that when Gayle is able to resolve her conflict with management much of her anxiety and depression will go away. When she

receives fair compensation based on her work and not on her gender, she will be able to resolve her disappointment over the loss of her child. Gayle will be able to be acknowledged as Fleet Manager Specialist.

Ginger Gabriel, Ph.D., MFCC
1/18/99



State of CALIFORNIA
County of SAN BERNARDINO

On 12/15/99 (DATE) before me, GAIL LEONARD (NAME, TITLE OF OFFICER - E.G., JANE DOE NOTARY PUBLIC)

personally appeared GAYLE NOLLAU (NAME(S) OF SIGNER(S))

X personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

GAIL LEONARD
COMM. #1185680
NOTARY PUBLIC - CALIFORNIA
SAN BERNARDINO COUNTY
My Comm. Expires June 30, 2002

Witness my hand and official seal.

(SEAL) Gail Leonard (SIGNATURE OF NOTARY)

RIGHT THUMBPRINT (OPTIONAL)
TOP OF THUMB HERE

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☐ INDIVIDUAL(S)
☐ CORPORATE
OFFICER(S) (TITLE(S))
☐ PARTNER(S)
☐ ATTORNEY IN FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER:

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

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THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Title or Type of Document RESOLUTION OF COMPLAINT
Number of Pages 3 Date of Document 12/15/99
Signer(s) Other Than Named Above

EMPLOYMENT DISCRIMINATION AFFIDAVIT FORMAT & CONTENTS

UNITED STATES DEPARTMENT OF AGRICULTURE - FOREST SERVICE

NAME AND PERSONAL PROFILE DATA

NAME: Priscilla Peterson **TELEPHONE NUMBER:** 530-259-4156

ADDRESS: PO Box 1384, Chester, CA 96020

EMPLOYER ADDRESS: Lassen NF; Almanor District; PO Box 767, Chester, CA 96020

YEARS OF FEDERAL SERVICE: 15 **RACE, NATIONAL ORIGIN:** Hispanic

GENDER: Female **AGE:** 45 **DO YOU HAVE A DISABILITY?** Yes

YEARS WITH FOREST SERVICE: 15 **DATE OF LAST PROMOTION:** July, 1998

PRESENT JOB TITLE AND GRADE LEVEL: GS-193 Archaeologist

EDUCATION AND TRAINING: Bachelor of Science, Anthropology

JOB SKILLS: Site recordation; mapping, excavation, surveying, reporting writing/editing, supervision, gps, gis, map & aerial photo interpretation.

CURRENTLY WORK FOR THE FOREST SERVICE: Yes

SUMMARY AND CHRONOLOGY OF YOUR SPECIFIC CLAIM(S) OF DISCRIMINATION

WHAT SPECIFIC CLAIMS OF EMPLOYMENT DISCRIMINATION ARE YOU MAKING? Sexual Harassment, Hostile Work Environment, Discrimination due to Disability, and Reprisal

NAME(S), RACE, NATIONAL ORIGIN, TITLE(S), AND GRADE LEVEL OF THE INDIVIDUAL(S) WHOM YOU ARE ALLEGING TO HAVE ENGAGED IN EMPLOYMENT DISCRIMINATION AGAINST YOU:

Jeff Withroe	anglo male	GS-13 District Ranger	Plumas NF, Milford District
Danny Nasser	anglo male	GS-462-5 Firefighter	"
Bob Morganthaler	anglo male	GS-462-6 Firefighter	"
Randy Owings	anglo male	GS-462-7 Firefighter	"
Chuck Smay	anglo male	GS-13 District Ranger	Plumas NF, LaPorte District
Mark Madrid	hispanic male	GS-15 Forest Supervisor	Plumas NF, Supervisor's Office
Jody Cook	anglo female	GS-14 Dep Forest Supvsr	Plumas NF, Supervisor's Office
Bruce Bernhardt	anglo male	GS-13 District Ranger	Plumas NF, Feather River District
Jerry Bertagna	anglo male	GS-460-11 Forester	Plumas NF, LaPorte/Feather River
District			

DELINEATE IN CHRONOLOGICAL ORDER YOUR ALLEGATIONS OF EMPLOYMENT DISCRIMINATION: See the following chronology of harassment, discrimination and reprisal incidents at the end of this document.

DO YOU CONSIDER YOUR WORK AREA TO BE A "HOSTILE WORKING ENVIRONMENT"?

The Milford District and LaPorte District both were overall hostile work environments for me and my female coworkers. Many of us were treated as sexual objects, harassed, and denied opportunities due to our gender. Bruce Bernhardt has made the Feather River District a hostile work environment for women who raise issues.

WHAT WAS THE AGENCY/MANAGEMENT RESPONSE(S) TO YOUR CHARGES OF EMPLOYMENT DISCRIMINATION? In 1994, I filed an EEO complaint, became involved in numerous HWE investigations and became a visible member of the Donnelly v. Glickman Class Action. I was pegged by management as a troublemaker. I was warned, intimidated and coerced into dropping personal involvement with Lesa Donnelly and with the Donnelly Class. I was reprised against. In 1998, I left the Plumas NF and reassigned to Lassen NF as part of my EEO settlement. I felt I had to leave the Plumas NF because I had been "marked" as a troublemaker and was not allowed equal opportunities like my coworkers.

DELINEATE THE MAJOR FINDINGS OF THE EEO INVESTIGATOR ASSIGNED TO YOUR CASE: Despite many requests to the Region 5 Human Resource Office, the Washington Office & USDA Offices of Civil Rights, they refused to provide me with my Report of Investigation (ROI). At first they told me they lost it. Then they said they had it, but refused to send it. When I wanted a copy for my attorney, Brad Yamauchi, prior to going into the USDA EEO Backlog mediation, they refused to give me a copy. I am in the process of doing a FOIA to receive it.

RESOLUTION OF YOUR EEO COMPLAINT(S)

WHAT HAS MANAGEMENT DONE TO RESOLVE OR IMPEDE THE RESOLUTION OF YOUR EEO CLAIMS OF DISCRIMINATION? I settled my complaint in December 1997 under the EEO Backlog mediation. I was unhappy with the mediation. The mediator's name was Johlmy Scott. He worked for the Federal Mediation and Conciliation Service. Prior to working for FMCS, he was an EEO counselor for the USDA. He was the initial counselor in my informal complaint process. He was not neutral, but pro-management in the EEO process. He bullied me into dropping one of my EEO complaints. Evidently he quit the USDA and went to work for FMCS. Coincidentally, he became the mediator in my complaint mediation. I was not comfortable with him and did not trust him. In the mediation, management said I did not have a strong case because I did not file EEO complaints timely. However, I had tried and was bullied by Mr. Scott into dropping the complaint. I felt the process was biased again. I settled because I could not afford to go to court. Plumas NF management went into non-compliance on my resolution. It was a fight to get them to give me the Transfer of Station and other information I needed timely in order to move to my new duty station under the settlement agreement. They made it hard for me through the whole process. I believe Mike Vineyard, the Plumas NF Human Resource Officer delayed getting me the information for schooling and transfer as an act of reprisal. I did not file a complaint, but I threatened to and then got action.

WHAT WAS MANAGEMENT'S RESPONSE TO YOUR FILING OF ONE OR MORE EEO COMPLAINT? (List Each Complaint and the Date it Was Filed) A SEPARATE RESPONSE IS REQUIRED FOR EACH COMPLAINT FILED. See above.

DELINEATE IN SPECIFIC DETAILS THE IMPACT ON YOUR CAREER FOR FILING AN EEO COMPLAINT(S). From 1994 to 1997 I have had my career put on hold. As a GS-9 archaeologist, I should be doing higher level work than surveying., such as research, excavations, lab work and data base management. However, my supervisor, Kevin McCormick directed me to perform surveying and report writing as my job duties. The GS-5, temporary archaeologist, an anglo female was allowed to perform lab work, data base management, etc. which has enhanced her career. She should have been doing survey field work. I also had the hispanic program manager duties taken away and given to a male. This is one of the reasons I left the Plumas NF for the Lassen NF.

MISCELLANEOUS ISSUES

DID YOU REQUEST CONGRESSIONAL ASSISTANCE AND WHAT RESULTS WERE ACHIEVED? No.

IMPORTANT ISSUES/CONCERNS RELATIVE TO YOUR FILING OF AN EEO COMPLAINT(S):
Most importantly, management failed to respond to my complaints and requests to stop the hostile work environment and discrimination. I was forced to file a complaint in order to address this. The EEO process was biased and corrupt. The mediation process was abusive. R-5 management retaliated against me as a complainant and class member.

OTHER VALUABLE OR SUBSTANTIVE DOCUMENTS AND/OR INFORMATION:
Chronology of Incidents of Discrimination/Harassment/Reprisal
This is a brief outline of the harassment/discrimination incidents that were perpetrated against me as a female employee on the Plumas National Forest. It is not all inclusive and there may be incidents I wish to add at a later date.

* As a single mother, I put myself through college and obtained a degree in anthropology. My goals were to work for the Forest Service in fire or in archaeology. My initial government with the Forest Service was in Archaeology and Job Corps in Region Six (Oregon) driving a commercial vehicle.

* In 1988 I was hired into Region 5, (California) on the Plumas NF, Milford District. I was hired under the Bernardi Consent Decree, a court order for hiring and promotion of women.

* My position on the Milford District was a GS-462-3/4 firefighter. I was a fire engine driver trainee. My engine Captain and male coworkers would not allow me to drive the engine. My disability is a lazy eye. It does not cause any sight impairment, but my male supervisor and coworkers used it against me to prevent me from driving.

* The men resented having women on the fire crews. They verbalized their resentment of the Bernard Consent Decree and the women. I was tripped and spit at during physical training. I was told to "ride bitch" in the crewcab. The men coined this term, making the woman sit in back in the middle, the least comfortable place to ride in the crewcab.

* I was called filthy names by my male coworkers such as, "you fucking bitch". They made fun of my lazy eye. They labeled me incompetent.

* I witnessed my female coworkers on the Milford District also being harassed and treated differently than the men. I witnessed Melissa Brookey, Linda Byrd, Megan Meinert, Nikki Gustafson, Liz Cochran, Michelle Holiday and others be treated the same way I was being treated.

* Under the Bernardi Consent Decree, I applied for and was accepted to for schooling to obtain my Forester degree. I was to be allowed to go to college on government time and my tuitiion paid by the Forest Service. This would make me more competitive and allow me to apply for higher GS grade level positions. My supervisor refused to allow me to attend the schooling, saying he could not spare the time away from my job. Yet men on my unit were attending schooling at the University of Nevada, and using government vehicles to travel back and forth. I was treated differently than the men. This harmed my career. My position at Feather River District was abolished in 1997. Not having the Forester degree left me with little competing area. This is another reason I moved to the Lassen NF.

* I applied for and received a job in 1989 as an archaeologist on the Oroville District (now named the Feather River District). Prior to leaving, I advised District Ranger, Jeff Withroe that I and other women were being subjected to harassment from the men working in Fire. Mr. Withroe did nothing about it. When I left the district, the men put a Mr. Potatohead picture over my face in the crew picture that hung on the bulletin board. District Ranger Jeff Withroe saw it and did nothing. Women who remained at Milford District after I left have stated the men continued to slander me and make fun of my disability.

* After working at the Oroville District for a while, I was assigned to work at the La Porte District, a neighboring district and then back to Oroville. I did not receive mileage reimbursement though I had to use my own vehicle to

drive farther than my duty station. I have observed male coworkers (including my supervisor) being given per diem and milesage reimbursement.

* While stationed at La Porte District a male staff officer, Jerry Bertagna, started sexually harassing me. I was on a trainee detail to the timber department. He was my temporary supervisor. He requested a sexual relationship. I told him, "No". He kept after me to have a relationship. He sent me flowers on the computer, left flowers on my desk at the La Porte District, and had flowers delivered to me at the Oroville District office via florist . He placed a salary chart on my desk, circling both our grades and salaries together. He would come into my office and stand there staring at me. He told other employees we were having a sexual relationship. I was humiliated at first, then scared. He started stalking me on & off work. One time I become so distraught over his following me, my coworker took me to the doctor in emergency. We both lived on the Forest Service compound. A couple of times he called me drunk (slurring his words) and came knocking on my door in the evening, drunk. I felt he watched me at night. One night, after hearing a noise outside my window, I got up and crawled out of my bedroom, down the hall and into the living room, where I sat huddled on the floor in the corner of the room, shaking, and didn't move until morning. He had a lot of guns and I was frightened of him. The Bernardi Consent Decree representative at the La Porte District, Susan Hixon, reported the harassment to District Ranger, Chuck Smay. Mr. Bertagna was not held accountable for his actions. I discovered Mr. Bertagna grabbed my 14 year old daughter's buttocks. I also witnessed him sexually harassing Christine Grupp in the same manner.

* Ginelle O'Conner witnessed Mr. Bertagna and her supervisor, Art Rohrbacker picking the female employees with whom Mr. Bertagna wanted to do night field work (looking for Spotted Owls) based on Mr. Bertagna's personal desire for them. I lost money working overtime doing night field work because I was told I could only go out at night with Mr. Bertagna. I refused to go. Other women came in from the field and refused to go out with him again, stating, "He was acting weird". He asked Christine Grupp to get in his sleeping bag on one of these night field trips, telling her they could keep warmer together..

* There was a hostile work environment for the women at La Porte District. I witnessed Susan Cueva, Kimberly Johnson, Jill Holderman, Christina Grupp, Susan Hixon, Maria Cisneros, Debbie Tautges, Carol Durnell, Juanita Cortez, Ginelle O'Conner and other women be harassed and discriminated against at the La Porte District. The male staff was a part of the harassment. District Ranger Chuck Smay retaliated against the women that raised complaints. Most women left the district because of the harassment. In Fall 1993, I saw my coworker and friend, Christine Grupp, have a nervous breakdown due to the hostile work environment and quit. It was at that time we started seeking advice and help from Lesa Donnelly, Administrative Officer (and my personal friend) at the Oroville District. This is how the Class Action Donnelly v. Glickman was started.

* In 1994, the Oroville District and La Porte District colocated at Oroville and became the Feather River District. We had several investigations based on Lesa Donnelly's requests to the Washington Office. Ms. Donnelly filed the Class complaint for sexual harassment/hostile work environment, largely based on her witnessing many Plumas NF women being harassed like herself. Forest Supervisor, Wayne Thornton and Human Resources Officer, Mike Vineyard, would not help us with our complaints and reprised against Lesa Donnelly for bringing them to their attention. They called her a "zealot" and unfinded her. We women were frightened about participating in the investigations and complaints because we saw how the Plumas management reprised against Lesa Donnelly. I believe they did it purposely to intimidate us and prevent us from speaking with investigators. We did anyway. It didn't do much good. The men were not held accountable. In 1994, I filed my individual complaint on sexual harassment and hostile work environment. I did not have my mediation until December 1997, over three years later.

* Based on the Washington Office investigation, District Ranger Chuck Smay was given a disciplinary promotion to the neighboring Mendocino NF "for his failure to deal with the women's work environment". He was promoted to a Forest Staff Officer and became an Acting Forest Supervisor for the Mendocino. The above-named women who participated in the investigations were harassed and reprised against. I was told by management to stay away from Lesa Donnelly because she would get me in trouble.

* In June 1994, the new District Ranger, Bruce Bernhardt arrived. At the same time the Plumas NF received a

new Forest Supervisor, Mark Madrid, and Deputy Forest Supervisor, Jody Cook. We were hopeful they would turn things around for the women. We were still being harassed. All the same men were there. Only Chuck Smay had been removed from our workplace.

* Bruce Bernhardt did not respond to our requests to stop the hostile work environment. He called me "a whiner" for sharing the hostile work environment information with him. He called me "a slut" to my face. I had a witness to this and he admitted it under oath. He verbally reprimanded me for supposedly drinking on the job. He had no evidence at all, only hearsay. The truth was I had an anxiety attack on the job, and they tried to make it look like I was drinking. It was dropped when Lesa Donnelly got involved. He has not dealt with men who he knows are drinking on the job. After 6 months or so it became apparent to us that Mr. Bernhardt was trying to punish the women who started Donnelly v. Glickman on the Feather River District.

* I witnessed Mr. Bernhardt attempt to fire a native american woman, Evelyn Patterson. When management discovered she had a sexual relationship with her supervisor, she was reprised against. Her supervisor was given a performance award. Mr. Bernhardt had other women being harassed on the job that he refused to deal with, such as Donna Jones, Carol Durnell, Patti Williams and my own daughter, Danielle Peterson. Lesa Donnelly represented the women. He punished Ms. Donnelly for that. I was part of the Class and Ms. Donnelly's friend so I, too, was mistreated by Mr. Bernhardt. He calls us women "The Group" or "Lesa's Group". He gave preferential treatment to a woman named Anne Shirley at our office after she quit associating with the women Mr. Bernhardt calls The Group. He polarized employees against us. We discovered he had been arrested for domestic abuse at his previous job location.

