[ms-0436.001.003.002]

PLEASE READ INSTRUCTIONS CAREFULLY BEFORE PROCEEDING

PLEASE DO NOT REMOVE THIS SHEET FROM TRANSCRIPT PAGES

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C.

STENOGRAPHIC MINUTES
Unrevised and Unedited
Not for Quotation or
Duplication

June 23, 1995
(Date)

For: Hal Brown

San Diego Field Hearing/Group Preferences and the Law

Thursday, June 1, 1995

Thank you for participating in the recent hearing. Attached are transcript pages, Nos. 73-87, showing your remarks given before the Subcommittee on the Constitution. **PLEASE CORRECT YOUR TESTIMONY ONLY**, using the following guidelines:

1. PLEASE PRINT WITH RED INK, using standard editing symbols (lengthy inserts should be typed).
2. Correct only grammatical errors or misstatements of fact. The intent of your remarks should not be changed, nor should the language be so enhanced that it becomes unrecognizable from the original text.
3. Attach documents or other requested information to the appropriate page. Supplemental material supplied for the record should be of photographic quality for reproduction.

Should the Subcommittee have questions about your edited transcript, please indicate the name and telephone number of the person to whom inquiries should be made:

Name: Harold Brown Tel: (619) 594-6437

To expedite printing, **PLEASE RETURN** this material, even if no corrections are made to the text, **WITHIN TEN DAYS** after receipt to the address below.

Subcommittee on the Constitution
806 O'Neill House Office Building
Washington, D.C. 20515
Telephone: (202) 226-7680

UNLESS THE CORRECTED TRANSCRIPT IS RECEIVED BY THE SUBCOMMITTEE WITHIN THE SPECIFIED TIME, YOUR REMARKS AS RECORDED WILL APPEAR IN THE PRINTED RECORD.

NOTE: Copies of the transcript are not to be distributed for other than editing purposes and no direct quotations are to be taken from the unprinted transcript.

CERTIFICATION

I certify that the corrections made by me reflect the changes I wish to make in my oral testimony.

Harold K. Brown
(Signature)

1644 STATEMENT OF HAL BROWN, ASSOCIATE DEAN, COLLEGE OF BUSINESS
1645 ADMINISTRATION, SAN DIEGO STATE UNIVERSITY.
1646
1647 Mr. BROWN. Thank you, Mr. Chairman. My pleasure to be
1648 here. I have distributed a written statement, which I'm
1649 assuming that everyone has had an opportunity to read. I
1650 won't bother to read that statement.
1651 Mr. CANADY. And let me say this. Without objection, the
1652 full statement of all the witnesses will be included in the
1653 record for this hearing. Thank you.
1654 Mr. BROWN. I'd like instead, Mr. Chairman, to react to
1655 some of the statements that were made previously. One of
1656 the remarks that ~~were~~ was made that I disagree with
1657 strongly--first of all, let me, in a sense, qualify myself.
1658 I have lived in San Diego for 42 years. I came here ~~to go~~
1659 to attend college. And I have been active for the past 35
1660 years in many civic organizations. I think I have a pretty
1661 strong understanding of San Diego and a good understanding
1662 of what's been happening nationally in regards to
1663 African-Americans and other people of color.
1664 One of the remarks that was said was that quotas and
1665 preferences without merit produce unqualified people, many
1666 unqualified people. I find that to be a very misleading
1667 statement in this context. In my work experience, I have
1668 found many unqualified people who did not perform to the

1669 expectations of the ~~supervision~~ supervisors I have found those people
1670 to be white, and I have found some to be non-white ~~I have found those people to be non-whites.~~
1671 So to state that the affirmative action program results in
1672 people being hired because they lack qualifications, I
1673 think, is a very dangerous and very--the statement is very
1674 incorrect and it has no validity and ~~it has~~ there is no evidence to
1675 support it.

