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50 Years Later—The State of Civil Rights and Opportunity in America

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50 Years Later—The State of Civil Rights and Opportunity in America

*Abridged Transcript, The Summit for Civil Rights, November 9,
2017*

Catherine E. Lhamon†

Thank you, Myron, and thank you all for being here today. It's really a pleasure to be in a room full of people who are so committed to what I do every day, so thank you for that. It's inspiring. It's really terrific to be with you as you begin thinking about how to sustain and nurture a truly diverse, fantastic coalition that is focused on actual delivery of civil rights for the country. So, I wish you luck, and I thank you for the task that you've begun. And, I look forward to what will come from these two days together.

As I mentioned, I live your task every day, chairing the United States Commission on Civil Rights, so it's comforting to be with you all. The reality is that we need that comfort, because our task, your task for these two days, and I hope every day going forward, is urgent by any measure now. The data that has been reported recently, confirming what many of us know and live anecdotally, that there's been an increase in spates of hate incidents from 2015 to 2016, and a particular spike around the election, is a confirmation of how urgent this work is.¹

†. Catherine E. Lhamon is the Chair of the United States Commission on Civil Rights. President Obama appointed Lhamon to a six-year term on the Commission on December 15, 2016, and the Commission unanimously confirmed the President's designation of Lhamon to chair the Commission on December 28, 2016. Lhamon also litigates civil rights cases at the National Center for Youth Law, where she has been Of Counsel since October 2017. Lhamon received her J.D. from Yale Law School, where she was the Outstanding Woman Law Graduate, and she graduated *summa cum laude* from Amherst College.

1. See Aaron Williams, *Hate Crimes Rose the Day After Trump Was Elected, FBI Data Show*, WASH. POST (Mar. 23, 2018), https://www.washingtonpost.com/news/post-nation/wp/2018/03/23/hate-crimes-rose-the-day-after-trump-was-elected-fbi-data-show/?utm_term=.c224105f0c12 (relying on FBI data and a study from the Center for the Study of Hate and Extremism at California State University at San Bernardino to show a spike in reported hate incidents around the election); Dan Bauman, *After 2016 Election, Campus Hate Crimes Seemed to Jump. Here's What the Data Tell Us*, CHRONICLE OF HIGHER EDUC. (Feb. 16, 2018), <https://www.chronicle.com/article/After-2016-Election-Campus/242577> (relying on FBI data to indicate that more hate incidents were reported on college campuses in November 2016 than in any other one-month period).

So is the ongoing segregation in housing opportunity in the country, the radical re-segregation of our schools themselves; the material differences that we document in the Civil Rights Data Collection,² and the opportunities actually delivered to students in schools, regardless of how segregated they are or are not; in the longstanding data and increasing public attention to different police interactions with communities of color than with White communities, and our polarizing politics today. We know that the work that you've come together to discuss is urgent.

It's also especially urgent now, because we live in a time when our federal civil rights officials are, at best, me excluded, but at best, indifferent to civil rights and often hostile to civil rights. I want to concretize how dangerous that time is now for us. Walking through some lowlights in this administration: The Chief in the Health and Human Services Agency, with respect to civil rights, his only prior relationship to health-related civil rights was to oppose the application of Obamacare to transgender Americans.³

Housing and Urban Development Secretary Ben Carson has characterized himself as unqualified for the job, which I will say is a view I share.⁴ He's characterized poverty as "a state of mind,"⁵

between 2012 to 2016); *see also* FED. BUREAU OF INVESTIGATION, DEP'T OF JUSTICE, HATE CRIME STATISTICS: INCIDENTS AND OFFENSES (2016), <https://ucr.fbi.gov/hate-crime/2016/tables/table-1> (noting that in 2016, there were 6,121 criminal incidents that were motivated by bias); FED. BUREAU OF INVESTIGATION, DEP'T OF JUSTICE, HATE CRIME STATISTICS: INCIDENTS AND OFFENSES (2015), <https://ucr.fbi.gov/hate-crime/2015/tables-and-data-declarations/1tabledatadecpdf> (noting that in 2015, there were 5,850 criminal incidents that were motivated by bias).

