ABA COMMISSION ON
HISPANIC LEGAL RIGHTS & RESPONSIBILITIES

WEST COAST REGIONAL HEARING I
SAN FRANCISCO, CALIFORNIA
(TIMED)
Thursday, January 13, 2011

Location: Irving G. Breyer Board Room
San Francisco Unified School District
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West Coast Regional Hearing I

Date: Thursday, January 13, 2011

COMMISSION MEMBERS IN ATTENDANCE:

CESAR ALVAREZ, CHLRR Chairperson, Executive Chairman, Greenberg Traurig, LLP

PROF. JENNY RIVERA, CUNY Law School

THOMAS SAENZ, General Counsel & President, MALDEF

ANGELA OH, Executive Director, Western Justice Center

HON. KIM McLANE WARDLAW, U.S. Court of Appeals, 9th Circuit

FRANCISCO (FRANK) R. ANGONES, Angones, McClure & Garcia

MARIBEL MEDINA, General Counsel, San Francisco Unified School District

EDUARDO PADRON, President, Miami Dade College

DIANA SEN, HNBA President

HON. CHARLES Z. SMITH, Supreme Court of Washington

ALLAN J. TANENBAUM, General Counsel & Managing Partner, Equicorp Partners, LLC
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PROCEEDINGS

MR. ALVAREZ: Good morning, everyone. My name is Cesar Alvarez. I'm the chairman of the Commission under Hispanic Legal Rights and Responsibilities, and I would like to call this public hearing to order. This is our second public hearing. We had one in Chicago earlier.

The first order of business would be to call upon the superintendent of the Unified School System here in San Francisco, Carlos Garcia, for some welcoming remarks. Carlos.

WELCOMING REMARKS BY CARLOS GARCIA

MR. GARCIA: Buenos dias. Good morning. Welcome to San Francisco. It's always great to have a commission like yours here in our board room. I'm usually on that side, so it feels good to be on this side of the podium. I do want to welcome you because the issues that you're -- I looked at your agenda, and it's great that you've asked some students to come because I really do think that sometimes the most important voices aren't heard, and the most important voices, especially in education, are our children.

I want you to know that here in San Francisco
we take social justice as a really critical issue. In fact, you're sitting in the place where, you know, Lau versus Nichols is such a critical part of the law across this country, and we're proud of that here in San Francisco. We have a lot of firsts. I know sometimes people see us as a city that's a little on the left. We see that as just being progressive and dealing with issues that are good for all children in America and not just for some.

I also come to you as the president of ALAS, which is the Association of Latino Administrators and Superintendents. It's the only administrative national educational organization that deals with issues of Latinos, and it's really exciting to be a part of that because, you know, just think -- when you listen to the students, I hope that you keep in mind that the most important thing is: When does it become a crisis in America when you talk about rights for Latino students. When you have over 50 percent of Latinos across this country not graduating from high school, I don't think that all of society would accept 50 percent of the predominant society flunking out of high school, so why would we accept that 50 percent of African-American and Latinos are.

So I hope that that becomes a focus because I
think the most fundamental right in America needs to be
having the right to a proper education to be successful.
So welcome. It's a pleasure to have you here.

MR. ALVAREZ: Thank you very much, Carlos, and
thank you for allowing us to use your facilities and for
permitting the students to participate today. As you
said, that's an important part of what we want to do.
Thank you very much.

Before I tell you a little bit about the
commission, I thought I would allow the introduction by
themselves, briefly, of each of the commissioners here
so you know the people that are involved. Why don't we
start with Allan.

Allan, if you would tell us a little about you
so the folks are able to understand the commission
members.

MR. TANENBAUM: Thank you. I'm Allan Tanenbaum
from Atlanta, Georgia. I've been in private practice
for a number of years and counsel of a public company,
and now general counsel of a private investment company.

MR. ANGONES: Francisco Angones from Miami,
Florida. Past president of the Florida Bar.

MS. MEDINA: Maribel Medina, general counsel
for San Francisco Unified School District.

MR. ALVAREZ: Tom, we'll go to you.
MR. SAENZ: Thomas Saenz, president and general counsel of MALDEF, Mexican-American Legal Defense and Educational Fund in Los Angeles.

MR. PADRON: Eduardo Padron, president of Miami Dade College in Miami, Florida.

MR. ALVAREZ: My name is Cesar Alvarez. I'm the executive chairman of Greenberg Traurig. I'm a prior graduate of Miami Dade College, and I have him right next to me so he will not be able to disclose my grade point average from my Miami Dade days.

MS. RIVERA: I'm Jenny Rivera. I'm a professor of law at the City University of New York School of Law. I'm currently visiting at a law school in D.C., and I also serve as a reporter for the commission.

MS. OH: Good morning. Angela Oh, executive director of the Western Justice Center Foundation which is based in Pasadena, California.

MS. WARDLAW: Good morning. I'm Kim Wardlaw, and I'm a judge at the 9th Circuit Court of Appeals which is based here in San Francisco, and I was born in San Francisco and ultimately graduated from high school in San Jose Pioneer High School. So I've had the benefit of this great public education. Thank you.

MS. SEN: Good morning. My name is Diana Sen, and I'm president of the Hispanic National Bar Association, and I'm from New York. I live in New York City.

WELCOME AND PRESENTATION OF TESTIMONY

BY CESAR ALVAREZ

MR. ALVAREZ: Thank you. Obviously, we have a number of additional commissioners. I think you have materials that will show you who they are. I would be remiss if I did not mention our honorary chairman that we have. We have Emilio Estefan, well known in the entertainment business. Amelia and Gloria are very well known all over the world.

We have Mel Martinez who was the past Senator from the state of Florida to the U.S. Senate, and we have Governor Bill Richardson from New Mexico. As you know, Governor Richardson is -- has quite a career -- quite a varied career, and I don't know of a better known Hispanic Latino in the United States, both in Hispanic and Latino communities and in the entire community of the United States. So we have put a very serious group of folks to look into this.

Let me tell you a little bit about the commission. The commission was really thought of by Steve Zack. Steve Zack is the current president of the
American Bar Association. The American Bar Association
is a voluntary association of lawyers in the
United States. It is the largest voluntary association
of any kind in the world and certainly a very
influential group in the United States.

Steve is the first Hispanic -- the first Latino
-- to be president of that organization, and as such,
obviously Hispanic and Latino issues are very personal
to him, and he conceived of having a commission that
would look at the rights and responsibilities of
Hispanics and Latinos in the United States; particularly
as it deals in the legal marketplace and our access to
all of the democratic -- how we could operate better in
the judicial system and the democratic system of
government in which we have, and we're blessed to have,
in this country.

Very simply, the commission is looking broadly
as to what issues may be important to Hispanics and
Latinos here in the United States. We'll be having
several of these hearings. (Cell phone rings)

I apologize. I guess Steve didn't like what I
was saying. We'll be having several of these hearings.
We'll be hearing from a lot of folks that will be able
to narrow the issues in which we believe, A, that having
the ABA, which is a mainstream national organization
that is not just a Hispanic organization but a
mainstream organization, could be of tremendous help in
advancing some of these issues for us, and we will be
proceeding to -- basically we'll be a couple of years of
trying to get all of these issues down and presented
both to the ABA and to other organizations that may be
able to be helpful in these areas.

Our goal here is pretty much as the title of
our commission says, "the rights and responsibilities."
We feel that we are to look at things in which we as
Hispanics and Latinos are not getting equal treatment in
the United States and, therefore, we need to get there.
At the same time, we also want to look at things that
actually are happening that are good for our community
or where our community itself can help itself. And we
want to encourage our community to engage in those
activities also. So it's a well-balanced commission
that is looking not only at responsibilities but also at
issues in which, you know, we are not getting equal
treatment.

You know, the way I generally like to express
it in very shorthand is that as a Hispanic -- as a
Latino myself, I don't want anybody to give me anything,
and I don't want anybody to take anything away from me.
I just want to be treated equally like everyone else. I
think with most Hispanics and Latinos, that's what they
want, and that's basically the goal of the commission.

Having said that, I think we are ready for our
first witness, who also happens to be one of our
members. And the first panel would be the state of the
legal landscape and it's impact on Latinos in the U.S.,
and Tom will be our first witness. He is the president
and general counsel of the Mexican-American Legal
Defense and Education Fund. Tom, I'll turn it over to
you.

**PANEL 1 - The State of the Legal Landscape and its
impact on Latinos in the U.S.**

**SPEAKER: THOMAS SAENZ**

**MR. SAENZ: Thank you. Good morning. It's
indeed an honor to be a member of this commission which
is so much needed at this particular time in our
country's history, but I am testifying before you this
morning as the president and general counsel of MALDEF
Mexican-American Legal Defense and Education Fund. For
those of you who may not be as familiar with MALDEF, we
are a 43-year-old nationwide civil rights legal law firm
whose mission is to promote the civil rights of all
Latinos living in the United States. We are
headedquartered in Los Angeles, California.

So those of you who are not from California,
let me welcome you to our great state. We also have offices in San Antonio, Texas, where we were founded in 1968; in Chicago, Illinois; in Washington, D.C., with a satellite office in Sacramento, California. We are looking in the future to return to the south. We had an office in Atlanta, Georgia for eight years until financial circumstances required us to close that office some two years ago.

I have been a member of the American Bar Association for 20 years since I graduated from law school, and I must say that when President Zack established this commission my first reaction was that it was long overdue. So I want to begin by publicly thanking President Stephen Zack for his initiative and wisdom in establishing an ABA Commission on the Hispanic community, specifically on Hispanic legal rights and responsibilities.

My reaction was that it was long overdue, and I think that's a fair response that many of you may have had as well. We have been a part of this country and a part of its legal system for so long that it's long past time that there should be particular attention by an organization, like the ABA, to the needs of the Latino community. That said, even though it is long overdue, one could also say with fairness that this is the right,
the most auspicious historical moment for the
establishment of this commission. Because we know
currently in 2011 and in 2010 each day's new cycle seems
to bring a new -- newly articulated or rearticulated
threat to the basic rights of significant numbers of
folks in the Latino community.

As good an example of this phenomenon as any is
the opportunity -- the dubious opportunity that I had
last week. Some eight days ago, I took the chance to
 crash a press conference at the National Press Club in
Washington, D.C. The press conference was being held by
a coalition of legislatures representing a number of
states -- intolerant state legislatures who were
presenting their plan put together with the assistance
of a number of members of the legal community --
presenting their plan to challenge the citizenship
clause of the 14th Amendment. The longing-standing, the
long-practiced legal requirement that anyone who is born
in the United States is a citizen of the United States.

The plan that they presented would use the
state legislation to attempt to trigger a legal
challenge that, it was their hope, would go to the
United States Supreme Court. Their plan involved two
steps. They planned to introduce and seek the enactment
of state laws in at least the eight states represented
at the press conference that would create a new state
citizenship that would be different from the national
citizenship, and that would seek to deny that state
citizenship to anyone, any child born in the
United States whose parents were undocumented.

Their second step would be a compact, again,
enacted in state legislatures around the country, to
seek to change the national rule in existence since the
end of the Civil War and the adoption of the 14th
Amendment that anyone born in the United States is a
citizen. Of course, their plan is based on three faulty
premises, premises that violate the very basic
constitutional principles not just of the 14th Amendment
but of this nation's founding and continued thriving.

First they seek to resurrect the notion of a
state citizenship that is different from national
citizenship. This is the very basis of the enactment of
the citizenship clause in the 14th Amendment. It was
designed to prevent there being different levels of
citizenship depending on the state in which someone
lived or moved to. It seems a particularly
inappropriate resurrection of a dated notion in a day
and age when people travel regularly, when people move
throughout their lives, and very rarely do people
continue to stay from birth to death in a single state.
They seek to resurrect the notion of a state citizenship as distinct from the United States citizenship.

The second faulty premise is that, because there was no phenomenon of undocumented immigration at the time the 14th Amendment was adopted in the mid 19th century, there is no applicable precedent. This is demonstrably untrue because the Supreme Court in the late 19th century in the Wong Kim Ark case concluded with respect to the group that at that point in time was most analogous to the undocumented today. Specifically, those immigrants who by force of federal law and by force of their racial background were denied the right to be citizens themselves; prevented from naturalization.

In Wong Kim Ark, the Supreme Court determined that the 14th Amendment means that, even though those immigrants were not allowed to become citizens, their children born in the United States were, by virtue of the citizenship clause, automatically United States citizens. That is the closest analogy from the 19th century to the undocumented population today and seems to be a clear precedent establishing the unconstitutionality of the plan put forward eight days ago.

The third faulty premise, one that would, if it
prevailed in defining how we as a nation conceive of citizenship -- would undercut the citizenship in the paths of our founders; of many presidents of the United States. Specifically, their basic premise is that anyone who is an immigrant to this country is not legally processed as such; whose allegiance to a foreign government therefore is not subject to the jurisdiction of the United States; therefore, is not a citizen, and their children, even if born in the United States, cannot be citizens. That's the basic philosophy behind their attempt today to deny citizenship to children born to undocumented parents.

If you apply that theory in the past, it would mean that anyone whose ancestors immigrated before we had immigration regulations at all -- which are in our history a relatively recent phenomenon, specifically anyone whose ancestors immigrated to this country prior to the mid 19th century -- never went through a legal process in immigrating. By the theory of these legislatures, those immigrants owed allegiance to a foreign government. Their children could not be citizens of the United States.

So the plan put forward eight days ago not only directly attacks applicable precedent from the Supreme Court, not only directly assaults longstanding notions
of United States citizenship, but seeks through its
philosophical underpinnings to undermine the whole
notion of our historical leadership in this country.

I have to say that as ideologically and
theoretically troubling as what was presented eight days
ago is, particularly seeing legislators who by virtue of
their office have all taken an oath to uphold the
Constitution of the United States articulating a plan
put together with members of the legal community to
directly attack longstanding constitutional principles,
but as ideologically and theoretically troubling as that
is, the proposal was not as practically troublesome as
some others that have been floated publicly recently.

Specifically, you may all be aware that Senator
Russell Pearce, the state senator out of Arizona who is
author of SB 1070, about which I'll talk in a moment,
has proposed creating legislation in Arizona that would
make it difficult, if not impossible, for those children
born of undocumented parents to obtain a birth
certificate by creating fines and other disincentives to
obtain a birth certificate. This would create stateless
children who while theoretically and in legal fact
United States citizens by virtue of the 14th Amendment,
these children would have no ability, no documentary
evidence, to demonstrate and prove their citizenship.
That is an even greater practical impact than what was presented eight days ago. But these examples of assaults on the citizenship clause are only the most recent examples of what we have seen increasingly of late, which is what I believe has precipitated a constitutional crisis, not just for the Latino community, but for an entire nation. As we see, too many elected officials and candidates for elected office are championing an open disrespect for our constitutional established principles and values and seeking publicly to challenge through legislative action and administrative action the actual implementation and continued compliance with those constitutional principles.

It's perhaps appropriate we are here in California because we have in some ways seen this before. Sixteen years ago with Proposition 187, California enacted through popular initiative in November 1994, new state law that would challenge the rights of immigrants to obtain public services of all kinds. What is of particular note in my testimony today is that one provision of that initiative -- one provision would have directly confronted and by its own terms contradicted the Supreme Court decision. That was then, at that point, 12 years old, in Plyler vs. Doe.
Plyler vs. Doe, decided in 1982, is a decision by the Supreme Court that established for all time that our Constitution does not permit charging tuition or preventing the enrollment of any child in public school from kindergarten through 12th grade on the basis of immigration status.

Proposition 187, by its very terms, sought to contradict that and would have barred the enrollment in public education of any undocumented child. What is astounding is that the proponents of Prop 187 at that time, 16 years ago, were quite clear about what they were doing. They knew that that provision directly violated Supreme Court precedent, but they were seeking through its enactment to create a test case to go back to the Supreme Court in the hopes that a newly configured court would reach a different conclusion.

What is different about what happened with Proposition 187 and what is going on today is that the proponents of 187, members of the public, who through signatures of electors qualified the initiative for the ballot. The authors and proponents were not elected officials. None of them had taken an oath as a part of taking office to uphold the Constitution of the United States. What we have today, beginning with SB 1070 when it was enacted in April of 2010, are public
officials who have taken that oath who are openly
seeking to challenge, disrupt and overturn long-standing
constitutional principle. The danger of SB 1070, which
I'll describe in a moment, is compounded by the many
publicly stated intentions by elected officials and
candidates for office to replicate that legislation in
some form in their own states. The danger in 2011 is
that we will see a plethora of such proposals actually
enacted and attempts to implement these violations of
constitutional law and principle.

SB 1070 itself -- I'm sure most of you are
familiar with it -- assaulted a number of
well-established constitutional principles. First of
all, by requiring every law enforcement agent in Arizona
to basically engage in enforcement of a status crime
specifically to enforce a new state law making it
unlawful to be undocumented in Arizona. Those law
enforcement agencies in enforcing that status crime
would have been required to engage in inappropriate
racial profiling. When you enforce a status crime you
have nothing -- no acts to base your conclusions on. So
you look at indicators of status. Those were likely to
be race, ethnicity, accent, language, last name, and
other inappropriate bases of police action.

Now, this mandate of racial profiling directly
confronts the principle of equal protection in the 14th Amendment, clearly established in 1954 in Brown versus Board of Education, as prohibiting race-based action by law enforcement and other state agents.

Second, in a provision of SB 1070 not often remarked upon, there is a direct attack on the 1st Amendment. The protection of free speech in the 1st Amendment so longstanding in this country clearly prevents any state or local agency from deciding who among its residents will be allowed to engage in free speech activities. But on its face, SB 1070 would specifically single out the undocumented, and with respect to that group and that group alone, prevent them from engaging in solicitation of employment. Free speech.

Finally, in what has gotten the most attention in the press and in the court is the violation of the supremacy clause that is inherent in SB 1070. The supremacy clause which renders all federal law supreme, but particularly with regard to immigration, makes it clear that only the federal government may engage in regulation of immigration and the conditions under which immigrants can remain in this country. That supremacy clause is directly violated by SB 1070. Indeed in Section 1 of SB 1070, Arizona articulates its own new
state policy with respect to immigration regulation. Something the legislation calls attrition through enforcement is specifically identified as a state public policy in the area of immigration. On it's face, that kind of acclimation would seem to indicate a direct violation to the supremacy clause.

What I see in SB 1070 and the many attempts to replicate it is the constitutional crisis that I alluded to earlier. This is a crisis in some ways unlike others we have seen in the past, but in some ways it is like what we have seen most recently following the Supreme Court's decision in Brown versus Board of Education.

Following that decision, which was a change in constitutional law, an appropriate and unanimously arrived at change, but a change of existing precedent from the late 19th century that pronounced separate but equal facilities -- public facilities to be constitutional. Brown versus Board of Education, while unanimous, was greeted with opposition from some elected officials, particularly in the south. Governors and others articulated their view that they had the right as state elected officials to nullify the decision of the Supreme Court, to ignore it, to fail to apply it with impunity.

What I see today is a new nullification, the
notion that elected officials, because they are state
elected officials, have the right and ability to ignore
the Constitution. To nullify constitutional principle
is a dangerous notion. It is the constitutional crisis
that I think the Latino community and the broader
American public faces today.

An important distinction from that last
nullification and this new nullification is that these
new champions of nullifying constitutional principle and
values are not attacking a change in constitutional law
as occurred with Brown versus Board of Education. They
are attacking longstanding constitutional values and
principles. As I mentioned previously, perhaps the
youngest of these principles is a principle established
in Plyler vs. Doe, which at this point is now 28, 29
years old. The other principles that they attack go
back to the 14th Amendment, to the 1st Amendment, and to
the Constitution's very adoption with the inclusion of
the supremacy clause when it was ratified.

That is why I think this is an auspicious
historical moment for a commission on Hispanic legal
rights and responsibilities. We are at the forefront of
a constitutional crisis precipitated by hostility toward
the Latino community, but this is a crisis that ought to
be of concern to the broader legal community represented
by the ABA as well as to the general public. But I also
mentioned that in some ways this commission is long
overdue, and I think it's important to note that much of
what occurs today for the Latino community in the legal
system, particularly with respect to constitutional and
civil rights, grows out of the fact that historically
our legal system has had difficulty in accommodating and
addressing the discrimination directed at the Latino
community. Too often, the legal community has struggled
with applying it's established legal principles to new
forms of discrimination targeted at the Latino
community.

This goes back at least to the historical case
of Hernandez versus Texas, decided by a unanimous
Supreme Court in 1954 of the same year as Brown versus
Board. In Hernandez versus Texas, the Supreme Court's
first opportunity to address in one of it's decisions
the growing Latino community was a challenge to jury
exclusion in Texas. It came to the Supreme Court
precisely because the Texas legal system had struggled
with how to apply precedent established in the 1930's by
the Supreme Court for the African-American community to
the Latino community.

Specifically, once the Supreme Court concluded
through the exclusion rule that a pattern of exclusion
of African-Americans from juries was prima facie proof of unconstitutional discrimination, Texas struggled with whether that could or should apply to the Latino community, and many Texas prosecutors came up with a dodge, a way to get around that precedent, by arguing, in many cases for the first time, that the Latino community was not a separate race, but was a part of the right race; the white race. And as a result, at their exclusion from a jury was intraracial, not interracial, and therefore the argument was that the jury exclusion rule that applied to the African-American community should not apply to Latinos.