* I witnessed Mr. Bernhardt, Ms. Cook and Mr. Madrid start harassing Ms. Donnelly. I was intimidated by them to drop my friendship with Ms. Donnelly and drop my involvement with the Class lawsuit. They tried to coerce me into making a statement to a Special Agent against Ms. Donnelly. I was bullied and intimidated. I had anxiety attacks and had to seek medical attention. I was placed on anti-anxiety and anti-depressant medicine.

* Mr. Bernhardt sent an intimidating and threatening letter out to all employees trying to cover up the fact that he was addressing the letter to Susan Cueva, Lesa Donnelly and me for posting a single document on the Union bulletin board. He refused to meet with me to resolve the conflict. He stopped speaking to me and would ignore me completely in the office. Mr. Bernhardt does not show up at the office more than once per week. No one knows where he is. Plumas NF management covers for him. Yet when he is there, he is an intimidating figure. He keeps his door closed and locked most of the time, sending a negative message to the employees. He claims he keeps it locked to keep Lesa Donnelly out. He has tried to isolate and shun Lesa Donnelly, Susan Cueva, Cindy Roberts and me. He has turned staff members against us. I have never seen him do any of the above-stated actions to males at the office. Mr. Bernhardt's behavior toward me and the other women is a reason I left the Feather River District. Mr. Bernhardt has made it an extremely hostile work environment for me and other women at the Feather River District. He has not been held accountable for his actions. We cannot even get his actions investigated, despite asking for three years.

* Since 1988 I have been sexually harassed, discriminated against and reprised against on the Plumas NF. I was in a hostile work environment at the Milford District. I moved to the Oroville/La Porte District and was harassed and discriminated against there. It was a very hostile work environment for the women. Then I worked at the colocated Feather River District and was harassed and discriminated against. I have witnessed many other women harassed and discriminated against at each location. No one has acknowledged the hostile work environment in all that time or attempted to correct it. This is the number one reason I left and moved to the Lassen NF. I am aware that some Lassen NF women have been harassed due to their gender. I can only hope that I will not be harassed here.

June 1997 to November 1999

* I was reassigned to the Lassen NF, Almanor RD in the archaeology department under Diane Watts. I experienced acts of reprisal based on my prior EEO activity from my supervisor. I was treated disrespectfully, subjected to disparate treatment, performance threats and directed to falsify my time and attendance. My

supervisor ridiculed me in public, harassed and intimidated me. I was isolated and excluded from department discussions and activities. I filed an EEO after attempting early intervention mediation (which only caused more reprisal) and meeting with Mike Williams, district ranger. Since no action was taken in June when I met with Mike, I met with others in authority to seek resolution. I met with several acting line officers on the Lassen between June and November of 1999. The list of folks I have tried to get resolution with include: KJ Silverman, Brad Powell, Marlene Lewis, Florence Pruitt (R5 HR), Lori Tapia-Plozet, Marcia Andre and Gary Smith..
I also reported these incidents/behaviors from my supervisor, over a year's time to the province Civil Rights Officer/Hispanic Program Manager, Larry Sandoval.

On November 22, I had a verbal commitment from Lori Tapia-Plozet and Marci Andre that my effective date for working under Trinidad Juarez on a temporary reassignment would be effective on Nov. 21, 1999. As of this date, December 14, 1999, I have had no update on my paperwork being processed or that a settlement agreement has been approved/signed. Region 5 HR has told me that I need to work for the Almanor acting DR, Gary Smith as an "interim measure". My many attempts to get updates from the regional office and the Lassen have not been responded to. My representative, Ginelle O'Connor has also asked for intervention from Brad Powell and Clyde Thompson. I am considering filing another EEO for reprisal based on previous EEO activity. I feel demeaned and frustrated. I am having stress related health symptoms. I am under medical care for stress and anxiety.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Priscilla Peterson

State of California
County of Plumas

Subscribed and sworn to by Priscilla Peterson, before me, Robin L. Schumacher, Notary Public this 14th day of December, 1999.

Priscilla M. Peterson

Robin L. Schumacher, Notary Public

ROBIN L. SCHUMACHER
Comm. # 1085927
NOTARY PUBLIC - CALIFORNIA
Plumas County
My Comm. Expires Mar. 1, 2000

EMPLOYMENT DISCRIMINATION AFFIDAVIT FORMAT & CONTENTS

UNITED STATES DEPARTMENT OF AGRICULTURE - FOREST SERVICE

NAME AND PERSONAL PROFILE DATA

NAME: Henrietta (Rea) Haaziq **TELEPHONE NUMBER:** 530-533-4190

ADDRESS: 675 Mitchell Avenue, Oroville, CA 95965

EMPLOYER ADDRESS: USDA, Forest Service, R-5, Plumas National Forest

YEARS OF FEDERAL SERVICE: 21 **RACE, NATIONAL ORIGIN:** African American

GENDER: female **AGE:** 46 **DO YOU HAVE A DISABILITY?** No

YEARS WITH FOREST SERVICE: 10 **DATE OF LAST PROMOTION:** none

PRESENT JOB TITLE AND GRADE LEVEL: GS-462-5 Forestry Technician, permanent seasonal -
I work 18 pay periods and I'm laid off for 8 pay periods.

EDUCATION AND TRAINING: 2 1/2 years college/Silviculture/Forestry/Fire/Computer/Civil Rights

JOB SKILLS: see above

CURRENTLY WORK FOR THE FOREST SERVICE: yes

SUMMARY AND CHRONOLOGY OF YOUR SPECIFIC CLAIM(S) OF DISCRIMINATION

WHAT SPECIFIC CLAIMS OF EMPLOYMENT DISCRIMINATION ARE YOU MAKING?
Racial Harassment and Discrimination/Gender Harassment and Discrimination

NAME(S), RACE, NATIONAL ORIGIN, TITLE(S), AND GRADE LEVEL OF THE INDIVIDUAL(S) WHOM YOU ARE ALLEGING TO HAVE ENGAGED IN EMPLOYMENT DISCRIMINATION AGAINST YOU:

Marc Walburn	Culturist	GS-462-6	white male	Plumas NF	Feather River District
Mike Clark	Culturist	GS-462-7	white male	Plumas NF	Feather River District
Bill Smith	Culturist	GS-460-9	white male	Plumas NF	Feather River District
Mike Mateyka	Forester	GS-460-11	white male	Plumas NF	Feather River District
Lauren Turner	Staff	GS-xx-12	white female	Plumas NF	Feather River District
Jody Cook	Dep FS	GS-14	white female	Plumas NF	Supervisor's Office
Mark Madrid	FS	GS-15	Hispanic male	Plumas NF	Supervisor's Office

Ron O'Hanlon Forester GS-11 white male Plumas NF Feather River District

DELINEATE IN CHRONOLOGICAL ORDER YOUR ALLEGATIONS OF EMPLOYMENT DISCRIMINATION:

I am the only African American female on the Plumas National Forest. I have been treated differently than my white male and white female coworkers. I believe the harassment and discrimination are due to a hostile work environment for women on the Feather River District and because I am African American. I have been undermined, the men have made negative statements about me and my career has been damaged due to a lack of work assignments and training over the years.

I started working for Forest Service in 1989 at the Feather River District, Plumas National Forest. Around 1994 I started being treated differently. My supervisor was Mike Mateyka. I was not given work assignments. I was treated as if I was invisible. I did not receive training. I believe it is because I am an African American female. I have collateral duties as the Forest African American program manager. I spend most of my time performing in that capacity because I have no other work to perform.

In 1997 , Bill Smith made negative comments about me doing the African American program. He said, "Rea's always doing that black stuff". He also complained about the amount of time and travel I spend on the program. Bill made negative statements to and about other women at the office. I reported this to Mike Mateyka and an investigation was done. It is my understanding that this was his third investigation regarding treatment of women. I was a participant in that investigation.

In 1998, the Plumas National Forest reorganized. Marc Walburn became my supervisor and Mike Clark became my second line supervisor. It is my understanding that both men have been investigated in the past for their inappropriate treatment of women. I did not understand why the Forest would make them my supervisors knowing they had problems working with women

Mr. Walburn and Mr. Clark ignore me. They do not provide me with work assignments. I have not had training appropriate to my position. I spend my time on the African American program, the Regional Civil Rights Committee and helping other program managers with their civil rights programs.

Mr. Walburn gives preferential treatment to a woman coworker who is a temporary employee. Mr Walburn admitted to the District Ranger that he had a sexual relationship with her. Mr. Walburn assures that she has work assignments, tools and equipment to do her job and anything she needs. He brings her coffee in the morning. He does not even say hello to me. Mr. Walburn provides the female coworker with overtime assignments. He gives her cash awards. He does not treat me the same.

Mr. Walburn has made inappropriate statements about me to other employees. He told a staff officer who wanted to give our department work that I was afraid to go into the field. Mr. Walburn and Mr. Clark told the staff officer that all I do is program work. I caught Mr. Walburn keeping track of my time in November of 1998 by posting it on a public calendar. He was not keeping track of the men's time. He also wrote down time off when I was at work. In 1998, Mr Walburn did not submit my timesheet and I did not receive a paycheck. He did not submit my

travel vouchers timely and it caused me financial problems with the Credit Card Company and harmed me financially.

Ron O'Hanlon, another member of the white male group has undermined my ability to work and made negative statements about me. In 1997, Mr. O'Hanlon asked a coworker on the district to perform work in our department that was the work I was supposed to be performing. He told a staff officer that he did not think I was clever enough to perform work in Geographical Information Systems (GIS). He gave the work to a temporary white male employee instead of giving the work to me to perform. Mr. O'Hanlon has recently gone to a new position in GIS. His job is to train others is GIS. Recently, a staff officer asked Mr. O'Hanlon to train me on the GIS. He refused to do it. He also stated about me, "Why is she still here? Because now they have to find her work to do." This is the type of derogatory and demeaning talk I have lived with for several years on the Plumas National Forest. No manager has ever stopped this behavior.

It is an overall hostile environment in my work group from the white males. Often when I come to work, they are already gone to the field in order to avoid working with me. They do not leave instructions or directions on where they are going to work.

In the 1999 season, management tried to change my work schedule. The change would result in financial harm to me since I receive unemployment during the time I'm laid off from work. The changed work schedule would have prevented me from doing program work for the Martin Luther King, Jr. celebration and African American History month. When I explained that, the managers stated they did not care. I filed an EEO complaint. I demanded an investigation. The Forest would not investigate, so I went to the Regional Office with my request. An investigation was conducted in December 1999.

I believe there is an overall hostile environment for women on the Feather River District of the Plumas National Forest. Many women have left due to the hostile conditions. The behavior of the men in the department has been going on for many years. Other women, such as Christine Grupp have been forced to leave because of the harassment. There have been many investigations but little accountability, so the behaviors and attitudes do not change. Women are seen as valuable if they submit to the men. The rest of us are ignored and undermined. It is worse treatment for me because I am also African American. Mark Madrid and Jody Cook have allowed this to continue since 1994.

My representative and I have requested that I be removed from supervision of Mike Clark and Marc Walburn. Mark Madrid and Jody Cook refused this request, then told the Regional Office I had been removed from their supervision. It was not the truth. I HAVE STILL NOT BEEN GIVEN ANY WORK ASSIGNMENTS FROM MARC WALBURN, THOUGH I BROUGHT IT TO THE ATTENTION OF MANAGEMENT IN OCTOBER, 1999. I am waiting to go into mediation on my EEO complaint, hoping I can resolve the complaint by being moved to another department - preferably Civil Rights where I have spent most of my time, energy and training for the last 5 years.

DO YOU CONSIDER YOUR WORK AREA TO BE A "HOSTILE WORKING ENVIRONMENT"? yes.

WHAT WAS THE AGENCY/MANAGEMENT RESPONSE(S) TO YOUR CHARGES OF EMPLOYMENT DISCRIMINATION? Non-responsive until I spoke with the Regional Civil Rights personnel. After that I received an investigation

DELINEATE THE MAJOR FINDINGS OF THE EEO INVESTIGATOR ASSIGNED TO YOUR CASE: n/A

RESOLUTION OF YOUR EEO COMPLAINT(S)

WHAT HAS MANAGEMENT DONE TO RESOLVE OR IMPEDE THE RESOLUTION OF YOUR EEO CLAIMS OF DISCRIMINATION? Management has done nothing to resolve my complaint.

WHAT WAS MANAGEMENT'S RESPONSE TO YOUR FILING OF ONE OR MORE EEO COMPLAINT? (List Each Complaint and the Date it Was Filed) A SEPARATE RESPONSE IS REQUIRED FOR EACH COMPLAINT FILED. Marc Walburn retaliated by not sending my travel vouchers in for payment I have still not been given work assignments

DELINEATE IN SPECIFIC DETAILS THE IMPACT ON YOUR CAREER FOR FILING AN EEO COMPLAINT(S). I've had very little work assignments and training in my job in the last five years. This has impacted my ability to promote in the agency. Management views employees who file EEO complaints as troublemakers. I expect reprisal

MISCELLANEOUS ISSUES

DID YOU REQUEST CONGRESSIONAL ASSISTANCE AND WHAT RESULTS WERE ACHIEVED? yes.

IMPORTANT ISSUES/CONCERNS RELATIVE TO YOUR FILING OF AN EEO COMPLAINT(S): I filed an EEO complaint in January 1999. I withdrew the complaint because I wanted to resolve the issues at the lowest level. However, Marc Walburn and the other white males continued to undermine my ability to perform my job and I was forced to file again.

OTHER VALUABLE OR SUBSTANTIVE DOCUMENTS AND/OR INFORMATION:

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. I will get this document FAX and Notarized on 12/14/99.

Henrietta Haaziq Henrietta Haaziq 1-6-2000

Henrietta Haaziq

SUBSCRIBED AND SWORN TO before me, the undersigned, a Notary Public in and for said State, this 6th day of January 2000. Witness my hand and official seal.

B.J. Green

Notary Public, State of California

B.J. GREEN
COMM. # 1169480
NOTARY PUBLIC-CALIFORNIA
COUNTY OF BUTTE
Comm. Expires Jan. 15, 2002

EMPLOYMENT DISCRIMINATION AFFIDAVIT FORMAT & CONTENTS

UNITED STATES DEPARTMENT OF AGRICULTURE - FOREST SERVICE

NAME AND PERSONAL PROFILE DATA

NAME: Lesa L Donnelly **TELEPHONE NUMBER:** 530-824-3859

ADDRESS: 4552 Rawson Road, Corning CA 96021

EMPLOYER ADDRESS: USDA, Forest Service, Plumas National Forest

YEARS OF FED. SERVICE: 20 **RACE, NATIONAL ORIGIN:** Hispanic / Caucasian Native American

GENDER: female **AGE:** 42 **DO YOU HAVE A DISABILITY?** No

YEARS WITH FOREST SERVICE: 20 **DATE OF LAST PROMOTION:** 1989

PRESENT JOB TITLE AND GRADE LEVEL: GS-1101-09 Resource Specialist

EDUCATION AND TRAINING: 3 years of college - certified mediator

JOB SKILLS: Administrative/Management/Civil Rights /Mediation/Facilitation

CURRENTLY WORK FOR THE FOREST SERVICE: Yes

SUMMARY AND CHRONOLOGY OF YOUR SPECIFIC CLAIM(S) OF DISCRIMINATION

WHAT SPECIFIC CLAIMS OF EMPLOYMENT DISCRIMINATION ARE YOU MAKING?
Sexual Harassment/Sex-based Harassment/Gender Discrimination/Hostile Environment/Reprisal

NAME(S), RACE, NATIONAL ORIGIN, TITLE(S), AND GRADE LEVEL OF THE INDIVIDUAL(S) WHOM YOU ARE ALLEGING TO HAVE ENGAGED IN EMPLOYMENT DISCRIMINATION AGAINST YOU:

Lynn Sprague	(past)Regional Forester/R-5	white male
Mark Madrid	Forest Supervisor/Plumas NF	Hispanic male
Jody Cook	Deputy Forest Supervisor/Plumas NF	white female
Margaret Pasholk	Human Resources Director/R-5	white female
Brad Powell	Regional Forester/R-5	white male
Bruce Bernhardt	District Ranger/Plumas NF	white male
Mike Vineyard	Personnel Officer/Plumas NF	white male
Bob Simmons	OGC Attorney/R-5	white male

DELINEATE IN CHRONOLOGICAL ORDER YOUR ALLEGATIONS OF EMPLOYMENT DISCRIMINATION:

In 1988 I discovered a white male colleague performing the same work as I, but at a higher GS grade. The Forest Supervisor refused to acknowledge this. I filed a complaint under the Bernardi Consent Decree (a court order for hiring, promotion, training and grade equity for women in Region 5). My position was upgraded, but the Plumas National Forest managers retaliated against me from 1988 to 1993 by undermining my work, calling me names and refusing to work with me. I was also retaliated against for supporting the Bernardi Consent Decree.