2. CIVIL RIGHTS DATA COLLECTION, DEP'T OF EDUC., <https://ocrdata.ed.gov/> (last accessed Apr. 17, 2018).

3. *See* Ryan Anderson & Roger Severino, *Proposed Gender Identity Mandate Threatens Freedom of Conscience and the Independence of Physicians*, HERITAGE FOUND. (Jan. 8, 2016), <https://www.heritage.org/health-care-reform/report/proposed-obamacare-gender-identity-mandate-threatens-freedom-conscience>; *see also* Shefali Luthra, *Trump Puts Transgender Health Care in the Crosshairs*, DAILY BEAST (July 12, 2017, 1:00 AM), <https://www.thedailybeast.com/trump-puts-transgender-health-care-in-the-crosshairs> ("The ACA's non-discrimination portion, known as Section 1557, says federally-funded programs that provide health care, coverage, or related services cannot discriminate based on sex In a Texas case [challenging the application of Section 1557] . . . HHS responded by asking the Court to remand the case and stay further proceedings while it rewrites the rule.") (emphasis removed).

4. Ben Kamisar, *Carson Not Interested in Serving in Trump Administration*, THE HILL (Nov. 15, 2016, 10:30 AM), <http://thehill.com/policy/healthcare/306045-carson-turned-down-offer-to-serve-in-trump-administration-report> (quoting Ben Carson's business manager as stating, "Dr. Carson feels he has no government experience, he's never run a federal agency. The last thing he would want to do was take a position that could cripple the presidency.").

5. Pam Fessler, *Housing Secretary Ben Carson Says Poverty Is A 'State Of Mind'*, NPR (May 25, 2017, 3:50 PM), <https://www.npr.org/2017/05/25/530068988/ben-carson-says-poverty-is-a-state-of-mind>.

and during his listening tour as he began his time as the HUD Secretary, he said that he doesn't believe that low-income residents should be "comfortable," because "a comfortable setting"—this is a quote—"that would make somebody want to say: 'I'll just stay here. They will take care of me.'"⁶ He specifically cited the bareness of an overnight housing shelter that has bunk beds grouped in a room as a positive example of what kind of low-income housing the government should be offering to persons who need help.⁷

Turning to the Attorney General. The Attorney General has decided that it's a good idea to site ICE officials in courthouses to discourage people's access to justice, to discourage people from coming forward as witnesses, much less to seek justice for themselves in our American justice system.⁸ He has directed his staff to reconsider all existing consent decrees, and including

6. Yamiche Alcindor, *Don't Make Housing for the Poor Too Cozy, Carson Warns*, N.Y. TIMES (May 3, 2017), <https://www.nytimes.com/2017/05/03/us/politics/ben-carson-hud-poverty-plans.html>.

7. Sam Levine, *Ben Carson Wants to Make Sure Poor People Aren't Too Comfortable*, HUFFINGTON POST (May 3, 2017, 11:16 AM), https://www.huffingtonpost.com/entry/ben-carson-housing-comfortable_us_5909e189e4b02655f842ce21.