Now, the Supreme Court rejected that notion in Hernandez vs. Texas, but it did so not by questioning the recently developed conclusion that Latinos were a part of the white race but by concluding that regardless of what you called it, it was still discrimination and unconstitutional. But it was the first indication that legal doctrine would struggle with the Latino community.

What we see in our later Supreme Court decisions that distinguish racial discrimination from discrimination on the basis of language or discrimination on the basis of citizenship and alienage is the result that too often discriminators choose to engage in discrimination against Latinos by proxy. They
don't label what they are doing as discrimination against Latinos per se, but as discrimination on the basis of language, accent, citizenship, alienage, legal status or other proxies they view as applying in large part to the Latino community. This phenomenon of discrimination by proxy has precipitated a struggle ongoing in the legal community with how to apply existing doctrines prohibiting discrimination against the Latino community.

This long history indicating why this commission is so overdue and the more recent historical moment, the constitutional crisis that we face as a nation, are indications of why it's so important that this commission has been established. I have to admit to my fellow commissioners that I once flippantly remarked to a friend on the title of our commission -- the Commission on Hispanic Legal Rights and Responsibilities. I flippantly said that I wasn't sure what the responsibilities portion was about, but in preparing for today's testimony, I now understand what that means. Specifically, I think it is clear that the Latino community has a responsibility, a critical responsibility, to champion a vindication of constitutional principles and values because we are at the forefront of the constitutional crisis that I have
described.

We need as a community to be the champions of ensuring that our legal system is able to address concerns of the Latino community, concerns of discrimination regardless if that discrimination occurs by a proxy or directly. We need to be the champions of a more comprehensive public understanding and support of all constitutional principles. We cannot rely solely upon the 14th Amendment as critically important as it is in its equal protection clause, due process clause, and citizenship clause. If recent events teach us anything it is the importance of understanding and respecting as well the structural elements of our Constitution, including the supremacy clause. But one could also add to that the 10th Amendment. I think I have the distinction of being the first civil rights lawyer to bring a case under the 10th Amendment some 15 years ago.

We also have to add to that, respect for other elements of the Constitution not often thought of in terms of the Latino community or in terms of civil rights. Clauses like the Takings Clause. I look forward to eventually having MALDEF bring a challenge under the Takings Clause to some of the proposals out there that would deny the continued existence of businesses on the basis of the legal status or the
citizenship of their owners. We need to champion all constitutional doctrine.

Furthermore, and I will end with this, our responsibility as a community to vindicate constitutional values also has to extend to ensuring that constitutional values are applied even where they are not required to be applied. Specifically, in the context of federal immigration law, our Constitution permits open violation of constitutional principles that would apply elsewhere. Under the doctrine of Plan and Repower, our Congress can and has enacted immigration laws that on their face discriminate on the basis of natural origin.

Specifically, today in 2011, you can have two similarly situated immigrants -- potential immigrants -- each of them with the same relationship to someone in the United States. Take, for example, the adult children of the United States citizen. Two equally situated adult children of United States citizens. One from Mexico; one from a country elsewhere in the world. The one from elsewhere in the world, whether it's Europe, whether it's Africa, whether it's most countries in Asia, will wait four years. Four years in line to receive a Visa to immigrate legally to this country. The similarly situated immigrant from Mexico will wait a
minimum of 18 years to obtain the same Visa to immigrate legally to this country. That is because on it's face our federal immigration law discriminates on the basis of natural origin.

If what I described was a waiting time of 4 versus 18 years was solely premised on the country from which someone descends were to apply in any other area of public policy, it would be immediately struck down in a federal challenge, but because this is federal immigration law, it is permitted under the preliminary power assigned by the Constitution to the Congress. What we as a community need to do is to ensure that even where the Constitution does not, per se, require compliance with constitutional values that we urge law makers to embrace those values and incorporate them into law, like immigration law, where the Constitution does not require respect for equal protection.

So our responsibility as a community is to vindicate constitutional values, to have a comprehensive support of our entire Constitution, and to ensure that there is respect throughout the public, and particularly among elected officials for those constitutional values as an important responsibility for the Latino community. I close by saying that it's not a responsibility that the Latino community must bear
alone. In particular, legal organizations like the
American Bar Association must be partners in vindicating
those constitutional values and principles, and we must
work together to have that vindication of constitutional
principle pervade our entire society and require the
support of the general public.

Thank you all for the opportunity to address
you this morning.

MR. ALVAREZ: Thank you, Tom, for your well
articulated remarks which we very much appreciated. I
would like to open it up for the members of the
commission. Allan?

MR. TANENBAUM: You are aware, and hopefully
others are, that the American Bar Association, in fact,
filed an Amicus brief -- in fact, two Amicus briefs.
One in a case in Arizona brought by the Justice
Department and one brought by MALDEF. In thinking what
this commission can develop in terms of recommendations
to the American Bar Association and its ability within
its own charter to effectuate change or encourage
change, what else with respect to the particular issues
in the Arizona case should the American Bar consider
doing in addition to filing the Amicus briefs in obvious
support of all of the principles of constitutional
rights and protections that you've articulated in your
testimony? What should we recommend?

MR. SAENZ: Thank you. I think that, first of all, the fact that the American Bar Association filed those Amicus briefs was very much a welcome development in those cases. I think the ABA, like those of us who participated in filing some of those cases, faces a potential flood of such litigation. Depending on how many replications there are of SB 1070 and in what form and in what states, there is going to be an avalanche of litigation in this area. So I think we need to try to work proactively to ensure greater respect for these constitutionals at the point before these proposals are enacted and signed by governors in their attempts to implement them.

What that means in my view is potentially championing a congressional statement about, for example, what supremacy means in the arena of immigration regulation. I believe the Constitution is clear. In terms of the exclusive responsibility of the federal government, I believe the Supreme Court has been clear particularly through the case of La Canos (phonetic) versus Beeka (phonetic) about what precisely is covered by the supremacy laws with respect to immigration regulation. But absent an even clearer statement in the context of these proposals from the
United States Supreme Court, the Congress can act. The Congress can state, we believe this is the scope of what is appropriate federal regulation and, therefore, inappropriate state or local regulation. We now see what the examples are. It's not just SB 1070.

Even prior to SB 1070 and between 187 and the enactment of 1070, we saw a number of local ordinances in Hazelton, Pennsylvania and Farmers Branch, Texas that saw at the local level to restrict rights on the basis of immigration status, including the right to rent housing, for example. A clear statement from the Congress about what is appropriate state regulation and what is inappropriate state regulation would go a long way toward detouring the avalanche of legislation and the inevitable litigation that would follow. That's the kind of legal reform -- preventive legal reform that I think the ABA could be a part of.

Second, I have the need to champion the Constitution in all of its structures and in all of its requirements. I think there's often a segregation, if you will, of different portions of the Constitution. If you're interested in civil rights, you focus on the 14th Amendment. If you are interested in civil liberties, you focus on the 1st Amendment. There's not much discussion in the popular media and not much
appreciation for the importance from a rights-preserving perspective of the structural elements of the Constitution's supremacy clause, 10th Amendment, and some of the others that I've mentioned.

I think the ABA needs to be, as the leading legal organization of the country, a champion for recognizing that it is seen, and we have to have respect for all of the elements of the Constitution to ensure that all folks' rights are respected.

MR. ALVAREZ: Anyone else that would like to ask a question? Tom, I would like to ask one brief question that's historic in nature, and I think it's interesting that we happen to be here in California in San Francisco. As you mentioned during your testimony, laws regulating migration to the United States are very much of a recent vintage, which I think most of the public does not understand, and if my history serves me correctly, the first law was really on citizenship and preventing Chinese from becoming citizens of the United States.

If you could just spend two or three minutes and give us a little historical perspective of when these laws started and how that developed, I think it may be useful for the rest of us.

MR. SAENZ: Thank you. I think what you just
pointed out is absolutely true. I think there's a tremendous amount of ignorance in immigration law history and even its particulars today. In fact, when I go to speak to groups about these issues, I tell them there are two areas of the law where the code books are thick, complicated, and very few people across the country could say that they are experts on these two areas of the law. Despite that fact, these are two areas of the law that everyone has an opinion. Those two areas are immigration and tax, and I think they are similar in that respect that there needs to be a greater understanding of the history and development of these laws that we have today.

Prior to the mid 19th century, there were no immigration regulations in this country whatsoever. Even after that we didn't actually begin regulating who was entering except with respect to those who were coming from overseas. So there was no land immigration regulation for an even longer period of time. I'm not an expert in this area, but I can certainly provide at a later point, as a member of the commission, some scholarly resources that describe all of this. That's important for people to understand that there has always been -- that there has not always been a regulation of immigration, particularly from those countries that
are -- have land borders with this country. What people also need to understand is that the evolving of our law in general is not what we've necessarily been led to believe.

I think the greatest misunderstanding, and it goes directly to what I described in my testimony, is we were all told in school -- if we got to this portion of the class in United States history or American government, we were all told that in 1968 this country abandoned its previously discriminatory immigration regulatory system. It is true that prior to 1968 we had an even more discriminatory system because it had national origin quotas that differed from country to country. They were designed to favor immigration from northern and western Europe over the rest of the world. We did abandon that in 1968, and it is absolutely true that the Immigration Act of 1968 is a great civil rights achievement.

What people don't necessarily understand -- if they remember that they were told that we had a discriminatory system and we abandoned that in 1968, they don't understand that the system we arrived at still results in practice in the kind of discrimination I described. That's because in 1968 we abandoned differential national origin quotas where they depended
on which countries they came from. There were a
different number that was allowed to a system that
basically at bottom apprised the same quota to every
country in the world. That's regardless of size,
regardless of proximity, regardless of historical
cultural connection, and regardless of a demand from a
particular country to immigrate.

Now, it is true that there are certain
categories that don't fall under these national origin
quotas, and that's why countries have different levels
of immigration to this country. But because the basic
premise of our current immigration system is that the
same quota will apply to every country in the world,
there is not one line to immigrate legally into this
country, which is why the rhetoric on the other side
that says, "Why can't people just wait in line," is
inaccurate. It's not one line. It's different lines
depending on the country that you come from. That's why
there's the 18-year wait versus 4 years for those who
are coming from Mexico in the category of adult children
of United States citizens.

I think that's an important element of kind of
our popular misunderstanding of our history and how our
immigration laws developed. Folks have a sense that we
have immigration laws; they have a sense that they are
fair; they have a sense we followed all of the
Constitution principles, including equal protection; and
they have the sense that we've had those laws forever,
both of which aren't true.

MR. ALVAREZ: Thank you, Tom. I appreciate
your testimony very much. And I think now --
Oh, I'm sorry. Diana?

MS. SEN: Tom, thank you very much for your
testimony. I just had a quick question. Just a
follow-up in terms of your testimony and
recommendations. Given this is sort of a national
issue, are there specific regions that you think we
should focus on in terms of the recommendations that you
made?

MR. SAENZ: I wish I could say this is a
phenomenon that's restricted to particular regions, but
based on our current assessments of where legislation
will be introduced, this is really going to occur in
every region of the country with the possible exception,
knock on wood, of the West Coast, but I think there will
be proposals out of states throughout the country.

At present, MALDEF, together with our sister
civil rights organizations, are engaged in efforts to
catalog where these proposals will arise and where they
are most likely to be enacted, signed by governors, and
there's likely to be an attempt to implement them. So at this point it's an incomplete picture, but based on the assertions, I believe at the last count during the campaign leading up to the November 2010 election representatives of at least 22 states had indicated some interest in replicating SB 1070 in whole or in part in their state.

The press conference I crashed last week had at least eight states represented. If you look at those who weren't there but who were on paper associated with the effort, it went well beyond those eight states. So there is, I think, a danger nationwide with respect to this issue. I think it's also important to note that there is more or less a concerted campaign to do this nationwide to attempt to challenge what federal law is by enacting state laws. It's not just in the press conference that I attended last week where there is a concerted effort to enact the same compact and legislation in a number of states throughout the country. The whole goal of the compact is to get enough states on board that it essentially forces Congress' hand to do something unconstitutional which is not legal or permissible, but it is a concerted effort. I think that's important to note that that's the nature of the crisis we face.
MR. ALVAREZ: Thank you, Tom. We appreciate it. We would ask you to put your objective hat on and come back and sit in the commission. We will call the second panel. Robert Rubin will be discussing voting rights and responsibilities. Robert is from the California of Voting Rights Institute. Robert, welcome.

**PANEL 2 - VOTING RIGHTS & RESPONSIBILITIES**

**SPEAKER: ROBERT RUBIN**

MR. RUBIN: Thank you very much for inviting me. (Adjusting microphone) I guess it works better when it's on. I thank you for inviting me to discuss voting rights.

I think it's only appropriate that we follow that area of defined analysis that my good friend, Tom, provided in immigration to talk about voting rights because we often think of voting rights as the next generation issue affecting immigrants. First, we deal with issues affecting status, as Tom was talking about, and all of the discriminatory aspects of it, and once we've regulated immigration status, we move on to full participation in our political processes, including, of course, the right to vote. So I don't know whether that was what you all had in mind in setting the order of the discussion, but I think it's most appropriate.

The right to vote is often said to be the most
important right in our Constitution and that all rights
are derivative of it because without it we don't have
democratic institutions. Now, the structure of an
election system may not appear as blatantly
discriminatory as voting devices that you would be more
familiar with such as poll taxes or literacy tests, but
they can be just as discriminatory and just as easily
unfairly dilute the voting power of minority
communities.

In California about ten years ago, we enacted a
law entitled, "The California Voting Rights Act," and
what it does is it eliminates one of the requirements
required under Section 2 of the Voting Rights Act, the
Federal Voting Rights Act requiring that you establish
that you are a majority minority. That is, that in a
particular district you comprise more than 50 percent of
an elected candidate of your choice. In California, we
eliminated that requirement, even if you can't comprise
51 percent, but you can influence the outcome of an
election with 30 or 40 percent. That is, through a
coalition with other minority groups or with crossover
votes from the Anglo community you can influence the
outcome of the election. That is a cognizable claim
under the California Voting Rights Act.

But let me back up because I'm not sure that
there may be a full understanding of the difference
between what I call at-large elections and district
systems. So let me just briefly highlight the
differences and how our system in particular works. The
hypothetical is you have a five-member city council. If
your demographics are 60 percent anglo and 40 percent
Latino and the voting patterns are racially polarized,
that is Anglos vote for Anglo candidates and Latinos
vote for Latino candidates, the 60 percent will defeat
the 40 percent in all cases. So the 60 percent controls
all five seats. But in a fairly drawn district system,
the 40 percent will likely comprise -- again, if you try
to keep the math simple here -- two of the five. They
would likely comprise a majority in at least two of the
five districts. And, therefore, they would be able to
elect candidates of their choice in those two districts
and exert a political influence more commensurate with
their actual numbers.

So given racially segregated housing patterns,
given racial voting patterns, an at-large system will
inherently discriminate and dilute the voting power of a
minority; whereas, the district system will empower that
same minority group. So there you have the problem.
Unfair dilution of Latino voting power. I would submit
we have a solution, which is the California Voting
Rights Act, that allows us to challenges the
discriminatory systems and have fair systems put in
place.

Before going into the California Voting Rights
Act, let's dig a little deeper into the problem itself.
In California, approximately 90 percent of all school
board elections are conducted at large. Due in large
part to the discriminatory impact of the at-large
system, only 14 percent of school board members
statewide are Latino. Fourteen percent. Two thirds --
two thirds of all school districts in the State of
California do not have a single Latino on their school
board. Two thirds. Shocking statistics in and of
themselves, but when considered in the context of the
reality, recently released statistics showing that
Latino students, children, make up more than 50 percent
of the student body, this reality is unacceptable. You
can simply not force children and parents to go through
an educational system that's so disproportionately
unrepresented in their interests.

One purpose of the California Voting Rights Act
is to shift political power, but in addition to
empowering the Latino community, the CVRA, the
California Voting Rights Act, serves many good
government purposes. One, by reducing the size of the
jurisdiction. Instead of the whole pie, you only have a fifth of the pie to deal with, and it brings government closer to home. In turn, constituents have greater access to their representatives. If I only have to fight with 20 people to get in your door to complain about something, it's a lot easier than getting past 100 other people. The costs of campaigning is eased considerably. Instead of having to buy radio or TV ads to appeal to people throughout a larger jurisdiction, I can probably almost walk door to door in most jurisdictions in the school board level in a district system.

And, finally, members on the school board, particularly given term limits here in California, can be a launching pad for young Latino leadership to move through the ranks and move on to city councils, board of supervisors, and the legislature itself, the assembly and the Senate. So to remedy this problem and enforce the CVRA, we have filed a half dozen civil lawsuits and prevailed on each and every one of them. Mostly through settlements after they realized how violative their actions were of the law, including one against the Madera Unified School District in which in a fairly extraordinary measure the trial judge ordered a preliminary injunction against the conducting of an
election on a school board election. The facts and law were so clear that he resorted to that extreme extraordinary remedy.

I should say that while the CVRA applies to all local jurisdictions and allows us to challenge any at-large system, we have focused at the Lawyers for Civil Rights, where I work, on school boards primarily. That's due to our longstanding commitment to quality to public education, from the landmark San Francisco school desegregation order to the California Supreme Court Affirming of Education as a fundamental right, the (inaudible) case, to the Williams suit that brought millions of dollars to improve school conditions, teachers and textbooks.

The Lawyer's Committee has been committed to fighting for excellence in the public school systems. That commitment is focused on the school boards because school board members are actually in the position of influencing what is taught to our children in the schools through control of course curriculum, through the selection of textbooks, and the like. So as we debate the meaty questions, the weighty questions that will confront us over the next decade around what is the role and responsibility of government in the lives of poor people, particularly in the face of the devastating
budget cuts that we'll be confronting, those course
curricula -- the manner in which teachers will talk
about those issues will have profound influences on the
children in the schools, who, as they become of age,
will be forced to -- will be required to, as citizens of
our state and our country, articulate their own
positions and to vote on those matters. So the
composition of the school board is absolutely crucial to
the future direction of the state in terms of the
influence that it has on our student body.

Now, converting discriminatory election systems
from at-large to districts or to other alternative
systems -- and we're not opposed to other alternative
election systems -- cumulative voting seems to be one
that's somewhat popular, but we'll leave those for
discussions for another day. Converting the systems to
whatever system they are from a discriminatory at-large
system is crucial, but it's not enough. What I mean by
that is if an election system is converted to districts
and there are no viable candidates coming out of the
Latino community because of the historical
disempowerment of people becoming estranged from the
political process, that is not going to get us where we
want to go.

So filing the lawsuits, winning the lawsuit,
getting the discriminatory election systems replaced is only a part of the effort. We've got to make sure that there are good candidates so that the Latino community is not confronted with the charge that the real reason that it's been disenfranchised is because of a lack of viable candidates and not because of the discriminatory election system, which we know is the actual root cause. But at the Lawyer's Committee, and I believe at MALDEF -- and I believe Tom would share these sentiments -- our focus is not on the candidates. Indeed, we are not interested in who wins in a particular election. We are interested in the power of the community, and the power of the community to effect change and the power of the community to elect candidates of its choice, whatever color they may be. That is the priority, and that is what the California Voting Rights Act allows us to do, and that is what we are pursuing in large part on behalf of the Latino community in the area of school boards primarily.

Let me close with just a suggestion that this commission might consider pursuing, and that is -- you obviously have nationwide jurisdiction, so to speak. I would encourage you to promote, if you believe in the policies underlying the California Voting Rights Act, similar legislation elsewhere. Litigation in the
federal courts under the Federal Voting Rights Act is extremely difficult; extremely expensive. The California Voting Rights Act really does provide for a more viable vehicle in terms of litigation burdens, and I'd urge you to encourage those efforts where they are viable elsewhere in the country.

Finally, be vigilant. Do not -- I think that we fall prey to the risk of thinking that because a black man sits in the white house and literacy tests are no longer imposed that voting rights discrimination is a thing of the past. It's not. It's alive and well here in California right in our backyard, but with your vigilance, together I think we can address it and remedy it and ensure that the Latino community has full political empowerment to which it's entitled.

MR. ALVAREZ: Thank you, Mr. Rubin. Questions?

Go ahead.

MS. MEDINA: Thank you, Mr. Rubin, for your testimony and for being here today. The commission's title is Hispanic Rights and Responsibilities, and in the context of your testimony, the rights would be the right to be able to vote as a Latino without any discriminatory practice, and the responsibilities would be the responsibility as a voter to do the research on your candidate and vote for a candidate regardless of
the candidate's race, but more importantly what the
candidate can do for -- you highlighted school districts
for your children.

I'm wondering if you can share with us what
safeguards are in place so that when you identify a
school district, for example, to bring such a lawsuit,
that the safeguards are not an automatic only Latinos
can address Latino issues, for one. And I'm also
interested in hearing -- in some instances we're seeing,
for example, the issues of polarized race voting which
are not as simple as we once could articulate them; the
white community discriminating against a minority
community, but they are getting more complicated. An
African community disempowering a Latino community or a
Latino community disempowering an Asian community or
disempowerment among the minority groups, how are you
addressing those particular interracial issues?