In 1993 a manager told me I could, "Take purchasing and stick it you know where". He threatened me when I told him that his behavior was offensive. Shortly after, I was denied an important work assignment and called a "bitch" by the same male managers who had been harassing me for the previous four years. I filed an EEO complaint for sexual harassment and discrimination.

When women on the Plumas NF discovered I filed a complaint, they called me and shared similar stories of harassment and discrimination. By January 1994, approximately 50 women from the Plumas NF had contacted me. Women from all over California contacted me for help. I tried to get assistance for the women, but Forest and Regional management was non-responsive and I started getting threatened and intimidated by management for speaking up for the women. I filed a class complaint in March 1994, on behalf of all women in the Pacific Southwest Region (California). The class complaint was based on sexual harassment, hostile work environment, sex-based discrimination, reprisal and management's failure to respond to complaints. Regional and Washington management refused to even discuss the complaint, so the complaint was filed as a lawsuit in December 1995. The Agency still would not discuss the complaint/lawsuit, telling me I would never certify the Class in court.

In 1996 we went into Discovery to prove class certification. We reviewed thousands of documents pertaining to sexual harassment, hostile work environment and EEO complaints. Judge Lowell Jenson of the ninth district court certified the class in February 1997. By that time over 400 women had identified with the class. The lawsuit is known as Donnelly v. Glickman. After we certified, the DOJ contacted us to begin negotiations.

In 1997 the only discussion for settlement was a flurry of letters back and forth by attorneys. In 1998, disappointed with the USDA/Forest Service's refusal to come to the table to negotiate a settlement, I turned to the Coalition of Minority Employees and the NAACP for help. I contacted the Oprah Winfrey show and provided examples of the egregious actions perpetrated against women in R-5. I also contacted the Associated Press, the Washington Post and Reuters. With the help of The Coalition , the NAACP and the media we were able to convince the USDA to get serious about settling the Donnelly Class Action.

In April 1999 plaintiffs and defendants in Donnelly v. Glickman came to an "agreement in principle" on the settlement. However, the USDA/Forest Service reneged on the agreement and we are still not settled as of December 1999. We have only a few items to agree upon. The Agency and DOJ are stalling the settlement.

Our goal in the Donnelly settlement is the prevention and elimination of sexual harassment, discrimination and reprisal for women in Region Five. Our objective is to institutionalize the changes needed for Region Five to embrace diversity of people and ideas, deal with conflicts

swiftly, and hire and promote only those managers who embrace diversity and are skilled in conflict resolution.

Ironically, during the entire time period we have been negotiating a settlement to end harassment and discrimination, I continue to get calls from women all over Region 5 who are being harassed, discriminated against and reprised against. I am currently representing at least 30 women who have complaints filed. Some of these women are providing affidavits to the NAACP. The Agency refuses to stop harassment, hold perpetrators accountable and settle complaints. The Agency continues to retaliate against complainants. It shows there is no good faith in resolving the Class Action, much less taking any action to stop harassment and reprisal. The many individual complaints, Class lawsuits, investigations, settlements, sick leave, workers' compensation, disability, resignations, poor morale and lost productivity have cost the American taxpayer millions and millions of dollars in the last few years. Unfortunately, I see no end in sight, despite the Agency's desire to settle with us out of court.

DO YOU CONSIDER YOUR WORK AREA TO BE A "HOSTILE WORKING ENVIRONMENT"? .YES!!!!!!!

Since filing my individual complaint in 1993 and the Class Complaint in 1994, I have been severely harassed and retaliated against. Harassment and Reprisal have been in the form of the following:

* Investigated twice - once administrative and once by a Special Agent
* Received Reprimand Letters
* Demoted
* Suspended
* Placed on AWOL and LWOP
* Unfunded and Directly Reassigned
* Threatened
* Stalked
* Called filthy names and publicly accused of sleeping with management officials
* Received deficient/unacceptable performance ratings
* Within Grade Increase Denied
* Had duties removed
* Placed on Leave Restriction
* Denied travel, training and awards
* Isolated, shunned and ignored

Other women have been harassed and retaliated against for seeking advice or assistance from me. Employees tell me they have been warned and/or threatened by management for associating with me.

I had all duties removed from my position in 1996. I have not had a position with duties since that time. In 1996 I had NO DUTIES to perform. In 1997 I was denied work for nine months. In 1998 I was given only a few hours of work per week. In 1999 I performed approximately 2 hours of work per month. In the last four years I have had no position and very few tasks provided. This was done as an act of reprisal by Mark Madrid, Jody Cook, Mike Vineyard and Margaret Pasholk. It was done to humiliate me and force me from my "position" on the Plumas National Forest

I have filed over 40 EEO complaints of harassment and reprisal. I've written numerous letters to Washington, including letters to the DOJ asking for assistance to stop the reprisal. No action was taken and the disparate treatment continues. Employees who are familiar with the treatment I have received at the hands of Forest Service management sometimes refer to me as "**The USDA Poster Child for Reprisal**."

WHAT WAS THE AGENCY/MANAGEMENT RESPONSE(S) TO YOUR CHARGES OF EMPLOYMENT DISCRIMINATION? I was immediately retaliated against. When I filed the Class Complaint the retaliation escalated. I am viewed as a troublemaker for my actions.

DELINEATE THE MAJOR FINDINGS OF THE EEO INVESTIGATOR ASSIGNED TO YOUR CASE:
The findings of all my complaints have been "no discrimination" occurred. This is typical.

RESOLUTION OF YOUR EEO COMPLAINT(S)

WHAT HAS MANAGEMENT DONE TO RESOLVE OR IMPEDE THE RESOLUTION OF YOUR EEO CLAIMS OF DISCRIMINATION? Retaliation, slander and libel is the method management has used to impede resolution. Management officials have lied under oath. EEO complaints have been lost in the system. The EEO complaint process is archaic and dysfunctional at all levels.

WHAT WAS MANAGEMENT'S RESPONSE TO YOUR FILING OF ONE OR MORE EEO COMPLAINT? (List Each Complaint and the Date it Was Filed) A SEPARATE RESPONSE IS REQUIRED FOR EACH COMPLAINT FILED.
The response has been lies, excuses and denials. Managers continue to lie under oath about their behaviors toward me.

DELINEATE IN SPECIFIC DETAILS THE IMPACT ON YOUR CAREER FOR FILING AN EEO COMPLAINT(S). My career was damaged when I filed my first complaint in 1988. My career has been destroyed due to filing the Donnelly Class Action. I've been labeled a troublemaker, zealot, crazy, etc. I cannot apply for jobs because my performance ratings show as deficient. No one would hire me in the Forest Service because my reputation has been damaged. My career has also been damaged due to the Agency taking my duties from me for the last 4 years. I've lost knowledge and training opportunities because I've had no work to perform.

MISCELLANEOUS ISSUES

DID YOU REQUEST CONGRESSIONAL ASSISTANCE AND WHAT RESULTS WERE ACHIEVED? Yes. Senator Kennedy's office was helpful. Congresswoman Chenowyth was interested in the law enforcement abuses.

IMPORTANT ISSUES/CONCERNS RELATIVE TO YOUR FILING OF AN EEO COMPLAINT(S): N/A

OTHER VALUABLE OR SUBSTANTIVE DOCUMENTS AND/OR INFORMATION: N/A

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge

Lesa L. Donnelly

JURAT

State of California
County of Butte } ss

Subscribed and sworn to (or affirmed) before me this 15th day of December 199[illegible]
(1) Lesa L. Dennelly
(2)

DANICA HERMAN
COMM. # 1199049
NOTARY PUBLIC-CALIFORNIA
COUNTY OF BUTTE
Comm. Expires Oct. 18, 2002

ARS 3 ARS 3

Danica Herman

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EMPLOYMENT DISCRIMINATION AFFIDAVIT FORMAT & CONTENTS

UNITED STATES DEPARTMENT OF AGRICULTURE - FOREST SERVICE

NAME AND PERSONAL PROFILE DATA

NAME: Melissa R. Brookey **TELEPHONE NUMBER:** 530-824-3859

ADDRESS: 4552 Rawson Road, Corning CA 96021

EMPLOYER ADDRESS: N/A

YEARS OF FEDERAL SERVICE: 15 **RACE, NATIONAL ORIGIN:** Caucasian

GENDER: female **AGE:** 47 **DO YOU HAVE A DISABILITY?** yes

YEARS WITH FOREST SERVICE: 15 **DATE OF LAST PROMOTION:** 1989

PRESENT JOB TITLE AND GRADE LEVEL: Terminated from the USDA, Forest Service in 1996 Job Title/Series/Grade at the time was GS-462-6, Fire Prevention Technician.

EDUCATION AND TRAINING: Masters Degree/Extensive Fire Training/Technical Fire Management

JOB SKILLS: Firefighting/Technical Fuels Management/Fire Prevention/Engine Operator/Wildland Fire Operations/Information Systems Management

CURRENTLY WORK FOR THE FOREST SERVICE: No. I was fired for AWOL.

SUMMARY AND CHRONOLOGY OF YOUR SPECIFIC CLAIM(S) OF DISCRIMINATION

WHAT SPECIFIC CLAIMS OF EMPLOYMENT DISCRIMINATION ARE YOU MAKING?
Gender Discrimination/Reprisal

NAME(S), RACE, NATIONAL ORIGIN, TITLE(S), AND GRADE LEVEL OF THE INDIVIDUAL(S) WHOM YOU ARE ALLEGING TO HAVE ENGAGED IN EMPLOYMENT DISCRIMINATION AGAINST YOU:

Lynn Sprague	white male	Regional Forester/R-5
Mark Madrid	Hispanic male	Forest Supervisor/GS-15 Plumas NF
Jody Cook	white female	Deputy Forest Supervisor/GS-14 Plumas NF
Jeff Withroe	white male	District Ranger/GS-13 Plumas NF/Milford Ranger District
Tom Cable	white male	Fire Prevention Officer/GS-7 Plumas NF/Milford Ranger District
Bob Morganthaler	white male	Fire Hand Crew Supervisor/GS-6 Plumas NF/Milford Ranger District
Danny Nasser	white male	Fire Crewman/GS-5 Plumas NF/Milford Ranger District
Randy Owings	white male	Fire Engine Operator/GS-6 Plumas NF/Milford Ranger District
Dennis Neves	white male	Fire Prevention Technician/GS-6 Plumas NF/Milford Ranger District
Tom Rowland	white male	Law Enforcement Officer/GS-9 Plumas NF/Milford Ranger District
Wayne Crowder, Sr.	white male	Special Agent/GS-11 Modoc NF

DELINEATE IN CHRONOLOGICAL ORDER YOUR ALLEGATIONS OF EMPLOYMENT DISCRIMINATION:
Gender discrimination started in 1988/89 during the Bernardi Consent Decree. Harassment and Discrimination continued until 1995 when I was charged with criminal misconduct. I filed an EEO complaint and was terminated in 1996 for AWOL.

DO YOU CONSIDER YOUR WORK AREA TO BE A "HOSTILE WORKING ENVIRONMENT"?
The Plumas NF, Milford Ranger District was an overall Hostile Work Environment for women. Other women who were harassed and discriminated on the Milford District during the time I worked there from 1988 through 1996 included: Carmela Schill; Vicki Disney; Barbara Hamilton; Linda Byrd; Priscilla Peterson; Michelle Holiday; Liz Cochran; Millie Allen; Carolyn Garcia and many more.

WHAT WAS THE AGENCY/MANAGEMENT RESPONSE(S) TO YOUR CHARGES OF EMPLOYMENT DISCRIMINATION? Management's first response was to ignore my claims of harassment and discrimination. Their second response was to retaliate against me for asking for help to stop the harassment. I was threatened with a poor performance rating if I spoke of the harassment to anyone off the Milford District. When I requested a meeting with the Forest Supervisor to deal with the harassment, I was trumped up on criminal charges of theft. When I had a nervous breakdown from the continual surveillance and threats of prison, I took stress leave. The Agency then fired me for AWOL. During the Merit Systems Protection Board Hearing, the Agency managers lied and I did not get a fair hearing. I was never reinstated into my position.

DELINEATE THE MAJOR FINDINGS OF THE EEO INVESTIGATOR ASSIGNED TO YOUR CASE:
The EEO investigation was prepared very poorly. I did not get a reasonable chance for a finding of discrimination because the misinformation supplied to the Agency was used to determine a finding of no discrimination.

RESOLUTION OF YOUR EEO COMPLAINT(S)

WHAT HAS MANAGEMENT DONE TO RESOLVE OR IMPEDE THE RESOLUTION OF YOUR EEO CLAIMS OF DISCRIMINATION?
Management lied during my MSPB hearing and the Administrative Law Judge denied my appeal. I was offered mediation in 1997. The Agency's total offer to me was $30,000. I have lost three years of backpay and benefits. (Approximately 25,000 per year). I had to take my $15,000 out of retirement to pay a criminal attorney and to live on while I was appealing my case. I had medical bills and MSPB/EEO attorney expenses. The Agency's offer was not even close to compensating me for any damages. They REFUSED to give me a position with the Forest Service.

WHAT WAS MANAGEMENT'S RESPONSE TO YOUR FILING OF ONE OR MORE EEO COMPLAINT? (List Each Complaint and the Date it Was Filed) A SEPARATE RESPONSE IS REQUIRED FOR EACH COMPLAINT FILED.
I filed the initial EEO complaint in 1995. I filed three reprisal complaints in 1996. Their only response was to offer me a global settlement of $30,000 in 1997.

DELINEATE IN SPECIFIC DETAILS THE IMPACT ON YOUR CAREER FOR FILING AN EEO COMPLAINT(S).
I no longer have a career. I was placed on medical disability for PTSD (post-traumatic stress disorder) due to the hostile working conditions at work.

MISCELLANEOUS ISSUES

DID YOU REQUEST CONGRESSIONAL ASSISTANCE AND WHAT RESULTS WERE ACHIEVED?

I have been working with Lesa L. Donnelly, CA Chapter President of The Coalition of Minority Employees. I am one of the women Lesa has named to congressionals as a "priority case".

IMPORTANT ISSUES/CONCERNS RELATIVE TO YOUR FILING OF AN EEO COMPLAINT(S):

See Attached pages.

* From 1981 through 1986 I worked as a firefighter/engine operator on the Pacific Ranger District on the El Dorado NF. I incurred no harassment or discrimination at that time.

* From 1986 through 1988 I worked on the Lassen NF as a Fuels Technician and Engine Operator. I incurred no harassment or discrimination at that time.

* In 1988 I worked 6 months on the Tahoe NF as an Fire Engine Operator. I incurred no harassment or discrimination there.

* In 1988 I was hired on the Plumas NF, Milford Ranger District as a GS-5/6 Fire Prevention Technician. This was a position under the Bernardi Consent Decree. There was resentment of women being hired under the Bernardi Consent Decree. This resulted in my male coworkers and supervisors harassing me.

* In 1989 I was sent to the Technical Fire Management training provided by Colorado State University. This angered my supervisor, Tom Cable, and my male coworkers. The harassment began at this point.

* Tom Cable was bitter about the Bernardi Consent Decree and was angered by not being allowed to go to Technical Fire Management. He started discriminating against me and harassing me by placing me on 30 day performance improvement plans. **He told me he was going to make my life miserable.** He took credit for the work I performed. He criticized me constantly. He would not allow me to have fire assignments. He used other male employees to create false documentation against me.

* My male coworkers, Danny Nasser, Dennis Neves, Bob Morganthaler, and Randy Owings made negative comments to me such as "All the women are worthless", "Women get to do everything and never get in trouble", "Women don't belong in fire", and "If it weren't for the Consent Decree I'd be a GS-11 by now".

* My **male coworkers would do malicious things to me** such as steal my clothes, let the air out of the tires on my fire prevention vehicle, drain the battery and steal equipment off my vehicle. This was not only a problem for me, but was a health and safety factor for the public because my vehicle would not be fire-ready if needed in an emergency.

* **I was stalked by my supervisor, Tom Cable and my male coworkers.** Tom Cable admitted on paper that he peeped in the windows of my private residence during non-work hours. My male coworkers admitted under oath that they constantly watched me and videotaped me on and off work. Additionally, the male fire managers admitted under oath that they directed my male coworkers to watch me.