8. Letter from Jefferson B. Sessions III, Attorney General, and John F. Kelly, Secretary of Homeland Security, to Tani G. Cantil-Sakauye, Chief Justice of the Supreme Court of California (Mar. 29, 2017) ("Some jurisdictions, including the State of California and many of its largest counties and cities, have enacted statutes and ordinances designed to specifically prohibit or hinder ICE from enforcing immigration law by prohibiting communication with ICE, and denying requests by ICE officers and agents to enter prisons and jails to make arrests As a result, ICE officers and agents are required to locate and arrest these aliens in public places rather than in secure jail facilities where the risk of injury to the public, the alien, and the officer is significantly increased"). For more information on the dispute regarding ICE officials in courthouses, see Letter from Tani G. Cantil-Sakauye, Chief Justice of the Supreme Court of California, to Jefferson Sessions III, Attorney General, and John F. Kelly, Secretary of the U.S. Department of Homeland Security (Mar. 16, 2017) ("Courthouses should not be used as bait in the necessary enforcement of our country's immigration laws. Our courts are the main point of contact for millions of the most vulnerable Californians in times of anxiety, stress, and crises in their lives. Crime victims, victims of sexual abuse and domestic violence, witnesses to crimes who are aiding law enforcement, limited-English speakers, unrepresented litigants, and children and families all come to our courts seeking justice and due process of law. As finders of fact, trial courts strive to mitigate fear to ensure fairness and protect legal rights."); Matt Zaptosky, *Top U.S. Officials Defend Courthouse Arrests of Undocumented Immigrants in Escalating Feud with California Justice*, WASH. POST (Mar. 31, 2017), https://www.washingtonpost.com/world/national-security/top-us-officials-defend-courthouse-arrests-of-undocumented-immigrants-in-escalating-feud-with-california-justice/2017/03/31/d92dddfe-1627-11e7-ada0-1489b735b3a3_story.html; see also COMM'N ON CIVIL RIGHTS, COMMISSION ON CIVIL RIGHTS EXPRESSES CONCERN WITH IMMIGRANTS' ACCESS TO JUSTICE (Apr. 24, 2017), http://www.usccr.gov/press/2017/Statement_04-24-2017-Immigrant-Access-Justice.pdf.

proposed consent decrees with respect to systemic police reform, because, in his view, we shouldn't let the actions of a few bad actors drive systemic change.⁹ This is notwithstanding a twenty-three-year mandate from Congress that the Department of Justice do exactly that, that the Department of Justice exactly look at the ways that some police departments engage in systemic violations of the constitutional rights of American citizens in their policing work.¹⁰ And so, the message from the Attorney General is that we will turn our backs on our communities, and that we will not have a strong enforcement message for civil rights in our communities moving forward.

Then, my former department, the Department of Education, is starving the budgets of the Office for Civil Rights,¹¹ as well as the full Department of Education, withdrawing critical guidance related to sexual violence,¹² related to transgender students,¹³ and we expect more to come, directing staff to under-evaluate rights,¹⁴ and consistently failing to commit to enforcement.¹⁵

9. Memorandum from Attorney General Jefferson B. Sessions III, to Heads of Department Components and United States Attorneys (Mar. 31, 2017), *available at* <https://www.documentcloud.org/documents/3535148-Consentdecreebaltimore.html>.

10. Violent Crime Control and Law Enforcement Act of 1994, 34 U.S.C. §§ 12601–12602 (2008). *See also* CIVIL RIGHTS DIV., DEP'T OF JUSTICE, THE CIVIL RIGHTS DIVISION'S PATTERN AND PRACTICE POLICE REFORM WORK: 1994-PRESENT (Jan. 2017), <https://www.justice.gov/crt/file/922421/download>; COMM'N ON CIVIL RIGHTS, U.S. COMMISSION ON CIVIL RIGHTS URGES DEPARTMENT OF JUSTICE TO USE ALL AVAILABLE TOOLS TO WORK WITH POLICE DEPARTMENTS TO ENSURE CONSTITUTIONAL POLICING (Apr. 24, 2017), http://www.usccr.gov/press/2017/Statement_04-24-2017-Policing.pdf.

11. FISCAL YEAR 2017 BUDGET REQUEST, DEP'T OF EDUC., <https://www2.ed.gov/about/overview/budget/budget17/justifications/z-ocr.pdf> (last accessed Apr. 17, 2018); *see also* Michelle Hackman, *Trump Job Cuts at Education Department Worry Civil-Rights Advocates*, WALL ST. J. (Dec. 15, 2017, 5:30 AM), <https://www.wsj.com/articles/trump-job-cuts-at-education-department-worry-civil-rights-advocates-1513333800> (“The department has offered voluntary buyouts overall to 207 employees as part of a broad staff reduction . . . [o]f those, 45 offers were made in the civil rights office, the most for any unit in the department.”).

12. *Department of Education Issues New Interim Guidance on Campus Sexual Misconduct*, DEP'T OF EDUC. (Sept. 22, 2017), <https://www.ed.gov/news/press-releases/department-education-issues-new-interim-guidance-campus-sexual-misconduct> (“The Department of Education is also withdrawing . . . the Dear Colleague Letter on Sexual Violence . . .”).