1676 There was a remark by Congressman Royce that--his comment
1677 to what people are doing in this whole affirmative action
1678 debate. They're quoting Martin Luther King and they're
1679 stating that Martin Luther King's statement about people
1680 should be judged on the content of their character and not
1681 by the color of their skin, that statement ignores the fact
1682 that Dr. Martin Luther King, Jr. and many others of us who
1683 fought during the civil rights movement were protesting
1684 against the very practices of the United States of America,
1685 which did not hire on the basis of the content of a person's
1686 character, but discriminated on the basis of color, and he
1687 was merely trying to redress that particular situation.

1688 Another remark, minorities are victims, that affirmative
1689 action somehow makes those of us who have been victims of
1690 America's practices, it makes us somehow victims of the
1691 program of affirmative action. That I completely do not
1692 understand, because ~~they~~ there are many African-Americans, all of
1693 my associates and many of us, who have had to fight against

1694 the past practices and who continue to fight today in San
1695 Diego and elsewhere to make sure that those opportunities
1696 are there available to us.

1697 The problem that I have, as I stated in my paper, it's not
1698 that there aren't things wrong with affirmative action.
1699 There are things wrong with all programs that the government
1700 has or that we have at the university. I'm sure we can find
1701 things wrong.

1702 What I don't understand, Mr. Chairman, is that some of
1703 these instances of affirmative action are used to completely
1704 eliminate the whole affirmative action program, the
1705 affirmative action program that has helped me and has helped
1706 others who have been discriminated against in the past, that
1707 that program--now it's decided that that program is
1708 completely wrong and should be ousted.

1709 And what I don't hear is that what programs are
1710 recommended by the opposers of affirmative action, what
1711 remedies are recommended to redress the same problems that
1712 affirmative action was addressing. And anther problem that
1713 I have and which I think is the basic difference that many
1714 of us have with the proponents of the elimination of the
1715 affirmative action program is this.

1716 Those of us who have been victims and who are still
1717 victims fully recognize that affirmative action has helped
1718 us and that affirmative action still needs to be in place

1719 because the conditions that caused affirmative action to be
1720 put in place in the first place are the conditions that
1721 exist today.

1722 And so we have a basic difference in those who are
1723 proponents saying that the playing field is ~~not~~ now even and
1724 those people I suppose now have become the experts on race
1725 relations. Those of us who have studied race relations,
1726 those of us who have participated in redressing America's
1727 problems of racism, segregation, discrimination, those of us
1728 who have involved ourselves in that are fully aware that the
1729 problems have not gone away.

1730 And I really appreciate the proponents of the elimination
1731 of affirmative action who say that we should have a level
1732 playing field. Yes, we should. And most of us understand
1733 that that playing field is still not level and there are
1734 many attitudinal problems that have not changed since the
1735 times from slavery and since the time from post-slavery.

1736 Now, I know people don't want to hear the word
1737 ''slavery.'' They say slavery has no connection with today,
1738 and that is absolutely wrong. Slavery, as I stated in my
1739 paper, created certain conditions. It created--I know the
1740 light went off, but is ~~that~~ it okay?

1741 Mr. CANADY. Please continue another couple minutes to
1742 conclude your remarks.

1743 Mr. BROWN. Thank you. I know that without recognizing the

1744 history of slavery--and one of the remarks, I think from Mr.
1745 Flanagan, was that he did not have a first person connection
1746 with what happened in the past ~~in~~ during slavery, and I can
1747 appreciate that. But those of us who call ourselves
1748 educated and sophisticated really understand and recognize
1749 what slavery caused in our system.

1750 It not only caused certain conditions, physical
1751 conditions, but it caused certain mental conditions. It
1752 caused certain attitudinal conditions that still exist
1753 today. And I think for those who propose legislation to
1754 eliminate affirmative action cannot fully understand that,
1755 that those conditions are still in existence today.