* In 1992, I went to Oroville District Staff Officer, Lesa Donnelly to request assistance in getting the hostile work environment stopped. Ms. Donnelly tried to get assistance for me. The result of this was **I was threatened by my supervisor and District Ranger, Jeff Withroe with a poor performance rating if I "bad mouthed the Milford District again".** I was also advised that they would not allow me to go off-district again. I felt threatened and intimidated by their actions. I did not complain about the harassment again until 1994.

* **I witnessed many women harassed and discriminated against on the Milford Ranger District**. For example, I saw Priscilla Peterson harassed by the same men as I, that is Danny Nassar, Bob Morganthaler, and Randy Owings. They would trip Priscilla during physical fitness running and spit at her. They did not allow her to drive the fire engine even though it was her job. They made fun of her eye disability.

* I saw many other women treated the same way. The women all left Milford District by quitting, going on disability, being fired or transferring. I did not leave. **I was known as "The Last Woman Standing" at Milford Ranger District.**

* In 1994, I witnessed the above-mentioned male coworkers harassing a woman fire trainee, Holly _____. I contacted Lesa Donnelly. I advised Ms. Donnelly that I was still being harassed and I was not being given training or fire assignments. My career had been stifled. For speaking with Ms. Donnelly, I was retaliated against by Tom Cable and Jeff Withroe. They tried to intimidate me again.

* In August 1994, the Federal Women's Program Manager, Jerry Carpenter, had a meeting with Forest Supervisor, Wayne Thornton and Deputy Forest Supervisor, Jody Cook, to discuss the harassment I was undergoing and to try and help me. When she was rebuffed, she contacted Lesa Donnelly for assistance.

* In August 1994, Lesa Donnelly had a meeting with Acting Forest Supervisor, Jody Cook and Jeff Withroe to discuss the harassment occurring against me and other women at Milford. **Ms. Donnelly requested an investigation. Jody Cook refused, stating, "We don't want a witch hunt".**

* Around October/November 1994, I participated in an EEO investigation as a witness for Carmela Schill in which she claimed harassment by her supervisor Wayne Crowder, Jr. I gave an affidavit under oath. I also requested a meeting to speak with newly hired Forest Supervisor, Mark Madrid about the hostile work environment at Milford District.

* **In November 1994, a criminal investigation started on me by Special Agent, Wayne Crowder, Senior. This was the father of the man who had allegedly harassed Carmela Schill and for which I gave an affidavit.**

* In March 1995, Special Agent Wayne Crowder, Sr. and Law Enforcement Officer, Tom Rowland interviewed me as a suspect for employee misconduct. My male coworkers made false allegations that I had misused my government vehicle and abused government time. They alleged I stole an arrowhead. **Rowland and Crowder threatened me with jail. They searched my private residence and found no stolen property.** They admitted to me they had me under surveillance at my private residence.

* **Due to the stress of the continual harassment and the threat of jail, I had a nervous breakdown.** Lesa Donnelly and Priscilla Peterson helped me get medical treatment. They accompanied me to a meeting with Mark Madrid. Mr. Madrid approved leave for me, saying, "Take all the leave you need." I moved from my private residence because of the men and law enforcement admittedly watching me.

* **Shortly thereafter, Mark Madrid and Jody Cook placed me on AWOL. I received no paycheck. I had no place to live and no money for food.** When I returned to work (without a doctor's release) they threatened me with adverse actions. **The reprisal was worse.** I was reprimanded for my vehicle breaking down. I was reprimanded for failing to follow directions. Mark Madrid and Jody Cook forced me to continue working with the same male coworkers who made false allegations against me and who had harassed me for years. The men left me out in the field on my own. They spit on my windshield. I complained and nothing was done. **I was reprimanded for "falsely using your government credit card". I did not even have a government credit card!**

* **In May 1995, I was formally charged with criminal theft of government property.** Plumas NF management alleged I stole 71 items, including an arrowhead. The items were not found at my residence.

They were at the residence of a friend who made false allegations against me. She was having a sexual relationship with one of the Milford men who was part of the harassment against me. Lesa Donnelly tried to explain this to Mark Madrid and Jody Cook. She asked them to look into the matter and not let the investigation get out of hand. They refused, saying this was a "personal matter" for me.

* Items identified as being stolen were rusty pieces of angle iron, a toothbrush, a Smokey Bear ink pen free to the public, a pink blind, a broken shovel, a wooden army ammunition box, my spare keys to my personal vehicle, my coveralls, and my fire crew T-shirts. A private property sign was part of the stolen property. The Forest Service does not have private property!!! **The Forest Service dropped the charges and recharged me four times. Prior to me asking for a jury trial, the Forest Service tried to offer me a deal that I quit and never work for the Forest Service again. I refused.** It was clear they were just trying to get rid of me.

* **To make matters worse for me, Crowder and Rowland told the judge I was a flight risk. They tried to have me incarcerated until trial.** They lied and said my mother lived in Canada (she has always lived in Oklahoma) and I was going to flee the country. The judge disagreed with them but I had to report to the bail clerk every week.

* Lesa Donnelly tried to reason with Mark Madrid and Jody Cook about the trumped up charges and my emotional state, but they would not listen and reprised against her for trying to help me. They would not allow her to help me fill out my timesheets and leave slips. **I was confused, isolated and alone. The doctors placed me on anti-depressants and anti-anxiety drugs.**

* **I had to make eleven appearances at the court in Sacramento, 350 miles away.** When I could not make a court date because of the snow, **Tom Rowland handcuffed me in full view of my coworkers and took me to jail.** My emotional state worsened. While on stress leave I inadvertently had my leave slip signed erroneously. Mark Madrid and Jody Cook fired me for AWOL. Mark Madrid initially told me to "take all the leave you need". **I had about 176 hours of annual leave and 320 hours of sick leave, yet they fired me for AWOL!!!!**

* Mark Madrid and Jody Cook did everything they could to reprise against me and damage me emotionally and financially. **I signed up for unemployment. Mark Madrid and Jody Cook controverted my claim. I appealed it and won.** Mark Madrid and Jody Cook appealed it a second time, and we had to go before an Administrative Judge. The judge said she could not understand why I was fired and why they were fighting my unemployment. I won the appeal.

* **I had to use my retirement to hire a criminal attorney.** On September 16, 1996, I went to criminal trial. Though Mark Madrid and Jody Cook told me the criminal theft charges were a "personal matter" and had nothing to do with the on-going harassment and reprisal against me, the same men who had been harassing me for years were brought in to testify against me at the criminal trial. **The men who testified against me were, Bob Morganthaler, Randy Owings, Tom Cable, Wayne Crowder, Tom Rowland, and Dave Nelson. These men had been allowed to harass me for years and now they were testifying against me.** It was a nightmare. However, my timesheet showed I was on vacation when the arrowhead was allegedly stolen. Lesa Donnelly had tried to tell Mark Madrid about this but he refused to listen. It was apparent during the trial that the "stolen items" were not even Forest Service property. **The jury acquitted me of all charges in about 1/2 hour.** However, I still had no job because I was fired for AWOL. I still had to go before the Merit Systems Protection Board (MSPB).

* I could not get an MSPB hearing until January 1998. Mark Madrid and Jody Cook lied under oath. Lesa Donnelly testified that she spoke with them on more than one occasion and asked them for assistance to stop the hostile work environment. She had documents to verify that. Jerry Carpenter testified that she spoke with Jody Cook and asked her to stop the harassment against me. When asked if Ms. Donnelly and Ms. Carpenter had requested assistance for me, **Mark Madrid and Jody Cook lied under oath saying,**

"Never heard of her". I had other witnesses. My witnesses were ignored. Despite being acquitted of criminal charges, they insisted I was still guilty of theft. **I lost my MSPB appeal. After the judge's order was made, the judge advised Ms. Donnelly that Mark Madrid and Jody Cook were going to go after me with administrative charges on theft if I was reinstated and he saw no reason to reinstate me if they were going to do that.** My entire MSPB hearing was a sham! I lost my case because Mark Madrid and Jody Cook were allowed to lie under oath.

* **Mark Madrid and Jody Cook also lied under oath during the EEO investigation.** False information was given to the investigator and placed into the discrimination case file. The finding of no discrimination was based on an erroneous investigation and investigative file. I am currently appealing this decision.

* Because I am a woman, I was harassed for years at the Milford Ranger District and management failed to respond to my complaints. I endured the harassment and the barriers to my career. I witnessed many women on the Milford Ranger District endure the same type of treatment. I saw them come and go. When the men realized I would not be run off, they worked together to trump up charges of misconduct and criminal theft. Mark Madrid and Jody Cook used these men and the charges against me to cover up their own failure to respond to my complaints of harassment. **I had to hire a criminal attorney, an EEO attorney and an MSPB attorney to fight the Agency.** I lost my emotional health (I was diagnosed with post-traumatic stress disorder and placed on social security disability). I lost my 15 year career and my financial security, including my salary, retirement and health benefits. My only crime was being a woman hired under the Bernardi Consent Decree. I believe this needs to be rectified and reparation made.

* I am asking to be reinstated to the Forest Service. I do not want to work in Region Five ever again. I would like to work in another region. I also request back pay and compensation for lost benefits and retirement. I am requesting accelerated training to compensate for the years I have lost. It is time the USDA ends this nightmare I have endured for the last four years and allows me to move on with my life and my career.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Melissa Brooks
/s/ Melissa R. Brooks

Will sign & notarize

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January X 2000

Kimberly A. Day 3-16-01

EMPLOYMENT DISCRIMINATION AFFIDAVIT FORMAT & CONTENTS

UNITED STATES DEPARTMENT OF AGRICULTURE - FOREST SERVICE

NAME AND PERSONAL PROFILE DATA

NAME: Cindy Jandt **TELEPHONE NUMBER:** 530-275-9535

ADDRESS: 14216 Bear Mt Road, Space #13, Redding, CA 96003-7919

EMPLOYER ADDRESS: Not applicable

YEARS OF FEDERAL SERVICE: 9 **RACE, NATIONAL ORIGIN:** caucasion

GENDER: female **AGE:** **DO YOU HAVE A DISABILITY?** yes

YEARS WITH FOREST SERVICE: **DATE OF LAST PROMOTION:**

PRESENT JOB TITLE AND GRADE LEVEL: Last job title and grade was. GS-462-5, Assistant Fire Engine Operator

EDUCATION AND TRAINING:

JOB SKILLS:

CURRENTLY WORK FOR THE FOREST SERVICE: No I left the Forest Service on work related disability

SUMMARY AND CHRONOLOGY OF YOUR SPECIFIC CLAIM(S) OF DISCRIMINATION

WHAT SPECIFIC CLAIMS OF EMPLOYMENT DISCRIMINATION ARE YOU MAKING?
Sexual Harassment Hostile Work Environment and Discrimination Based on Gender

NAME(S), RACE, NATIONAL ORIGIN, TITLE(S), AND GRADE LEVEL OF THE INDIVIDUAL(S) WHOM YOU ARE ALLEGING TO HAVE ENGAGED IN EMPLOYMENT DISCRIMINATION AGAINST YOU:

Bob Ward	anglo male	GS-	Shasta-Trinity NF
Bill Harris	anglo male	GS-	"
Bruce Giampoli	anglo male	GS-	"
Shawne Mohoric	anglo female	GS-13 District Ranger	"
Becky May	anglo female	GS-	
Irl Everest	anglo male	GS-13 District Ranger	"

DELINEATE IN CHRONOLOGICAL ORDER YOUR ALLEGATIONS OF EMPLOYMENT DISCRIMINATION: See the following chronology of harassment and discrimination at the end of this document

DO YOU CONSIDER YOUR WORK AREA TO BE A "HOSTILE WORKING ENVIRONMENT"?

Yes. The reason I went on work related disability was due to the hostile work environment for women on the Shasta Trinity NF, Lakeshore Guard Station

WHAT WAS THE AGENCY/MANAGEMENT RESPONSE(S) TO YOUR CHARGES OF EMPLOYMENT DISCRIMINATION? Agency management on the Shasta Trinity NF was completely non-responsive. I, and other females working at Lakeshore Guard Station repeatedly relayed incidents of sexual harassment and discrimination to our second line supervisors and District Ranger. They chose to completely ignore it. The harassment escalated and I could not take the mental and emotional stress. I went off on disability and filed an EEO complaint

DELINEATE THE MAJOR FINDINGS OF THE EEO INVESTIGATOR ASSIGNED TO YOUR CASE: I filed the EEO complaint in March 1998. I have asked for $10,000 and two years schooling at the Shasta Community College. This in no way makes up financially for the loss of salary and retirement. The USDA Forest Service refuses to even negotiate or mediate a settlement

RESOLUTION OF YOUR EEO COMPLAINT(S)

WHAT HAS MANAGEMENT DONE TO RESOLVE OR IMPEDE THE RESOLUTION OF YOUR EEO CLAIMS OF DISCRIMINATION? I am a Donnelly vs. Glickman classmember. I believe I've been retaliated against because of that, i.e. the Agency will not settle my complaint.

WHAT WAS MANAGEMENT'S RESPONSE TO YOUR FILING OF ONE OR MORE EEO COMPLAINT? (List Each Complaint and the Date it Was Filed) A SEPARATE RESPONSE IS REQUIRED FOR EACH COMPLAINT FILED. I filed one complaint after I separated from the Agency. I did not file while working because I feared reprisal.

DELINEATE IN SPECIFIC DETAILS THE IMPACT ON YOUR CAREER FOR FILING AN EEO COMPLAINT(S). My career was destroyed while working at the Shasta Lake Guard Station. I went on disability due to the work related stress

MISCELLANEOUS ISSUES

DID YOU REQUEST CONGRESSIONAL ASSISTANCE AND WHAT RESULTS WERE ACHIEVED? No.

IMPORTANT ISSUES/CONCERNS RELATIVE TO YOUR FILING OF AN EEO COMPLAINT(S): The complaint process is not neutral. It takes too long. It is too little, too late. If I had a complaint process that would have dealt with the problems while I was working on the Shasta-Trinity NF I could have kept my career, financial stability and emotional stability. As the process stands, there is no recourse to get your hostile work environment complaints dealt with. The men who harassed me to the point I had to leave the Agency have not been held accountable for their actions

OTHER VALUABLE OR SUBSTANTIVE DOCUMENTS AND/OR INFORMATION:

Chronology of Incidents of Discrimination/Harassment

This is a brief outline of the harassment and discrimination incidents that were perpetuated against me as a female employee at the Lakeshore Guard Station, Shasta-Trinity NF. It is not all inclusive and there may be incidents I wish to add at a later date

* I started work at the Lakeshore Guard Station on the Shasta Trinity NF in 1988. I was a temporary firefighter employee who was accepted into the JAC firefighter apprenticeship program in 1991. The JAC program trained non-permanent employees in firefighting and upon completion of the program, trainees became permanent employees with the Forest Service. The JAC program was used extensively during the Bernardi Consent Decree to recruit and hire women in firefighter positions. I obtained permanent status in

1992 as a firefighter after completing the program. I was placed in the permanent Assistant Fire Engine Operator (AFEO)position at Lakeshore Guard Station.

* The men at Lakeshore Guard Station resented the Bernardi Consent Decree and the women hired during the time of the consent decree. Their resentment was made known to me by verbal statements against the consent decree, verbal statements against women they believed to be hired because of the consent decree, and discriminatory actions that were perpetrated against me and other women by these men.

* There are two engines located at Lakeshore Guard Station. Bob Ward is captain of Engine 52. Bill Harris is captain of Engine 51. Bill Harris was my captain and supervisor. My coworker, Cathi Colehour worked on Bob Ward's engine. The engine crew worked together on most projects. Cathi and I were both harassed by both men.

* The work environment at Lakeshore Guard Station was an overall hostile work environment for women. I, and other women have been sexually harassed, gender harassed, humiliated and verbally abused by Bill Harris, Bob Ward and the men on the fire crews. We were shunned and isolated by the supervisors and crew. This created a barrier to performing our jobs effectively. We were denied training which also effected our ability to perform our jobs and enhance our careers. The men were not treated this way.

* When I became a permanent employee, the men made negative comments about me, such as I was only hired because I was a woman, and I was only hired because of the Consent Decree. I was not allowed to perform my job. The male temporary employees, Barney Sidle and Ean Bates were openly and verbally resentful because they were not allowed to attend the JAC academy. Bob Ward and Bill Harris encouraged the resentment toward the women by making negative and demeaning remarks about us in front of the male crew. They would allow Barney Sidle and Ean Bates to perform my job driving the engine. They would isolate Cathi and me from the rest of the crew, making us clean the barracks while the male crewmembers worked on equipment and projects.

* Bob Ward continually talked about his penis (he used the word cock). He would tell Cathi and I how big it was and invite us to have sex with him. He would say things like "This is how big I am, here's your invitation, is it big enough for you?" We told Bob and Bill we did not appreciate this type of talk. They laughed at us.

