

EXHIBIT 1

Civil Action No. 00-2445 (JR)

**TREATMENT OF MINORITY AND
LIMITED RESOURCE PRODUCERS
BY THE U.S. DEPARTMENT OF
AGRICULTURE**

SEP 30 1997
HEARINGS

BEFORE THE
SUBCOMMITTEE ON DEPARTMENT OPERATIONS,
NUTRITION, AND FOREIGN AGRICULTURE
AND THE
COMMITTEE ON AGRICULTURE
COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

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The CHAIRMAN. Now, Mr. Secretary.

STATEMENT OF HON. DAN GLICKMAN, SECRETARY, U.S.
DEPARTMENT OF AGRICULTURE

Secretary GLICKMAN. Thank you very much.

First of all, I want to introduce who is with me here. On my right is my partner, the Deputy Secretary, Rich Rominger. And on my left is Pearlle Reed. Pearlle is the head of our Civil Rights Action Team. Pearlle was Associate Chief of the Natural Resources Conservation Service when I asked him to take this job around the first of the year, to begin to focus our attention on civil rights.

So Pearlle is now Acting Assistant Secretary for Administration and he has been our savior coming in and doing his best to clean up a problem that has existed for a very long time. A very difficult problem. One that has caused me, in terms of my personal time as well as attention and focus, more than any other issue the Department of Agriculture, and one that frankly we have barely scratched the surface on. And so it is, this is an important topic.

I served with you for many years, 18 years, I don't think this topic was ever discussed at a formal hearing, so I commend you for having this hearing. Abraham Lincoln called USDA "the people's department," when he created this department in 1862. We are working hard to restore the full lustre of that name.

I'd like in particular to thank those on this committee and elsewhere who have shown a deep, personal commitment to and involvement in the civil rights struggle at USDA. The support of Congress, and in particular, this committee will be crucial to the progress we make. And I would tell you right now, we need your help and your support and your involvement to work through this particular issue.

It was a little over 2 years ago when I appeared before this committee to first talk about my plans for USDA. We talked about wheat and cattle, crop insurance, research, conservation. We talked about Kansas and California, just two States that Mr. Rominger and I care about. We did not focus on civil rights. Quite honestly if there was one ambush awaiting me in this job, that's it.

Today I spend as much, if not more, of my time dealing with civil rights matters as I do any specific farm program. And the reason is simple enough. We have a long history of both discrimination and perceptions of unfairness that go literally back to the middle of the 19th century. For those who look back on the progress made in the 1960s of the historic civil rights laws passed in that time and think we got the job done, I can say just from my experiences at USDA, we do not yet fully practice what we preach.

I've talked to people who have lost their farm. Good people, who lost their family land not because of a bad crop, not because of a flood, but because of the color of their skin. I've talked to employees—dedicated public servants—who have been humiliated, abused and then punished for speaking up. I want to close this chapter of USDA's history. My goal is to get USDA out from under the past and have it emerge in the 21st century as the Federal civil rights leader.

The American farmer and the American people deserve nothing else. I appear before you today proud of the progress we have made

in calling attention to the problem of starting to focus ourselves on solutions and getting key changes quickly in place. But I also appear before you today having undergone a reality check as to the massive amount of time, resources, people, power and leadership, both at USDA and in Congress, that it is going to take to get the job done right.

This is an extraordinarily complicated problem that has taken decades and decades and decades to build to this situation. So we are committed to resolving, but we do need your help as well. I also want to emphasize the overwhelming majority of our employees are committed to treating their co-workers and customers with dignity and respect. The institutional and personnel problems which continue to afflict the Department, should not demean the majority of our committed and capable staff.

By and large, USDA employees are dedicated, fair-minded, overworked and under paid.

Like discrimination in many of America's public and private institutions, civil rights problems at USDA are not going to disappear overnight. If there were easy solutions, I would assure you we would not be sitting here today. But the fact is, there is no silver bullet. We are going to have to get through this the old fashioned way, with our sleeves rolled up and a whole lot of people doing a whole lot of work.

And our efforts are already well underway. As most of you know, it's been 5 months since the release of USDA's Civil Rights Action Team Report. And by the way, that process got started around Christmas, and within a record 60-day time period, it was finished. We had 12 listening sessions around the country to hear from farmers, ranchers, employees, rural residents and community leaders.