MR. RUBIN: Thank you for the question. In the
first question of only Latinos can represent Latinos, we
don't promote that. We don't believe that. Again, I
tried to emphasize that in my testimony which is the
point that we are about empowering the community to make
candidate choices on its own. Frankly, in an unguarded
moment I'd probably admit to you that the Latino
community has the right to make the same stupid mistakes
everyone makes in electing their officials. But it does
make the point that it's simply about empowerment, and
no one is saying only a Black can represent a Black
community or only a Latino can represent the Latino
community. The Latino community may very well choose an
Anglo candidate, but it's simply about making sure that
the election system does not prevent their ability to do
so. And in that large system they're unable to do so.
So it's a favorite charge of those opposed to voting
rights, but I think it's bogus, and I don't think that
it's what we're about and we shouldn't allow ourselves
to be cabined into that.

     Racial polarization. You might be surprised at
the analyses that we have done of certain jurisdictions
-- not all but many jurisdictions -- in which straight
up and down the line you have Anglos voting for Anglos
in a way that defeats the electoral choices of minority
groups, whoever they may be. It is a reality, and you
won't get it in the exit polls. We've seen that in the
past, but you get it behind closed curtains.
Unfortunately, racially polarized voting remains a
reality. Where it doesn't the CVRA doesn't apply. I
dare say that the San Francisco voting populous would
probably not reveal racial polarized voting. So even
though the school board here is elected at large, it is
not challengeable because it doesn't dilute the minority community's vote. So I guess I would say to both of them that they are important issues, but I think that they are easily addressed through the means that I mentioned.

MR. ALVAREZ: Tom?

MR. SAENZ: Robert, I am a great supporter, as you know, of the CVRA, and I think it's positive legislation, but it's also true that even under the CVRA these are resource intensive lawsuits on both sides. You end up spending a lot of money to defend and you end up spending a lot of money to prosecute these cases.

Holding apart the context of the discrimination, there may be good reasons to have district elections, even in a one-race community, particularly because we seem to have inherited at-large systems from a time when populations were smaller. They were a smaller jurisdictions, and we're obviously growing in population across the country.

I wonder, Robert, if you might talk about what are the policy rationales in favor of converting to a district system wholly apart from a discrimination that might exist, and what are the barriers to addressing this issue at the policy level? What are the barriers to having the jurisdictions that adopt a district system
even without the CVRA or a VRA lawsuit?

MR. RUBIN: Well, taking the last point first, the issue of -- I'm sorry. I lost it.

MR. SAENZ: Converting. Why couldn't jurisdictions convert today even without knowing whether there's polarization?

MR. RUBIN: So conversion -- this law has been in place for ten years. Our position is that it's already required. You don't need a court order. It's the law of the land. It's the law of the state. And so I think that Commissioner Medina had asked this too in terms of protecting against -- you know, if the people are unaware that they are in violation. First, it's your responsibility to state law and you ought to be able to follow state law, but if not, we don't just go in and sue school districts willy-nilly. We engage them at least in some communication, and tell them that we think they are in violation, and if they don't cure the problem, we will sue, but we always do that before we go into court.

And as far as the difficulty of converting the election, why school districts might not do that, as Commissioner Saenz had alluded to, is people do not give up power voluntarily. And in a district system, when we move from an at-large system, typically in my
hypothetical with the community council with five board
members, they all live in the same area. They are
established interests of the community, and they tend to
live in the wealthier areas of town, and they live in
the same area.

Well, in a district system, four of them are
going to be out of jobs because you can only have one
person representing that district, and so I think that's
the difficulty that we have in getting voluntary
compliance because people just don't give up their power
voluntarily.

In terms of other purposes, I thought I touched
on them, but just to go over it again, I think that the
CVRA in addition to the political empowerment issue and
admittedly the shifting of power in the Anglo community
is going to have to get used to that because that's what
the demographics tell us and otherwise engage in
demographic denial, but those are the numbers and there
is going to be a power shift. But in addition to that
power shift, if I have to drive over the same pothole
that you do to get to work because I live in the same
neighborhood as you, I'm going to be more sympathetic to
your problems. So it brings government closer to home.
Instead of it being some abstract issue, it's something
that I've experienced as well. Again, I'm going to know
you better because instead of having to fight with 100
two people to see you in an at-large system, I only have to
fight with 20 people to get to see you. The cost of
campaigning is obviously reduced in a smaller
jurisdiction.

So I think those are the good government
policies that underlie it. I think that the
jurisdictions ultimately see that, although it often
takes a fight to get them to that point. So I think,
despite when the whole thing started, I got too long on
your questions.

MR. ALVAREZ: Thank you, Mr. Rubin. We really
appreciate your time here today and your comments.
We'll have to call the next panel because we're running
somewhat behind time.

MR. RUBIN: Thank you.

MR. ALVAREZ: Thank you, and I'm sure if you're
around at the break, any of the commission, if they have
some additional questions, can approach you. Thank you
so much for your time and effort.

The next panel is a Latino Youth and
Educational Pipeline, and we have Ruthe Ashley from the
State Bar of California. She is presently a member of
the ABA commission on women. She has quite a
distinguished history with the ABA in serving a number
of the key committees, so we appreciate you being here today. We also have Armando Castro from the Hispanic National Bar Foundation, and both of them will be contributing to this topic.

I believe at this time we will also, via the technology advancement today, are going to have the civic and governmental classes from Mission High School actually watching the hearing and being able to listen to what you're doing, and actually at the end of each panel have an opportunity to maybe ask you some questions from probably a different viewpoint from some folks here on the panel. So please, Ms. Ashley, if you would start, we would appreciate it.

**PANEL 3 - LATINO YOUTH & THE EDUCATIONAL PIPELINE**

**SPEAKER: RUTHE ASHLEY**

MS. ASHLEY: Thank you so much, Mr. Alvarez. It is a distinct pleasure and honor to be here. El Ano Nuevo to all of you. Welcome to California for those who are not California based and especially to San Francisco. I have to say that being in this room again brings me back to my earlier days as a lawyer. This is the old State Bar of California building, and you are sitting in the board room for the State Bar of California. And many meetings were held here making issues -- legal issues for the State of California,
making decisions and policy decisions right here in this
room. So it's hugely appropriate that you are here, and
I'm honored to testify on behalf of the State Bar of
California on behalf of the Counsel in Acts in Fairness
which represents all of the university work for the
State Bar of California, and all of the pipeline work
that is going on here and nationally.

I'll have to say that the ABA, for those of you
who know what the work is of the ABA, has been
distinctly important in the work of the pipeline, for
two reasons. No. 1, Bill Paul who created the
Presidential Advisory Council on Diversity in the
Profession in 2001, and in 2002 I was the president
elect of NAPABA, the National Asian Pacific American Bar
Association. I was sitting on the Presidential Advisory
Council as a member because I was the precedent elect of
a national bar. That was the first time I heard the
word "pipeline." Not referring to gas and oil, but
"pipeline" referring to an educational pipeline. That
was No. 1.

No. 2 was Steve Zack, and I consider myself a
prodigy or a star in the crown of Steve Zack because
when I was president elect of NAPABA, he was chair of
the Bar Activities and Services Committee. The first
Hispanic chair. The first person, Diana -- and you'll
know. You were a benefit of this -- the first chair to actually provide scholarships for president elect of the National Ethnic Bar Association and the executive directors to attend the Bar Leaders Institute. The four of us from NABA, HMBA, MBA, and NAPABA attended for the first time to work with the national bar executives and bar leaders and to get acquainted with the ABA. So now Steve's work as the chair and then going on to create this commission shows the importance of what sitting at the table is all about and what leadership is all about, and I really want to thank Steve for not only being my impetus into the ABA, but being the impetus to create this commission and the work the commission does because it is a historic moment to have the first Hispanic Bar President for the ABA.

Going back to the ABA pipeline, the ABA pipeline was created by Bill Paul, and it takes a little bit of time to get a rolling stone to gather moss. So that was in 2001. In 2005, the First National ABA conference was created, and the people from all around the country met in Houston at Rice University to talk about the pipeline. When the ABA started talking about the pipeline, we said, "Let's go back to law school. Let's see what we can do to diversify the profession from law school statistics."
When we talk about "the pipeline," we're talking really about diversity. To talk about lawyers who represent the people that they are representing also, and to look like the population that we serve. And when we went back to law school we thought, "Well, great, but there's a real jam-up here. People aren't getting into law school. What's the jam-up?" So in California we started to do some real research and to look at pipeline issues; to create programs that reached back not only from law school but back into high school and into elementary school. As we looked at our research, we found that kids are leaking out of the educational pipeline by fourth grade.

Now, at fourth grade we can tell whether or not they are going to end up in the judicial system, in the criminal justice system or they are even going to get out of college because the achievement gap is really great. Let me talk about California to show you our problems in California, using California because it is the most diverse state in the country. It has 57 percent population of colored. Of that population, 38 percent are Hispanic or Latino. That's a huge number. And as you just heard, about 50 percent of the kids in school are Latino.

Let's talk about the State Bar of California.
There are 230,000 licensed attorneys who are licensed in
the State of California. They may not all practice
here, but they are licensed here. Now, in the country
there are over 900,000-plus attorneys in the entire
United States, so if you look at the numbers, about a
quarter of the nation's attorneys are in California.
Fifty-eight percent population of color; thirty-eight
percent Latino population. What do we have in lawyers?
In the State of California collectively 15.6 percent are
lawyers of color. Dropping from five years ago when we
had 17 percent. Are we doing okay in California?
Absolutely not. How many of those are Latino lawyers?
Six percent. Six percent of the state's population in a
population that has, and will almost have, half the
Latino population, are lawyers of Latino and Hispanic
heritage. That is unacceptable.

When we look at the kids coming in through the
pipeline, we know that we have to do a better job. So
what has California done? In 2005, the California State
Bar Board of Governors, which I was on at that time,
created a diversity pipeline task force. We knew we
needed to go back a lot further. We could not stop in
law school. We needed to go down all the way into
preschool. Those of you sitting here have kids and
grandkids. You know that the first five years are the
most important part of a child's life. We needed to get them critical thinking skills. We needed to get them access. We needed to create opportunities.

So we created a diversity pipeline task force for one year that would look at best practices. We needed to know what was out there, and what we needed to build, what we needed to expand, what we needed to grow, what we needed to create.

So our manager was from preschool to the profession. Not just retention and advancement into the profession but all the way into the judiciary. This task force, 70 members of thought thinkers -- "thought thinkers," that's redundant -- thought leaders, corporate counsel, professors, deans, we got together and we said, "How can we make it happen in California. On the Web site in California now there's a list of best practices going all the way from preschool into the profession of retention, advancement and pipeline programs. That task force led to the creation of the Council on Access and Fairness. A council that really does set policy and direction for diversity in the State Bar of California.

Let me tell you how important that council has been, because it has taken the work of diversity; the work that we really have to do to reflect the people
that we serve to a level where it is making a
difference. We're working with the legislature. We're
working with the judiciary. We're working with students
-- students to make sure that the future is different,
and the future looks different, and the future looks
like what I see in front of me today. From the Council
of Access and Fairness we created a nonprofit called
"California All" focused on closing the achievement gap.
Really looking at education, and the systems in
education. Working with school districts.

From there we created the very first project
that I'd like to share with you. A really exciting
project that we are just starting to make happen. We
announced this at the ABA Council on Racial and Ethnic
Diversity at the pipeline last August because we want
this to go statewide and nationwide, and we want every
state to be able to do this. For the first time in
California, the profession -- the legal profession has
partnered with the California Department of Education in
building law-themed academies. We've been talking a
lot. We've been saying, "When are we going to walk the
walk?" And we have lots of hearings, and we are all
committed and passionate about changing the profession.
But, folks, this is a boots on the ground program. We
would love to be starting in preschool, but we're not.
We're starting in 10th grade. That's good enough for us now. We can build and go down. We can start programs and replicate programs that are across the nation, but in California right now we are creating law-themed academies. Six in six different counties. We've just selected those high schools. Our letter of intent going to the Department of Education is due today. Six different counties, San Diego, Santa Clara, Orange County, Los Angeles, Sacramento, and San Francisco are building law-themed academies starting with curriculum. Total curriculum in 10th grade focused on critical thinking skills. Teaching kids to think like lawyers. We know they are not all going to be lawyers. We wish they would be, but they will have those skills to choose to be anything they want to be. We know that the rising tide lifts all boats. So even if we get a few kids to think about being lawyers, but all of those kids to have those critical thinking skills, we've won.

So we have the 10th grade focused on curriculum, and the 11th grade where the professions come in as mentors creating internships and creating opportunities, and the 12th grade where they really start working with lawyers. If they become court administrators, court interpreters, paralegals, that's great. They are in the justice system, and it reflects
the justice system that looks like the people that we serve. But if they become lawyers because we put people like you in front of them, that's even better. So for us in California, we are doing things to make things happen.

What are the rights for kids? As you said, Maribel -- and, Maribel, we are so proud of her because she was a part of that diversity pipeline task force that we had in California that looked at best practices because she was then president of the La Raza California Lawyers, correct? And Maribel was a part of that. So what are the rights for kids here from the pipeline going from preschool into the profession? It's the right to have a level access playing field. A right to a legal education that everyone else gets. And what's our responsibility? Our responsibility is to work together. Not just as Latinos. Not just as people of color. I say to people, some of my biggest heroes are that middle-aged white guy that made things happen. The middle-aged white guy that got it, that said that diversity is as important to me as it is to you a woman of color. We have to work together to make sure every kid as soon as they are out, in utero, or even before, to make sure they have the access, they have the opportunities, and then when they get in school they
have the availability to the best education because here in California if we don’t educate our kids of color, especially those Latino kids who are more than 50 percent of our student population, we will have failed as a community. Thank you.

MR. ALVAREZ: We’ll let Armando go and then save our questions.

SPEAKER: ARMANDO CASTRO

MR. CASTRO: Thank you very much. It’s a great honor for me and for the Hispanic National Bar Foundation to be able to testify before this panel. Those of you that are not familiar with the Hispanic National Bar Foundation, I just want to briefly say we are a public charity qualified under the rules of the Internal Revenue as a 501-C-3 foundation. Our mission is fairly clear. Our motto is equality through education. All of our programs have an educational access theme to them.

I will briefly describe some of the programs that we put in place, but I would tell you that all of them have the same thing. Exposure and access to information and resources in order to provide the students that we’re working with the types of information that they are going to need in order to move forward in the pipeline. I’m not going to talk about
the state of the pipeline. We recognize there's
problems with it at all stages, and so I could talk to
you about the programs that we have.

If you look at these programs, and I've
described to you what we're doing, one of the things --
the way we think about it for the students is the
student will not know which door to open in many cases
if they do not have the information. If they do not
know which door to open in order to move forward, then
that door remains shut to them. I'm going to go through
and describe these programs.

The first program is a mentoring program that
was a very intensive mentoring program called "Project
Access" and we rolled that out in two metropolitan areas
so far, Los Angeles and in Miami. In that program we
tried to prepare mentors that were primarily members of
the Bar with middle school and high school students.
This proved to be a very difficult program for us to
administrator. Real mentoring where you're working with
the students over a prolonged period of time, six months
to one-year period, involves a great deal of commitment
on the part of the mentors. This is something we had
known, but going through that in the last couple of
years has really, you know, brought this point home to
us because you saw a number of the people that were very
committed, but they were also working professionals, and it was very hard for them to balance that time to be able to give that time to the students. But that program is designed to encourage students to move forward into college and ideally to law school, but not necessarily to law school. We want to get them into college.

The next program we have, and this is the longest running program the organization has had, is Law Camp. Law Camp is a program in which we take 25 to 30 children each year and bring them all to Washington D.C. The target age for the children are people that have finished their second or third year of high school, so they are going to be either juniors or seniors in high school. And for a week they are taken to D.C., and they are introduced to attorneys from various professions, practicing trial lawyers, corporate lawyers, lawyers that work for various government agencies, judges, politicians, staffers that work for the various politicians. And in addition to those introductions and presentations by those members to the students, the students are given tours of various government agencies because in most cases, almost every case unless the student came from the eastern seaboard near that area, they were not aware of what these agencies did and what
their roles were, so we tried to expose those things to the students. They are also put through a bit of training in how to do legal research, and at the end of the law camp they go through a moot court competition.

We are only starting to get substantial feedback from the students that we did the law camps with seven, eight years ago. We now have had a few students actually make it into law school that attended those programs early on, and we have now had two of the students come back and work as counselors in those programs. Those numbers are not that significant, but when you look at the statistics and the numbers of students that we worked with, we can go back and show that the students that we worked with had a much higher graduation rate from high school than on a national average and certainly in most cases in the states that they come from. I cannot tell you that in each case their graduation rate was higher for the individual states, but certainly on a national average. Then the percentages of those students going on to secondary education to college is much, much higher, again, than for Hispanics generally in the United States.

The last program that I'll tell you about is a Law Fellows Program. One of the things that we recognized is that even once the students were to make
it into law school, it was very, very difficult for them
to get jobs. So we tried to create a program to try to
help make a difference for some of these law students in
order to help them secure jobs and also to expand their
understanding of what it is that attorneys do. That
certainly makes sense, you know, when you're talking
about middle school children and high school kids when
you're talking about Project Access and Law Camp, but we
were surprised to find that when some of the students
made it to law school, that their ideas of what the law
profession was were fairly narrow. So in the Law
Fellows Program we were able to introduce them to
various types of attorneys and government agencies, and
the idea in one of the things that made Law Fellows
possible was that they could go to work for
corporations. So Law Fellows worked because we were
able to secure partnerships with corporations that were
willing to both help us fund the program and then give
these students that we selected placements for the
summer. And we placed some of them with agencies and
some of them with corporations.

In each instance when we spoke to the students,
they would say things like, "I didn't know what a
corporate lawyer did. I didn't know what a regulatory
attorney did for a corporation." I don't know how many
of these students will go to work for places like this as opposed to being a trial attorney, but I feel much more confident that those students now have a better idea of some of the breadth of opportunities that are available to them, and I do believe that they will in many cases take the relationships that they formed with the various people that helped them through that program to, you know, form a mentoring relationship to try to help them to keep going forward.

You know, in my regular job I'm a partner at a law firm, and I will tell you that it's a challenge within the law firm structure to find people when you first start at a law firm that are going to help you and help spend the time with you, develop you, and mentor you along. So I look at the Law Fellows Program, and I am hopeful for the students that have gone through it that they will take advantage of the opportunity we've extended to them and take advantage of the relationships that they were able to form.

With that, really that's really the message that I had in terms of the programs that we have. I also wanted to have the opportunity to ask -- and I know that one of the things that the panel wanted to do was to find out, well, what could the ABA do? The advantage of the ABA Hispanic National Bar Foundation and other
bar associations and bar foundations is that they are comprised of attorneys. By definition they have gone through graduate school. They have in most cases been successful in getting employment in the field of their choice, and they have had the opportunity to, you know, work in the field that they chose. What we're trying to do in our programs is give the students that we're working with the types of information that they need so that they are in a position to make those types of choices.

I started, when I was describing the programs, to tell you how difficult we found the amount of time that mentoring programs really took with Project Access, as we call them. It's a big ask, I think, but what I'm asking is that the ABA consider with their programs to have more types of programs like that where the members are actually working with either law students coming into the profession, college students that want to go to law school, and, if possible, any types of programs that would give information to at least high school students. I don't know if we could devise programs that go all the way down to grade schools, but certainly at the high school if there's an opportunity to have programs for those students and have -- have the members of the ABA work with those students over a period of time. The
reason it's a big ask is it's a big ask on the personal
time of the people that are delivering that mentoring.

If you look around the room, I know that
there's a number of you that I've seen at a number of
different diversity events. I know that you are already
committed to doing those things, and on top of that you
have your regular day jobs and your family lives. So
recognizing that's a big ask, I would say that when you
consider these programs, we believe that these programs
work. I would ask you to consider those.

MR. ALVAREZ: Thank you so much. We will open
it up for questions from the panel. Allan?

MR. TANENBAUM: I appreciate the pipeline issue
of starting early and Pre-K as the beginning if not
earlier just with role models for kids even as they are
growing up, but once you get through college, leaving
aside the tremendous cost of college education, the
almost embarrassingly high cost of legal education today
that can run for three years for a student to be able to
complete law school of over $120,000, and the ability of
people to be able to just pay for a law school education
within the Latino community and the organizations that
are supporting the kind of projects you're talking about
statewide and nationwide, are there any financial
scholarship programs available just for Latino students
in college who needed financial help to go to law
school?

MR. CASTRO: There are some programs. They are
fairly limited in scope. I would look at the HMBF as an
example where we do try to provide some financial
assistance, but it's primarily in things like being able
to pay for test prep courses so that they can take the
LSAT and do well in the LSAT. Then we try to introduce
them to the various types of financial aid that might be
available to them, but it is fairly limited what is
available, and to my knowledge there is not -- you know,
there is not a lot. There is not a formal program that
is going to be generally available to these students as
ey come up.

MR. TANENBAUM: While embarrassingly small,
there are a number of scholarship opportunities
available for African-American college students who are
trying to go to law school sponsored by a number of
organizations that, obviously, are focused on the
advancement of African-Americans going to law school,
and it just seems to me that maybe they would be a
similar broad base of support to try to do that. And if
not, who would be the likely organizations that could
coalesce to try to develop these sorts of scholarship
opportunities? Not just with their own money that they
are raising, but then to be able to go to foundations
that have resources to be able to coalesce into a broad
based scholarship fund to help law students who are
Latino?