* In 1988 I witnessed Bob Ward get mayonnaise from the barracks refrigerator, pull up a female coworker's shirt (her name was Angie Bates), and smear mayonnaise on her breasts. This was an example of the unprofessional behavior exhibited by our male supervisors, and an indication of the overall attitude Bob Ward displayed toward women workers.

* Bob Ward showed me a picture of a highschool girl that he said he took while he was on a fire. He said to me, "She gave me head." Almost everyday Mr. Ward said inappropriate sexual remarks similar to this to Cathi Colehour and me. It was extremely offensive and demeaning.

* Forest Service engine crews have caps made with their station logo on the front. Our caps said, "Lakeshore Guard Station". I observed Cathi Colehour's cap after it was changed by a crewman from Lakeshore to "Lakewhore". Cathi did not notice the change and wore the cap until it was pointed out to her. She was very humiliated.

* Bob Ward continually called Cathi Colehour and I filthy names such as "bitch" and "cunt". He had a bad temper. When he would get mad at us he would say, "I'll kick you in the cocksucker". He always referred to our mouths as cocksuckers. For example, one time we were driving through tall brush with the windows down. Bob said to Cathi and I, "Watch your cocksuckers."

* I witnessed Bob Ward calling our female Fire Management Officer (Becky May), and our female District Ranger (Shawn Mohoric) names like "bitch", "whore" and "cunt". I did not hear Bill Harris say those

words, but when Bob Ward would say them, Mr. Harris would agree and say words to the effect of "Yeah we know how to do our jobs and now she came in and is doing things the way a woman would do it. Women don't belong in the Forest Service."

* It was commonly stated by the men we worked with, "The best thing about women in the Forest Service is eventually they quit." It was a big joke for the men when they said it. It was not funny to us because we *had* seen women quit because of the harassment from these men.

* Cathi Colehour and I found the Bernardi Consent Decree Handbook at the Lakeshore Guard Station. In the margins of the directives that discussed hiring and promoting women, it was written, "Women will be given dicks". We took the book to District Ranger Shawne Mohoric to use as an example of the way the men treated us. She did not take it serious. I still have a copy of the handbook.

* Bill Harris made comments to us such as, "Women don't belong in fire", and "We don't want you here because you're a woman". The men were never talked about like this.

* I complained to managers Becky May and Shawn Mohoric many times about the disparate treatment and harassment by the men and my supervisor. Cathi Colehour also talked with them. They would say, "We have to get this straightened out." But they never did.

* I told the managers I was not allowed to perform my job, I was called filthy and sexually demeaning names, and the men were being given preferential treatment over Cathi Colehour and me. In a meeting the managers told the men to "quit being good ole boys", and to "get over the resentment of the Consent Decree". But the men did not listen to this. The managers never did anything to stop the hostile work environment. They have lied under oath stating there was no hostile work environment. However, we have other female witnesses who have stated they were treated the same way as Cathi Colehour and I were treated.

* I became physically and emotionally ill from the constant harassment. My doctor placed me on medication and therapy. Eventually my doctors placed me on disability retirement due to the hostile work environment. If I had not been sexually harassed, discriminated against and demeaned and demoralized on a daily basis, I could have kept my job with the Forest Service. The constant hostility and anger acted out upon me from these men, and Shasta-Trinity NF manager's refusal to correct the situation left me no other choice but to resign. I lost my financial stability and my retirement. My health will never be the same. The men who harassed Cathi Colehour, me and other women are still working there and have not been held accountable for their actions.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Cynthia Jandt

Cynthia Jandt 12-15-99

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of SHASTA } ss

On 12-15-99, before me, JUDITH K. SILLS, NOTARY PUBLIC
(Date) (Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

personally appeared Cindy Sandt
(Name(s) of Signer(s))

☐ personally known to me
☑ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

JUDITH K. SILLS
Commission # 1173921
Notary Public - California
Shasta County
My Comm. Expires Feb 16, 2002

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document
Title or Type of Document: Group Discrimination Complaint & Contents U.S. Dept of Agriculture
Document Date: 12-15-99. Number of Pages: 4th Pack

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer
Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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EMPLOYMENT DISCRIMINATION AFFIDAVIT FORMAT & CONTENTS

UNITED STATES DEPARTMENT OF AGRICULTURE - FOREST SERVICE

NAME AND PERSONAL PROFILE DATA

NAME: Catherine Colehour **TELEPHONE NUMBER:** 530-474-4436

ADDRESS: 29203 Highway 44 Shingletown, California 96088

EMPLOYER ADDRESS: USDA, Forest Service, Region 5, Shasta Trinity National Forest

YEARS OF FEDERAL SERVICE: 8 **RACE, NATIONAL ORIGIN:** caucasian

GENDER: female **AGE:** 30 **DO YOU HAVE A DISABILITY?** yes

YEARS WITH FOREST SERVICE: 8 **DATE OF LAST PROMOTION:** 1996

PRESENT JOB TITLE AND GRADE LEVEL: I resigned from the Agency in 1997. My job title and series and grade at the time was GS-462-5 Assistant Engine Operator

EDUCATION AND TRAINING: IAC Firefighting Academy

JOB SKILLS: firefighting

CURRENTLY WORK FOR THE FOREST SERVICE: No

SUMMARY AND CHRONOLOGY OF YOUR SPECIFIC CLAIM(S) OF DISCRIMINATION

WHAT SPECIFIC CLAIMS OF EMPLOYMENT DISCRIMINATION ARE YOU MAKING?
Sexual Harassment, Hostile Working Conditions, Sex-based Harassment and Discrimination

NAME(S), RACE, NATIONAL ORIGIN, TITLE(S), AND GRADE LEVEL OF THE INDIVIDUAL(S) WHOM YOU ARE ALLEGING TO HAVE ENGAGED IN EMPLOYMENT DISCRIMINATION AGAINST YOU:

Bob Ward	white male	Engine Captain	Shasta Trinity National Forest
Bill Harris	white male	Engine Captain	"
Bruce Grampoli	white male		"
Shawne Mohoric	white female	District Ranger GS-13	"
Becky May	white female	Fire Management Officer	"
Irl Everest	white male	District Ranger GS-13	"
Sharon Heywood	white female	Forest Supervisor GS-15	"

DELINEATE IN CHRONOLOGICAL ORDER YOUR ALLEGATIONS OF EMPLOYMENT DISCRIMINATION:
I was hired under the Bernardi Consent Decree in 1989. I went through the JAC firefighter academy and was a firefighter at the Lakeshore Guard Station on the Shasta-Trinity National Forest. The male firefighters resented women being hired under the court order of Bernardi. I was treated differently than my male coworkers, sexually harassed, threatened and intimidated, assaulted, verbally demeaned and not allowed to perform my job.

My supervisor, Bob Ward made negative statements about women who worked for the Forest Service and women who were hired under the Bernardi Consent Decree. Mr. Ward would say women did not belong in the Forest Service. He called me and my female coworkers filthy names such as bitch, cunt and cocksucker. He made demeaning comments and sexual statements about me in front of the crew, and encouraged the male firefighters to degrade, shun and ignore me and the other women.

While driving in a government vehicle on assignment, Mr. Ward stopped at his house and directed me to enter it while he picked up something. He then tried to get me into his bedroom.

Mr. Ward grabbed my breast. He told me to perform oral sex on him during working hours. He talked about his penis all the time. I asked him to stop the behavior. He laughed and said words to the effect of "What are you going to do about it?"

Mr. Ward gave preference to one of the female firefighters on the crew. She told me they were having sex and he promised to promote her. He would allow her to sit in his office all day and talk to him. I entered the office one time and she was sitting in front of his desk with her legs spread wide open in a very suggestive manner. When I got embarassed, they just laughed at me.

The men on the fire crew changed the wording on my fire cap from "Lakeshore Guard Station" to "LakeHore" Guard Station. I wore the cap not knowing it identified me as a Whore. I was extremely humiliated by this.

Mr. Ward called our District Ranger, Shawn Morhonic and Fire Management Officer, Becky May who were women names like bitch and cunt. I complained to Ms. Mohonic and Ms. May about the harassment and unequal treatment but they did nothing to stop the behaviors. They made excuses for them, calling them "good ole boys".

I was not allowed to drive the engine much even though it was my job. Mr. Ward would let the men drive the engine. I was not provided the training I needed to perform my job. I was treated differently in all aspects than the men.

I became physically ill from the overall hostile work environment and the daily harassment and intimidation from Bob Ward and the male crew members. I became ill with irritable bowel syndrome. I was depressed and anxious all the time. I did not know what to do. No one would stop Mr. Ward and the men from harassing me and the other women.

One day I was assigned to a vehicle with the woman who told me she was having a sexual relationship with Mr. Ward. She cried and said she did not want to have the relationship anymore, but feared she would not be promoted if she stopped. I advised her Mr. Ward was not allowed to have a relationship with her as his supervisor and she could file a complaint. Shortly thereafter I was given a letter admonishing me and threatening me with disciplinary action for discussing the EEO process. I believe the woman and Mr. Ward set me up.

I could no longer stand working for the Shasta-Trinity National Forest so I resigned from the Forest Service and filed an EEO complaint. They offered me $5,000 for settlement and I refused it. I lost my health, my emotional well-being, my career as a firefighter and my income. I was insulted by their offer. I remain unemployed. I am waiting for a reasonable offer for resolution from the Agency, but their last comments were that they did not want to mediate my complaint.

DO YOU CONSIDER YOUR WORK AREA TO BE A "HOSTILE WORKING ENVIRONMENT"?
Yes. I resigned because of the hostile working environment that management refused to acknowledge and stop.

WHAT WAS THE AGENCY/MANAGEMENT RESPONSE(S) TO YOUR CHARGES OF EMPLOYMENT DISCRIMINATION?
Management offered to give me $5,000 if I would drop my complaint. I was a permanent employee. When I resigned I lost salary and benefits. The $5,000 offer was an insult.

DELINEATE THE MAJOR FINDINGS OF THE EEO INVESTIGATOR ASSIGNED TO YOUR CASE: I had an EEO investigation but there has been no finding.

RESOLUTION OF YOUR EEO COMPLAINT(S)

WHAT HAS MANAGEMENT DONE TO RESOLVE OR IMPEDE THE RESOLUTION OF YOUR EEO CLAIMS OF DISCRIMINATION?
Management is not serious about solving my complaint. If they were, we would go into mediation and resolve it.

WHAT WAS MANAGEMENT'S RESPONSE TO YOUR FILING OF ONE OR MORE EEO COMPLAINT? (List Each Complaint and the Date it Was Filed) A SEPARATE RESPONSE IS REQUIRED FOR EACH COMPLAINT FILED.
I resigned and then filed the complaint because of the reprisal I had already endured.

DELINEATE IN SPECIFIC DETAILS THE IMPACT ON YOUR CAREER FOR FILING AN EEO COMPLAINT(S).
I have been emotionally, financially and physically destroyed by the Shasta Trinity National Forest's refusal to respond to my requests to stop the sexual harassment and hostile work environment.

MISCELLANEOUS ISSUES

DID YOU REQUEST CONGRESSIONAL ASSISTANCE AND WHAT RESULTS WERE ACHIEVED? No

IMPORTANT ISSUES/CONCERNS RELATIVE TO YOUR FILING OF AN EEO COMPLAINT(S):
1) Forest Service management did nothing to acknowledge, investigate or stop the sexual harassment after I brought it to their attention. Mr. Ward created a hostile work environment for numerous women.
2) I was reprised against for making the complaint of sexual harassment.
3) I resigned and then filed a formal EEO complaint. The Agency did not take it seriously.
4) Coalition president, Lesa Donnelly had a meeting with the Deputy Forest Supervisor, Karen Wood and demanded an investigation. An investigation occurred. Mr. Ward told employees he only received a few days of suspension. The investigation would not have occurred if Lesa Donnelly had not become involved. Even then, accountability was little to nothing. I and other women lost our livelihood. Mr. Ward lost a few days salary.
5) I was advised that Mr. Ward sexually harassed a secretary in the Shasta-Trinity district office after his disciplinary action so the minimal action they took against him did not stop his behavior.

OTHER VALUABLE OR SUBSTANTIVE DOCUMENTS AND/OR INFORMATION:

Cathy B Colik 12 16 99

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 16th DAY OF Dec 19 99
K. Van Klinken
NOTARY PUBLIC-CALIFORNIA

K. VAN KLINKEN
Comm. # 1270397
NOTARY PUBLIC - CALIFORNIA
Shasta County
My Comm. Expires May 24, 2002

EMPLOYMENT DISCRIMINATION AFFIDAVIT CONTENT

UNITED STATES DEPARTMENT OF AGRICULTURE-FOREST SERVICE

NAME AND PERSONAL PROFILE DATA

NAME: GINELLE O'CONNOR PHONE: 530-259-4207

ADDRESS: 627 WEST BURNT CEDAR ROAD, LAKE ALMANOR, CA 96137

EMPLOYER ADDRESS: LASSEN/INYO NF

YEAR OF FEDERAL SERVICE: 16

GENDER:FEMALE
STATUS: DISABLED
PRESENT POSITION AND GRADE: GS-486-11, WILDLIFE STAFF OFFICER

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOLLOWING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

I certify that the following statement is true and represents the events to the best of my knowledge. I began my Forest Service career in July of 1982 as the first female hot shot on the Sequoia Fulton Hot Shot fire crew. I was told that a woman attempted to join the crew in 1981 but quit due to an injured ankle early in the season. During the fire season of 1982, I endured many types of harassment including threats of physical harm, rape and quid pro quo from the foreman, Dave Provencio. The threats of bodily harm were reported to the asst. district fire management officer, Rueben Lopez and the district ranger, Rod Sallee. No action was taken. The harassment got worse toward the end of the fire season when the foreman became frustrated that I had not resigned. He attempted to coerce me into having sex with him to keep my job. He also threatened to fire me if I couldn't meet the standards set up for the male crew members. The worse harassment occurred when I was alone with individual crew members or when the foreman was 'comparing' other crew members to 'the female'. I was the daily measure for crew failure. Dave Provencio would say to the crew things like: if you can't keep up with the female (bitch, broad or cunt), then you (guys) won't make it in a tough fire situation. When we were in fire camps located where alcohol was readily accessible, the threats increased to rape and/or death threats. They would make comments like, "if she wants to stay on the crew, she'll do us all or suffer the consequences'. I often had to get up in the middle of the night when they returned from drinking in town to hear plans for raping me. I would get up in my sleeping bag and hop over to another crew that I knew would protect me. One of the hotshot crew members would brag about being on probation for

manslaughter. When he drank alcohol, most of the crew members were afraid of him. His goal was see me either in the process of changing or in a wet t-shirt. After a very hot fire on the Angeles NF, I went down stream (away from the crew) to get wet and cool down. He had followed me (without my knowledge) and caught me coming out of the creek in my wet t-shirt. He made sure all the crew knew he had 'been there, done that". On the compound located in Glenville, there were no facilities for women. I was offered the use of the small shower in the foreman's office. I would often shower (in cold water-I found out later they had simply turned off the hot water heater) after our morning PTs (strenuous exercises, hiking and running). One morning when I was menstruating, I accidentally dropped my bloody underwear when walking from the shower to the lower compound where we assembled for the daily field work. I did not know that one of the crew had given my bloody underwear to the foreman. One of the crew hung them on the foreman's truck antennae (like a trophy). They thought it was funny that I didn't notice them on the truck until later that day. They were all laughing at me during the day while I had no clue as to what was so funny. When I retrieved my bloody underwear, they all stood around laughing and making sexual comments. I was humiliated and cried continually while driving home to my parents' house ½ hour away that evening. Often when we had to quickly respond to a fire call, I would not have time to change into my crew designated t-shirt. I was forced to change in the back of the crew vehicle on the way to the fire. The foreman told me if I didn't show up with my crew t-shirt on, I would be sent home. Often, my crew mates refused to fly in a helicopter with me on board. They believed it was 'bad luck'. I would be manifested with other hot shot crews. On a fire near Pyramid Lake on the Los Padres, I was flown alone to a heli-spot with a portion of the Dalton hotshot crew. When I arrived, one the Dalton crew stated that he saw an opportunity to 'screw' the Fulton chick. He implied that a female on a hot shot crew had only one purpose-to be the crew fuck. He began to act serious on his threat, so I ran far away and hid in the brush where he couldn't find me. A portion of my crew arrived on the next helicopter and I rejoined my crew. At a fire on the Sierra NF, our fire camp food was cooked by the CA Dept of Corrections inmates. They verbally harassed me since I was one of the only women in fire camp. My crew leader encouraged their comments. At one point, in the middle of the night, my crew leader offered to 'give me to them-to keep them happy' in a very loud voice. There was a loud bunch of laughing in the dark-I hopped in my sleeping bag further away from both the inmates and my crew to sleep with a crew I felt safe with. During these incidents, my foreman, Dave Provencio was either the source of the encouragement or did nothing to stop the harassment. I did report some of the threats to the district AFMO and the district ranger. They took no action to stop it. I did not quit because I didn't want them to think they could run women off.