Our report listed 92 specific recommendations to improve the civil rights climate at USDA. To carry them out, we have organized 33 implementation teams, involving approximately 300 people, currently employees at USDA. Together they have logged tens of thousands of hours of work. We have a long way to go, but we have started down the road to a solution.

And I want to give you a progress report. Where progress could be made on my authority, we have moved quickly. I have made it a condition of employment, that every employee treat every co-worker and customer fairly and equitably with dignity and respect. No exceptions, no excuses. We have a new foreclosure policy. Now when a written civil rights complaint is lodged, the foreclosure is frozen wherever it is in the process until an independent review occurs and a judgement is made as to whether or not discrimination occurred.

We have a zero tolerance policy for reprisals against employees who file civil rights complaints. From now on, a three person panel made up of one union or an employee representative, one manager or a personnel staff and one mediator will investigate alleged reprisals and make binding recommendations.

I've also ordered that loan processing continue on accounts where a discrimination complaint is pending. Standing up for your rights should not disqualify someone from seeking a farm loan. If it is the loan processor facing the allegations, then another FSA, Farm

Service Agency loan officer will be assigned to work with the applicant. If that loan cannot be approved, they get a meeting and a written letter of explanation. That last part helps clear up the problem and the perceptions.

Without question, part of the problem is economic. Smaller farmers of all ethnic backgrounds and all regions of the country are having an increasingly difficult time coping with the massive changes that are occurring in the structure of the Agriculture. Yesterday I announced the formation of a National Commission on Small Farms.

It will be headed by a former member of this committee, Harold Volkmer of Missouri. His commission will talk to folks around the country and pull together the thread of rural and economic conditions that affect America's small farms, and weave a national strategy to make our small farms as powerful a force in agriculture's future as they have been in the past.

I've asked their report be presented to me by September 30 and I look forward to sharing it with all of you and taking bold steps in that area as well.

Under the economic rubric, we will also propose legislation to modify certain provisions of the 1996 farm bill. We have worked very closely with Congresswoman Clayton and others to provide more flexibility in terms of assisting farmers who rely on USDA for farm operating credit. In my book, the 1996 farm bill went too far in restricting credit, particularly to those farmers who received a debt forgiveness and were denied an opportunity to work their way back to qualifying for assistance. That's even harsher than commercial credit standards and needs to be corrected.

USDA will also soon have an Office of Outreach, which may be the most visible evidence that we are serious about reaching out to customer whom we've neglected in the past. All our potential customers should get the information they need to use our programs and services. We also expect to soon fill the newly created position of Associate General Counsel for Civil Rights. This person will head a staff of attorneys who will be dedicated exclusively to the performance of civil rights functions.

These are just the highlights of what we have done to date, and they accomplish perhaps a third of the recommendations that were made in the report. You should all have a more complete accounting in the package of material that my staff has handed over to this committee. But I mentioned earlier a reality check. Nowhere has it been more abrupt than in our efforts to resolve the backlog of nearly 2,300 civil rights complaints, 1,500 from employees and nearly 800 in our farm and rural development and other programs.

Some of them go back years. This shows the rift between civil rights and civil realities. I don't have to explain to anyone on this committee what's likely to happen to a small farmer who's denied a timely loan. Or the employee who has filed a complaint against his or her boss and then has to wait year after year for closure. I am not proud of our history. I must tell you that. I am not proud of our history, our institutional dedication, or commitment or our internal operations in the past 15 years in resolving these complaints. And that even includes time that I have been in this job.

Our organizational structure and institutional commitment to resolving program and personnel complaints have left a great deal to be desired. And quite frankly, neither past administrations nor past Congresses, including when I was in this body, devoted very much time to this issue at all. I do believe this is the first time in the modern history of Congress, that this committee on either side has held a hearing on this subject. And for that, you should be commended.

Since the Civil Rights Action Team Report, we have focused huge amounts of time and resources on resolving those complaints. We have settled 215 cases of alleged discrimination against employees and closed 89 cases on the program side. Of that 89, four cases involved what I would characterize as significant settlements, adding up to a total, the four cases, of more than \$2 million.

USDA stands ready to resolve quickly and fairly, legitimate civil rights complaints. And I stress the word legitimate, because we have an obligation to taxpayers to ensure the charges are warranted. We cannot simply settle for settlement's sake. We must investigate each charge. This is where we have hit the proverbial brick wall. A good part of the reason for the backlog is the fact that in 1983, USDA Civil Rights Investigation Unit was dismantled. We are just now in the process of hiring back those positions.