MR. CASTRO: I think we are only at the
forefront of starting to see some of the organizations
that are focused on the problems of the Hispanic
community overall becoming financially and political
powerful enough with some of the corporate organizations
in order to be effective to raise large sums of capital
like this in order to provide meaningful scholarships to
the students. In the last few years, there's an
organization that's gained a great deal of political
notoriety, particularly in the financial sector, the New
America Alliance, and I believe it's going to take
organizations like the HMBF and BH MBA working with some
of these other professionals organizations to work in
unison to be successful to raise those types of funds.

As I said, I think we're just barely at the
forefront of doing this, and I would point to our Law
Fellows Program as an example where we did go to
corporate donors, and that is how we were able to raise
the money to have that program for the students, but it
was limited. I would suspect if we were doing that in a
larger scale with some of these other organizations, we
would have a higher level of success.

MS. ASHLEY: If I could just address that on a statewide and a government level. At a statewide level and at the State Bar of California, since we are a government agency, we are the state of 209. As you know, under Proposition 209 we can't focus on any specific racial or ethnic group. However, just because of the population that we serve and just because of the school population we have in California, the programs that we have, although not specifically focused on the Latino population, they reach a lot of Latino kids. For instance, this new California law academy that we are building. The requirements under the Ed. Code -- and this is funded by the legislature so this is a program that's totally funded. The six law academies we are building are funded. Unless Jerry Brown cuts us completely out, which I don't think he will, these six law academies will happen, and 50 percent of those kids have to be at risk. And just because of the populations we have in the public school system, most of our kids will be Latino.

So even though in California because of 209 at the government agency level, we cannot focus on that. In reality, we are doing that. For scholarships and for money, we really do have to rely on the private sector,
on the corporate counsel, and on the law firms who we
are getting, for instance, to focus on the projects we
have. We've got a lot of school board members and a lot
of superintendents and a lot of chairs of school boards
who we have worked with. Your school board
superintendent here in San Francisco and the school
board superintendent in Los Angeles where there is a
large Latino population, we are working very closely
with them. We work closely with the Latino caucus and
legislature to make sure that we meet the needs of the
Latino population.

   Even though we can not fund specifically based
on that racial or ethnic heritage, then just because of
our population, that's where we are forwarded and where
we are headed.

MR. ALVAREZ: Angela, and then Frank, and then
Tom.

MS. OH: Thank you for your statements today.
I just wanted to ask, would it be helpful -- I'm trying
to bring it back to the recommendations that could be
made to President Zack. Would it be helpful for there
to be a place to capture your experiences with the
programs that you've done so we could begin to think
through best practices and some smaller steps that the
ABA could consider taking within its larger structure
once this commission closes out its business? Are you already transferring the knowledge and information to the ABA in some way?

MR. CASTRO: I think we have a number of our members working on various committees within the ABA, and I think there's been formal communication with some of the feedback, but I think there would be great benefit in being able to capture some of the information that we've had and passing it back to the ABA. The three formal programs that I spoke about are just a few of the programs that we conducted over the years.

For example, we -- depending on our ability to organize them, we've conducted events that we refer to as "law days" where we will go to a law school. We've done one at UCLA and one at the University of Texas at Austin, and we will have a weekend conference for it and we'll put it into different tracks. The parent track for the parents to talk about financing the education. Students that -- high school students and younger thinking of going to law school, including college students. And then we also have a track where we invite college graduates and people that are in other professions because they often don't know again what it involves going to law school. But for us to get to that position where we were offering the multiple tracks, it
took us a few attempts.

What were the things that we did that were
different? One of them was offering this track for the
parents so we could address the financial aid issue.
It's difficult when you're addressing an audience, and
they are about to sign up for loans that exceed -- you
know, they may not own a home. If they are lucky enough
to own a home, the loans they are looking at are larger
than the mortgage that's on their property. So what is
that like? So the answer to your question is yes.

MS. ASHLEY: Angela, if I could answer your
question, too, because it opens up something important
for the ABA to recognize. We do have the former
Presidential Advisory Council on Diversity in the
profession, which Frank's wife, Georgie, is on. It is
now called the Council on Racial and Ethnic Diversity in
the Educational Pipeline, and I just finished chairing
that last year. And I have come off of it, and we do
have a place where we have all of the programs --
pipeline programs all the way from preschool in the
profession. It is on the ABA Web site under "That
Council." It is not vetted. It hasn't been vetted for
best practices. There's over 400 pipeline programs that
are listed on that Web site, and we advertise that Web
site whenever we can because it does help other entities
if they want to build their own pipeline programs.

What can the ABA do? We are Goal 3 diversity in the ABA. As Goal 3 for the ABA, we really don't get the funding that we need, and here comes my money talk. We can have the commitment, we can have the passion, we can have the motivation, we can have the desire to change the profession, but it all takes money. And we know that money is a thing that really helps to get all of these programs going. It's the thing that helps policy get set. It's the thing that helps grow programs -- Hispanic programs. If you could have any influence on funding and sending money to the Goal 3 diversity center, to work on projects like this, to bring lawyers in, to bring it when it's statewide to a national level, to look at the best practices and to actually make things happen, that would be a huge thing that the ABA -- this commission could do for the diversity center and for Latino kids.

MR. CESAR: Thank you. Frank?

MR. ANGONES: I have a very personal observation to Allan's question about Hispanics in the profession in educational goals, and some of the members of this panel, and maybe Fred Alvarez and yourself can shed some light on this. My observation is that the African-Americans led the civil rights movement, and
historically the HNBA when it was created was created by a group of Mexican-Americans in California that observed what African-Americans had achieved in coming together with the civil rights movement and they said, "You know, we are also being discriminated. We also don't have opportunities that others have." And then that started, and it was the foundation of the HNBA by another name.

And so here we are some 60 years later. The largest growing minority in the United States, and we are just beginning to get organized, be recognized, and that's why I applaud Steve Zack and our Chair, Cesar Alvarez, who are convening this group. But I think historical perspective is appropriate and if I had misstated something, I'd like to be corrected.

MR. ALVAREZ: Any thoughts?

MR. CASTRO: I would agree. I think it would be very difficult to disagree with that statement. And I made a statement during answering one of the questions that we are barely just starting to get to the forefront where the organizations that are focused on the Hispanic community in general are in a position politically to have the type of influence necessary to get things done, really.

MS. ASHLEY: Fortunately, in California the Latino caucus has become much, much stronger, and
California, for those of you Californians, know that
their power is growing stronger and stronger, and they
are in leadership positions. So I think it behooves all
of us as lawyers -- and so many of them are lawyers also
-- to really work with government. And having
organizations like MALDEF that really puts the name out
there and puts it out in front of the civil rights
community, and also the lawyer of civil rights. It
really takes organizations like Asian B.A. and MALDEF
and the legislature and all of us really working
together. We start the journey, and we keep working at
it, and I completely agree with you that the
African-American community led civil rights, and that
the Hispanics are right behind them. The Asian Pacific
Americans, we are just getting our feet on the ground,
so we are following you. We're hoping you lead us in
the way we need to go also.

I wanted to make sure that you knew my maiden
name was Candoligo (phonetic), which means that I'm a
quarter Spanish, so I consider myself a part of this
community, too.

MR. ANGONES: The Asian Pacific Bar Association
is very well organized. Tom?

MR. SAENZ: I have two questions, but I need to
preface it about Prop. 209 that you raised. I realize
Prop. 209 started in California, and, unfortunately, it's now been adopted in a number of other states. In fact, with everything going on with SB 1070, it was enacted last November in Arizona, and it sort of snuck under the radar and didn't get the attention it might have otherwise gotten.

I also want to preface my question by saying it's important to recognize it is a pipeline issue, and starting as early as possible is really one of the best approaches long term to solving this problem that we have in the legal profession.

But that said, I want to ask specifically -- the first question is about scholarships and financial burdens that you all discussed. You mentioned restrictions at 209 places. In my testimony I talked about the fact that the Latino community sometimes faces discrimination by proxy. It's labeled discrimination on some other basis. That also goes both ways, and this is what I'm going to ask. If one of the reasons we wanted to assure greater diversity in the legal professions is to serve a growing monolingual Spanish-speaking population, I wonder if the California Bar has ever considered programs or scholarships that would specifically target Spanish-English bilingual law students and potential lawyers. That's question number
1. The second question relates to 209. In part, because California was first, there's been more research and work done in this state to look at the effects of 209, particularly on higher education, and specifically with respect to law schools. I know there's been some good work, some of it very recent, about the disparate impact of some of the ubiquitous criteria used in law school admissions, and I wonder if either of you might talk a bit about that issue. I know it's controversial. In some ways we seem to have inherited criteria and test instruments and just stick with them because of inertia, but I wondered if either of you could comment a little about what work might still be done in reforming admissions criteria that would, in part, begin to address this issue, recognizing that the pipeline, once again, is long term and is the best way to address the issue.

MS. ASHLEY: To answer your first question, the California State Bar has not done any focused scholarships or programs for Latino law students. We've done a lot of work with the general counsel, and it always gets pushed back on general counsel's advice because of the issues of 209.

MR. SAENZ: My question was not specifically
about race based. If they were based on targeting
Spanish-English bilingual students, those are not all
Latino. That is not a race-based category. So that's
specifically what I'm asking whether this alternative
approach -- because that's an answer to a need for more
attorneys who will meet the needs of that monolingual
Spanish community.

MS. ASHLEY: Pat, can you answer that?

MS. PATRICIA LEE: Yeah.

MS. ASHLEY: This is Pat Lee who is the special
assistant on diversity for the State Bar of California.

MS. LEE: The State Bar of California as an
entity isn't able to provide funding because we are
partially a government entity, and our general counsel
considers that a gift of public funds, but we have a bar
foundation that's a private entity that does have
scholarships for students from diverse backgrounds to
attend law school and to attend the LSAT, the classes,
and so forth. So they do focus on minority communities
for those scholarships, and we can propose to them that
they also focus, in terms of this language position as
well because that is a major need in terms of the
population in the State of California and in counties
such as Los Angeles where the need for Spanish-speaking
advocacy is at a high rate, and the representation that
exists in those counties cannot meet that need.

MS. ASHLEY: In answer to your second question as to admission policies, that is one of the big issues that we have not only here but across the country. The section on legal education is facing that. The issues of the bar exam, the issues of U.S. News and World Report, the issues of the law school admission council. All of the barriers that are placed in front of the students to get there, and in the State of California all of the barriers in place especially for the students of color. So those are the issues that there is no easy answer.

If you really want to talk about those sometime, Tom, and help us on some of that, we have a letter that's going to the U.S. News and World Report editor soon from the Council on Access and Fairness to talk about those kinds of things, and we've been working on that with the ABA Pipeline and Racial and Ethnic Diversity in the Pipeline Council. So a huge question and huge answers, and we're all very aware of that.

Also, the Diversity Summit that Tom Wells had with the ABA two years ago. That's one of the big issues that we're working with on law school admission. All of the barriers that go into that.

MR. SAENZ: I'd just like to make sure we get
those issues in front of this commission as well. If
this work has been done by these other ABA entities, I'd
like to make sure that we incorporate it into what we're
doing.

MS. ASHLEY: Absolutely.

MR. CASTRO: If I could address the admissions
question. This is one of the questions that we've
looked at ourselves, and we've looked at it as we try
and counsel the students, and also we've been fortunate
enough to speak to a couple of presidents and deans of
law schools. The issue that we are seeing that we are,
I guess, very concerned with, the category 1 schools --
the very best, the top ten schools -- they are still in
a position because of their reputation that if a student
comes up and maybe their LSAT scores are a little bit
lower, a couple of points lower than they would like to
see it, they can take a chance on that student. They
are economically disadvantaged and they had to overcome
more things. We're going to let them in.

In the second category, the regional schools,
really very good law schools but not top 10s, those
schools increasingly are not willing to take those risks
on those students anymore because they are looking at
those rankings, and they are not willing to sacrifice
the rankings. And we see that as a very big problem for
the students because when you look at the makeup of the people in our organization, a lot of us went to those schools, and would we have been able to attend the schools that we did -- would we be in the positions that we're in if those were the criteria today? And that's very troubling for a number of people because if you look at the people that we're talking about, they've been very successful in their profession. Those schools were very correct in their decisions to admit those students. I don't have an answer. I can just tell you it's something we are very concerned with.

MR. SAENZ: I would ask that if the HNBA and HNBF has the work on the criteria, I'd like to see us get it for the commission too.

MS. RIVERA: May I ask a question?

MR. CESAR: Oh, sure. Jenny, go ahead, please.

MS. RIVERA: Thank you for your testimony -- really very helpful -- and for all of your work. I wanted to ask a question about gender experiences of males and females going through the pipeline and in law school and on their journey to the profession.

The HNBA recently did two reports on Latinas in the legal profession -- the commission on Latinas, and the profession issued these two reports. One generally across all sectors of the profession, and one focusing
specifically on the public interest sector. In both of those reports -- and if you have not had a chance to read them, I'm sure they will make them available to you before you walk out the door -- but in both of those reports the women talk about these experiences. Young women and the kinds of obstacles and challenges they faced in choosing the career, really being able to get access to lawyers, to learn more about the career, and to really be taken seriously throughout their educational experience and, of course, once in the profession.

Although the number of Latinas in law school is often larger than the number of males in law school -- as a researcher, I know that -- the reality is that the number of Latina attorneys is much smaller than the number of men, although you quoted some very low numbers for Latinos overall. So my question is whether or not you have some suggestions based on the experience of your various programs and efforts as to how we can address some of these gender experiences and obstacles that females face and also males face because the number of Latino males in law school, of courses, is dwindling.

MR. CASTRO: I'm going to answer this question primarily based on my experience and practice. This is not something the HNBF has studied, although I have no
reason to disagree with any of the results on the
studies done by the HNBA. We completely agree with
them.

I would tell you that when we look at the
numbers for ethnic minorities that are attorneys,
particularly in the State of California, they talk about
people based on their ethnic origin. If you were to
look at those numbers based on gender, they would be,
you know, more dismal for women than for men. And the
one thing that -- the only thing that I have seen that
has helped in my experience is for young attorneys to be
able to develop a mentoring relationship with a more
senior attorney -- at least in law firms -- to help them
understand what's expected of them and how to address
obstacles as they come up in their career because they
will come up frequently.

So I will go back to the programs that we have
at the HNBF, and because I had mentioned the ones that
we are currently running, one of the things that we are
considering doing is that we noticed, especially in the
last recession, the risk -- the layoffs
disproportionately affected women and minorities. We
used to think, well, it's not enough to get them into
law school. Now, we're looking and saying it's not
enough that they get a job. They have to be able to
keep it.

So we're going to try to roll out some programs working on a regional basis working with large law firms to establish mentoring programs for women in ethnic minorities in various cities, and I'm not sure how many cities we are going to roll out with at first, but the idea is to try to address the shortcomings of basically, from my experience, the law firms themselves in being able to keep their associates. That's really about it. I mean there's not an easy answer, but we're trying to address it ourselves that way, or try to help.

MS. ASHLEY: So the short answer with regard to -- I'm sure Aracely wants us to shut up and leave -- so the short answer is that even though we've been working on diversity for 25 years, the issues of women of color are just starting. So the commission on women in the profession now has a commission on women of color. I'm a new member of that, so I will be working with you. I know now who you are, so we're going to get you going. The State Bar of California has just created in their Council of Access and Fairness, a Woman of Color Committee. We are now just starting to coalesce, and you are at the very beginning of something big that's going to happen, so let's do it.

MR. ALVAREZ: Thank you. This will be the last
question because I think we need to move on in both the
comments and questions. I think if you analyze the
pipeline issue, which obviously is so critical to what
we do, first of all it's critical because I think if you
analyze lawyers, we play a disproportionate roll in
society. If you look at the judicial branch, all of us
are lawyers. If you look at the legislative branch,
overwhelmingly people in the legislative branch are
lawyers. And if you look at the executive, many
governors come from legislative backgrounds, et cetera.
So we, whether we like it or not -- people like it or
not -- do have a disproportionate role. If we are not
properly represented within our own groups of society,
those groups will never be properly represented. So
it's absolutely a huge issue, as far as I'm concerned.

Now, when you look at the pipeline and you look
at both extremes of it, I see the area that you folks
have been talking about. We have made a lot of efforts
throughout the years and a lot of programs have been
instituted. There's a lot of organizations in a very,
very positive way, ABA, Bar Associations, that are
trying to increase minority reputation. Yet, as you
noted, we're regressing, and we are regressing. So when
I look at the other side which is the pipeline, the way
I would phrase this is we're working with
quarter-of-an-inch pipe here, and we really need like a
2-foot pipe coming here. Yes, we're working at a margin
here, but we really need to increase it.

One of the things that was pretty obvious, and
I never hear the discussion on --

I think if you went around this panel here or
just about most successful folks who have come from a
minority background, you will see some very strong
parental influence that it was the parents, that it was
an aunt, that it was a grandmother, that it was a
grandfather or somebody who made it an educational
imperative for them to be educated. In my case it was
very simple. I could either go to school and be
educated or I would not be alive here today. It was a
very simple choice, which I understood quite clearly
which one was the right one, and, therefore, I took
that. But I personally have noticed that that
educational imperative that existed at the home base,
which is really where you need to really have it so
centrally located because when you think about
educational alternatives, that's a long period of time.
You're talking about somebody to invest 10, 15 years,
particularly in today's society. You know, teenagers if
you can get them to look three months ahead of time,
that's a major accomplishment. You have to tell them to
sacrifice all of this because 15 years from now you'll
do so well.

I don't see it at the family level. I see it
as a deterioration at that level, and I wondered if you
could comment. Do you see deterioration, improvement?
How is the Hispanic and Latino families -- how are they
pushing their children through the educational pipeline?

MS. ASHLEY: You're absolutely right, and I'm
glad you're alive today; that you made the right choice.
In all of the programs that we create or start or help
or work with, we demand a very high parental component.
I can tell you from having been involved with many
parents and gone to graduations at the Saturday Academy
of Law and gone to graduations of other programs, when
the parents are involved, the kids do well. When we
work with the parents directly, the kids do well, and
they are excited about their kids doing it. In this new
program we're having, the parents also have to recommend
their kids.

So I don't think we're doing enough there. I
think that we, as a law profession, need to work with
other professions and the education system to make sure
we are working with parents, but that certainly is
something that we need to keep high on our priority list
of being involved in the team that we have to make
things happen.

MR. ALVAREZ: Thank you.

MR. CASTRO: Again, I completely agree with the importance of parents, but I wanted to add one more thing to it. This is one of the things we talk about in our programs, the importance of the parents' involvement, and I'm sure this is true in your case as well. At some point, it became important to you to get an education. And one of the things we look at with the students and in our programs -- we could do a number of things. We could show them the door. If it's closed, we could show them where to get a key, how to make a key, how to open it. We could show them all of these different things, but the student has to open the door themselves, so it has to come from the student eventually. If they don't have it, they will not be able to succeed and move forward.

While I agree with you about the parents, we also look at the individual student. Was the parent successful in passing that desire onto the student so that they have what it takes to move ahead?

MR. ALVAREZ: Thanks very much. Now, I believe we have students from Mission High School, and if they are available we will open it up to see if they have one or two questions that they can ask on the panel. Is the
feed not here? No.

Okay. So we thank you Ruthe and Armando.

Thank you very much. Obviously, it's of critical importance to what we are discussing. Do we get a break now? We'll take a break now for ten minutes. So we will readjourn in ten minutes.

(Whereupon, a recess was taken from 11:11 a.m. to 11:35 a.m.)

MR. ALVAREZ: Thank you. We'll call the meeting back to order again, and we will introduce the next panel which is the Latino Farmers. We have two gentlemen that will be speaking. Fred Pfaeffle -- close enough -- Deputy Assistant Secretary of Civil Rights, United States Department of Agriculture, and then Juan Sanchez, Chair, New Mexico Land Grants Council. With that, Fred, I will turn it over to you. Thank you for being here.

PANEL 4 - LATINO FARMERS

SPEAKER: FRED PFAEFFLE

MR. PFAEFFLE: Thank you for having me. Some of the issues that have come up this morning have really hit home. Being an immigrant myself from Latin America, Commissioner Saenz's comments were very special to me. And Ms. Ashley should know, I am also a member of the State Bar of California, although not practicing in
California at the moment.

Agricultural census figures report almost
56,000 Hispanics own farms in the United States
comprising in excess of 17 million acres of land.
Between 1980 and 2000, the Latino population in rural
and small-town America nearly doubled and now is the
fastest growing segment in non-metropolitan counties.

Thank you for the opportunity to provide
information about ways the Obama administration and,
more particularly, the United States Department of
Agriculture are attempting to assist the Hispanic
farmers and ranchers in the United States and to improve
our record on civil rights.

The USDA is the fifth largest department in the
United States government with an annual budget exceeding
134 billion dollars. Among its roles, the USDA promotes
agricultural trade and production, assures food safety,
administers the U.S. Forest Service, protects natural
resources, fosters rural communities, and seeks to end
hunger in the United States and abroad. One other
important function of the USDA is to make and guaranty
loans to family farmers and ranches to promote, fill and
sustain family farms. Last year, the USDA's Farm
Service Agency extended over 6 billion in farm loans
within the United States.
For decades the USDA has had an unfortunate and
checkered history with regard to civil rights. Reports
dating back to the 1960s have pointed to the
discrimination at USDA in both program delivery and the
treatment of employees. USDA was also the target of a
number of lawsuits seeking redress for discrimination in
the delivery of its formal programs, which I will
explain, but first let me tell you what the Obama
Administration and USDA Secretary Tom Vilsack are doing
to address this problem.