1756 I'd like to also address very quickly the question that
1757 came up about the Veterans and the biological factor versus
1758 service. And, again, I think that the full appreciation for
1759 the African-Americans' role in this society, the women's
1760 role in this society, and the American Indian and Latino,
1761 the Asians, their role in the society, and I am speaking now
1762 specifically for the African-American, to not recognize that
1763 the role of the African-American who fought in the wars, who
1764 participated in this society as a loyal citizen, who made
1765 the contributions even in spite of having second class
1766 ~~citizen,~~ citizenship those contributions which are not recognized to be
1767 equivalent to a soldier or a military person who went into
1768 the service.

1769 I'm one of those military persons. We went into the
1770 service. But my understanding from the remark was that how
1771 can you equate Veterans receiving preferential treatment
1772 ~~applied~~ to minorities who have been discriminated against in
1773 America receiving preferential treatment.
1774 My final remark before the questions is going to be on
1775 goals and timetables. Affirmative action was created to
1776 redress the problems of discrimination and segregation in
1777 the United States. Goals and timetables were set. We set
1778 goals and timetables at our university. We also set a
1779 program of affirmative action to recruit people of color and
1780 women to fill our positions.
1781 Goals and timetables now have been turned into some very
1782 negative term of quotas. We teach in our business school
1783 that goals and objectives are part of a plan, so are
1784 timetables, and if you don't address a problem or the
1785 development of an enterprise, for instance, with the
1786 business objectives, the goals and timetables, and the
1787 resources necessary to implement that, you're considered to
1788 not to be a very competent manager.
1789 Now, all of a sudden, to have goals and timetables to
1790 redress a problem so horrible as the one we have experienced
1791 in America, to now decide that goals and timetables have no
1792 meaning when you're addressing that problem is something
1793 that I find very, very hard to understand.

1794 Thank you.

1795 [The prepared statement of Hal Brown follows:]

1796

1797 **********INSERT**********

1798 Mr. Canady. Thank you very much. We appreciate your
1799 testimony. I just want to make a couple of observations.
1800 There's a lot of talk about doing away with affirmative
1801 action. I think if you look at the specific proposals that
1802 are being made, you will find that what we're talking about
1803 is focused on doing away with race and gender-based
1804 preferences.
1805 I, for one, believe that certain types of recruitment and
1806 outreach activities are appropriate and should continue.
1807 What I have a problem with is where the government goes to
1808 its individual citizens and asks them what their race is or
1809 what their gender is and then either awards them a benefit
1810 or denies them a benefit on the basis of that answer.
1811 That's where I have the problem. And I agree with you
1812 that the history of slavery in this country is a relevant
1813 factor for us to think about when we're talking about these
1814 kinds of issues. That is part of our history, a shameful
1815 chapter in our history, but I do believe that we have made
1816 progress in addressing prejudice in this country. I have
1817 seen in my own lifetime in the lives of people I know, whose
1818 attitudes have changed remarkably over a 20 or 30-year
1819 period.
1820 We are not where we want to be, but the question really is
1821 whether the continuation of policies which divide us into
1822 different racial groups and different gender groups will

1823 actually get us to the goal. And I understand that there
1824 are legitimate, sincere differences of opinion on that
1825 subject and I respect your perspective on that.
1826 But let me just focus on one question. Do you think when
1827 it comes--
1828 Mr. BROWN. Excuse me. Before you do, Mr. Canady, may I
1829 interject just one point before you ask that question?
1830 Governor Wilson today is calling for the abolishment of all
1831 affirmative action programs.
1832 Mr. CANADY. Well, I have read some press accounts about
1833 what the Governor is going to do and I don't think that that
1834 is the consequence of the Governor's action today. But I'm
1835 not going to get into an argument or a quibble over the
1836 impact of what the Governor is doing. But I think there's
1837 another side to that story and I'll let the Governor defend
1838 his actions.
1839 But let me ask you if you think that there as compelling a
1840 case for preferences based on gender as for preferences
1841 based on race. Do you put those in the same category? Do
1842 you support gender-based preferences as well as preferences
1843 based on race?
1844 And I guess what brings this question to mind is you're
1845 focusing on the history of slavery, which I think is an
1846 important and relevant consideration for us to look at as we
1847 discuss these issues, but, of course, there is not a history