Currently, we are using contract investigators to help us sort through the backlog. We expect that a permanent staff will help us break up the logjam, but this will remain a lengthy, arduous process that is likely to take a year to wrap up responsibly. And I should mention, with me is Lloyd Wright who is the new head of our Office of Civil Rights.

Since Mr. Reed came on board, we have virtually an entire new team involved in the administration of these particular matters, and it's his job to break through this backlog and get it done responsibly. Once we get back to ground zero, we are working on ways to move the process along at a quick but fair clip, that allows all parties to move on with their lives.

So I would say that this leads me to perhaps my last issue, and that is the issue of building accountability. We don't just want to fix what's wrong, we want to build an institution that consistently does what's right. That requires building more accountability into the system. In this area in particular, we are going to need to work very closely with this committee. We need to send a strong signal throughout our ranks that USDA is serious about institutionalizing proper civil rights enforcement up and down our ranks.

I've given Mr. Reed the authority to rate agency heads on their civil rights performance. It will no longer be a second tier consideration. We are also working to ensure that our civil rights objectives are incorporated into our performance management system, so that managers know what's expected of them and understand that they will be rated based on how well they live up to those expectations.

Finally, there is the question of the USDA structure which serves agriculture outside of Washington, the field structure. As an 18 year member of this body, from the great agricultural State of Kansas, I am under no delusions as to the political degree of difficulty of any legislative proposal to convert county employees to Federal employees. While this change was suggested in our Civil Rights Re-

port. its origin is almost entirely based on general management concerns.

Our county field structure is far from resembling a Fortune 500 corporation. But as we downsize and streamline and all the rest that we have to do, I think a brief comparison is worthwhile. Right now we operate under two personnel systems in our counties. A system of county-based employees and Federal employees, often in the same offices, all whose salaries are paid for by the Federal Government, Uncle Sam.

It wasn't even until about 10 years ago that I realized that county employees were paid by the taxpayers of the America just as Federal employees were paid by the taxpayers of America. They are all paid by the same people. In the same county office, we find both Federal and non-Federal employees all doing USDA work, side by side, but they do not technically have the same boss.

This is something that you would be hard pressed to find in the private sector, because it is that dreaded management consulting word, inefficient. Now what does that mean? We had a county committee, they are a grass roots connection and bring to the table hands-on farmers' knowledge of how Federal policies actually work. These men and women are like the Board of Directors. They care about the big picture, getting their rural communities and farmers the Federal resources they need. Seeing Federal conservation policies, rural development efforts and farm programs work in their county.

Their role in substantive policy and program matters would not be affected by this shift at all. This proposal will simply take the next logical step. It will recognize all the changes that are occurring. It will close the accountability gap on civil rights and it will create a more efficient and much less costly field structure where everyone does what they do best.

County committees will be free to focus on the big picture, the program picture. And nuts and bolts personnel management will be carried out according to one national standard. Again, all these people are paid by the same people. They are all nationally taxpayer paid people. This will help create a more positive, consistent work environment for our field staff and a higher standard of service for all our customers.

Done right, it will also eventually save us the thousands of hours and millions of dollars we are putting out right now on the damages side of civil rights enforcement. I understand that the nature of a bureaucracy is to resist change. I understand too, that for decades this has been an untouchable issue and probably rightly so for the times. But today I am utterly convinced that we can do this the right way, and I am equally convinced that this is simply the right thing to do.

Our employees out on the front lines of this whole civil rights effort liken their work to trying to turn an elephant around using a pin. We are dealing with a large Federal bureaucracy. One that is scattered across almost every county in this country. We were the first decentralized government in this country. The Agriculture Department was set up and it was—the programs in the thirties were set up basically to run in a decentralized way, with a national set of policies. So we are located everywhere.

We are also dealing with civil rights, which involves laws and policies, but also people's hearts and minds. Some things change faster than others. It is not hard to draw the comparison to the President's "One American Initiative." On the one hand, racial healing is such a vast and squishy issue that few people have any real concrete ideas on where to begin. On the other hand, discrimination runs so completely counter to everything we stand for as a Nation, that the alternative, which is to do nothing, would be unthinkable.