Both the President and Secretary Vilsack want
to close this sad chapter in USDA's history once and for
all. Under Secretary Vilsack's leadership, USDA made
civil rights a top priority and has worked to move USDA
into a new era for civil rights. It is his goal that
the USDA achieve Abraham Lincoln's vision of the
people's department where each employee and customer is
treated fairly and equitably. On his first day -- his
very first day, Secretary Vilsack hosted a live web cast
with employees to express his commitment to improving
the department's record on civil rights.

Early on he learned of 14,000-plus civil rights
program complaints filed at USDA between 2001 and 2008,
and of those, the last administrations's Office of the
Assistant Secretary for civil rights found merit to only
one single complaint of program discrimination. So we have taken the following action to address complaints made between 2001 and 2008 to correct past errors and to ensure a more effective process to address program complaints.

Secretary Vilsack created a program complaints task force to review 11,000-plus of the 14,000-plus cases. The task force exceeding 50 USDA employees and interns completed a review and determined that 3800 of those could have merit. Because the statute of limitations had already expired in 80 percent of those 3800 cases, it will take an act of Congress to extend the statute for these cases to be resolved. To this end, we've provided technical assistance to Congress including background information, data and draft language, and we have worked actively with congressional leadership to include relevant provisions in a legislation passed by the U.S. House of Representatives in December of 2009.

Among the 3800 cases that have merit, the task force is working to prepare foreclosure on those for which they have sufficient information and to coordinate fact finding in those cases where they do not, once the statute of limitations is passed by Congress.

Secretary Vilsack has set a policy to resolve
all existing complaints either in formal closure and/or
a settlement before the expiration of the statute of
limitations. To meet the standard, he provided
resources and doubled the number of employees working to
process program discrimination complaints.

After a competitive bidding process, USDA hired
a firm to do an independent external analysis of our
service delivery programs to identify problem areas and
fixes. That firm has completed more than 1500
interviews of state and local USDA employees in 16
states where the majority of the program complaints
originate. Secretary Vilsack has taken what some
consider the rather unusual step of meeting directly
with farm worker groups and takes a public and local
stance in favor of immigration reform. He is seeking to
recruit 100,000 new and beginning ranchers and farmers
to help feed the nation and recognizes that USDA must
position itself to support the changing face of the
farming community.

Secretary Vilsack meets regularly with Hispanic
farmers and ranchers and Latino leaders to discuss the
Obama Administration's commitment to civil rights. In
addition to meetings in New Mexico, Colorado and Texas,
he recently met with the National Hispanic Leadership
Agenda for feedback on how to strengthen the USDA.
Secretary Vilsack relies heavily on the 26 Latinos and Latinas who serve under him as presidential appointees and included in our staff, for example, is our program leader Christine Chavez, Cesar Chavez's granddaughter who works closely on issues affecting farm workers in the United States. Other noteworthy efforts include the Forest Service Hispanic Outreach Initiative and the Food and Nutrition Service Hispanic Leader's Round Table.

Let me talk a little bit about the civil rights cases. On February 18, 2010 USDA worked with the Department of Justice to enter into a settlement with Black farmers for 1.25 billion dollars known as Pickford. On December 8th, 2010 President Obama signed legislation that will provide 1.15 billion dollars in additional funding for the settlement beyond the 100 million that had been provided for in the 2008 farm bill. This settlement compliments a 1999 settlement with Black farmers which exceeded 1 billion in cash and debt relief to successful claimants, and when it receives final approval by Federal Court we look forward to bringing closure once and for all to the longstanding litigation brought by Black farmers against the USDA.

In addition to the law suits filed by Black farmers, the USDA is the target of law suits, some of which sought class actions status brought by Native
American women and Hispanic producers. Native Americans filed a class action -- excuse me -- a class certified case entitled, "Keepseagle." A group of women farmers and ranchers filed suit in Federal District Court under a case referred to as "Love," and a number of Hispanic ranchers and farmers filed suit in Federal District Court under another case referred to as Garcia. However, neither the Love or Garcia action succeeded in obtaining class certification status.

On October 19th, 2010 USDA and the Department of Justice announced the settlement of Keepseagle. The settlement which must also receive final approval by a Federal Court to become effective provides 680 million dollars plus up to 80 million in debt relief or in debt forgiveness. It involves out of court administrative claims processing and adjudication performed by a third party neutral. Currently the USDA is working with the Department of Justice to establish a plan that would turn the page on the discrimination claims of Hispanic and women farmers by making monies available from the judgment fund administered by the Department of Justice, which means that it would not require an act of Congress for the funding.

Because federal courts did not certify either of the Hispanic or women's farmers cases as a class,
these claims would only be resolved through thousands or
tens of thousands of individual lawsuits. You may have
seen reports that the Obama Administration is working on
a plan to attempt to provide a means for these claims to
be resolved. As the program being developed is not
final, I am not at liberty to disclose any of its
details. However, when the plan is finalized, the
government will make a public announcement.

Access to justice is critical, and we share in
partnership with the ABA in providing it. In
particularly, significant challenges exist when trying to
reach Hispanic farmers and ranchers in remote areas with
potential language barriers. Whether you are working
hard to help obtain justice for deserving members of our
communities or watching out for individuals posing as a
so-called notarios (phonetic) out to take advantage of
individuals seeking justice, we know that the access you
provide to quality legal assistance is a critical part
of the civil rights mission that we view in common with
you and that Secretary Bill Sack and us at the USDA are
working every day to fulfill. That's all I have for
now.

MR. ALVAREZ: Thank you.

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SPEAKER: JUAN SANCHEZ
MR. SANCHEZ: Mr. Chairman and members of the commission, we thank this commission for its hard work on behalf of Latinos and the opportunity to speak today about a profound legal issue over 100 years old that has caused serious legal and serious harm to our community. Today we request that you incorporate land grant Merced issues into your report and help us improve the proposed remedies to Congress and the administration. My name is Juan Sanchez. I am speaking on behalf of the New Mexico Land Grant Council, which I chair. Also on behalf of the New Mexico Land Grant Consejo whose president Gilbert Ferran is here today.

The council is an agency of the state of New Mexico responsible for providing assistance to community land grants also known as "merceros" and for serving as a liaison with local, state and federal agencies. The Consejo is an organization of 25 community land grants, including one in Colorado. It works to recover former common lands, restore our rights and prove socioeconomic opportunities, protect our culture's integrity and to advance social justice.

Our testimony is about the loss of properties granted to Merceros by Spain or Mexico beginning in 1962. The Treaty of Guadalupe signed by Mexico in the United States 1848 explicitly protects our property
rights, but the process followed in New Mexico starting
in 1854 was flawed. First, the manner in which the
confirmation process was handled raises serious
questions. In New Mexico it took 50 years to complete.
There were three acts of Congress, 1851, 1854 and 1891.
Three venues, three standards, and three sets of
instructions. The three sets of presumptive application
of law.

In 1890, President Harris reminded Congress
that the United States owed a duty to Mexico to confirm
grants protected under the treaty which led to the 1891
statute that established the court of private land
claims. Second, the congressional acts were
inconsistently applied. On the firsthand, the process
confirmed 3.8 million acres of certain private land
grants. For example, the Maxwell and the Sangre De
Cristo. On the other, it rejected 1.1 million acres on
the basis of erroneous theory that common lands under
Mexican law belong to the sovereign. For example, the
United States versus Sandoval.

The process applied law of equity to confirm
certain land grants and refused to apply the law of
equity in the identical situation of San Miguel del
Ballo (phonetic). It allowed the application of adverse
possession for some land grant heirs to keep home lots
within rejected community land grants but rejected the
application of other who possessed their property for
over 100 years. These inconsistencies created a body of
conflicting law that was cemented. Huge disparities for
land grant heirs.

Third, the foreign concept of law were
superimposed on Spanish and Mexican land grants. Legal
concepts that did not exist in Spanish and Mexican law.
One was to treat a Mercero as a collective of
individuals only as a tenancy in common rather than a
corporate body of indivisible common lands. This
concept of Anglo American law defined common land grants
as indivisible, which allowed it to be sold in order to
satisfy and demand one petitioner his or her share in
the common property. Partition suits led to the sale of
fire-sale prices.

A 2008 report by the New Mexico Attorney
General concluded that the confirmation of community
land grants in tenancy in common was a monumental error
that led to the distorted consequences for land grant
heirs in nearly every case in which it occurred.
Twenty-seven of the 84 community land grants ultimately
confirmed were treated as tenancy in common. As a
result of this flawed and inconsistent process, land
grant communities and their heirs suffered profound
inequities and discrimination. Meceros not only lost
dacreage which resulted in inadequacies but others were
not confirmed at all. Millions of acres were illegally
converted from community land grants to United States
public domain. The statutes of 1851, 1854 and 1891 make
it clear the Congress intended to fulfill its property
protection obligations under the treaty. Just as
clearly, however, the property rights of Meceros
communities were not recognized in the United States as
Mexican law would have recognized them. The loss of
millions of acres of common land devastated our
communities.

After the conclusion of the CPLC in 1904, they
have never completely recovered. Before 1904, our
ancestors, the first Latinos in the United States,
raised farm animals, harvested timber, hunted game or
extracted other natural resources in their common lands
to support their families. After 1904, they needed
permits from the United States Forest Service or the
Bureau of Land Management or other state agencies to
engage in these same activities. When permits were
taken away, they had to move or change occupations.
Many moved to cities. Others moved out of state,
including the State of California. Land grant
communities that were left behind are among the poorest
in the United States.

Before 1904, our ancestors had cemeteries, organized morales (phonetic), and organized activities on common lands. After 1904, access to these sacred sites were denied. These sacred sites are now located on U.S. Forest Service or Bureau of Land Management. Others were leased or sold to the federal government or to private individuals.

Starting in the '70s, land grant leaders have tried to get Congress to establish a new commission to address these matters and have not been successful. Native American tribes have succeeded where Spanish and Mexican communities have not. For example, in 1946, the Indian Claims Commission ruled unanimously against the federal ownership of former lands taken during Teddy Roosevelt's presidency for the U.S. Forest Reserve. We have had more success in getting state legislation in New Mexico to support community land grants.

We ask that you -- in addition to acknowledging this profound Latino legal property rights issue in your report, that you assist us in refining our federal proposals; establish a commission to correct the inadequacies and the flood process of Merced adjudication, including completion of petitions not adjudicated by the PLC; return of former common lands
under federal control where possible and restore access
and traditional use rights to former common lands
elsewhere; establish an endowment fund to provide
resources that will foster sustainable land grant
communities; also, congressional action to repeal
United States versus Sandoval.

In conclusion, no government should allow an
injustice to continue. Government has the duty to
correct injustice. We respectfully request that you
include the issues we described here in your report and
final recommendations. Gracias for your time and
attention to the right issues that affect the first
Latinos in the United States.

MR. ALVAREZ: Thank you so much for your
testimony. Questions from any member? Frank?

MR. ANGONES: I have a comment. Since I am not
from the southwest or the west, I'm not that familiar
until very recently when I had the opportunity to visit
New Mexico, and that is that -- I asked some of the
Mexican-Americans that I met with, and I said, "How long
have your ancestors been here?" And then the response
was, "Four hundred years." And it is not that they came
illegally to the United States like we have seen in the
20th and 21st century. It is that the United States
went to them. Not unlike the analogy of the Indian
situation. That's just a personal observation, but thank you for your presentation.

MR. ALVAREZ: Anybody else? Allan, please.

MR. TANENBAUM: You mentioned that there were 14,000 complaints and that you then reviewed 11,000 and that 38 percent had merit. Of the 14,000 of the 11,000 of the 38 percent, any of those, have you broken down by race, national origin, religion what those -- what percentages comprised any particular category of Americans?

MR. PFÄEFFLE: We don't have that breakdown, but 3800 of the cases, they are being held in abeyance, and so what we're hoping is for Congress to fund and extend the statute of limitations and give us the ability to then do the work we need to do with those 3800. And we know there's going to be a significant portion of them that are Hispanic Americans, Latino ranchers and farmers, without a doubt.

MR. ALVAREZ: You mentioned the Sandoval case, and you were requesting help legislatively getting that overturned or a different law. I do not know enough about what the issues were in the Sandoval case, and maybe you can let us know, if you know, or you know.

MR. SANCHEZ: Mr. Chairman, thank you. The Sandoval case really comes down to seven land grants
within the state of New Mexico, which were known as the Sandoval because the plaintiff was the Sandoval versus the United States. What happened in that case back in 1897 is that the Supreme Court ruled that the land belonged to the sovereign and not to the individual or to the community properties so, therefore, they returned it over to the public domain. Back in 2004, the United States attorney general's accounting office did a report which was known as the GAO report of 2004, and in there one of their recommendations was perhaps for having Congress repeal that court case in order to justify some of the claims on that.

MR. ALVAREZ: Thank you very much for that clarification. Anybody else? Well, we certainly thank you for the testimony. It was very interesting history. Obviously, that affects a significant number of people in New Mexico, and it is something we will look into it as a part of the commission. Thank you very much. Anything else you guys would like to add?

MR. PFAEFFLE: Thank you. I'd like to say on our civil rights program that we are still developing, I know that this group -- the commission will meet again in the future, and by then we'll hopefully have more information, and I'm hoping to be able to reach out again at that point in the future, and we can -- I can
work with whoever is responsible in that regard.

MR. ALVAREZ: Absolutely. If you would speak
to Aracely, she would be more than happy. And to the
extent you have that developed, that would be better
very helpful to better understand your position. Thank
you very much.

MR. SANCHEZ: Mr. Chair, if I may, also with
our part also, if the commission requires any further
testimony on this issue, we will be more than glad to
continue our testimony at another place in time in front
of this commission. Thank you.

MR. ALVAREZ: Thank you. Thank you both. I
appreciate it.

Our next panel will be Latinas in the

PANEL 5 - LATINAS IN THE WORKPLACE

SPEAKER: ARCELIA HURTADO

MS. HURTADO: Thank you. Good afternoon. It's
great to see some familiar faces on the commission.

Thank you for inviting me to speak to you today. I
really want to commend the ABA's efforts and this
commission's efforts to address some of the issues that
are facing the Latino community across the country. So
thank you for being here and for your time.

Before I begin my testimony, let me briefly
introduce myself in the hopes that it will give some
background to what I'm about to tell you about the
issues facing Latinos in the workplace. My name is
Arcelia Hurtado, and I'm the Executive Director of Equal
Rights Advocates. ERA is an organization that advances
women's rights across the country, and we've been in
existence since 1974. I myself come from an immigrant
family. My parents are Mexican immigrants who came to
the United States in the 1950s. I grew up in the lower
Rio Grande valley in south Texas, in McCowan, Texas. My
father was a farm worker there, and my mother was
actually a nurse trained in Mexico, but she never got
her nursing degree in the United States due to language
and other barriers. But she worked as a midwife and
delivered a lot of babies in south Texas.

I earned my undergraduate and law degrees from
the University of California at Berkeley, and I joined
the ERA in September 2009 as the executive director
after having spent about 12 years in indigent criminal
defense including representing women on death row in
California and their post conviction appeals. I am all
too familiar, based on professional and personal
experience with the issues that Latinas face in this
country as a result of poverty, immigration status,
language barriers, and other socioeconomic factors. I
have dedicated my career to representing Latinas and others who would not otherwise have legal representation to help vindicate their constitutional, their legal and their human rights.

As I said, ERA is a national nonprofit legal organization dedicated to protecting and expanding economic and educational access and opportunities for women and girls. We were founded in 1974, and we're now in our 37th year of advocacy. ERA is one of the oldest women's advocacy organizations in the country and has been involved in some of the most significant legal victories affecting women's rights in this country. We have litigated cases to enforce anti-discrimination laws and give women access to jobs in the U.S. Forest Service, various fire departments including the San Francisco Fire Department, and also in the private sector.

Perhaps our best known case, of course, is Dukes versus Wal-Mart which is the largest civil rights class action lawsuit in the United States history which will be in front of the Supreme Court this coming March. In that case we represent over a million women who were subject to sex discrimination and pay and promotions at the retail giant stores across the country. And at issue in front of the Supreme Court is Wal-Mart's appeal
of the trial court's class certification order.

So economic justice for women is our mission at ERA, and we achieve it through litigation, policy, advocacy and public education. We believe in assisting women along a lifelong continuum from their first encounter with sexual harassment in schools to their first experience in the work force and as they seek to harmonize work and family responsibilities at work. Our work is organized into three campaigns that each incorporate litigation, policy advocacy and public education. Our marginalized-worker campaign addresses the issues Latinos face in the workplace.

Latino workers most often contact us through our nationwide multilingual and toll free advising counseling hot line. The majority of the calls we receive relate to sexual harassment at work, a retaliation usually followed by termination. We serve primarily low income women and women of color who labor in low-wage sectors of the economy. We have a multilingual staff of attorneys, including four bilingual Spanish language attorneys and staff to help meet the needs of Spanish-speaking callers.

Today I want to talk about the most prevalent issues that we see during the course of our work and that affect Latinos in the workplace nationwide. Due to
time limitations, I will outline only four issues. The first one is sexual harassment and violence; sex discrimination, particularly pregnancy discrimination; wage theft; and exploitation due to immigration status. Although I will speak of them separately, Latinas often encounter all four sometimes at the same time. By virtue of being Latinas, women, poor and immigrant. As I outline these four key issues, I will also discuss how the legal community and policy makers can help address them.

The Latinas that contact ERA predominantly labor in low-wage sectors of the economy. They are domestic workers, janitors, restaurant workers, farm workers, factory workers, fire fighters, and retail store clerks, among others. Many are unaware of their rights or are disempowered to enforce them due to cultural and linguistic barriers, immigration status and extreme poverty. As a result, Latinas face multiple and gross injustices in the workplace, including sexual harassment, which seem to be the norm rather than the exception in low-wage sectors where Latinos toil for a living. Sexual harassment is rampant among Latina low wage workers including offensive comments, grabbing, touching, humiliation, and repeated inappropriate propositions.
A recent study indicates that 80 percent of Latina farm workers in the Central Valley of California experience some form of sexual harassment as compared to about 50 percent of all women in the work force who experience at least one incident in their work life.

The story is much the same for restaurant workers. Another recent study of restaurant workers in the L.A. area reflects the exact same phenomenon. Not only are Latinas reluctant to report harassing behavior due to a number of unique vulnerabilities, they are often at a loss to even name the harassment, much less recognize it's illegality and remedy it. When Latinas do complain, employers often fail to remedy the situation or, worse, terminate them. Unfortunately, persistent sexual harassment often escalates to the point of sexual violence.

This past year alone ERA has taken on the representation of two Latinas separately in separate cases. One a restaurant worker and the other a janitor who were each raped at work by a supervisor after months and sometimes years of harassment, and after their complaints to their employers were ignored. This is not an aberration but rather a national phenomenon or trend as evidenced by several recent studies on the topic. One very good example of a report illustrating this is
the Southern Poverty Law Center's report on immigrant
farm workers that was published in 2010.

It is well established that federal and state
anti-discrimination laws protect Latinas whether
documented or undocumented. Although laws are in place
that theoretically protect Latina workers, laws are
empty promises without enforcement. Latinas face
several barriers to enforcement. First and foremost, is
a lack of information regarding legal rights and
remedies. There is a need for expanded public education
and outreach to Latinas to help identify them harassment
and remedy it. We urge the federal government and the
agencies charged with enforcing the rights of workers to
include a diverse legal staff with the bilingual skills
and cultural competencies to do this much needed
outreach to Latinas and better serve their needs.

We also urge the federal government to continue
funding direct legal service providers who can assist
federal agencies in enforcing the rights of Latinas in
the workplace and aid employers to implement best
practices. Finally, it's essential that the federal
government encourage to adopt best practices to prevent
harassment by providing training and incentives prior to
the point where the need for litigation arises. For
example, employers should receive training to adequately
respond to sexual harassment complaints. In addition, employers should be required to provide regular and meaningful training on sexual harassment to supervisors and workers in English and Spanish to ensure the Latinas are not victimized to the point of sexual violence in the workplace.

A second key issue Latinas face in the workplace is sex discrimination of various kinds, but particularly pregnancy discrimination. The Pregnancy Discrimination Act was passed in 1978 and prohibits discrimination in the workplace due to pregnancy. However, pregnancy discrimination issues have been on the rise, and we have seen that trend at ERA as well. Latinas, along with women in general, are now the majority of the work force in the country, and since they have become the primary bread winners in many families, it's imperative to them and their family's economic survival that they be free of unlawful termination based on the simple fact that they become pregnant. Unfortunately, pregnancy discrimination is all too common for Latinas laboring in the low-wage sector. At ERA, we receive several calls a month dealing with discrimination.

The story usually goes like this: A Latina becomes pregnant. She tells her employer. He refuses
to reasonably accommodate her, often endangering the
lives of both the mother and the baby. Some employers
outright terminate the Latina worker when they receive
notice of her pregnancy. In addition, pregnant Latina
workers lack information regarding their rights to
family leave leaving them vulnerable to unscrupulous
employers who prefer not to honor these rights.