1983-1984 Summit Engine and Peppermint Helitack Crews

While I was on the Summit engine crew, I worked with a difficult male crew member who was later arrested for masturbating in front of a Kmart in Porterville. Another male crew member followed me home (I walked from my parents house to the Summit compound). I thought he was being friendly so we talked while we were walking. At one point, he stopped me by blocking my path, kissed me on the mouth and tried to put his hand on my breast. When I pushed him away, he made a comment about wanting to 'get

it on with a hotshot chick'. I warned him to leave me alone. As a result, he only made snide female comments at work instead of sexual advances.

Peppermint Helitack

When I arrived, there was resentful comments made about my getting a permanent position due female preferential treatment under the Bernardi consent decree. There was one other female on the crew who was somewhat supportive of me. Most of the other male crew members felt competitive with me due to my hotshot background. Eventually, the harassment was started by a Hispanic male, Julio who threatened me when the foreman or asst. foreman were not present. I reported the threats he made toward me, so the foreman, as a result, Rick Johnson sent us on a small lightning fire alone 'to resolve our differences'. This tactic only increased the hostility against me since I was put in charge of the fire. I don't believe Rick Johnson or the asst. foreman Mark Reese until Julio threatened Rick with a large knife in a bar when the crew was drunk. My performance rating had a negative comment about my not being a team player due to my unwillingness to socialize ie: drink and 'raise hell' after work with them. This crew had a reputation for tearing up local bars and was proud of it. Another incident occurred when we were returning from a fire on the Greenhorn district. We were all tired and making cracks about mistakes we had each made on the fire. When I brought up a mistake made by the crew leader, he turned around (we were riding in the crew cab chase truck) and slapped me open-handed across the face. The assistant foreman, Mark Reese was driving and did not say a word. This assault was totally out of line and several of the crew talked with me in private later about how shocked they were. Mark Reese thought it would help if I apologized. I did not. During this year on helitack, I endured more threats of bodily harm and rape. I believe I received this type of treatment because I am a strong woman and insecure men react to my determination. We endured near burn-over incidents twice during that fire season both as a result of asst. foreman mistakes or error in judgment. Mary (the other female on the crew) and I ended up being the reported reason for these incidents. These reports were outright lies and our outrage made no difference in the end result. Toward the end of the season, I lost my option to sleep in a small travel trailer because the repair work to the barracks was complete. I was ordered to move back into the single female room where I wasn't allowed to have my daughter. As a single parent, this left me little option in this remote location. My daughter and I were forced to sleep in my VW Rabbit near the compound in the woods. I reported this to the district ranger, Del Penguilly who did nothing. The next year, I requested a transfer to the marking crew in timber. My last 3 years on the Sequoia NF, I worked as the marking crew foreman capacity. My pay did not increase (I was still a GS-4 in a GS-7 position). I was forced to work part time as a waitress while I was commuting 150 miles per day to finish my BS in biology. Del was aware of this situation but did nothing to assist me. I was detailed into the GS-9/11 zone wildlife biologist position in 1987 due to a consent decree opp't. At the end of the 1987 field season, I finally was promoted to a GS-5. Shortly thereafter, I found a coop position for a zone wildlife biologist position on the Plumas. Del was angry that I was leaving shortly after the GS-5 promotion. At my going away party, my supervisor, John Gerritsma roasted me by pretending to have gotten a copy of my personal diary. He spent 15 minutes making up sexual exploits that I supposedly embarked on during the

night. It became lewd and embarrassing even to the district ranger, Del. He asked John to quit and sit down. John continued until he was done. I was very surprised since I thought we had gotten along well. He humiliated me in front of most of the district employees I had worked hard to establish a professional demeanor as a Union steward, a Consent Decree representative and an acting wildlife biologist.

Plumas NF 1987-1994

I worked as an assistant zone wildlife biologist on the west side of the Plumas NF for 7 years. During this time, I moved from a GS-4 student coop into a GS-486-5/7/9 professional biologist. My supervisor taught me little about biology and a lot about politics. I was sexually harassed by the district fire mgt officer, Jim Klump. My supervisor, Art Rohrbacher was supportive as along as I acted subservient. When I developed my own style at the journeyman level, we began to have problems. I had to inform the district ranger, Chuck Smay, several times that my supervisor was not adhering to regional standards and guidelines for timber sales. My supervisor treated like a secretary. When I was invited to meetings, I was told to 'sit in the back, shut up and observe' I began to resent this demeaning treatment and applied for other positions. I observed during a 5 year period approximately 25 women 'run off' the La Porte district by Chuck Smay and the all white male staff. These women would be hired in professional positions but not given training or responsibilities equal to the men in the same position. They would be treated rudely, in a demeaning manner, spoken about in sexual ways, sexual harassed in front of others and set up to fail. At times, I would sit in on a staff meeting as the acting zone biologist. In these staff meetings, I would have to listen to comments about new hires (females) that were sexual in nature. Chuck Smay did nothing to correct this demeaning behavior. My supervisor, Art began throwing a 6 inch knife into the wall in his office when he was angry. The spot on the wall that he was aiming for was only a few inches from the doorway which was located at the top of the stairwell. After this went on (in front other other male staff), I finally reported these knife throwing temper related behaviors to the Chuck Smay. I showed Chuck where the knife marks were. I showed Chuck the broken clock that Art had hit with his knife-it was only about 2 inches from the doorway. Art would often threaten in an angry tone (in front of many employees), that he was going to become a sniper and shoot people from a belfry tower He would also threaten to throw a lit road flair into his office if/when he finally was able to leave for another job. No action was taken when these behaviors were reported. They continued and were directed toward me at times. I reported other incidents involved with my owl survey projects. Jerry Bertagna, timber mgt staff officer, would select owl survey partners based on their sexual appeal. He would come into the office late at night after heavy drinking when I had crews working. I reported his going through confidential personnel files late one evening but no action was taken to stop his behavior. I had several women complain about his sexual inappropriate behavior when out with them completing owl surveys. They refused to go with him again, as they knew the district ranger would do nothing to stop his behavior. I had owl survey partners who had been drinking before working with me. When I complained, the district ranger wrote a letter

but did not enforce it when Jerry Bertagna continued to provide free beer to his crews prior to their working on owl surveys.
During a particularly tough owl/timber situation, I worked over 200 hours in a 2 week period with no assistance (I asked all district employees for help and got none). When I asked for assistance from the forest biologist, both my supervisor and the district ranger acted very hostile toward me. During this time period, I was 6 months pregnant and climbing steep rugged terrain for hours non- stop. I got very little sleep and ended up hemorrhaging and losing my baby. I was devastated and could not go back to work or leave my house for over 2 weeks.

Inyo NF 1994-1999

I was promoted to a GS-11 district staff by moving to the Mono Lake district of the Inyo NF. For 3 months, I acted successfully in a staff capacity. I enjoyed working with the other staff and the acting District Ranger, Roger Porter. At the end of the first three months, the Inyo was reorganized into forest-wide teams. I was forced to work with young inexperienced male biologists on a team. During one of our meetings when we were assigning projects to team members, I expressed concern that I was getting all the 'crap jobs'. I was told by Gary Milano, a biologist in training that I was getting the 'crap jobs' because I was a woman. When I complained about this comment to the team supervisor, Ron Keil, he said "Oh, that's just Gary joking around'. I made sure he knew I did not think that was the case. I took this and other issues to Dennis Martin, the forest supervisor in 1995. He assigned Ron Keil as the oversight authority-even though Ron was already identified as part of the problem. After Dennis Martin retired, I offered to work in a committee chairperson position for civil rights. I worked well with Bill Bramlette, the acting forest supervisor until the arrival of Jeff Bailey in May of 1997. I resigned my CR capacity in January of 1998 due to betrayal and undermining behavior demonstrated by Jeff toward me and the employees who came to me for assistance. This devious behavior followed me into the biological resource area when I volunteered to be the forest coordinator for Sierra Nevada bighorn sheep.
When I realized Jeff was also undermining me through other agencies and the region 5 team working to save bighorn sheep, I asked for time off for health reasons. My fibromyalgia which resulted from an repetitive strain injury on the Plumas, gets worse with stress. There are times when I must be bed-ridden for a few days until I can physically function once again. I live in pain daily since my injury in April of 1993. After working part time for 4 months, Jeff Bailey threatened to take action against me. My husband who is a 15 year temporary was suddenly laid off. I had no choice but to force Clyde Thompson to locate me elsewhere during class action mediation.

Lassen NF May of 1999-present

I was relocated on temporary assignment to the Almanor ranger district in May of 1999/ Brad Powell refused to take action on the Inyo NF to change inappropriate behaviors by Jeff Bailey, the Forest Supervisor. Before I arrived on the Lassen, a GS-9 biologist co-worker, Mark Williams had been promised the GS-11 staff position by Mike Williams, the district ranger. I am still struggling to run a district program while I am being

undermined by a co-worker, other district staff and line officers. The several acting district rangers and forest supervisors who have been here since my arrival have revealed that they are following Brad Powell's direction when it involves dealing with me as a Donnelly vs. Glickman class action representative. I have been denied reasonable accommodation and reprised against for my EEO activities and helping other employees. I have reprised against for my Coalition of Minority Employees national advisor work. The harassment and intimidation occurs daily. I have had several employees from many forests and regions contact me for help with their work environment. Sexual harassment is still occurring in region 5. Little or no action is being taken to stop these behaviors. Employees have told me they fear reprisal for filing any type of complaint. Fire crews still 'control' female and minority employees by harassment and intimidation. People with disabilities are treated with little or no respect. Any opportunity to 'run them off' by downsizing or setting them up to fail still occurs. I have been contacted by many employees and will continue to help when I can in spite of the reprisal I continue to experience.

Ginelle O'Connor
GINELLE O'CONNOR

State of California
County of Plumas

Subscribed and sworn to before me Robin L. Schumacher, Notary Public this 16th day of December, 1999 by Ginelle O'Connor.

Robin L Schumacher
Robin L. Schumacher, Notary Public

ROBIN L. SCHUMACHER
Comm. # 1085927
NOTARY PUBLIC-CALIFORNIA
Plumas County
My Comm. Expires Mar. 1, 2000

Chairman Lugar
Senate Committee on Agriculture, Nutrition
and Forestry
SR-328A Russell Senate Office Building
Washington, DC 20510-6000

Dear Chairman D. Lugar,

Date: September 20, 2000

Subject:
USDA CR Hearing Input

I am writing this letter on behalf of the many disabled employees working in USDA. I have been an employee of the Forest Service for 18 years in California. The types of treatment and disrespect I have observed and encountered in this agency has been an amazing experience! There are many "categories" of employees with disabilities striving everyday to be productive in spite of the barriers and challenges we face. As a Coalition National Advisor for conflict resolution, I have assisted employees who are disabled veterans, employees who have become injured on the job, employees who have become mentally ill from job related stress, employees suffering from improper ergonomic equipment, employees who are being discriminated against due to visibility of their disability, employees who 'hide' their disability due to fear of reprisal and those who show great leadership as 'pioneers' in this tough work environment.

I am currently a class representative for a region 5 People with Disabilities Class Action. This EEO class action has been misplaced, ignored (for 10 months), misrepresented, and passed back and forth between region 5 and the Washington office. There has been no attempt to mediate or discuss this class action in spite of the number of complaints. Reasonable accommodation is still a term many managers believe is a 'nice to do' or special treatment for one individual. Other managers place too much emphasis on modification of one employee's work environment while ignoring basic office needs such as ergonomic equipment for all employees. This low level of ignorance is only a fraction of the issue. The core issue is that the Forest Service is still managed by the good old boy/girl -buddy/bully system that very often punishes any employee who appears different than the typical white male manager. Many males in the Forest Service call themselves the "Last of the Macho Men". They don't easy accept women, minorities or disabled employees, especially if they hold any position of authority.

When I began my career in 1982, I worked for several years in fire as a firefighter. I worked as the first woman on a hotshot crew, on an engine crew and on a helicopter helitack crew. During those years, I had to call on all my determination to succeed and survive. I was threatened with rape, physical harm and reprised against just due to my gender. Several years later after continuing to improve my career and become a biologist, I still continued to work many hard hours "proving myself" each time I moved. I became

injured on the job due to improper ergonomics, high levels of sexual harassment/reprisal and hundreds of hours above and beyond the call of duty (500+ extra hours every summer for over 7 years). Yet, when I became disabled at the age of 36, I was literally discarded in spite of all the years of high performance levels.

Another employee I respect highly was wounded three times during the Vietnam war. Yet, because he is Hispanic, he has been passed over for promotions, placed on unfunded lists and treated as a lower class employee due to his race.

I have assisted a female fire lookout who (after 20 years as a temporary employee) was blown off her fire lookout tower by an improperly hung door which opened into high winds. She barely survived and lives in great pain-5 years later. She is unable to get another job or proper medical care. The forest managers (local up to national) simply wrote her off-saying she is now an OWCP 'problem'. Upper levels of the USDA Forest Service refuse to reply to her letters or return her requests for any kind of assistance. She is a miracle-after falling 20 feet to the rocks below the lookout, her dog dragged her to a handheld radio so she could call for help. She always believed the agency valued her for all her many years of hard work. She believed they would 'do the right thing'. She has had to learn that managers in this agency do not care about personal responsibility or accountability. They look her straight in the face and claim that there is nothing they can do to assist her. I think this behavior is shameful.

Mr. Lugar, I appeal to your compassion and your heart-please provide any assistance you possibly are able to for accountability in the USDA Civil Rights arena. We need your help to continue our fight for equal treatment!!

Thank you for your time and efforts!

Sincerely,

Ginelle O'Connor

GINELLE O'CONNOR
The Coalition
Wildlife Biologist
Regional Office, Vallejo, CA
Region 5, USDA FS

SENATE HEARINGS, USDA DISCRIMINATION – ADDITIONAL PUBLIC INPUT OPPORTUNITY

"Another grade band that will be disproportionately impacted is the GS 11/12 band which is projected to reduce by 29%. The majority of the reductions in this grade band are projected to occur in Administrative positions, rather than in Professional positions."

"These reductions will be accomplished through normal attrition, voluntary re-assignments to field locations, and if necessary, directed re-assignments, and Reductions-in Force (RIF)." "A reassignment process or a Reduction-in Force (RIF) which is based on seniority may have a disproportionate effect on women, minorities and persons with disabilities because these groups in general have less seniority."

Upon returning to my office I learned that the wife of my Director's previous Supervisor (White Female (GS/6) was placed in the Staff Secretary's position (GS/6-7) as my Supervisor. She was a displaced employee. I had acted as Staff Secretary to the staff on and off for 4 years and received a temporary promotion (Staff Secretary GS/7) the year before for 120 days and earned a Performance Rating of Outstanding and a monetary award.

I communicated the conflict and my concerns to the Staff Director and suggested that he consider the mitigation of any negative impacts by placing us under equal Supervision. I was told by the Director to *"do what I was supposed to do, and that I would have nothing to worry about."* My concerns were as follows:

Concern (1): Equal Opportunity - The FTE that the White Female occupied was a GS/6-7 and would be a non-competitive promotion to a GS/7 in one year. This staffing decision placed me at a disadvantage and denied me an equal opportunity to receive a promotion to Staff Secretary, GS/7.

Concern (2): Seniority - As my direct Supervisor, the White Female was in position to rate my performance. If one of our positions were abolished, or if there were a decision to RIF, the performance rating would be used, with everything else equal, as a means to calculate Length of Service, or Seniority. Her position posed a serious conflict of interest. If she rated higher then I, it would mean my job.

I received a rating of *Fully Satisfactory* and she received a rating of *Outstanding*. She was reassigned to another staff in *October of 1995*, and I resumed all GS-7 duties.

My questioning the Director's decision continued a history of abuse and harassment directly and indirectly from the staff members and the Director of the Watershed and Air Management staff.

Fact: Message from Director to Judy Humphrey, Classification, *January 28, 1997*;

SENATE HEARINGS, USDA DISCRIMINATION – ADDITIONAL PUBLIC INPUT OPPORTUNITY

"Margaree has been gradually assuming some of the new duties described in the PD, budget, purchasing, etc., since we lost 3 other people last year to downsizing. We formally had a budget analyst (12), a secretary GS-7 and a Clerk Typist GS-5. Margaree is now filling the void created by the departure of these folks. She continues to perform primarily as the Secretary to the Director and everything else that we need.

Fact: Memo to Arthur Bryant from Sheila Venson, Employee Relations, *November 12, 1997:*

"Margaree is single support staff person for groups of GS-14's (5) employees. She supporst (12) GS-13's and works for the Director, Art Bryant. For the past 2 yrs., had accretion of duties to serve as Director's Secretary who was a GS-7. Has asked for desk audits for the past 1 ½yrs. and Lee Eckerode was too busy. Margaree is upset and wants upgrade or reassignment.