Today President Clinton is talking to the NAACP and the National Association of Black Journalists about our options as a Nation. I am here talking to all of you. I have every confidence that these actions, if embraced by this Congress, will be extraordinarily positive for the Department of Agriculture. We, at USDA, are special in our advocacy for America's farmers and ranchers. These changes will make us even more effective.

We cannot change how every person treats every other person, but we can demand a basic respect for the human rights and dignity of our customers and employees. If we do, we will strengthen the people's Department and dramatically improve our ability to serve agriculture and the Nation.

Thank you, Mr. Chairman.

[The prepared statement of Secretary Glickman appears at the conclusion of the hearing.]

The CHAIRMAN. I thank you, Mr. Secretary, for an excellent statement. Does the Deputy Secretary or Mr. Reed have comments?

[No response.]

The CHAIRMAN. Not at this time. And they are available for questions. Thank you. I have several questions, but I would like to send them down to the Department. That will save some time for the rest of the committee members who have been patient to answer some of their questions.

At this point, I recognize Mr. Stenholm of Texas.

Mr. STENHOLM. Mr. Secretary, I know that Mrs. Clayton has developed a bill with a number of provisions stemming from the Civil Rights Action Team Report and I look forward to working with her on that package. But I was wondering when we might be expecting a formal, legislative package with the eight or nine recommendations that now appear to need Congressional action?

Secretary GLICKMAN. Well, we have been working with Congresswoman Clayton, and based upon the early drafts, we support most of the provisions in the bill that we have seen. So it is my expectation that you will probably be hearing our position, as it relates to Congresswoman Clayton's bill.

Let me tell you a little bit. We're going through close-out sessions of the Civil Rights Action Team Report. There were 92 recommendations, many of them involve legislative recommendations. So we have the implementation teams that I have been working with, since this is a grass roots effort and I need to complete that process before I finish a final decision on everyone of the legislative packages.

But working with her, I think that we have reached agreement on most of what she has prepared to date.

EXHIBIT 2

Civil Action No. 00-2445 (JR)

DECLARATION OF DALLAS R. SMITH

I, Dallas R. Smith, hereby state and declare the following:

1. I am over 18 years of age and a United States citizen. I was born on October 1, 1942 in Bolton, North Carolina where my family operated a farm on which the main crop was tobacco. I currently reside at 3011 Brock Drive, Upper Marlboro, Maryland 20772.
2. I am a retired federal employee and am currently self-employed as a consultant on agricultural and related matters. Prior to my retirement in January 1999, I held the Secretarial appointed position of Deputy Under Secretary, Farm and Foreign Agricultural Services, United States Department of Agriculture (USDA). During my 33 years at USDA I held career positions from the entry level of GS-5 to the top most Senior Executive Service position (ES-5). I also worked at the county and national level in organizations within USDA.
3. I began my career in 1965 as a Negro County Extension Agent in Cumberland County, North Carolina. The Agricultural Extension Service in North Carolina was segregated by race and I worked in the 1890 Land Grant College program. In 1966, I moved to Bladen County where I continued to work with Black and Indian farmers until I moved to Washington, DC in 1968 to study government. After completing my studies in 1969, I became a Cotton Marketing Specialist with the Agricultural Stabilization and Conservation Service (ASCS) of USDA. I remained at ASCS in various positions until I was appointed Deputy Under Secretary in August of 1993.
4. In the early 1970s, while working as a cotton marketing specialist at USDA, I took on addition collateral responsibility as an EEO counselor to help management and staff employees to resolve disputes relating to charges of discrimination in employment and promotions. During this period there were very few African American, Hispanic or Native Americans in professional positions in the agency. Minorities who were in professional positions were concentrated in entry-level support positions with no identifiable career path for advancement. As an EEO counselor and later Chairman of the ASCS EEO Advisory Committee, I was involved on a daily basis in observing the operation of the complaint process and the response of USDA management to such complaints.
5. In April 1976, I was notified that I had been selected to fill a Branch Chief's job in the Agency. However, I was not permitted to formally assume the position until December because heavy opposition to the appointment of an African American to a management position supervising non-minorities delayed matters. Until my appointment as a Branch Chief no minority or female had ever advanced above the grade level 13 in the history of the USDA, although several had completed agency-sponsored training at the Masters and PHD level. There was little departmental emphasis on EEO and Civil Rights issues within USDA during the 1970s, and the level of commitment varied from manager to

manager. The consequence was that the entrenched racism that has long plagued USDA continued largely unabated. As late as the early 1960s, water fountains, restrooms and cafeterias were segregated by race in the main USDA office complex in Washington, DC. Indeed, until the Clinton Administration there was little institutional USDA interest in or support for efforts of local EEO and Civil Rights counselors, and even then little lasting progress was achieved. Reports of new regulations and requirements relative to EEO and civil rights were treated (if they were discussed at all) as low priority, end of the meeting items, and often provoked levity and negative responses.