For example, ERA recently represented an
airline baggage handler who became pregnant and was
forced to go on leave early on in her pregnancy after
her employer refused to accommodate her with a lighter
duty that did not involve lifting heavy baggage. This
was a pattern of conduct by the same employer who
routinely refused to accommodate pregnant women causing
some of them to suffer miscarriages. ERA's intervention
assured that this Latina was able to retain her job,
receive reasonable accommodation, ensuring the safety of
both mother and child, and ultimately to continue to
work and make a living to support her family until the
birth of her child about a month ago.

We urge the federal government to tighten
protections under the Pregnancy Discrimination Act and
ensure that federal agencies enforce the law. The
policy maker should adopt a reasonable accommodation
requirement under federal law as none currently exists.
Under California law there is a reasonable accommodation provision, but Latinas need to know about that and know about their rights to be free of pregnancy discrimination.

A third key issue for Latinas in the workplace is wage theft, meaning the failure to pay wages, overtime, and minimum wage as well as establish that regardless of immigration status, labor laws protect all workers, but we persistently receive reports of employers that fail to pay Latinos at all and often no overtime and no minimum wage. A recent study of restaurant workers in the Los Angeles area found that 44 percent of workers experienced overtime violations and 27 percent reported working off the clock, which means without being paid. We need more lawyers to help them get a remedy and get paid.

Domestic workers are particularly vulnerable to wage theft. They are particularly vulnerable due to their isolated working conditions. They labor behind closed doors and out of the public eye. Many domestic workers are Latinas who clean houses, take care of children, and otherwise toil in private homes in conditions close to indentured servitude. Isolated both physically and socially, domestic workers are excluded from most labor and employment laws.
ERA is a part of a coalition that is currently advocating for a domestic workers' bill of rights here in California similar to the one enacted in New York state and which would guaranty domestic workers overtime pay equal to that of other workers, safe working conditions, workers' compensation protection, paid sick days and other protections workers in other sectors currently receive. We urge policy makers in California and nationally to ensure workers, many of whom are Latinas, to receive equal treatment under the law.

A fourth and final over-arching issue that Latinas face in the workplace is exploitation due to immigration status. There are over 4 million undocumented women living in the United States. As I've tried to say today, albeit with a very broad stroke, immigrant Latinas come to this country to work and to help support their children and families. They are economic refugees. Due to their many and varied vulnerabilities, they are often exploited by employers and even victimized to the point of violence.

Our broken immigration system revictimizes them. For example, when sexual harassment crosses over into sexual violence, Latinos remain reluctant to report it for fear of deportation. Their fear is not unfounded as there are no legal protections to stop law
enforcement officials from turning crime victims, even victims of rape, over to ICE. In addition, the new visa mechanism, which was intended to afford a pat to residency and citizenship for victims of crime, does not protect all victims such as Latinas who suffer wage theft or other types of abuses on the job. When the Latina does become the victim of sexual assault, often due to sexual harassment on the job that an employer fails to remedy, a new visa may not be obtainable as they are limited to 10,000 per year. This numerical requirement is nonsensical if the goal is to encourage crime victims' cooperation with law enforcement. We urge the federal government to enact comprehensive immigration reform including abolishing the numerical limit on new visas.

In conclusion, the issues Latinas face in the workplace are multi-layered and complex due to the confluence of race, class, gender and other identities that impact their treatment as workers. ERA has historically addressed the unique needs of women of color, including Latinas. Our approach to representation is holistic and recognizes that a single case may raise a variety of issues, such as wage-an-hour violations, sex and race discrimination. We work closely with co-counsel on the various parts of the
case. For example, one case may involve an immigration attorney, a wage-an-hour attorney, and a workers' compensation attorney in addition to our representation on the discrimination issue.

Not for profit law firms like ERA are unique in a legal system driven by profit. Civil litigants, even those seeking enforcement of civil rights, are hard pressed to find an attorney to represent them, much less one is who bilingual and bicultural. We urge the ABA to support funding for direct legal service providers since we are often left with the responsibility for enforcing the rights of Latino workers where governmental agencies lack the resources. Finally, the ABA should actively seek to increase the number of bilingual and bicultural attorneys. The bar needs to be representative of the population it serves, and Latinas are often reluctant to come forward with workplace discrimination issues fearing repercussions or simply due to unfamiliarity with the legal system.

The recent HNBA study that was referred to earlier found that Latinas make up 7 percent of the U.S. population but are only 1.3 percent of the nation's lawyers. A culturally competent and bilingual attorney would advance the goals of knowledge and access to legal rights and assure issues that Latinos are facing in the
workplace. Thank you for your attention.

MR. ALVAREZ: Thank you so much for your testimony. Questions? Tom.

MR. SAENZ: First of all, thank you so much for your testimony. I'm sorry I had to step out at the very beginning. I wanted to ask you questions about if you could expand on your comments on the domestic worker exemption from labor protections and specifically whether you have data about what proportion of the domestic work force is made up of Latinas, so we could assess whether that has a particular disparate impact in its continuing application even though it goes back so many years because I think it should be an issue of concern to this commission.

MS. HURTADO: Okay. I don't have the numbers with me today. There is a domestic workers alliance or a coalition that's working right now across the state, like I said, to enact a domestic worker's bill of rights. And a large part of that momentum is behind the fact that domestic workers are not subject to overtime laws; are not subject to sick and vacation leave. They are simply not a part of existing laws and are abused and exploited for those reasons. There are several different organizations working on this bill or on this legislation which is supposed to, I believe, go to
committee at the end of this month. So it's a very
critical time for this effort, and I don't know the
exact numbers of Latinas that are domestic workers. I'm
sure that those statistics would be easy to find.

From personal experience and from also the work
that we do at ERA, we do see that a large majority are
immigrant women, including Latinas.

MR. ALVAREZ: Judge?

MR. SMITH: Ms. Hurtado, it is my understanding
that adequate laws exist if they are properly enforced.
Is that a misconception on my part or is this a fact?

MS. HURTADO: Yes. That was the point that I
was trying to make is that Title 7 does cover -- Title 7
anti-discrimination laws and constitutional laws do
cover both documented and undocumented workers, Latino
workers. We cannot ignore that a large majority of the
Latino workers in the United States are undocumented,
although there are also, obviously, documented Latino
workers. Theoretically, the laws cover women, Latinas,
against discrimination and protect them against some of
these abuses. In practice, because we don't have enough
lawyers to do this type of work, and we don't have, you
know, 25 ERAs across the country doing this work, women
suffer in silence, and they don't get any recourse to
any remedy, and that is probably, I believe, the biggest
legal crisis facing this nation is not having enough
lawyers to handle representation of people who may not
speak English as a first language, who may have cultural
barriers, and who are poor and cannot afford to pay for
a lawyer. Like I said before, that's what I have
devoted my own career to is indigent criminal defense
and now civil litigation.

MR. ALVAREZ: Could I ask you a question
relating in some of these areas. How much of the issue
within the Latino community itself is Latinos abusing
other Latinos within this framework? Maybe you could
describe it.

MS. HURTADO: Sure. I'm not naive enough to
say that is not the case. That is certainly the case.
We see these types of abuses from the smallest
restaurants in the Mission District to the largest
corporations like Wal-Mart. The issue is that there is
no access to representation to remedy these problems,
and that the laws do not adequately cover certain groups
of women. It is a very big problem across the spectrum.
Just in the history of ERA alone, we've litigated
against fire departments, against small restaurants,
against huge corporations, insurance companies. It is a
problem that has been persistent since the 1970s, and we
are still at it after 37 years.
So it is an issue that -- it's about exploitation, and it can happen based on race, it can happen based on gender, it can happen based on a lot of different identities that women have. So you're correct that it's endemic.

MR. ALVAREZ: I can only tell you that it varies, but culturally certainly among some of our own Hispanic community, some behavior -- and I'm not talking about the behavior that you're talking about -- but some bantering that goes on inside the workplace is very much accepted and a part of the culture. It's only when it crosses a certain line that it becomes negative. Certainly I've been to work places where I was shocked that it was going on. It's very much accepted as a regular course. So I'm curious to see how much are our own cultural issues, and certainly the abusive part is not permitted under any cultural aspect of it, but some of it can be misinterpreted from time to time.

MS. HURTADO: Well, there is the issue of, like I was saying, educating women to even name the problem. There is certainly the view that it's just something that is unpleasant, and it's a fact of life that women have to endure if they want to work in certain sectors of the economy. It's particularly severe, like I was saying, in low-wage sectors where, because women are not
educated about their rights or because they are not aware that this is illegal, at a certain point, that the employers or those in power take advantage of the situation. So a lot of the work that we need to do is getting out in the community and educating women about what it means and giving them the language to name it and to try to remedy it.

MR. ALVAREZ: Yeah. I find nothing more horrific than for feeling that a woman needs to go to a workplace and be harassed in any way. I cannot imagine the mental state that you have to be going to the workplace on a regular basis, so I very much understand why you're doing that. Certainly in my workplace when I see it I treat it very harshly because I don't see any value in it.

If there's not any other questions --

Oh, Jenny?

MS. RIVERA: Thank you for your testimony. I have a question about whether or not you have experienced working with trafficking victims, sex or labor and/or labor trafficking victims, and if you could share some of those experiences and what recommendations you might have for this commission as to how we can address some of the issues that come up with trafficking. And then my other part of the question is,
if you have had experience working on these issues, whether or not in your opinion the current federal anti-trafficking legislation has really been helpful or if there are perhaps weaknesses that the commission should consider thinking about.

MS. HURTADO: Sure. That's a very important issue, and thank you for asking about that. We have not dealt with human trafficking directly, although there is also always the issue of when women come to this country and are brought here, when they pay someone to bring them here there is always that power imbalance, and there is that obligation to repay the cost of bringing them here. So it does arise tangentially in the work that we've done with the women that we work with that have experienced that power dynamic, but we have not dealt with the issue directly.

I know that there are lots of organizations across the country that do deal with it more directly. I think I referenced the Southern Poverty Law Center's report earlier, and I highly recommend that on those issues. They do incredible work across the south working with those very marginalized immigrant workers who are subject to human trafficking.

MR. ALVAREZ: Any other questions? Allan.

MR. TANENBAUM: In the Wal-Mart case, of the
class that you're seeking to represent, have you done
any work to categorize the class by race, national
origin, et cetera, and if so, would you share that with
us?

MS. HURTADO: That's an excellent question,
because as I was referencing before, women are not just
subject to gender discrimination. There can be
overlapping layers of oppression and mistreatment.
Certainly we don't operate under the assumption that
women are just women. Sometimes they also, of course,
have a racial identity and an ethnic identity.

And regarding the Wal-Mart case, we don't have
exact numbers right now as to the composition of the
class, but based on the retail industry's makeup, you
know, who is working in the retail industry, it's
predominantly women and it's predominantly women of
color. So based on that, we can extrapolate that
members of our class will also be predominantly women of
color. The Department of Labor, I believe, has some
statistics on the exact makeup of the retail industry
which you can use to extrapolate and think about the
Wal-Mart case along with other cases that are going on
in that industry because there is this persistent
problem in that industry.

MR. SAENZ: I appreciate that the time limits
caused you to focus on the four very helpful issues that you focused on, but I wonder if you have any experience, from the ERA perspective, with occupational safety and health standards and experience of Latinas in the workplace with regard to violations and enforcement?

MS. HURTADO: Yes. In the past, ERA has represented women winery workers out in -- I believe it was in Napa County back in the mid '90s, and one of the issues was, of course, pesticide exposure. Again, the Southern Poverty Law Center's report documents the vast problem of pesticide exposure for farm workers and farm worker women and how it causes birth defects and other very horrific problems for them. Reproductive harm, not only to themselves but to their children as well. So we have dealt with that issue.

We're also keeping an eye on the meat packing industry which is -- and there's a lot of scholarship around the meat packing industry right now, particularly in the midwest, Iowa and Nebraska, where abuses are rampant in terms of occupational safety issues. One example is the chicken disassembly plant, is what they call them, where they basically chop up chickens in the midwest. They go by on a conveyor -- a series of hooks. They go by very quickly, and women are supposed to cut them as they whiz by, and there's a lot of injuries from
the hooks and the sharp instruments that they have to use. So that is one area where we're really, really keeping an eye on that industry because, like I said, when women work in a certain job, it's not -- there's so many issues that come into play. Health and safety issues, harassment issues, wage-and-hour issues. They all can occur at the same time, so it's definitely something that ERA has focused on the in the past and continues to focus on.

MR. ALVAREZ: Anyone else? Arcelia, I want to personally thank you for your testimony, and not only for that but for the work that you do and for the passion that you have for it. You know, it's great to see, and we thank you.

MS. HURTADO: Thank you all.

MR. ALVAREZ: The next panel is Latinos and Access to Legal Services. We have two gentlemen from the California Rural Legal Assistance. Jose Padilla and Dan Torres.

MR. PADILLA: Looking at the clock, I notice that we have negative five minutes left, so I'll ask for your patience before we begin.

MR. ALVAREZ: You have all of your time, so don't think you need to hurry through it.

PANEL 6 - LATINOS and ACCESS TO LEGAL SERVICES
SPEAKER: JOSE PADILLA

MR. PADILLA: Thank you very much. My name is Jose Padilla, and I'm the Executive Director of California Rural Legal Assistance. And I have with me a colleague and an attorney, Dan Torres, who will address one of the cutting edge issues that we are involved with involving LGBT and the LGBT in the Latino community, particularly Latino LGBT in rural places.

But like Ms. Hurtado who just spoke, I wanted to begin by introducing myself and talking about the fact that my career in public interest is personal. It is, perhaps, because my grandparents from both sides were migrant farm workers in California in the 1920s or because my father was a migrant farm worker in the 1930s and '40s that I gave -- perhaps it was because of that that I gave the whole of my career to the work of CRLA. CRLA has 45 years of history. In those 45 years, I served as an attorney. I was there for the 32 of those, and as a director for more than 26.

But as to your charge, like Mr. Saenz, I've been a member of the ABA throughout my 30 some years as a public interest lawyer, and like all previous speakers, I applaud and I recognize that this ABA leadership as being very opportune, and Mr. Saenz articulated it so powerfully. In applauding and
supporting Steve Zack's initiative and the work of this commission, we recognize -- we recognize that disproportionate Hispanic poverty is a critical social justice issue in this country, and if so, that is a legal aid that addresses civil legal address for the U.S. poor. If that's important to us, then this must be your issue.

Some day they'll argue that this subject, Latino poverty and legal aid service, must be studied more thoroughly because civil legal needs related to immigration status, to labor rights, to education rights, to civil rights may go unserved by the existing legal aid structure, which is why I decided to be here to make my own comments.

So you ask, "Who is CRLA vis-a-vis legal aid?"

CRLA is a nonprofit law firm that was a part of the 1960's war on poverty, and we started opening rural offices in August of 1966. In that history, we were the first legal aid in the United States established to serve rural places, and we were the first in that war on poverty. We were the first legal aid to provide legal aid statewide, but we were created to provide legal services for all of the rural poor.

So why is this a Latino issue, and why has CRLA treated it in its history as a Latino issue? Perhaps
because Cruz Reynoso, the first Latino on the California Supreme Court, was the first chairman of the CRLA board, or perhaps because Cruz Reynoso was CRLA's second executive director, or because Cesar Chavez was on the founding board or because four of CRLA's six directors had been Latino in that 45-year history. Perhaps for all of these reasons Latino focused legal aid and Latino civil rights and Latino labor rights have been priorities for our 65-attorney firm throughout our history.

Today with more than half a million low income eligible persons residing in our service area, we target the most under-served regions and the most under-served Latino rural communities with our legal aid, and within the Latino poor we target the most isolated, the most vulnerable, and the most silenced among them. As examples, farm workers are an isolated part of the community, but yet within them indigenous farm workers are yet more isolated because they do not even speak Spanish, bringing with them from Mexico indigenous languages. Like the previous speaker, we also represent Latina victims of gender discrimination and harassment in agriculture, and as another vulnerable community we represent Latino LGBT persons.

So why should you be concerned about legal aid
and the type of work that we do? Today funding for legal aid is significant, and because Latinos make up 25 percent of the nation's poor, this resource should be available for meeting the needs of low income Latino poor. Today with the federal appropriation of 420 million dollars to the legal services corporation, the federal government provides funding to 137 local legal aid programs. We with our 8.6 million dollars from the federal government are the 8th largest of those 137. We are the 8th largest recipient of those funds in the United States.

Why did I take interest in coming before you today? In reviewing the commission's charge, I noted one that stood out as I looked at my material. It was the one that indicated that you as one of your charges was to look at and explore the impediments to access to justice by Hispanic individuals, and in that I assumed that that meant also the larger community, the Latino community. There is the Latino community at large.

So let me explain why I think that we need to be paying attention to this issue and you as the commission should do so. I wanted to go over some very basic data, both legal aid data and just general Hispanic poverty data. The basic poverty data indicates that the Latino poverty and its special civil needs
should be of concern not only to the ABA but the national legal aid community. Of the five states with the largest poverty populations in the United States according to the 2000 census -- and you know those states, California, Texas, New York, Florida, Pennsylvania -- four of those that have the highest poverty populations have the highest Latino populations in the country. So as we are growing as Latinos -- and we've talked about it and you've had different speakers talk about that growth, which is why you are here. So as we grow as Latinos, our Latino poor and their needs grow with that changing topography.

Another fact. Sixty-eight percent -- nearly 70 percent of all U.S. Latinos reside in the ten states with the highest poverty populations, and, therefore, the highest LSC funding in the United States. We reside as Latinos -- our Latino poor reside in those places with the highest legal aid resources. As I said, nortavos (phonetic) spoke about the need among those poverty immigrant communities to find legal aid. You have legal aid resources there, but there are major impediments that prevent those legal aid resources from being used for Latino civil legal needs.

According to the 2008 Hispanic center data, among communities of color, Latinos represent the
largest of the 34 million poor. Latinos have 8.7
million poor, 25 percent; African-Americans 7.5 million
poor, 21, 22 percent; Asians about 3 percent. So if we
believe that the ethnic poor deserve equal access to
legal aid, then that must be a conscious subject of your
work and your study. So what does the data within legal
aid say about representation of Latino issues, Latino
needs in legal aid? Legal aide service and staffing
data, "Are we underrepresented?"

The basic legal service data coming from the
federal government of LSC, when you look at client data
and staffing data, it suggests that Latino poor may be
underserved. It's examples that Latinos are 25 percent
of the U.S. poor. The last three years, 2007, '08 and
'09 of LSC Data indicate that of the 2.5 million clients
served by legal aid, 20 percent were Latino. Some
underrepresentation. Again, all of the Latinos are 25
percent of the poor of this country. The staffing data
from the LSC for those same three years also indicates
underrepresentation. Of all of the legal aid staff in
this country, 19 percent are Latino, but there is no
date analysis regarding Latino and Latina attorneys in
legal aid. But I will suggest that you will find, if
that data is searched and analyzed, that there is larger
underrepresentation than that 19 percent.
One final data point regarding legal aid and Latinos. There is no data reported regarding the ethnic makeup of Latino legal aid boards, but yet these bodies make policy, they select program priorities. That is, they select the legal needs that are to be served by legal aid and this data that should be provided in the same manner that client services and staffing data is provided to the public.

But now let me talk about special civil legal needs that I don't think are being served but that are significant legal needs for the Latino poor. The first point, civil legal needs study should include Latino poor legal needs. I think we are all aware that when the federal government -- an individual states study data about the individual needs of the poor and the lack of legal services for these populations, none have ever identified the justice gap for Latino poor.

Let me give you our own example of why that might be important. A lot of this data represents that -- we all hear that there are too many attorneys out here in our country. Something like one attorney for every 300 Americans or 250 Americans. Something to that effect. When a civil legal aid attorney study was done in our state most recently, it was said that one civil legal aid lawyer was there for 10,000 poor. But if you
ask, "How about farm workers -- Latino farm workers," you will find, at least in the data we have looked at, one civil legal-aid attorney for those 30 to 40,000 farm worker poor. That kind of a justice gap is just anecdotal. But most of these gaps, the best that they do is that they mention that perhaps immigrant communities, farm workers or language minority groups may have be special needs, but not really provide any legal need data for these communities. I think that's an issue that you should address.

I also think the next point is that current legal aid services, as being provided right now, may not be addressing Latino poverty needs. We have had a long history, as we said, in serving rural Latino poor. We have identified painstakingly what those special legal needs are for that part of the poverty population that we serve, and Latinos only make up half of the poverty population that we serve. Let me talk about those special needs. One thing we found is that Latino poverty is not a welfare poverty, but it's a poverty of working poor people. This suggests that legal aid services related to labor, to employment, would be important to Latino poor. Yet employment services -- employment services provided by legal aids represent some of the lowest numbers in the country. Nationally,
looking at the same three-year data, those percentages were 2 percent, 3 percent, 3 percent respectively. So we're not meeting the civil legal need. If those are the numbers that we find in labor and employment in civil legal aid, we are not addressing the legal needs of the Latino working poor in this country.