13. DEP'T OF JUSTICE & DEP'T OF EDUC., GUIDANCE WITHDRAWING DEAR COLLEAGUE LETTER ON TRANSGENDER STUDENTS (Feb. 22, 2017).

14. Erica L. Green, *Education Department Says It Will Scale Back Civil Rights Investigations*, N.Y. TIMES (Jun. 16, 2017), <https://www.nytimes.com/2017/06/16/us/politics/education-department-civil-rights-betsy-devos.html>.

15. In the Senate Committee on Appropriations' hearing on the fiscal year 2018 budget request for the Department of Education, Senator Patty Murray asked if Secretary DeVos would “require these schools receiving these funds [referring to voucher program funds] to follow the [Individuals with Disabilities Education Act]”

Those policies, those practices, across the federal government come directly from our President as well. The President of the United States himself tweeted, and we're talking about tweets with this President, but tweeted this week, that United States Senator Elizabeth Warren, he called her "Pocahontas" in a derogatory reference to his disbelief about her Native American heritage.¹⁶ That's the President of the United States, and the rhetoric that he shares with our full community.

We are living in a time when the clearest, most consistent signals from our federal government are a retreat from civil rights. That says to us that we need to come together. We can't rely only on the federal government. We can't rely on someone else to ensure the rights that have been part of a sixty-year national consensus about who we are as a community, and what we expect to live, and what we expect to provide to all of the people who are part of our fabric.¹⁷ The reality is that I am sick every day about how hard this time is, and I think we are past time to realize that we need to be vigilant at all times. We can never rest on our civil rights laurels. We cannot assume that a gain is a past tense gain that we can live and rely on moving forward. In fact, Thomas Jefferson is famous for having said that "eternal vigilance . . . is the price of liberty."¹⁸ That was remarkably prescient, that phrase, that we need to be

and whether the Department of Education will have "specific rules and regulations" relating to discrimination of students. Secretary DeVos responded, "Any institution receiving federal funding is required to follow federal law." *Review of the FY2018 Budget Request for the U.S. Department of Education*, SEN. COMM. ON APPROPRIATIONS (June 6, 2017), <https://www.appropriations.senate.gov/hearings/review-of-the-fy2018-budget-request-for-the-us-department-of-education> (discussion at 49:00–50:19). Senator Jeff Merkley followed up by noting that federal laws regarding discrimination "are somewhat foggy" as relates to enforcement of charter and private schools that receive federal funds. Secretary DeVos stated "on areas where the law is unsettled [referring back to Senator Merkley's concerns about discrimination against LGBT students], this department is not going to be issuing decrees." *Id.* (discussion at 1:29:47–1:32:34). *See also* COMM'N ON CIVIL RIGHTS, THE U.S. COMMISSION ON CIVIL RIGHTS EXPRESSES CONCERN REGARDING FEDERAL CIVIL RIGHTS ENFORCEMENT EFFICACY AND PRIORITIES (June 16, 2017), <http://www.usccr.gov/press/2017/06-16-Efficacy-of-Federal-Civil-Rights-Enforcement.pdf>.

16. Donald Trump (@realDonaldTrump), TWITTER (Nov. 3, 2017, 4:55 AM), <https://twitter.com/realDonaldTrump/status/926417546038923264>.

17. *See* Drew S. Days, III, *Turning Back the Clock: The Reagan Administration and Civil Rights*, 19 HARV. C.R.-C.L. L. REV. 309 (1984) (arguing that for at least the past forty years national civil rights policy "reflect[ed] the nation's acceptance of two basic premises of 'life, liberty, and the pursuit of happiness' on an equal basis for large groups of its citizenry; and second, that the federal government should play a major role in vindicating civil rights").

18. THE YALE BOOK OF QUOTATIONS 384 (Fred R. Shapiro ed. 2006) (attributing the quote to Andrew Jackson and noting that while commonly attributed to Thomas Jefferson, this exact formulation of the quote has not been found in his writings).

eternally vigilant; we cannot assume that we have achieved civil rights and that we can turn to our next task. We have to nurture those rights every day.