6. Although I was able to progress through the career ranks and end my career in the Senior Executive Service, my career advancements were not without challenges. For example, in addition to delay in selecting me for my first management position as a branch chief, I was denied training that would have enhanced my opportunity to enter the Senior Executive Service. My selection as Director of Tobacco and Peanuts Division at the SES entry level was highly influenced by the fact that tobacco and peanut programs were unique southern crops and very few middle managers had the interest or knowledge to manage the programs. At the time I was appointed to the position of Deputy Under Secretary, I remained the only African American Senior Executive among the 18,000 employees in the Agricultural Stabilization and Conservation Service.

7. In the early 1980s it became apparent to the career employees that EEO complaint processing and Civil Rights enforcement regarding discriminatory practices in the administration of loan, benefit and other USDA farm programs was not a high priority. To us in the agency, it appeared that new political appointees under President Reagan were determined to dismantle what little enforcement existed before they arrived. As I recall, there were a couple of Supreme Court (Bakke and Adarand) decisions that questioned the constitutionality of affirmative action programs, which caused USDA's middle managers to believe that affirmative action was illegal and constituted quotas. This attitude by middle managers carried over and severely undermined the outreach programs designed in the late 1970s to educate all farmers, including minority farmers, about the availability of the many USDA programs. It permeated both USDA headquarters and, unsurprisingly, it was particularly welcomed at the state and local levels. I can specifically recall being in a meeting where questions were raised about modifying procedures and regulations that had been drafted so Native American ranchers operating on communal lands could qualify for disaster payments and other programs administered by the agency. The general response was that they should go over to Bureau of Indian Affairs at the Department of Interior for their benefits. In one instance, the debate focused on the loss of horses in extreme weather conditions in the Dakotas. White rancher's losses of horses would be covered because their horses were deemed to have been kept as part of their ranching operation, but Indian horses were deemed to have been kept solely for horseback riding (recreation) and thus ineligible for loss recovery. I don't recall the final outcome of the debate since I only picked up bits and pieces in staff meeting.

8. In other instances, I recall discussions of whether, and how, to administer the outreach programs aimed at encouraging under represented farmers, e.g. minority farmers, to avail

themselves of the USDA programs—whose avowed purpose is to assist and encourage family farmers to continue farming. For example, there was opposition to printing materials in Spanish and English for distribution in some counties where the Hispanic agricultural community was large, as there was general opposition to directing information to black churches, minority news media and other community outlets. Some opposed such efforts on the grounds that sufficient information was already available in the county offices and any minority farmer who is sufficiently motivated will make do with those materials. To exemplify the prevailing attitude in many of the counties in which minority farmers constituted a sizable number I recall a visit I made to a county in Georgia where we were automating services among the agency. I found most of the USDA agencies co-located in a single new building that was leased from the county government by USDA to house various federal agencies. However, the Farmers Home Administration (FmHA) office was located in an old house about a one fourth of a mile away. When I asked the office manager (a white male) why he did not relocate, he said that the county leadership said they did not want the FmHA black housing clients going to the new building. It made me wonder just how welcome blacks were made to feel for all of the other USDA programs offered by the agencies that did move into the building. Thus, throughout the 1980s there was a strong message coming down from USDA headquarters to employees in the field that the national policy with regard to strict enforcement of EEO and Civil Rights laws and regulations was being reviewed and would be relaxed. Hence there was no cause for the local county committees, the key component in the delivery of farm programs, to concern themselves about alien ideas about equal access to the FmHA farm loan program. Given the deeply rooted racism within the USDA, the initial steps to address the situation, incomplete, tentative and largely unsuccessful though they were, were undermined by indifference and opposition at the senior levels of USDA during the 1980s.