1848 of slavery, per se, that would justify gender-based
1849 preferences.
1850 What would you say about that?
1851 Mr. BROWN. Well, the reason I focused on slavery is
1852 because we all understand and we all are aware of slavery.
1853 Slavery merely points out the fact that discrimination took
1854 place, slavery and post-slavery. We all--those of us who
1855 know a little about history also know and understand that
1856 women have also been victims of the same type of
1857 discrimination and prejudice. Therefore--
1858 Mr. CANADY. Would you put the discrimination against women
1859 on the same level with the discrimination embodied in
1860 slavery and the aftermath of slavery in this country?
1861 Mr. BROWN. Well, discrimination against anyone is equally
1862 potent. So when you discriminate against women, which we
1863 still do today, when we perceive women as being very good
1864 secretaries and clerical people, but find difficulty in
1865 women being top executives, we do this today.
1866 My wife is an example of that. She has served many years
1867 in the private sector. So, yes. Discrimination is
1868 discrimination. And if it's based on some superficial
1869 means, such as the color of our eyes, the color of our hair
1870 or our gender, it's equally as potent and it's equally as
1871 handicapping.
1872 Mr. CANADY. Thank you. Mr. Sensenbrenner.

1873 Mr. SENSENBRENNER. I just have one question. You talked
1874 about goals and timetables and I don't see that there is
1875 anything wrong with goals and timetables, but what happens
1876 if you don't achieve your goal?
1877 Mr. BROWN. Well, I think then the issue is put in the
1878 hands of reasonable people. We pride ourselves in selecting
1879 reasonable people to represent us in government, in our
1880 institutions of higher education, in schools. We select
1881 those reasonable people.
1882 And when the situation arises where those goals and
1883 timetables have not been met, then there is a reasonable
1884 explanation or there is not a reasonable explanation as to
1885 why those goals and timetables have not been met or have not
1886 even been--
1887 Mr. SENSENBRENNER. Were you here when Representative Royce
1888 testified earlier this morning?
1889 Mr. BROWN. Yes.
1890 Mr. SENSENBRENNER. Did you hear his testimony?
1891 Mr. BROWN. Yes.
1892 Mr. SENSENBRENNER. Do you think that what DuVal Patrick,
1893 the chief of the Civil Rights Division, is doing to the City
1894 of Fullerton is reasonable?
1895 Mr. BROWN. I think to point out one aspect of
1896 unreasonableness is not fair, Mr. Sensenbrenner. I don't
1897 think it's fair that--

1898 Mr. SENSENBRENNER. But do you think that what he's doing
1899 is unreasonable?
1900 Mr. BROWN. I don't know all the facts of that case.
1901 Honestly, I really don't.
1902 Mr. SENSENBRENNER. Well, from what--
1903 Mr. BROWN. Based on what--
1904 Mr. SENSENBRENNER. From what Mr. Royce testified to the
1905 Committee, do you think that DuVal Patrick is being
1906 unreasonable in saying that a city that's never had a
1907 complaint filed against it has to have a pool of 44.3
1908 percent minority within five years of job applicants or be
1909 sued.
1910 Mr. BROWN. Well, I'll tell you something, Mr.
1911 Sensenbrenner. There may be some circumstances that I'm not
1912 aware of that makes Mr. Patrick's statement somewhat valid.
1913 Mr. SENSENBRENNER. Then why didn't Mr. Patrick give Mr.
1914 Royce the information that was requested by--
1915 Mr. BROWN. I don't know.
1916 Mr. SENSENBRENNER.--him as a member of Congress
1917 representing the City of Fullerton?
1918 Mr. BROWN. I don't know. I don't know the answer to that
1919 question.
1920 Mr. SENSENBRENNER. Well, neither did he and that's why he
1921 was here today.
1922 Mr. BROWN. I don't know the answer to that question, but I