As the result of a desk audit conducted in March 2000, I received a promotion to a GS-7 May 2000, 4 ½ years, later.

SOLUTIONS:

- Representation – There need for a mechanism built of diverse teams communicating vertically within and across agencies to monitor to ensure equal opportunity and multicultural diversity, rather than the leadership teams reporting to each other and passing the decisions down.

- Accountability – There is need for a Civil Rights Accountability procedure design written into the personal performance elements of all Supervisors and Program Managers. This procedure would track the actions taken from the first initial grievance in accordance to the procedure design and would require actions taken and signatures by all affected offices, e.g. Human Resource Management, Civil Rights, Local Unions, Supervisors, etc. This course of action would serve as a critical element of pass or fail. This documentation would also show the strengths and weaknesses in the grievance/complaint system.

Margaree Williams
MARGAREE WILLIAMS

SEP 22 2000
Date

– RATIONALE FOR THE EXECUTIVE ORDER

"...establishing policy means nothing without meaningful execution. But because USDA is a very decentralized organization -- much more so than most federal agencies and federal departments. Very few places in the government are organized like we are here in the USDA."

SOURCE: June 29, 2000 "New Initiatives Speech" By USDA Secretary Dan Glickman

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The United States Department of Agriculture has manifestly failed in regards to equal employment opportunity and civil rights for it's employees and the public it is supposed to serve.

It is concluded that a fundamental barrier to meeting the intents of equal employment opportunity (EEO) and civil rights (CR) in the U.S. Department of Agriculture (USDA) are the archaic organizational structures and lines of authority that were established more than one hundred years ago. The structure and lines of authority prevents EEO and CR from becoming a reality. EEO and CR policy and direction that go from the President to the Secretary of Agriculture seldom, if ever, become a reality at headquarters, regional offices, ground, and remote stations.

The USDA is sometimes described as a being a "Confederacy of Agencies". Such an organizational structure clearly usurps the President's and the Secretary's ability to carry out policy among the "Confederates". Additionally, each "Confederate" agency has it's own manner in which they achieve the "non-coercive will to conform". Such a concept of control has been applied effectively to "mission oriented" functions. However, almost all, if not all of the "Confederate" agencies do not apply that concept to the functions of EEO and CR. Thus, the USDA has become a conglomeration of chaotic and failed "Confederate" agencies in regards to equal employment opportunity and civil rights.

The absolute power of agency officials at all levels and remote offices to determine the level of EEO and CR has deprived employees of EEO and civil rights; subjects them to demeaning, disrespectful treatment; and allows the creation barriers to their standing and opportunity for advancement. Our citizens who are supposed to receive services from the USDA have not only been treated with disrespect, they have also suffered tremendous economic losses due to biased and differential treatment from USDA agency officials.

With the extensive hierarchical management layers and incoherent lines of authority, it is virtually impossible for any President or Secretary of Agriculture to enforce EEO and CR law, policy, and directives. It is an out of control situation. I believe that, if we cannot reform those structures and authorities, we will never attain our goal of fairness and respect in the workforce or for the public we serve unless there is strong executive action from the President of the United States.

Chairman D. Lugar, U. S. Senate Agriculture,
Nutrition, and Forestry Committee
Russell Senate Office Building
Washington, D.C. 20510

Ms. Messerschmidtt can be reached at messerschmitt@serratel.com

Allen P. Spencer
Sonora, California
Email: aspencer@mlode.com
WebSite: http://www.mlode.com/~aspencer

lugar_20000912_urges_prompt_action.rtf lugar_20000912_opening_statement.rtf

Senate Agriculture, Nutrition and Forestry Committee

Chairman Dick Lugar, U.S. Senator for Indiana

Date: 9/12/00

Lugar Urges Prompt Action on USDA Discrimination Complaints

WASHINGTON - U.S. Sen. Dick Lugar, Chairman of the Senate Agriculture, Nutrition and Forestry Committee, today called the high volume of discrimination complaints against the United States Department of Agriculture (USDA) "disturbing" and urged USDA officials to report promptly on efforts being made within the Department to resolve pending complaints and prevent future discrimination.

GOOD MORNING!

NFL DRAFT: Six get picks and lots of questions ..... Page B1

Sunny
High 67
Low 37

Saturday
DAILY INTER LAKE

April 17, 1999 SERVING THE NORTHLAND SINCE 1906

Today's forest fight: gender equity

26 years of gender battles pit Forest Service against itself

by MARTHA BELLISLE
Associated Press Writer

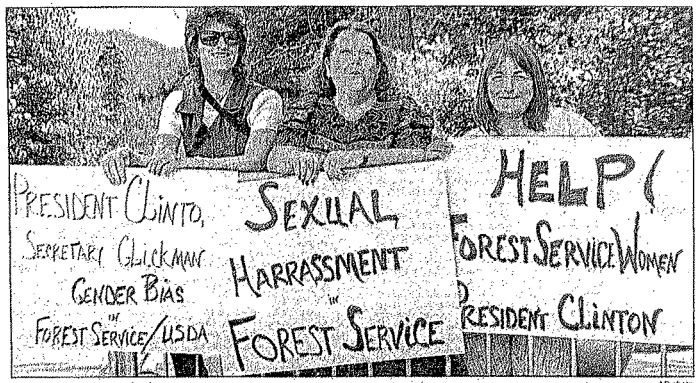
LOS ANGELES (AP) — Bob Grate grows nostalgic when he talks about the camaraderie of his crew on the front line of a wildfire — eating on the run, sleeping under the stars, picking ashes out of their teeth.

They felt like an elite club back then in the '70s, he remembers — guys who lived and worked together, counting on each other's strength and skill: They prided themselves on their ability to shovel back a blaze while smoke burned their nostrils and sweat ran streaks in their soot-smeared faces.

Fighting fires for the Forest Service demanded they be tough enough to run up a brush-covered hill, carrying a 50-pound pack in temperatures that reached 112 degrees; powerful enough to carry out 200-pound colleagues who collapsed in the heat.

It was a man's world. And as Grate remembers, it worked well that way.

"You tried to get the best people you could get so you didn't get hurt and they didn't get hurt," says Grate, who retired as a captain in 1999 after 25 years fighting forest fires. "You worked out together and you watched out for each other."



AP photo

GINELLE O'CONNOR, left, a firefighter in the Inyo National Forest, Lesa Donnelly, center, who fights fires in Plumas National Forest, and Melissa Brookey, right, formerly of the Plumas National Forest, wait for President Clinton to drive past their demonstration in this July 1997 file photo. The women have sued the Forest Service for alleged discrimination.

Worldwide REUTERS

UPDATE 1-Lawmakers offer bills to protect black farmers

(Recasts, including move of class-action settlement to 2nd para; adds USDA reaction in 7th para)

WASHINGTON (Reuters) - The Congressional Black Caucus Wednesday unveiled legislation that would protect black farmers and federal employees from racial discrimination by the U.S. Department of Agriculture.

Last year, the federal government reached a multibillion-dollar settlement with black farmers to end a class-action lawsuit that accused the USDA of racism in making loans and disaster payments. Nearly 20,000 minority farmers have applied to receive a portion of the settlement. The USDA has been the target of many lawsuits and racial discrimination complaints from employees and farmers for decades.

North Carolina Rep. Eva Clayton and Mississippi Rep. Bennie Thompson, both Democrats, introduced the bills in the House of Representatives. The bills, if they become law, would punish USDA managers who discriminate against minority employees in job promotions or against farmers seeking loans and disaster aid.

The bills ``are designed to directly and effectively address the sources of this discrimination and root it out, once and for all," Clayton told reporters.

Under the legislation, a USDA employee could be fired or fined up to $20,000 for discriminating against minority farmers or employees.

Chance of passage is considered slight because of the dwindling number of work days before Congress takes its August recess and the November election.

USDA officials said they have not seen the proposed legislation. They added, however that they look forward to working with the Congressional Black Caucus in improving the department's civil rights record.

Last April, the USDA said 13 USDA employees had been fired and 81 others were disciplined for racial discrimination.

The proposed legislation is the latest attempt to make the USDA do more to end a long history of racism.

Agriculture Secretary Dan Glickman has acknowledged that the department has treated some black farmers and employees unfairly for more than 20 years. The Clinton administration has added several million dollars to the USDA's budget in recent years for civil rights programs.

The proposed legislation's opportunity to get full consideration also is dimmed by the herculean task facing Congress between now and Oct. 1. Legislative experts have said Congress will have its plate full just trying to pass all 13 spending bills required to keep the federal government running after the fiscal year ends on Sept. 30.

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HE FEDERAL PAGE

THURSDAY, JUNE 22, 2000 A23

USDA Workers: Bias Persists

Minority Employees Seek Meeting With Clinton

By MICHAEL A. FLETCHER
Washington Post Staff Writer

A group of minority and female workers at the Department of Agriculture yesterday called on President Clinton to resolve long-standing complaints of discrimination at the agency, saying that bias continues to fester there despite repeated pledges by Secretary Dan Glickman to stamp it out.

About 30 members of the Coalition of Minority Employees aired their concerns at a Capitol Hill news conference before meeting with senior USDA officials yesterday. Citing their own experiences as well as an upsurge in the number of discrimination complaints brought by USDA employees, coalition members said the agency is making little progress in its much-touted civil rights fight.

"Nothing has changed," said John Sedillo, a Forest Service employee from New Mexico. "If anything, things have gotten worse."

Members of the coalition said that minority and female employees frequently receive disparate treatment from USDA supervisors, are often steered away from assignments that will enhance their careers, are denied promotions and are targets of blatantly racist jokes or sexual harassment, particularly in the agency's rural outposts.

"There is continued widespread discrimination at USDA," said Lawrence Lucas, president of the coalition. "We demand that President Clinton meet with the coalition to resolve this."

Since being named agriculture secretary in 1995, Glickman has said that his highest priority is to make USDA into a "civil rights leader in the federal government." In May, the agency released a report that officials trumpeted as evidence of the civil rights progress that had taken place. A USDA spokesman referred to the report when asked for comment about the coalition's charges yesterday.

The report said that the agency had increased its farm lending to minorities and women, increased minority and female representation on the local committees that make loan decisions for farmers and increased the percentage of agency employees who are minorities from 17 percent to 20 percent.

"Our efforts are having a real impact on USDA's programs and people," Glickman said then.

But minority employees said that has not been enough. Despite Glickman's efforts, they said, the number of employment discrimination complaints increased by nearly 50 percent between 1996 and 1999. At the end of last year, more than 1,700 were on file.

"There are so many cases that they are largely put aside," said Rep. Patsy T. Mink (D-Hawaii), who attended the news conference.

Also, the coalition said, the agency is the target of 20 class action complaints, either in the courts or before the Equal Employment Opportunity Commission. The coalition said several of the complaints have been filed in the past year.

BY RAY LUSTIG—THE WASHINGTON POST

Agriculture Secretary Dan Glickman said progress has been made in easing discrimination at USDA.

"The Department of Agriculture is an overflowing cesspool of filth that needs cleaning," said John Boyd, president of the National Black Farmers Association, who is running for Congress from Virginia's 5th District. "Nothing will change unless people are held accountable for their actions."

In his May report, Glickman said that 13 employees were fired and another 81 were at least reprimanded as a result of the agency's civil rights initiative—numbers that coalition members say are inadequate.

For decades, minorities at USDA have complained about a hostile work environment that fosters discrimination against employees as well as some USDA clients.

In 1999, USDA settled a class action lawsuit brought by black farmers who charged that they were denied loans and other services because of their race. Payouts in the suit are on track to top $1 billion.

The coalition's complaints come on the heels of a report by the agency's inspector general, who in March criticized the agency's handling of civil rights complaints. The report said USDA's civil rights division had lost more than a dozen files and mishandled hundreds of others.

During the news conference, a spokesman for Sen. Charles S. Robb (D-Va.) said that Robb plans to request a meeting between Clinton and the minority employees.

"The secretary has failed us," said Allen Spencer, an USDA employee involved in a suit against the agency. "It seems that all of our resources other than presidential action have been expended."

USDA NEWS RELEASE

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FAS PR 0569-99

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USDA APPROVES PILOT EXPORT TRAINING PROGRAM FOR SMALL AND MINORITY PRODUCERS

WASHINGTON, Nov. 10, 1999-Agriculture Secretary Dan Glickman today announced that the U.S. Department of Agriculture will fund a three-state pilot program in Alabama, Georgia, and Mississippi to train small and minority producers in export marketing.

"For many small and minority producers, limited local marketing opportunities present perhaps the leading threat to economic survival, especially in isolated or depressed rural communities," Glickman said. "Exports can provide the additional sales opportunities that may help them grow and prosper."

The goal of the pilot program is to train participants on the basics of international marketing to help them identify, research, and take advantage of potential export opportunities. About 30 farmers and members of producer cooperatives, processing firms, and other small and minority agricultural businesses will be trained as trainers for several organizations representing small and minority producers in the region. The pilot program is expected to last 2 years.

The export marketing training pilot program is funded through the Emerging Markets Program of USDA's Foreign Agricultural Service. Additional funding is being provided by the Southern United States Trade Association (SUSTA) and the international Small Business Development Centers in the three states.

Other partners in the program include the state departments of agriculture in each state and three Historically Black Colleges and Universities (HBCUs). The Alabama Department of Agriculture and Industries, Georgia Department of Agriculture, and Mississippi Department of Agriculture and Commerce will help select candidates for the training. The HBCU institutions -- Tuskegee University, Fort Valley State University, and Alcorn State University -- will help recruit participants and evaluate the effectiveness of the training, which will be conducted by the international Small Business Development Center in each state.

The training program will begin in the spring of 2000. Applications will be available in December 1999 from the following state contacts:

Georgia--Fred Harrison, Jr., College of Agriculture, Fort Valley State University, 105 State University Drive, Ft. Valley, GA 31030; E-mail: harrison@mail.fvsu.edu; fax: (912) 827-3062; phone: (912) 825-6344.

Alabama--Miles Robinson or Robert Zabawa,100 Campbell Hall, George Washington Carver Agr. Exp. Station, Tuskegee University, Tuskegee, AL 36088; E-mail: zabawar@tusk.edu or miles@tusk.edu; fax: (334) 724-4451; phone: (334) 727-8114 or (800) 720-8698

Mississippi--Samuel Scott, Alcorn State University, Mississippi Small Farm Development Center,1000 ASU Drive, Box 1080, Alcorn State, MS 39096-7500; E-mail: tainans@aol.com; fax: (601) 877-6219; phone: (601) 877-3948.

APPLICATION FOR THE EXPORT READINESS TRAINING PROGRAM

Please print or type all information in black ink.

The U. S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center (202) 720-2600 (voice and TDD).

THE NAMES AND ADDRESSES OF ALL PARTICIPANTS ARE CONSIDERED PUBLIC INFORMATION. CONFIDENTIAL BUSINESS INFORMATION WILL NOT BE RELEASED TO THE PUBLIC.

STATE: Alabama (Kansas)

I. COMPANY INFORMATION

Company Name: Nicodemus Flour coop (Kansas Black Farmers Assoc.)

Address: RR2 Box 132
Nicodemus, KS 67625

IV. TRAINING BENEFITS:

How will the training be used by the company?

enhance profitability of wheat production

V. ATTACHMENT(S)

1.) **Financial Statements**

2.) **Marketing Materials**

3.) **Signed Conditions of Training (one per person to be trained).**

VI. RECOMMENDATION FOR APPLICANTS:

(Complete only if the owner/operator will not be participating in the training program)

A) What do you want the applicant to learn through this training program?

that minority grain producers can use the capitalistic system to their advantage

B) How will the applicant's training be used when it is completed?

(1) shared with Kansas Black Farmers Assoc.
(2) business development of Nicodemus Flour coop

Signature: [signature] Date: 3-28-00

Name: Edgar J. Hicks Title: Marketing

Company: Nicodemus Flour Coop

Thank you for your application.

SEND THE COMPLETED APPLICATION AND ALL ATTACHMENTS TO:

Robert Zabawa & Miles Robinson
Tuskegee University
T.M. Campbell Hall Room 210
Tuskegee, AL 36088

USDA NEWS RELEAS

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Washington, DC 20250-1300 • Voice: (202) 720-4623 • Email: oc.news@usda.gov • Wet

Release No. 0238.00
Andy Solomon (202) 720-4623
andy.solomon@usda.gov

GLICKMAN ANNOUNCES ADDITIONAL FOOD DONATIONS FOR AFRICA, PLANS TO VISIT THREE AFRICAN COUNTRIES

WASHINGTON, July 17, 2000 -- Agriculture Secretary Dan Glickman today announced that the U.S. Department of Agriculture will donate an additional 350,000 metric tons of U.S. wheat, corn, rice, and other commodities to meet urgent needs in Africa and elsewhere.