Two, we all know that Latino poverty is also an immigrant poverty as reflected by the large number of foreign born Latinos in the United States. In this context, federal legal service restrictions against the representation of certain immigrant groups not only leave these communities unserved, and especially vulnerable to legal injustices, but it creates a disincentive for legal aid programs to outreach to these groups and a disincentive to have a language capacity to serve these immigrant populations. Those of you who know about legal aid know there are anti-immigrant, anti-farm worker, anti-civil rights forces that have always been opposed to any systemic advocacy being done in legal aid. But those forces have gone even further in the last 15 years or so. Since 1996, those prohibitions against legal aid and the use of legal aid federal dollars have been extended to any dollar received by the legal aid program. So if I receive $1 in federal legal aid and I have $9 that's not, my $9,
even though it's not federal, is restricted. Before 1996, I could use those $9 to represent Latino immigrants in a lot of these issues, but that does not -- those restrictions prohibit us from addressing very critical labor rights needs, and as I mentioned, the employment needs of Latino rural poor.

Three, people have mentioned about that one condition among immigrant Latino poverty is the failure of public schools to adequately serve Latino needs resulting in low academic achievement, large drop out rates, and we know the condition. Again, this would suggest that legal aid services relating to education would be important to the Latino poor. Yet, like employment services, education services represent some of the lowest numbers provided by legal aid nationally. In the last three years, where data was found, these percentages were less than 1 percent in any one year. Under service.

And, fourth, to the extent that poverty to the Latino community like the African-American community brings conditions of ethnic discrimination in housing, education, employment, the inability of programs to pursue class action remedies, and the fact that civil rights does not appear to be an area of client services for legal aids means that another unmet civil legal aid
of Latino communities goes unmet when we talk about national legal aid.

Let me end in my comment saying this. The defense of Latino labor rights and civil rights in legal aid has led to aggressive opposition by the federal government. In CRLA's nearly 50 year history we have always brought and have been known to have brought major and countless civil rights cases. We were a part of litigation against Proposition 187. We did the litigation that eliminated the practice of school districts replacing Latino students who could not speak English. Placing them in mentally retarded classes. That was CRLA's litigation. The first state funding education law, that was CRLA's, in the State of California and in the country. State bilingual educations law, that was CRLA's. We've always had a history of civil rights. But in that history federal government has always opposed. Those restrictions have been impediments, and the government itself has imposed. We are the most investigated legal aid in the United States, and that's because we go and represent Latino's civil rights, Latino labor rights, that this has happened.

In the last ten years we have had three significant investigations called by rural congressmen
that not only resulted in a loss of significant
resources in lodging a defense to our work, but I had to
go and testify before the subcommittee in Congress in
2004 because of those investigations. Twice in the last
ten years our funding has been suspended. Why? Because
we are doing Latino civil rights. Because we are doing
Latino labor rights. And most ironically perhaps, or
perhaps not ironically, that although the subject of
specific ethnic group representation has never been
restricted by Congress or by any Federal LSC regulation,
we were charged by the LSC inspector general in 2006
with expending resources in a manner that
disproportionately favors services to the Latinos and
farm workers. That is the type of environment within
which we as a legal aid are trying to serve our
community.

    I'm going to stop there and for the last couple
of minutes have Mr. Torres talk about one of the
vulnerable communities that we have been trying to serve
most recently. Dan?

    SPEAKER: DAN TORRES

    DAN TORRES: Good afternoon. My name is Dan
Torres. I'm an attorney and program manager for
Proyecto Poderoso, a California Rural Legal Assistance
civil rights project in partnership with the National
Center for Lesbian Rights. I'm also the son of Mexican farm workers, and I welcome this opportunity. Thank you so much for allowing me to speak.

The project's objective is to increase access to justice for lesbian, gay, bisexual and transgender rural communities in California, many of whom are Latino and Latinas. Rural California struggled with profound racial and economic disparities. The communities are disproportionately impoverished. Many residents in the region's dominate and agricultural industry are among the lowest status workers in the nation. California's rural poor struggle to find jobs that provide a living wage and dignified working conditions as well as safe and affordable housing, quality education, and healthcare. Since many rural communities are heavily Latino, this legacy of races undermines the community's access to economic and political power that would otherwise enable the improvement of living conditions. While these challenges affect all rural poor, they are acute for LGBT Latinos and Latinas.

Recently, the Williams Institute of the UCLA School of Law conducted a study for CRLA regarding rural lesbian, gay and bisexual populations of California. The Williams Institute found that in the counties that CRLA serves, there are 136,000 gay and lesbian and
bisexual individuals. The majority of same sex couples with children in the CRLA counties are Latino and Latina comprising 52 percent of same sex couples. That defies the stereotypes that we constantly face that there are no LGBT Latinos or that they don't have families or they don't live in our own communities.

In addition, the Williams Institute found LGBT people in California in rural counties tend to be economically disadvantaged, health challenged, coming out at a faster rate, and are more likely to be raising children. Very limited data is available about transgender Latinos in Latino rural communities. Yet we know from our own experience that the transgender Latino in Latino communities also face severe discrimination in rural California.

In recent years, the growing number of CRLA'S employment cases have involved harassment and discrimination based on sexual orientation and gender identity. A disturbing number of these cases have involved physical cases against our clients in addition to disparate pay and verbal abuse. Through the course of outreach efforts, CRLA has learned of additional examples of sexual orientation and gender identity discrimination in schools.

I notice we have anti-bullying signs along the
walls here. Bullying and harassment is an epidemic in rural California, particularly when it comes to LGBT students and students of color. It is reported that at a job counseling center it gave inadequate assistance to a gay man because his effeminate appearance made him quote "too difficult to place." In another example two students were suspended because of acting gay at school which was considered disruptive behavior. In Oxnard, a male junior high student who came out as gay was shot and killed by a classmate. A crime clearly motivated by hate. We've had transgender Latino and Latina clients who have been victims of hate crimes come to our offices seeking legal representation to obtain immigration protection and recourse in employment and education discrimination cases.

In addition to the civil and human rights violations our clients' experience, they also report finding it very difficult accessing LGBT culturally competent legal institutions in rural communities. (Inaudible) is just one example of an effort to help achieve access to justice for eligible Latinos and Latinas in rural California. I urge the commission to recognize the (inaudible) as a part of the Latino community and help make access to justice for rural Latinos and Latinas a reality nationally. As an initial
step, the commission could highlight the needs of this
under-served community and direct resources towards
trainings and research to address the issues I've
identified today.

I thank the commission for it's consideration
of these issues.

MR. ALVAREZ: Thank you very much for your
testimony. I will open it up to questions. We'll start
with you, Tom, and then Maribel, and then you'll be
last.

MR. ANGONES: As it should be.

MR. SAENZ: Thank you for being here today,
Jose, and for your testimony, and your colleague as
well. Dan, thank you for being here.

I have a question. You went over some of the
data about legal services nationwide. Is there data
collected about LSC nationwide ability to provide
bilingual services and more specifically you mentioned
the specific challenges faced by indigenous populations.
I wondered what information was available nationwide
about LSC organization's ability to serve indigenous
speaking communities.

Finally, I applaud CLRA for establishing this
LGBT project. My sense is that it's unique,
unfortunately, and I wonder if you could expand on
whether there is capacity in other LSC agencies
nationwide to specifically address the needs and
corns of the LBG'T poor community.

MR. PADILLA: With respect to what LSC has been
doing around the access legal services because of
language bilingual services, at least on paper there has
been a request that policies be passed by legal aid
programs, I believe, to address issues -- bilingual
issues in the provision of legal services, and that
program is being required to have bilingual capacity in
those areas where you have those communities, whether
those be Asian communities or whether those be other
communities that lack efficiency in English.

There are policies out there. We are asked to
pass those policies to our boards. But as far as the
identification of hard data, that's not there, and so
they will track ethnic data. Right now it's an
interest, and we applaud the Legal Services Corporation
for wanting to address it, but it's more like leaving it
to the legal aid program to really take the initiative
when they've identified the need of the community.

Similarly, the Legal Services Corporation has
adopted, like the ABA has adopted, certain standards for
legal aid provisions. So the language needs of poor
communities, those language needs are a part of those
standards that we are supposed to be needing. When you identify those needs in your community, you address the resources. But in terms of the data that would indicate that there is success, I think that needs to be done, and I think it's just very recently that that interest in bilingual needs has been surfacing in part because in many states, including ours, that's been an issue.

Bilingual services in the courts, that is important in the state judicial system, but I think that the national judicial system and legal aid as a part of that is paying attention. But I think that the point is that we need to be a little more direct in asking for, I guess, the accountability at the other end. Our programs will be doing that. And I think the most important part is to look at those programs where the Latino populations are. What happens is, because the country is so big, we have 137 programs. It really must be that Legal Services Corporation must understand where the Latino poverty is, and it is in those places where these policies are important. To the extent they audit and investigate those places, that's where they need to be asking those questions about where is your bilingual policy and where is your bilingual staffing, etc.

MR. TORRES: And to answer your last question, yes, you are correct, this project is still unique,
unfortunately, and we hope we can change that. And
that's one of the reasons we wanted to be here today.

In terms of legal aid organizations nationally,
we made the effort to speak at national conferences
about this project to share our experiences, and the
feedback we're getting is very positive. People are
asking basic questions like, "Where do we even start?
How do we even ask clients if they are LGBT? How do we
build capacity within our own organizations? What sort
of cultural competency to we need?" So there is still a
lot of work to be done to build capacity within the
staff at legal aid agencies.

We're very pleased with our own experience. I
think it takes leadership from the top. We're very
lucky to have Jose Padilla to champion this, but it also
takes the ABA's leadership as an institution to lead the
way for legal aid organizations nationally to say this
is worthy. This is a part of our community, and these
are civil rights that everyone deserves.

MS. MEDINA: Thank you both for your testimony.
Jose, you indicated that even $1 in federal funds would
restrict the organization's ability to provide certain
legal services, and I was wondering if you could give us
some concrete examples of what type of legal services
you would be precluded from providing, and if you have
either the regulations, the statutes or administrative
regulations that specifically preclude that that you can
provide it to this commission with the recommended
language of either modifying the language or
recommending the deletion or revocation of any of the
language that precludes that.

I also wanted to find out from you if you had
any recommendations on what we can do as the commission
or the ABA to increase the number of young lawyers that
are providing -- I mean, the statistics you provided on
one lawyer for every 30,000 migrant workers is
astounding. So if you had any recommendation on what we
can do to outreach, perhaps, to law students to
encourage them to pursue a career in CRLA or other legal
services.

MR. PADILLA: I apologize. I've been fighting
a bad cold. If I sound incoherent, it's from lack of
health.

In terms of the issue of the restriction
against the use of non-federal dollars into service,
before '96 -- well, let's look at labor in agriculture.
Any figure you look at, whether it's national or state,
you will recognize that among farm workers 50 percent,
maybe 60 percent, are going to be undocumented. So in
the past, before '96, when a farm worker crew would come
in or a part of the farm worker crew would walk in with
their problem on wages, we would use non LSC money to
represent them directly.

If they come in today, all the best we can do
is advise them or send them to the labor commissioner.
Sometimes there's very inadequate services coming from
the labor commissioners, including the state. Or we
need to find rural lawyers or urban lawyers because
rural lawyers are not out there to represent farm
workers, as a general matter, to represent those
undocumented, but in the past we were able to do that.
So we have had to, with a lot of difficulty, find urban
law firms willing to periodically represent undocumented
workers when they come in.

We have had to tell those workers many times
that we can't help them. We just refer them or we
educate them about the need to have a legal
representative -- a legal resident coming for our
services. And we have been investigated recently in the
recent past for having our lawyers represent -- two or
three lawyers represent one documented farm worker and a
private lawyer represents 20 undocumented, and all of a
sudden we get investigated because we subsidize the
services to undocumented.

That's the problem that happens when you -- you
beg those investigations when you cannot use your other
dollars freely. Either you do not do those cases or you
have to try to find that compassionate urban law firm
that will help you. There are a few, and we thank them.
We have such law firms in Los Angeles. A few. We have
some law firms in San Francisco. But it creates a big
difficulty in doing that, but worse than that, there's a
huge unmet need out there where we can handle all of
those cases.

In recent years we have done huge cases against
the dairy industry. Recently we won a huge case, maybe
a half a million dollars in unpaid wages from one dairy.
We made the bad decision to publicize it in the Latino
radio in the central valley. Workers from about 27
dairies called us up and said, "We have the same
problem." We can't represent 27 dairies in those labor
violations. The need is huge, but the impediment of not
allowing us to use any of these other dollars -- I
cannot use probably 6 million of my dollars to
represent -- to meet those unmet needs. So, to me, it's
a big difficulty.

I will say the ABA through SCLAID (phonetic)
has championed those changes that will allows us to
freely represent the legal needs -- the Latino legal
needs I was talking about, but given the congressional
makeup of the last few years -- '96 coming forward -- it has been very difficult. But I applaud the ABA and SCLAID for taking the right side on those issues and trying to remove the class action.

A lot of these civil rights cases that we have done in our history representing Latino children, it's class actions. We can't do those anymore. In the past, we used to use non federal dollars to do it. We can't do it anymore. So we have to send them all to MALDEF. So we have to find those organizations. As Mr. Saenz mentioned, they don't have the resources to do all of those cases. That's why it is very important to leverage that 400 million plus dollars, at least to some extent, and remove those impediments so some of this can reach the Latino poor.

In terms of the ABA in terms of students getting into farm worker, I think it's the same issue that one of the gentlemen, Armando, spoke of earlier about the pipeline. We need to be a part of that pipeline. What we need to do is to mention public interest -- public interest as an area for students, law students, college students, high school students. Public interest in the area of law that they should practice.

MR. ANGONES: Mr. Padilla, thank you very much
for your testimony. I was particularly pleased to
hear -- well, I guess I shouldn't be pleased, but it was
very informative, the statistic that you provided about
25 percent of the poor are Latino Hispanic. If you have
it readily available, where did you get this statistic?
If you do not have it readily available, if you can
supplement your testimony by providing that statistic.
I think it's significant, and it ought to be in the
record.

MR. PADILLA: Last night at 1:00 in the morning
I Googled it, and I looked up the Hugh Hispanic Center,
and there at Table 13, there it was. It really is
there, but I will willingly provide what I had and
attach that information with those resources for your
future use.

MR. ALVAREZ: Thank you, Mr. Padilla and
Mr. Torres. I will tell you even though it's 10,000 or
40,000 to one, with your passion, you will give them a
run for their money. We will take the next panel. No
further questions. Thank you very much.

The next panel will be two students from -- two
high school student leaders. It will be Jeffrey Flores
and Alvin Ramirez. This part of the testimony we ask
for written testimony, and we give the folks presenting
the written testimony a chance to provide a five-minute
overview so we can be more intimate with your testimony
once we read it. So we'll turn over the microphone to
both of you.

STUDENT LEADERS AND WITNESSES

STUDENT: JEFFREY FLORES

MR. FLORES: Thank you for allowing us to be
here. My name is Jeffrey Flores, and I'm Nicaraguan. I
was born here. I've lived most of my life in
San Francisco. My parents however are from Nicaragua.
My mother arrived in a plane, pretty first class. She's
a resident. And my father crossed the river to get
here. He is also a resident, but he had to go through
the process of it.

Most of my life they've had me in private
school, except for the very recent two years I've been
in the San Francisco Unified School District in public
school. At the last school I attended, 75 percent, I
believe, of the class population was white so I felt
very out of place because there were few -- there was
like maybe two colored Latinos at this school. So it
wasn't very -- it was very friendly for Latinos, but you
couldn't really fit in very well with the culture of the
class. They had amazing supplies. They had very good
books; very good teachers. They always taught above the
standard.
Recently I've gone to Mission High School here in the Bay Area, and White or Caucasian students are a minority at Mission High School. It's free, you know, but it has kind of bad supplies. Teachers try to beg for desks from other teachers because of over population in the classes so they have to split up the classes. And then you end up not having enough attention from your teachers because your teachers are just trying to do their job and conduct the class with maybe 30 to 26 students. So they can't meet your needs unless there's, you know, student teachers which we get from Stanford or other universities.

I think that we should be teaching above the standards anyways, just like in private schools. In public schools we should be teaching above whatever the government has as a standard right now. Some teachers do teach above the standards, but others teach below the standards as well. They should all meet at above the standards. We should have more AP classes, more honors for those of us who wish to pursue, like, higher education.

We need to also realize that the majority of the people who are coming out of there really might not want to go to college or get a degree because nowadays most people have a degree, and then after that you need
1 more credentials, right? You need -- what else are you
2 good at? Are you good at public speaking or are you
3 good at dance or are you good at ice skating? What kind
4 of career do you want? So we should maybe try to be
5 more open to the artistic side of the student's needs
6 because most high schools today and all around the
7 world, they focus on math and literature, and then those
8 are the highest held subjects. If you're failing those
9 or you get a C or something, they would probably send
10 you to the counselor or talk about what's wrong. Maybe
11 you're an ESL student and learning the English language.
12 That may be the problem, and they make that a priority
13 that you don't want to become a write writer or you
14 don't want to become a mathematician. You don't care
15 about the physics. So that's all I have to say.
16
17 MR. ALVAREZ: Thank you.
18
19 STUDENT: ALVIN RAMIREZ
20 MR. RAMIREZ: Hello. My name is Alvin Ramirez,
21 and I go to Mission High School. Thank you for giving
22 me the opportunity to talk to you all about the
23 situation because, apparently, we have a huge education
24 from White, Asian to Latinos and Black. I don't know
25 about African-Americans, but for us Latinos we have a
26 hard time because most of our parents are immigrants,
27 and they work really hard to give us the little that we
have. My parents work really hard, and I am not living in a great place, but I am focused in school so I can get out of the place I'm living in and into a better college and eventually into a good life, so I can help my parents like they are helping me now.

The thing is, Latinos, they don't know what to do. Because their parents are working 24/7, they have no inspiration. They have no one to talk to. So they don't know where to go, so they usually go to gangs or drugs. Gangs supposedly support them. They give them support and love which most people -- which they don't get from their parents. And the drugs are just like something that's filling a hole. Like people with materialism, they don't know what to do so they fill it up with stuff. So they fill it up with drugs.

We need school activities for the Latinos who are doing soccer, you know, because after soccer season is over, what do they do? They start slipping on the grades because they have nothing to work for anymore because soccer season is other. They should have more clubs for those types of students who want to work hard and be in certain things.

My parents came here illegally, both of them did. They both crossed the river and got here, and they are working hard to support me and my two brothers in
school which is almost impossible because of all of the
stuff that they have to deal with from the government
and from, like, their jobs. And that's pretty much all
I have to say. Thank you.

MR. ALVAREZ: Thank you. Although we're not
supposed to have questions here, if any member of the
commission has some overriding issue that they would
like to bring up, we'll permit one question, and we'll
allow the commission members to make that judgment.

(No audible response.)

Thank you very much. We will take your written
testimony, and we appreciate both of you being here
today, and continue with your hope and aspirations.
That's very, very important. Many of us here had
somewhat similar backgrounds, so it is possible to make
it, and it looks to me like both of you guys will have a
very good chance at it. Thank you.

Let me call the next panel. Again, two student
leaders. Norma Perez and Noe Rivas. Both high school
students. Norma is in the 11th grade and Noe is from
the 12th grade. Thank you very much. We will hear from
you. Norma?

STUDENT: NORMA PEREZ

MS. PEREZ: Good afternoon. I am very happy to
be here. Thank you for inviting us. My name is Norma
Perez. I am from Guatemala. I came here two years ago, and I started learning a new language. I am a junior at Mission High School. I am a roll honor student, and I am in the gifted program. My favorite subjects are English and history. When I came to this country, I didn't speak any English. Two years and a half later, I am preparing to go to the university. I especially like analytic writing, and eventually I want to be a lawyer. I have always loved learning. Even though back in my country my family could not afford to buy books, I would read the same book like eight times.

Three things that make the difference to prepare me for college are that I like challenges, I like personal attention from teachers, and I also like the support that I have at home now. I am excited.

Some of the barriers that I actually see every day at school and in my life is that many Latinos like me have no opportunities or a few opportunities to continue our education at schools because we don't have enough resources. We don't have enough teachers. Our classes are really crowded. I really have like -- like all of my classes have over like 25 students, and it's really hard for me to learn because it's so crowded. The kids are acting out because of their environment at home and many things that happen to them. So I think that's
mostly one of the big worries at our schools.

Also, kids, they don't -- really Latinos, we
don't -- many of us don't have now the hope to continue
our education because the dream that many of the kids
that graduated already hoped for it, it wasn't approved.
So they lost the hope. So I think that for all of the
high school we want the hope that one day we're going to
go to college, and we're going to study and be, like,
legal because this whole process is actually like --
kind of like we're not, like, having the hope that we
should have or that we should have the right to have.

When I was 11 years old I was told that girls
belong in the kitchen and not school. I wanted my story
to be written differently. For many Latinas it is
difficult to break the traditions and boundaries in our
families and society. I look forward to talking with
you about solving this issue. Thank you for listening.

MR. ALVAREZ: Thank you, Norma. Did you say
that when you came here two years ago you did not speak
English?

MS. PEREZ: Yes, I did.

MR. ALVAREZ: Thank you.

STUDENT: NOE RIVAS

MR. RIVAS: Good afternoon everybody. My name
is Noe. Before I talk about the problems that
immigration students have in this country, I want to
talk a little bit about like what happened before coming
to this country. There isn't much known about this part
of the story. I'm going to say my story. It was -- I
didn't want to have to leave the house in El Salvador.
My family was around there. My siblings, my mother who
had raised my siblings and me by herself. It was -- I
didn't want to leave the country, but I have to. I need
to do it. My family -- they live in El Salvador --
wasn't able to provide an education there for me. If I
have a decision of not coming to this country, I would
probably still be in El Salvador and start working to
support my family.