9. Although I was not directly involved in FmHA farm loan and benefit programs prior to 1994, both as a farmer and as a career USDA official I was well aware of these programs and the fact that they had long been administered in a discriminatory fashion. It was an open secret, but very difficult to combat. I had operated at the county level in North Carolina and had experienced first hand the enormous power over how the federal agriculture programs were administered which the county committees enjoyed. The institutionalized decentralization of the federal program unavoidably meant that local discriminatory attitudes determined who got what as regards the massive amounts of federal tax dollars earmarked for these programs. This stark reality—which continues to this day—is so deeply etched upon USDA that both national and state USDA officials take it as a given. The undeniable consequences, which I have seen borne out in hundreds of different ways during my career in agriculture, is that the conduct of the county committee mirrors the attitudes and prejudices of the local power structure, which invariably is a white male world hostile to minorities.

10. In 1993, Mike Espy, a black Congressman from Mississippi, became the first black Secretary of Agriculture—a hugely important symbolic event. Espy made it clear to us that he intended to rid the Department of its institutional racism and hostility toward minority farmers, but first he had to establish a predicate for doing so. Congress, in the

1993 reorganization legislation, helped by directing the Secretary to conduct an audit to determine the nature and extent of discriminatory conduct in the administration of FSA farm programs. Espy delegated the responsibility to conduct such a study generally to FSA, and Rashid Nuri, the deputy administrator of FSA and Willie Cook, the director of EEO and Civil Rights for FSA—both of whom are black, played the lead roles in arranging for the study. Nuri, a former senior manager for Cargill in Nigeria, was a political appointee who was part of the Espy team. Espy hoped the resulting report would provide him with the performance data, which Congress wanted to see.

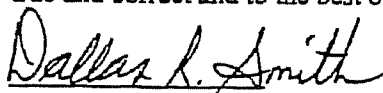
11. Willie Cook retained D.J. Miller & Associates, an Atlanta, Georgia based minority consulting firm, to conduct the audit and to prepare the report. Rashid reviewed and approved the contract with D.J. Miller and operated within his authority in doing so. The D.J. Miller audit exercise aroused considerable concern and apprehension throughout USDA because a thorough and honest audit would shine light into many dark corners, to the embarrassment of the Department.

12. In 1994, D.J. Miller, having survived several efforts to torpedo his project, proceeded to conduct an extensive field investigation at the county committee, district and state levels, and studied how headquarters handled both standard appeals and complaints about discriminatory treatment in the loan and disaster administration processes, among other aspects of USDA's wide array of farm programs. Most importantly, Miller was given access to the extensive data that USDA, via its record and data processing center in Kansas City, Missouri, thus permitting him to measure the impact of the discriminatory conduct. It soon became apparent that Miller could prove to be a major threat to the status quo and to the many key USDA officials interested in its perpetuation.

13. The initial D.J. Miller report and supporting documentation (in two volumes) was presented to FSA early in 1995, as I recall. I reviewed the report and found that it substantiated and documented what I had long observed as regards the systematic racism and discrimination, which infected FSA program administration. It is fair to say that the D.J. Miller report, thanks to the comprehensiveness of its fieldwork and its utilization of USDA data to demonstrate the impact on minorities of discriminatory program administration, had a profound impact upon USDA headquarters. Predictably, the instinctive institutional response was to simultaneously attempt to discredit the messenger and to muffle the message. I will spare the ugly details, but suffice it to say that both Willie Cook and Rashid Nuri, the two persons most directly responsible for hiring Miller did not survive the ensuing period of recrimination. Although the D.J. Miller Report was quietly and unceremoniously shelved, the fact of its existence made it impossible to ignore the undeniable fact that the administration of the FSA farm programs was and is pervaded by systemic racism and anti-minority bias. However much some in the USDA strained to discredit the report, the subsequent CRAT report (a pale copy of the Miller Report) cited the Miller Report and listed it in its bibliography, and the momentum generated by it inspired a succession of USDA IG reports detailing the progress (or lack thereof) in eradicating systemic discrimination at USDA.

14. I remained in USDA until January 1999 and am pleased that at least some progress has been made. Unfortunately the momentum that had been generated has not been institutionalized and my assessment is that a substantial amount of fundamental remedial work (which I would be happy to discuss on a later occasion) remains to be done. It appears that neither Congressional nor USDA initiated relief is likely, which means that only through judicial intervention can we have a fair, nondiscriminatory allocation of taxpayer funds intended to provide encouragement and security to all family farm families in America. The conduct of some USDA managers and employees in perpetuating this egregious situation simply can no longer be tolerated.