So, I'm grateful that you are planning to do it. We know that the story of our nation is a story of constant struggle between our promised ideals and what we live and the impulse to discriminate, which we know is very strong. The reality is also that the story of our nation is a story of people who are willing to fight for what they know to be right, to stand for what they know to be right, and to stand for other people. You all coming together these two days demonstrate that you are those people, so thank you for being those people. I rely on you, and I want you to know that I, and my fellow commissioners at the United States Commission on Civil Rights, take our charge seriously. We will seriously rely on you, and we will also fulfill our duty to you.

The Congress, sixty years ago now, created the United States Commission on Civil Rights as a federal independent commission that is to advise Congress, the President, and the public about efficacy of federal civil rights policy, efficacy of federal civil rights enforcement, and the need for improved or changed federal civil rights policy.¹⁹ Over the sixty years that the United States Commission on Civil Rights has been in existence, the Commission has influenced all of the federal civil rights laws that have passed in that time.²⁰ That's, on the one hand, a really terrific record, and on the other hand, I think that there's much that we need to be saying today.

The kinds of ways that the United States Commission on Civil Rights has sustained our civil rights traditions in this country have ranged from:

- Shoring up the basis for the 1965 Voting Rights Act,²¹ calling for the creation of the Act, and then also creating data that

19. See Civil Rights Act of 1957, Pub. L. No. 85-315, 71 Stat. 634 (establishing the United States Commission on Civil Rights).

20. See, e.g., COMM'N ON CIVIL RIGHTS, *Statutory and Interim Reports*, <http://www.usccr.gov/pubs/catalog/stat.php> (last accessed Feb. 11, 2018) (cataloging the Commission's reports on federal civil rights laws); see also Olatunde C.A. Johnson, *The Agency Roots of Disparate Impact*, 49 HARV. C.R.-C.L. L. REV. 125, 139 (2014) (noting the United States Commission on Civil Rights was tasked with drafting the final Title VI regulation rules); MARY FRANCES BERRY, AND JUSTICE FOR ALL: THE UNITED STATES COMMISSION ON CIVIL RIGHTS AND THE CONTINUING STRUGGLE FOR FREEDOM IN AMERICA (2009) (documenting Commission influence on various civil rights laws); COMM'N ON CIVIL RIGHTS, REINVIGORATING THE NATION'S CIVIL RIGHTS DEBATE: 2008-2013 STRATEGIC PLAN 5 (Oct. 2007), www.usccr.gov/pubs/SPFY0813.pdf.

21. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1965).

supported the United States Supreme Court’s decision to affirm the constitutionality of the Act when that was challenged.²²

- Even before that time, the Commission called for the use of fund-withholding from the federal government as a way of enforcing federal civil rights principles,²³ and so actually called for the creation of the 1964 Civil Rights Act,²⁴ among others.

The Commission essentially said then, once we say that we as a country don’t allow federal dollars to be used to discriminate on the basis of race, among other categories, the way that we will enforce it is that there will be federal civil rights officials who will withhold federal funds from those institutions that fail to live up to the promise in the congressional mandate.²⁵ That’s an incredibly meaningful stick to carry in the federal government. It’s an incredible enforcement tool. I was very pleased to be able to wield it when I was the Assistant Secretary for Civil Rights at the Department of Education. I also strongly believe in what the Commission did for us as a country all those years ago to say, we should have that tool, and we should expect it to be used.

That leads us to, “where are we now and what will we do now?” The Commission is bipartisan by design. The goal is to be able to bring people from lots of viewpoints together to think about, what are the right messages for the country? We, as a bipartisan commission, have voted unanimously to conduct a two-year investigation of all of the Trump Administration’s civil rights enforcement policies.²⁶ That’s actually to do oversight of what this Administration is going to be doing. Thank you for the applause. I’m really thrilled to be able to do it. I think it’s obviously critically important that we do it. The oversight will only be as meaningful as the information that we can take in, so we will rely on you. We will rely on your friends. We will rely on all around the country who are willing to share views about how this government is and is not

22. *State of South Carolina v. Katzenbach*, 383 U.S. 307, 309 n.5, 311 n.10, 323 n.33, 337 n.51 (1966) (relying upon data collected by the Commission on Civil Rights in determining there was sufficient evidence of discrimination to justify the Voting Rights Act of 1965).