So as a child I always wanted to achieve an
education to become a doctor. So in order to achieve
that dream, I decided to come to the United States, and
that week I left El Salvador. I left my family and
everything behind, and I decided to cross the river --
how you say it? I only had $15 in my pocket to pay the
authorities, and to survive the two months I would be
going through the borders of Guadalajara, Mexico, and
finally arriving to the United States.

It is really challenging because I was only 15
years old. I don't have nobody to support me. I didn't
even know really how I came to the United States. I
just know that I have to get somewhere, and I would find
a way to get here. It took me two months to come from
El Salvador to here. I walked desserts. I don't know
if some people have watched a movie about immigrants
walking in the desert. I did that. I paid some
authorities to help me out. I stopped in Mexico for a
time because I don't have money, so I started working
for two weeks to make some money so I can keep going in
my truck.

In 2007, I came to -- after two months I left
El Salvador, and I came to this country, and I didn't
speak English at that time. Nothing. I didn't even
know how to say my name is. So it was really like a
different environment. I didn't know nobody here. My
father was here in the United States, but I never met
him before in El Salvador because he immigrated six
months before I was born. So I didn't know nobody here.
I didn't know the language of this country; the system,
like how's it work. I just -- the only thing I knew was
I had to put a good effort in high school and get good
grades and learn the language, and finally with the help
of people, I will eventually get to the university.

So that is a challenge that immigrant students
face, and it is good that you spend the time to listen
to these stories; that you analyze why we pass through.
It is not an easy thing, but with motivation and
enthusiasm and with the support of you and your
decisions, that will help us. I know it will be a great
future for this country and for the country of our
communities, too.

MR. ALVAREZ: Thank you, both of you. Again,
any questions from the commission? You're both
impressive young folks. We wish you a great deal of
success. Remember that the path that you're in,
education is the right path for you to be in. You will
be a success. It will not be easy, but you will be a
success. I have every right to believe that. Seeing
you here today and seeing what you have accomplished and
the hurdles you have come from. We admire you and hope
you do well as you move forward. Thank you very much
for your testimony.

We have two additional individuals that will
testify. We have Tahititia Dean who is a college student
leader. She is a pre-law major at the University of
California, Berkeley. And then we have Christopher
Arriola, past president of the Santa Clara County Bar
Association. Welcome.

Tahititia?

/ / /

STUDENT: TAHITIA DEAN
MS. DEAN: Good afternoon. First, I would like to applaud the American Bar Association for establishing the first commission specifically focused on the Latino community. It is this kind of leadership that has shown us that truly this association can create positive change.

My name is Tahitia Dean. I'm a first generation American from immigrant parents who had the luxury of migrating here legally. I'm an undergraduate student at the University of California, Berkeley. I, along with my colleague, Anthony Lucas, who is here today, serve as co-executive directors of the University of California Berkeley's Latino Pre-law Society.

Because of that we take a very special interest in what is happening here today.

When I first started to prepare for this statement, I thought the most important thing I could do was present to this commission facts so, boom, I jumped on the Internet and started Googling Latino, issues, problems, education. I went bananas. I found a lot of the similar statistics that you are well aware of and that you already have in your pamphlet today. We make up 15 percent of the U.S. population; 37 percent of the population in California. Yet, 13 percent of Latinos have achieved Bachelor's degrees, and only 5 percent of
us are enrolled in higher education at all.

At U.C. Berkeley there are over 200,000

students that are currently enrolled. Yet between the

years of 2006 and 2009 less than 1,000 Latino students

were admitted as transfers. The numbers are even lower

for high school students who attend Berkeley and the

numbers and statistics just grow more dim. However, in

the midst of this Internet statistics wave that was

coming over me, I received an e-mail from Mark Yudof,

the University of California Berkeley's president, and

he had written a response to Governor Brown's 500

million dollar reduction to the U.C. Berkeley's budget.

This is after we just experienced a 32 percent increase.

This is the first time in U.C. Berkeley's history that

the student tuition would surpass the state contribution

to the university's budget.

After reading this letter it became very clear

to me. I'm not here to regurgitate statistics and data.

You're professionals and you're seasoned. You have

information. I could beat you on the head with a stick

with statistics all day and put you in a coma, but

that's not really why I'm here, is it? I'm here to

remind you why the American Bar Association established

a commission on Hispanic rights and responsibilities.

I'm here to remind you that the goals of this commission
are not wasted, and they are not in vein. I'm here to remind you of the importance of your positions, and the impact that has on our community. I'm here to remind you that despite the tuition fees being raised, despite being disproportionately underrepresented on the U.C. Berkeley campuses and despite many students like myself and my classmates, Anthony and Emily, who are also a part of the pre-law society who work multiple jobs, and while trying to participate in activities on campus and go to school full time and get good grades good enough to get into a law school, that despite all of these problems that seem to constantly affect us, it has no bearing and will in no way diminish our resilience to persevere.

It is because of students like us that I implore this commission to give us your support. Perhaps we can argue all day long about illegal or people who do bad things that they don't deserve the support of the government or the community or maybe even their families, but what my heart and mind cannot make peace with is when people do it the right way and don't get the support. How do we explain to the many students of color who regularly attend classes side by side with us who study hard and work hard and give back to their communities locally, nationally and internationally
across all cultural groups who commit no illegal acts?
How can a university, a state, a government, or a
community support making it harder rather than easier
for the people who have committed to the very ideals
this system and this country claim to be founded on and
believe in?

Some of us have made a commitment to pursue our
dream of a higher education regardless of the climate we
find ourselves in, but I admit we are getting
disheartened. What eventually happens is that Latinos
are forced to choose between passion and practicality.
If it isn't affordable for you to go to school, then
school simply loses its priority, and what gets replaced
is necessity over ambition. Necessity to pay rent, to
take care of your families, to provide daycare and
schooling for the younger ones in the home, and all the
while your own dreams simply disappear. I'm in a room
with clearly bright, successful people. People like
Honorable Kim Wardlaw who was with us earlier was once a
U.C. student, so she understands the discipline and
resilience it takes for us to complete this Bachelor
degree.

So I'm here to put a face to the statistics and
to remind you that those of you who have learned from
our examples and those of us who have learned from you,
you have paved the way for us, and we want to emulate
that progress for ourselves and our communities, but we
cannot do it without your help. An attack on education
is an attack on our ability to progress. Fight against
the budget cuts on education for our sakes for the
generations that are coming behind you, and if for no
other reason that doesn't inspire you, then please fight
for education so that the efforts you have put into our
support up to this point has not been wasted.

In conclusion, I'm reminded of the wise words
of Maya Angelou who wrote the inaugural poem in 1993.
In that poem she said, "The horizon leans forward
offering you space to place new steps of change. Here
on the pulse of this fine day you may have the courage
to look up and out upon me." I ask this commission to
look upon me and my classmates and remember always that
we look to you. Those who have paved the way, we look
to you to keep fighting the good fight. This is a call
to action, and it is an opportunity for you to support
the Latino community, and we will continue to prove that
we have and always will be worth that fight. Thank you.

MR. ALVAREZ: Thank you so much.

SPEAKER: CHRISTOPHER ARRIOLA

MR. ARRIOLA: My name is Chris Arriola. I want
to thank the ABA for putting together this commission.
I want to thank Maribel Medina for hosting us here. The first Latina General Counsel here at the school district, which I think is far too many firsts when it comes to Latinos and Latinas. We'd like to see more. Maybe the Supreme Court, perhaps. I was fortunate enough as the president of the Santa Clara County Bar Association -- the Bar Association of Silicon Valley, as we like to say -- to host the President's Blue Ribbon Commission on diversity in the legal profession, and the Chairs being Justice Carlos Reynolds of the California Supreme Court and Bruce Sewell who is the general counsel of Intel and is now the general counsel at Apple. I felt it was important to include corporations in this, if we're going to actually move anyone.

But the work of the President's Blue Ribbon Commission had two major findings to unclog the pipeline in diversifying the profession. The first had to do with hiring in law firms, and the second had to do with admissions to law schools. We felt that those were the two biggest things we could impact. We found that corporations, one, must continue to demand diversity from law firms they hire not simply as a matter of course but as a matter of long-term corporate vitality. And then, two, the Bar Association and ABA and member firms must push law schools to abandon their heavy
reliance on the LSAT as it is a major impediment to the
equality of opportunity to enter law school and add
diversity as an important element of law school
rankings. And, yes, the general counsel signed on
getting rid of the LSAT, and they do believe it is an
impediment.

Silicon Valley is a leader in technology and
innovation, and it has a powerful impact on the American
economy. However, world population growth projections
tell us the number of residents in North America, Japan
and Europe will remain virtually stagnant in some
countries, and actually their populations will decline.
The mass majority of growth in the world will be in
Latin America, Africa and Asia, as well as ethnic
enclaves in the United States like California and Texas.
Therefore, over the next 40-year marketplace for
technology, computers and software, microchips and other
electronics will shift to those markets.

Lawyers will need to be properly prepared to
deal with the conflicts that will arise from the
increased business in these areas. This preparedness
will include not only international markets but dealing
with a jury that is 3/4 minority in San Jose,
San Francisco or Los Angeles where the cutting edge
legal issues will still be decided. Many programs seek
to improve diversity in the bar, but companies and
organizations in Silicon Valley have begun to address
some root causes affecting the profession’s abysmal
record on diversity. Only 9 percent of attorneys that
are minorities nationally compared to 25 percent of
doctors and 22 percent of accountants, and, of course,
this is from the ABA Miles To Go Report. Companies who
signed on like Intel, Sun, Yahoo, Google, H.P. and
Oracle have come together as customers to tell attorneys
in the valley that diversity is important to them, it is
vital to their future and to the well-being of their
corporations. The bottom line is that we must change
the way we do business and adapt to our client's needs.

Issue 2, the pipeline in law school. We need
to change how we practice how we get students into law
school. Poorly funded schools and high dropout rates in
largely urban and Latino and Black school districts have
hampered our ability to create a meaningful pipeline to
college, let alone law school. For example, Palo Alto
schools receive over $14,000 a year per pupil, yet
schools in East San Jose receive 7,500 per pupil, and
that has never been changed in California and is often
failed to be mentioned.

In fact, the National Center for Public Policy
and Higher Education found this year that there is a
continuing long decline in California where only 14 of
every 100 college students will get a certificate or
degree. That is, in fact, comparable to rates in Latin
America. We must as a group advocate for improved and
meaningful funding for the schools.

Specifically, however, we should also encourage
the ABA to lessen the importance of the LSAT which tells
us more about how well the student will do in the first
year of law school than what kind of lawyer they will
be. In fact, the LSDAS tells us that while 30 percent
of the United States are ethnic minorities in the
college-age population, only about 20 percent of those
who graduate are minorities. Yet the percentage of
minorities rises again to 30 percent in the applicant
pool to law school despite this disparity. Sadly,
however, only a little over 20 percent of newly admitted
law students will be minorities, and only about 10
percent of lawyers. This is a seriously -- unlike K
through 12 school funding, this is something we can do
as lawyers to address it.

We must limit the importance of the LSAT as a
factor in admissions and encourage law schools to
continue to expand diversity in admissions for their
long-term survival and relevance. We must also
encourage polls like U.S. News and World Report to limit
the weight they give the LSATs in their rankings or eliminate it altogether, and more over, add for the first time ever a percentage award schools to their overall rank for admission and retention of minority students.

We must also encourage the admission of students in areas harder to measure, like disability, sexual orientation and socioeconomic status. I chair a committee for the Council on Access and Fairness for the State Bar of California that has asked Santa Clara Law School Dean Polden who chairs the ABA Standards Review Committee this year to change Section 503 of the Standards of the ABA Accreditation Review from "shall use the LSAT" in accreditation to "may use the LSAT" in accreditation.

This may sound radical, and it is, because some schools are allowed to do it, like Michigan, which has a successful program of using other tests, but he took a poll of the members of the commission, and it was split evenly to do this. This is real. It can happen. We can do it. If we take the "may" away, the LSAT importance will go away, and we can use other standards that will benefit our community and the profession.

Thank you. I have copies of the report from the Blue Ribbon Commission as well as the data and
slides which I'll submit. Thank you.

MR. ALVAREZ: Thank you very much. Any
questions from the commission? Yes, Frank.

MR. ANGONES: Thank you. If the chair will
permit addressing -- I'd like to address an issue that
Ms. Dean brought up. Since we have the distinguished
president of Miami Dade Community College, if I can
prevail on him to offer some hope since he also is the
president of the -- if I'm getting it correctly -- the
president of Colleges and Universities of America or
close to that.

Mr. Padron, if you will please address how you
are addressing the issue in Miami Dade about the
funding, and since we have a large minority -- Hispanic
minority and others -- could you address some of her
concerns. I know it's a tough time to do so, but you're
doing it so any encouragement you could provide would be
wonderful.

MR. PADRON: Well, I think I identify with your
issue because we're basically facing the same reality of
tremendous enrollment growth, which I think is very good
for this nation to see young people really wanting to go
to college. In the 21st century economy, if you don't
have a college degree, you are basically going to stay
in the same cycle of poverty for the rest of your life.
With the high school diploma today all you can hope to
do is flip burgers at one of those establishments --
without mentioning any names -- and get minimum wage and
don't be able to support a family.

So college has become, you know, a real need in
today's society, and access to college is an issue, but
then being able to have the support and, therefore, the
ability that is necessary for you to be able to complete
college is a real challenge. We find that in many
public institutions throughout this country, the
students are paying more than their fair share for going
to school. The share that is supposed to be paid by the
government continues to decrease. That is a real issue.
The cost of going to college continues to increase.

So, you know, my hope -- and I have written a
lot about this -- is that somehow we will come to our
senses in this nation and understand that in order for
us to keep our position in the world we need to make
sure that education is a real priority. We need to walk
the talk. There is a lot of lip service about
education, but when it comes to the applications and
making that a priority, in fact, it is not happening.
And that is a recipe for catastrophe in this nation.
While most of the nations are making education a top
priority, we have failed to do that at the state level.
It's a state issue. The federal government running the education is very limited. Basically, what the federal government does is to provide financial aid for the students who really show need, but the actual resources to support education has to come from the state. At least, that's the way it has been designed. And I sympathize with your issue and that of your classmates because I know how tough it is to be able to go to school and to be able to afford it.

Most of my students -- and we're a very large institution. As a matter of fact, we're the largest college or university in the country. We're serving over 171,000 students. We have the largest number of both Hispanics and African-Americans in that college. The fact of the matter is that for many of the students the Pell Grant is what they depend on to go to school, but that's not enough to pay for the cost of college. So you find that most of them have to work full time and go to school full time or part time in order to survive. For many of my students, 38 percent live in poverty, 61 percent of them are low income. Going to an emergency room or an increase in rent means them having to drop out. And that's not what we really need. What we really need is to be able to provide those students the opportunity to complete their degree so they can be
contributors to this great country, and we are not really doing that to the full extent we need to do it.

MR. ANGONES: I was wondering, Mr. Padron, if you could talk about the honors college very briefly which offers some hope in the midst of the current conditions.

MR. PADRON: If we could do for the general college what we do for the student population, we would have no problems. The honors college is where they give a first rate education. They get all of their studies paid for so they can put time to their careers. This is a program that has a very challenging curriculum, but what we see in this program is that well over 95 percent of them graduate. Almost 100 percent go to college, and most of them go to the best universities in this country, including yours, including Stanford, including Columbia, Yale, Princeton. You name it. But that is something that we're able to do for just a small select group of people. If we were able to provide that kind of a support for the larger student population, we will not have any problems.

I heard the presentation from the students before you, from Mission High School I think is the school, and the problems that they are relating to are the same problems that many inner city students are
facing in schools. They do not have enough support. They do not have enough attention. They have large classes, and they lack the necessary support to be able to be successful. And if we're not able to make that a priority, I have tremendous concern for the future of this nation. Don't give up.

MR. ALVAREZ: Allan?

MR. TANENBAUM: In reaction to the comments that were made by the high school students, I wonder if the commission in subsequent hearings, one or more of them, that we could focus on the issue of whether this commission and the ABA has a role to play in a discussion about the inherent right to an equal quality public education. Some people believe that it is inherent in the Constitution that there is some inherent constitutional right to an equal public education. Others believe -- some others believe that we may need a constitutional amendment to create the right.

I'm not suggesting that we take on that particular issue about a constitutional amendment, but it seems that the issue of a quality equal public education is a discussion that we should at least receive some testimony on so that we could be in a position to comment upon it and what the ABA might be able to be a force in advancing that discussion.
MR. ALVAREZ: I think that's certainly something we ought to consider and discuss as we have our meetings. I think it's certainly an important one. I think Dr. Padron would agree with this, and I can tell you being in another institution like Eduardo's, at one time, you know, education was publicly funded education. That's no longer the case. At best, it's assisted by the government at best. And I think most of the institutions I know are trying to figure out alternative sources of revenue because they cannot rely on the government to provide it for them. It's unfortunate, but that's what it has come to because you can't sit there and wait to see what the government will do. You almost have to take matters into your own hands. I know Eduardo has, and I know many institutions are going that way. It's really a critical issue that you raise.

Yes, ma'am.

MS. DEAN: We at the Latino Pre-law Society have taken it upon ourselves to start raising funding on our own since we know we can't at all get any from the school. Before we started getting that funding though, the first thing we did was talk to our students in our organization to find out what the day-to-day needs were since in order to fulfill the bigger needs you kind of need to fulfill the ones that matter on a day-to-day
basis. Some of the things we found out were half of our organization had never met an attorney before. Half of our organization has never seen the inside of a law firm. Half of our organization does not have money to eat because all of their money goes towards rent, tuition and books.

So what we have done is the last three semesters we've started doing bake sales. I personally am not a big fan of that. I mean, 400 cupcakes, how much money do you really think you're going to come up with? We gave it our best shot. We also decided to start going to corporations and law firms who lean towards these types of ideals and these types of values. So we've started to meet with Morrison and Foerster, a law firm that has shown interest in our organization.

I also hit up the banks. Since they got baled out, they probably also had a little extra money to burn. I started with Wells Fargo who has made a verbal agreement to donating to our org. this semester. That's wonderful, but the problem is, the time it takes to meet with these people and to meet with the students and find out their needs. In the mean time, we're working two jobs. A nonprofit at school called Stiles Hall that works with students of color, particularly Latinos, Blacks and Native Americans to help them get into the
school or anybody who comes from a lower socioeconomic background. And it's trying to find that balance of keeping the jobs, maintaining my tuition, keeping my grades up so I can actually get into a law school after all of this is said and done, and in the meantime not getting exhausted.

Do you have any recommendation aside from my going to corporations and knocking on their doors and begging? I'm not opposed to it. It just gets a little time consuming.

MS. RIVERA: I wanted to address that as the academic who oversees students for over a decade baking cookies and muffins, and I could not believe it. I object to it in my own school. I don't think students should be spending their time baking cookies for me to try to pay for tuition or to pay for rent or anything else. I hear you, and I think we understand sort of the crisis that you're in when you have to turn to things that are not letting you focus on studies to try to be able to pay for your studies.

I assume you've tried it, but I want to make sure it's on the record. I know the experience I have had in various schools is that the alum of color are often a tremendous resource. They may feel very alienated or isolated from their own school, but when
students of color ask for help and come to them, they respond and they don't think twice about it. I would assume that's also true of your own alumni if you have not tried it. Often the students try to do this alone.

One thing I will suggest is that your institution itself really benefits from their alum, so they will put a lot of resources into alumni relations and will work in partnership with you to get to those alum and help them to know what is going on at the school so they can be the ones to struggle because you have to take exams. Lawyers can be there all the time, but you guys have to take exams, and you have to get through law school, and move on with your career. So I do encourage you, if you have not done that, to reach out to who I'm sure are the tremendous alum of the U.C. system.

MS. DEAN: Thank you.

MR. ALVAREZ: Thank you. Before we close, and I know Aracely will go crazy when I say this, but nevertheless, would any commission member have any closing remarks that they would like to have on the record?

(No audible response)

MR. ALVAREZ: Okay. Aracely, won't go crazy. I really want to thank everyone for coming and
for participating. I can tell you these hearings are not only quite informative for us and really help us shape our thinking and shape what we need to do, but they are incredibly inspiring because they really get you recommitted to the idea that what we do here and what we will do here will matter to human beings. Human beings like we saw here today. There's no substitute for that kind of encouragement.

I thank you for all coming, and we will look forward to seeing you at the next commission hearing, and you can be sure we will take everything that was said here with importance, and we will give it the importance you gave by coming here and presenting it to us. Thank you very much.

(Whereupon, the proceedings adjourned at 1:55 p.m.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA  )
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I, BEVERLY A. HEDBERG, a Certified Shorthand
Reporter in and for the State of California, do hereby
certify that I was the Certified Court Reporter for the
proceedings named herein, and that as such reporter, I
reported in verbatim shorthand writing those
proceedings;

That I thereafter caused my shorthand writing
to be reduced to typewriting, and the pages numbered 6
through 186 herein constitute a complete, true and
correct record of the proceedings to the best of my
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IN WITNESS WHEREOF, I have subscribed this
certificate at Santa Rosa, California, on this 28th day
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BEVERLY A. HEDBERG, CSR #4256

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