"We are targeting these donations to drought-ravaged or war-afflicted countries, especially in the Horn of Africa where the drought continues to widen," Glickman said during remarks to the United Nations' Economic and Social Council. "These donations reflect the American tradition of sharing our abundance with the hungry, the displaced, and those who most desperately need our help around the world."

This year, USDA will provide a total of approximately 1 million tons in commodity donations for needy countries in Africa, nearly triple the tonnage provided for all of Africa last year.

Glickman also announced that he will travel to Africa later this month to visit Nigeria, Kenya, and South Africa. He will meet with government officials, business leaders, representatives of private voluntary organizations, and other African citizens to discuss agricultural trade, hunger, food insecurity infrastructure, and health care issues facing Africa today.

Of the approximately 350,000 metric tons in additional U.S. commodity donations announced today, about 310,000 tons will be distributed through the U.N. World Food Program. Countries that will receive commodities under this announcement include several in the Greater Horn of Africa, including Sudan and Kenya; Angola, Congo-Brazzaville, and Morocco. Recipient countries outside Africa include Afghanistan and Moldova. Specific commodities and quantities by country will be announced later.

Prior to this announcement, USDA had allocated more than 750,000 tons in U.S. commodities for donation to African countries under fiscal 2000 food aid programs, including nearly 600,000 tons for Ethiopia, Eritrea, Kenya, and Sudan.

The new donations, valued at an estimated $145 million, will be provided under USDA's Section 416 (b) authority. The donated commodities will be provided from Commodity Credit Corporation stocks acquired through surplus purchases.

Famine Threatens Ethiopia

Official: Economic Problems More to Blame Than Drought

Gode, Ethiopia — A famine is in the making in the arid reaches of Africa's Horn. Children by the hundreds already have perished in southeastern Ethiopia, and aid agencies are mounting a massive effort to prevent the country from once again becoming synonymous with starvation.

The United Nations warns that as many as 16 million people are at risk in 10 countries across eastern and central Africa, from Burundi to Eritrea on the Red Sea. The crisis is unfolding most dramatically here in Ethiopia's Ogaden region, where three years of drought turned wells steadily saltier, then dried them up.

Two hundred children younger than 5 died here in March, local officials say. In two nearby towns, children have been dying at the rate of a dozen a day since February.

"We know more people are going to die and we just can't do anything about it, quite frankly, because they're just so vulnerable by the time they get to us," said Judith Lewis, head of the U.N.'s World Food Program office in Ethiopia.

"My point to the international community is that we don't have enough," Lewis said. "We've got to have enough food on the high seas and into this country in June. By the end of June, I am out of food."

The food shortage is an economic problem that will persist until structural changes are made, said Nigel Roberts, the World Bank's director in Ethiopia.

Roberts said Tuesday that while the need for food assistance has increased significantly this year because of prolonged drought, the problems creating a potential humanitarian disaster will not disappear even if the rains come.

"(The food shortage) is a symptom of the overall level of poverty in the country," Roberts said. "When this emergency is over, the underlying structural problems will remain. ... It will take substantial commitment by the government and the donor community. It's important to understand that Ethiopia has persistent food crises."

Roberts said it was necessary to transform what is basically an agrarian economy by promoting development in urban areas and increasing the purchasing power of those living in drought-affected areas.

This report includes material from the Associated Press.

THE ASSOCIATED PRESS

FIGHTING FAMINE: An Ethiopian woman feeds enriched milk to her child at a feeding center in Gode. About 200 children younger than 5 years old died last month of malnutrition.

ANNOUNCEMENT KCPG5,
AS AMENDED
INVITATION NO. 204

United States Department of Agriculture
Farm Service Agency
Kansas City Commodity Office
Post Office Box 419205
Kansas City, Missouri 64141

TELEGRAM/TELEX/TWX 467094
EASYLINK 62140250
FAX NO. (816) 926-6381

Date: August 30, 2000

ANNOUNCEMENT KCPG5, AS AMENDED
INVITATION NO. 204
PURCHASE OF WHEAT FOR USE IN EXPORT DONATION PROGRAMS

The Commodity Credit Corporation (CCC) invites offers, subject to the terms and conditions of Announcement KCPG5, as amended, to sell to CCC for the following shipment period:

Offer 1: Up to 30,000 metric tons (1,102,300 bushels [CCC's option to contract up to 15 percent more]) of U.S. No. 2 O/B Soft wheat, 13.5 percent moisture maximum, dockage not to exceed 0.8 percent, WFP, Section 416 for Ethiopia.

SHIPMENT PERIOD: September 25, 2000 - October 10, 2000

Offer 2: Up to 30,000 metric tons (1,102,300 bushels [CCC's option to contract up to 15 percent more]) of U.S. No. 2 O/B Soft wheat, 13.5 percent moisture maximum, dockage not to exceed 0.8 percent, WFP, Section 416 for Ethiopia.

SHIPMENT PERIOD: October 15, 2000 - November 5, 2000

Offer 3: Up to 30,000 metric tons (1,102,300 bushels [CCC's option to contract up to 15 percent more]) of U.S. No. 2 O/B Soft wheat, 13.5 percent moisture maximum, dockage not to exceed 0.8 percent, WFP, Section 416 for Ethiopia.

SHIPMENT PERIOD: November 10, 2000 - November 25, 2000

Offer 4: Up to 30,000 metric tons (1,102,300 bushels [CCC's option to contract up to 15 percent more]) of U.S. No. 2 O/B Soft wheat, 13.5 percent moisture maximum, dockage not to exceed 0.8 percent, WFP, Section 416 for Ethiopia.

SHIPMENT PERIOD: December 1, 2000 - December 15, 2000

Offer 5: Up to 25,000 metric tons (1,102,300 bushels [CCC's option to contract up to 15 percent more]) of U.S. No. 2 O/B Soft wheat, 13.5 percent moisture maximum, dockage not to exceed 0.8 percent, WFP, Section 416 for Ethiopia.

SHIPMENT PERIOD: December 15, 2000 - December 30, 2000

OFFERS DUE: 2:00 p.m., CDT, September 6, 2000

AN EQUAL OPPORTUNITY EMPLOYER

Announcement KCPG5, as amended, Invitation No. 204

CCC will telephone notice of acceptance by: 9:15 a.m., CDT, September 7, 2000

All whole grain wheat (bagged or bulk) must be tested for deoxynivalenol (vomitoxin). Testing for vomitoxin is to be performed by the Field Management Division, FGIS, by sublot. A maximum level of 2 ppm (by sublot) is established under this Invitation for whole grain wheat exported for food assistance programs. Shipments exceeding these levels for vomitoxin will be rejected to the contractor's account in accordance with Article 60 of USDA-1.

CCC has the option to award less than quantity offered. Each offer will be analyzed independently. No offer will be contingent upon any other offer. The quantity contracted will be 5 percent more or less at CCC's option at contract price. Quantities loaded other than 5 percent tolerance will be settled in accordance with Announcement KCPG5, as amended, Paragraph 13(G).

FOB vessel, bulk carrier/ocean going barge named U.S. berth, possible multibottom.

Vessels must be able to be fumigated with an aluminum phosphide preparation in-transit in accordance with the USDA, FGIS Fumigation Handbook. Commodity supplier(s) to arrange and pay for in-transit fumigation performed by a certified applicator in accordance with the USDA, FGIS Fumigation Handbook. Fumigation must be witnessed by FGIS, USDA, and the aluminum phosphide preparation must be contained in packaging as described in the Fumigation Handbook. Dust retainers must be used. For bulk carriers (including push mode integrated tug barges) the recirculation method of fumigation will be used.

When the recirculation method is required, the contractor at the first port of loading will be responsible for arranging fumigation for the entire vessel. When the surface method is required, the contractor at the last port of loading will be responsible for arranging fumigation for the entire vessel.

Please provide separate commodity and fumigation offers on the enclosed Offer Form.

Demurrage and despatch shall be provided for as defined in the Charter Party. Demurrage, when applicable, will be paid directly to the vessel owner by the contractor. Despatch, when applicable, will be paid directly to the contractor by the vessel owner. Laytime issues are to be settled directly between the vessel owner and the contractor. Laytime calculations, overtime, and trimmings are to be resolved in accordance with Addendum No. 1 of the North American Export Grain Association, Inc., (NAEGA), FOB Contract No. 2 (Revised as of August 1, 1988), Clause No. 1-10 inclusive. Further, the following modification to NAEGA, Addendum No. 1, will apply:

> In NAEGA, Addendum No. 1, anywhere the word "buyer" appears, the words "vessel owner" should be substituted in its place.

Under no circumstances shall CCC be responsible for the calculation of laytime or the payment of demurrage or despatch between the vessel owner and the contractor.

Any/all disputes between the vessel owner and the contractor arising out of this contract relating to the settlement of laytime and/or the payment of demurrage/despatch shall be arbitrated in New York subject to the rules of the Society of Maritime Arbitrators, Inc.

Monitor Update: Late Claim Deadline

Date Issued: **August 14, 2000**
Update 001

Office of the Monitor
Pigford v. Glickman (D.D.C.)
Brewington v. Glickman (D.D.C.)
Post Office Box 64511
St. Paul, MN 55164-0511
Phone (toll-free): 1-877-924-7483

Late Claim Deadline

1. Introduction

On July 14, 2000, Judge Paul L. Friedman issued an important Order in the *Pigford* lawsuit that affects the filing of late claims. An Order from the Judge has the force of law.

The Order directs the Facilitator in the lawsuit to send a copy of the Order to a certain category of people. Because the Order is written in legal language, the Monitor's Office feels that a summary and explanation of the Judge's Order might help class members. If you would like to have a copy of the July 14 Order sent to you, please call the Monitor's office at 1-877-924-7483.

This update sets out to explain:

- What late claims are.
- When late claims are allowed.
- How to go about getting a late claim considered.
- The deadline for requesting late claim eligibility under the Judge's new Order.
- The deadline for filing a claim if the late claim is allowed.
- What to do if you have questions about this Monitor Update.

2. Late claims—what are they?

In order to be a part of the *Pigford* lawsuit—that is, to be eligible for adjudication under Track A or arbitration under Track B—each person must send to the Facilitator what is known as a Claim Sheet and Election Form. The Consent Decree in the lawsuit—the Consent Decree is the agreement that contains the terms of the settlement—set a deadline for filing the Claim Sheet and Election Form. This deadline was October 12, 1999. Any claim postmarked after October 12, 1999, is a late claim.

3. Some late claims are allowed

In some cases, it is possible for a person to be a part of the lawsuit even if his or her claim was filed late. The Consent Decree allows a person to be a part of the case if the person has shown that his or her failure to submit a claim on time was "due to extraordinary circumstances beyond his [or her] control."[1] In other words, someone whose Claim Sheet and Election Form was postmarked after October 12, 1999, can be eligible for Track A adjudication or Track B arbitration if the reason the claimant was late in filing was due to extraordinary circumstances beyond the claimant's control. The Court has directed the

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[1] This language is found in section 5(g) of the Consent Decree.

Consent Decree's Arbitrator to decide whether the failure to file the claim on time was due to extraordinary circumstances beyond the claimant's control.

4. How late claims are allowed

Three important rules apply when a claimant files a late claim. First, the claimant must file a written request for permission to file a late claim. Please note that the request may not be by phone or other means—it must be in writing. These requests must be filed with the Facilitator. The Facilitator's address is Claims Facilitator, P.O. Box 4390, Portland, OR 97208-4390. The Facilitator records the requests and sends them to the Arbitrator.

Second, the written request must explain in detail the extraordinary circumstance or circumstances beyond the claimant's control that prevented the claimant from filing a Claim Sheet and Election Form on time. The Arbitrator needs to know exactly why the person could not file the claim on time and why that reason was beyond the control of the person.

Third, the Arbitrator's decision on this matter is final. There is no Monitor review of the Arbitrator's decision regarding whether or not a late claim is allowed. This makes it all the more important for people to make sure that the written request for permission to file a late claim explains all of the relevant facts.

5. Judge's new Order—deadline to request permission to file a late claim

The Judge's July 14, 2000, Order sets a deadline for submitting a written request to file a late claim. **That deadline is September 15, 2000.** In order to meet the deadline, the written request must be postmarked by Friday, September 15, 2000. The Judge has ordered that no extension of this deadline will be allowed for any reason.

6. After the Arbitrator decides about the late claim

If the Arbitrator decides that the claimant was unable to file a Claim Sheet and Election Form due to extraordinary circumstances beyond the claimant's control, the claimant is eligible to file a Claim Sheet and Election Form to participate in the lawsuit.

If the Arbitrator decides that the claimant **was not** prevented from filing a Claim Sheet and Election Form on time because of extraordinary circumstances beyond the claimant's control, that claimant is not eligible for either Track A Adjudication or Track B Arbitration. No appeals from this decision are possible, and a person may not seek another ruling from the Arbitrator.

7. If the Arbitrator decides in favor of claimant—60 days to file a claim form

If the Arbitrator grants a claimant's request to file a late claim, the claimant may file a Claim Sheet and Election Form with the Facilitator. The Claim Sheet and Election Form must be postmarked no later than sixty days from the date of the letter from the Arbitrator notifying the claimant that his or her request for relief has been granted. No extension of this sixty-day period will be granted for any reason.

8. More information

Anyone who has questions regarding late claims should feel free to call the Facilitator toll-free at 1-800-646-2873.

USDA FOREST SERVICE
HISPANIC-AMERICAN CLASS ACTION NEWSLETTER
Newsletter No. 3

June 14, 1999

Update on Class Complaint

On March 10, 1999, the class agents received from the Equal Employment Opportunity Commission (EEOC) an interim ruling and order defining the accepted issues as follows:

- Whether the Forest Service, U.S. Department of Agriculture (agency), discriminated against the class agents and other members of the class on the basis of national origin (Hispanic) in selection, promotion, appraisal, awards, and training programs.
- Whether the Forest Service, U.S. Department of Agriculture (agency), discriminated against the class agents and other members of the class on the basis of national origin (Hispanic) by failing to remedy a working environment that is hostile to Hispanic employees.

This ruling is viewed as a positive step in framing these important issues alleged by the class for review by the EEOC. We are currently in the "discovery" phase of the EEOC procedure in reference to certification of the class. What this phase involves is an exchange of requirements to be certified to proceed as a "class" - basically that we have such a large number of class members that to solve these problems would be burdensome and inefficient and that the claims of the class agents are representative of the types of discrimination suffered by the members of the class. Once the certification discovery period is concluded, the EEOC will make a determination as to whether class certification is appropriate. We anticipate that this decision will be made within the next few months.

In reference to the attorneys' effort to informally resolve this matter, the Agency has made no efforts to engage in any type of settlement dialogue since our December 1998 request that they make some gesture to prove that they would like to negotiate a resolution in good faith. Although Chief Dombeck did articulate a desire to resolve this matter in a fast manner, the attorneys for the Agency have indicated that they are not prepared to move on the Chief's recommendation at this time.

Class Agent Added - Richard Salazar, Contract Specialist in the Washington Office, has been added to the list of class agents. Richard, like the other class agents, will provide information that will assist the attorneys in performing legal services on behalf of the class.

Chief Dombeck Comments on Class Complaint

In an article appearing in the Silver City Daily Press on June 7, 1999, during a recent visit to Silver City, New Mexico, Chief Mike Dombeck was asked to comment on the class action complaint brought against the Forest Service by Hispanic employees. When asked if there is an inequity of Hispanic representation in New Mexico in forest management positions, Chief Dombeck cited statistics that Hispanics make up 47 percent of the population of the state, and acknowledged that "there is a problem" and said action would be taken. He called the issue one that is "high on the radar screen."

FSHEA-Zone 7 Demonstrates Support and Commitment to Class Action

QUESTIONS AND ANSWERS

SEPTEMBER 12, 2000

Jonathan Lehman (Harkin)

Questions from Senator Charles Robb

1. To Mr. Fiddick:

   You indicated that cases that have been settled will still be referred to your office for further disciplinary review. Will all settled cases be referred or will your office only handle a subset of those cases?

Background: Mr. Fiddick said in a July 11, 2000 meeting with my staff that only those cases which are settled for over $25,000 will be referred to Human Resources for further review and possible disciplinary action.

2. To Mr. Rawls:

   Without commenting on the substance of the suits, how close is the Department to settling the two major class action employee lawsuits?

Background: In a July 11, 2000 meeting with my staff, an official from the Office of General Counsel indicated that the lawsuit involving Latino employees would be settled within 60-90 days. She also indicated that, with regard to the Donnelly class action suit, the USDA was "waiting on DOJ."

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