1923 do know that we heard one side from Mr. Royce. But there
1924 could be circumstances. You say that no one has filed a
1925 complaint. For many years, we, as African-Americans, have
1926 not filed complaints, and I talk to friends and associates
1927 all the time who make complaints as we sip cocktails or sit
1928 around joking, but do not file complaints. So that is not a
1929 valid reason to accuse or to accept what Mr.--what he said.
1930 Mr. SENSENBRENNER. But, sir, the proposed consent decree
1931 that Mr. Patrick sent to the City of Fullerton said that
1932 compensation had to be paid to people who never applied for
1933 a job because they feared they wouldn't get it. Now, is
1934 that the action of a reasonable person?
1935 Mr. BROWN. No. I don't understand that.
1936 Mr. SENSENBRENNER. Well, neither does Mr. Royce and
1937 neither do I. That's one of the reasons why people get so
1938 turned off at government; that when someone who has got
1939 enforcement authority over a very serious issue of the law
1940 does a stupid thing like that, he tries to convince you to
1941 clean up your act by punching you in the nose. That doesn't
1942 work any time.
1943 Mr. BROWN. I understand, Mr. Sensenbrenner.
1944 Mr. SENSENBRENNER. I yield back my time.
1945 Mr. BROWN. May I respond to that?
1946 Mr. CANADY. Yes, briefly.
1947 Mr. BROWN. We have people who complain about a particular

1948 thing that probably happens at the university in regards to
1949 personnel practices and maybe an employee does something
1950 that is not very smart. But we have not yet attempted to
1951 throw out our personnel practices. We have only decided
1952 that we must in some way correct what has happened and maybe
1953 modify that, but we haven't--no proposal has come forth that
1954 we throw out all of our personnel practices.

1955 Mr. SENSENBRENNER. Well, sir, I would submit that there is
1956 a different standard applied to the people that you deal
1957 with at the university and someone who has been appointed by
1958 the President of the United States as the nation's top civil
1959 rights enforcer.

1960 Mr. BROWN. Well, there might be, but I'd say he's still
1961 human and that person has a reaction as a human being
1962 regardless. And I do think that you cannot take one
1963 instance and use that to justify the removal of the
1964 affirmative action program.

1965 Mr. CANADY. Again, I'd just make the point that I don't
1966 think anyone is talking about eliminating all affirmative
1967 action efforts. I don't think that that is what is on the
1968 agenda. There may be some, but I don't think that that's
1969 what is going to be on the agenda in this Congress. We're
1970 talking about specific aspects of the program which are
1971 discriminatory in their impact.

1972 Again, we appreciate your taking the time to be with us

1973 today. Your testimony has been very helpful. Thank you
1974 very much.
1975 Mr. BROWN. Would we get a chance to see your proposed
1976 legislation, Mr. Canady?
1977 Mr. CANADY. Absolutely, yes. We'll be certain to get a
1978 copy of it to you when it's available.
1979 Mr. BROWN. Thank you.
1980 Mr. CANADY. Thank you. Our next witness today is Arthur
1981 Bierer, who is an undergraduate student at the University of
1982 California-San Diego. Mr. Bierer was denied a scholarship
1983 under the federal national science scholars program because
1984 of his gender. Thank you for being here today.

SAN DIEGO STATE UNIVERSITY

FROM: Harold K. Brown, Associate Dean
Community Economic Development

College of Business Administration
San Diego State University
San Diego, CA 92182-0414

Telephone: (619) 594-6437

FAX: (619) 594-1573

TO: Subcommittee on the Constitution

FAX: (202) 225-3746

DATE: 7/6/95

NUMBER OF PAGES (including this one): 17

Original is in the mail