23. COMM’N ON CIVIL RIGHTS, INTERIM REPORT OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS (Apr. 16, 1963).

24. Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241 (1964).

25. See COMM’N ON CIVIL RIGHTS, INTERIM REPORT *supra* note 23.

26. COMM’N ON CIVIL RIGHTS, FEDERAL CIVIL RIGHTS ENFORCEMENT EFFICACY AND PRIORITIES, *supra* note 15 (stating that the Commission “unanimously approved a comprehensive two-year assessment of federal civil rights enforcement, which will conclude in Fiscal Year 2019”).

enforcing civil rights and what more should and should not be done. That's one of our projects, but we have more.

We also have upcoming reports that will come out in the coming weeks related to LGBT employment in this country²⁷ and also related to school finance equity and resource equity in our schools around the country.²⁸ We have briefings coming up. We're going to hold a briefing about voting rights.²⁹ It's timely, given the anniversary that was yesterday in this country. We're holding a briefing about voting rights in the country, holding a briefing about the school-to-prison pipeline focused on students of color with disabilities,³⁰ and we're holding a briefing focused specifically on hate incidents,³¹ which is what I started this talk about.

We have a pretty broad-ranging agenda of kinds of topics that we expect to speak to. As I mentioned, we rely on people sharing with us what their concerns are, sharing with us what their recommendations are, sharing with us what their experiences are of civil rights satisfaction and civil rights dissatisfaction in the country. I invite you to come to the Commission briefings, to share information with us, to allow us to be your eyes and ears so we can then be able to make recommendations about what civil rights will be. We also watch carefully what comes from convenings like this one, about what recommendations are, what needs are, what should be examined, what should be done in the country, so I'm looking forward to being in partnership with you in addition to speaking to you now about what it is that you will say.

27. Subsequent to Chair Lhamon's remarks, the Commission released its report. COMM'N ON CIVIL RIGHTS, WORKING FOR INCLUSION: TIME FOR CONGRESS TO ENACT FEDERAL LEGISLATION TO ADDRESS WORKPLACE DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL, AND TRANSGENDER AMERICANS (Nov. 2017), http://www.usccr.gov/pubs/LGBT_Employment_Discrimination2017.pdf.

28. Subsequent to Chair Lhamon's remarks, the Commission released its report. COMM'N ON CIVIL RIGHTS, PUBLIC EDUCATION FUNDING INEQUITY IN AN ERA OF INCREASING CONCENTRATION OF POVERTY AND RESEGREGATION (Jan. 2018), <http://www.usccr.gov/pubs/2018-01-10-Education-Inequity.pdf>.

29. Subsequent to Chair Lhamon's remarks, the Commission's briefing was held. COMM'N ON CIVIL RIGHTS, U.S. COMMISSION ON CIVIL RIGHTS PUBLIC BRIEFING: AN ASSESSMENT OF MINORITY VOTING RIGHTS ACCESS IN THE UNITED STATES (Jan. 29, 2018), <http://www.usccr.gov/press/2018/01-29-PR-Briefing.pdf>.

30. Subsequent to Chair Lhamon's remarks, the Commission's briefing was held. COMM'N ON CIVIL RIGHTS, U.S. COMMISSION ON CIVIL RIGHTS TO HOLD PUBLIC BRIEFING: THE SCHOOL-TO-PRISON PIPELINE: THE INTERSECTIONS OF STUDENTS OF COLOR WITH DISABILITIES (Dec. 6, 2017), <http://www.usccr.gov/press/2017/12-06-PR.pdf>.

31. Subsequent to Chair Lhamon's remarks, the Commission's briefing was held. COMM'N ON CIVIL RIGHTS, PUBLIC BRIEFING: HATE CRIMES AND BIAS-RELATED INCIDENTS (May 11, 2018), <http://www.usccr.gov/press/2018/03-22-Hate-Crimes.pdf>.

I have just a few minutes before I have to race to catch a flight, but I want to end with saying that, as bleak as these times are, as hard as these times are, as challenging as they are, we know that there is value in speaking up. We know that good comes from saying what you know should be right, making a plan for how to get there, and how to deliver that for many, many more people in addition to those in your immediate nucleus. We know that, even though I've said that the price of liberty is eternal vigilance, even though we also know that it's hard to ensure that those promises are the lived reality around us, we know that when we stand for other people, that there are ripple effects that follow from it, and that we can't always quantify how many people benefit from the good that we've done. But we also know that if we're not looking, it will be worse.

I want to tell you just one example of an investigation from when I was at the Department of Education that is recent, to say how far we've come, how far yet we have to go. This was an investigation of an Alabama school district that had achieved unitary status,³² which means that it had convinced a court that it no longer segregated its students and that it offered equal opportunity to all students.³³ This was a school district that had been part of litigation begun in the 1960s about racially segregated schools, had gotten to a time when it had achieved unitary status, and then when we were investigating this district—we closed our resolution, investigation, in the district, in 2013—when we were investigating the district, this district had 23% Black students, but one of its four high schools in the district was more than 90% Black students. That already begs the question about whether they actually had achieved unitary status for real for their students, but we learned that the one high school that was more than 90% Black students in this district that had promised a court that it no longer offered segregated education, that high school, they never offered a single Advanced Placement course. Not only were they not offering Advanced Placement courses, they didn't offer International Baccalaureate. They just weren't offering high-rigor courses to the students in this one high school. They were in the other three high schools in the district, like Advanced Placement Microeconomics, the full range of Advanced Placement courses. The Black students

32. *Green v. Cty. Sch. Bd. New Kent*, 391 U.S. 430 (1968).

33. Letter from Cynthia G. Pierre, Ph.D., Reg'l Dir., Office for Civil Rights, U.S. Dep't of Educ., to Dr. James E. McCoy, Superintendent, Lee Cty. Sch. Dist. (Sept. 10, 2013), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/04085001-a.pdf>.

in the other three high schools were taking those courses and succeeding in them, but in this one high school, the 93% Black high school, they didn't offer the courses.

We asked the principal why he wasn't offering those courses in this integrated school district that was delivering equal opportunity to all students. He said, 'Well, these students need remedial education.' All of them? That's the leadership in this school for these students that not one student in that high school was college-bound? Not one student was ready for high-rigor courses? You'll be happy to know that that principal's not the principal anymore, and better, the district has agreed to offer high-rigor courses to the students in that high school just like in all the others. But, it's also agreed to go back to kindergarten to figure out what it takes to develop a pipeline, so the students are ready to succeed in those courses when they get to them, that the students understand that those courses are for them, and that their instructors throughout elementary, middle, and high school understand that those courses are for them, and that the students need to be prepared, and that the school needs to communicate a welcoming environment.

I say that to you to say, that was 2013 when we had to enter into that resolution agreement, in a district that had a history of *de jure* formal racial segregation, that had gotten itself out from that history, but that still perpetuated that history and that wasn't making a change absent a federal requirement and ongoing federal oversight to make sure that they live it. That is to say that standing for somebody else matters. It's not enough just to have a principle. It's not enough just to have an agreement about who we're going to be and what we're going to do. You have to monitor it. You have to be there, and you have to say, when somebody says, "These kids don't count. This community doesn't matter, that this part of America is not as important as another," that that is wrong, that that is not who we are, and that we don't accept it, so that we are a community that comes together, that responds, and that creates who we want to be.

I see that at this law school. It was fun for me to walk in and see, going in the bathroom, big signs for where the gender-neutral bathroom is in the building, and to see big signs for how to get to the accessible bathrooms. This is a community I see—when I was waiting to speak, I saw a beautifully multi-racial group of students coming in and out of the lounge, waiting to come in and out to this conference. I see that this is a place that is inclusive, that lives its values, and that is prepared to be the community that it should be

for schools. We need that in all of our institutions. We need that not just here. We need that everywhere in this country. I really welcome your coming together to think about how we build that, how we sustain it, and how we together nurture it and are the community that will make that happen. Thank you for letting me start your time, and I look forward to what will come from this. Thank you.