I have reviewed the forgoing Declaration, and declare, under penalty of perjury that it is true and correct and to the best of my personal knowledge.


Dallas R. Smith

4/5/02
Date

EXHIBIT 3

Civil Action No. 00-2445 (JR)

DECLARATION OF
ROSALIND GRAY

1. I am over 18 years of age and a United States citizen.
2. My business address is 607 Oneida Place, N.W., Washington, D.C.
3. I am a 1973 graduate of Howard University School of Law, a member of the Mississippi Bar and have practiced in many federal district courts. I am also a member of the Bar of the United States Supreme Court. From 1976 to 1986, as trial counsel and director for the Lawyers' Committee Municipal Services Equalization Project, I represented minorities in small, rural communities seeking to equalize municipal services. I have served as a consultant to the Legal Services Corporation, the Office of Revenue Sharing and the Departments of Justice and Housing and Urban Development. I have also served as Acting General Counsel to the U.S. Commission on Civil Rights and as Deputy General Counsel at the Equal Employment Opportunity Commission ("EEOC"). As Deputy General Counsel at EEOC, I managed the national litigation program and participated in the settlement of a number of major class actions. In addition, I have served as Associate General Counsel for the University of the District of Columbia where I represented the University in federal litigation and administrative proceedings on employment discrimination and other labor claims. On July 13, 1998, the Secretary for the Department of Agriculture announced my appointment to serve as Director of Civil Rights.
4. The Office of Civil Rights ("OCR") has broad responsibility for implementing and coordinating all Department of Agriculture ("USDA") nondiscrimination, civil rights, and equal opportunity efforts in connection with all USDA programs and activities, including programs and activities which are operated or sponsored by USDA and carried out by non-federal organizations. The OCR Director serves as the principal advisor to the Secretary and the Assistant Secretary for Administration on all matters related to equal opportunity and civil rights. The position description for the OCR Director is included as Exhibit 1.

OVERVIEW: USDA and Civil Rights

5. When I assumed my duties as OCR Director, the OCR could perhaps best be described as being in a state of confusion and disorder. The office had a history of failing to handle properly program and employee complaints. My task as a manager was further complicated by the fact that the OCR was newly organized and poorly staffed. Most of its employees had been reassigned from non-civil rights jobs or were new hires, and poorly prepared to undertake the responsibilities of the office. I soon realized that the goals established by the administration to organize the office, to reduce complaints and to develop procedures for complaint processing while executing the other duties and responsibilities of the Director's Office would be one of the greatest challenges of my life. Despite these obvious problems that I discovered upon my arrival at OCR, I

nevertheless welcomed the challenge and saw it as an opportunity to assist in addressing issues of USDA's long history of discrimination against minority farmers and the well-documented decline of minority farmers.

6. When I arrived at the Jamie Whiten Building, USDA's headquarters in Washington, D.C., the atmosphere resembled that of a recently desegregated institution. Minority men, whether farmers or employees, were greeted with suspicion. Minority females were largely hired in support or administrative positions. While the Clinton Administration sought to change some of this by appointing a number of minority employees to high-level positions at USDA, African American men who were appointed often saw the authority of their positions curtailed. Management involvement in the allegations against and removal of the former Secretary of Agriculture Mike Espy is but one example.

7. Almost forty years after the civil rights acts, black employees were still reluctant to frequent the cafeteria in the Whiten Building. Long-term black employees remembered when it had been segregated and still did not feel welcome. In fact, they did not feel comfortable in the building at all and came to the building as little as possible. Black senior executives told me that white females whom they saw daily were reluctant or declined to enter an elevator when they were on it. Most minority employees in the main administration building were in low-grade positions and worked in the mailroom or technical support. White females reported they were afraid to walk corridors along the basement where a number of minority employees worked. I am not aware of any reported incidence of harassment.

8. Minority employees complained frequently of promotion denials. Senior minority employees struggled to maintain authority in their areas of management. White career employees used different standards of evaluation for minority managers and attempted to rate them unsatisfactorily for performances that earned their white counterparts outstanding ratings. Senior white career managers resisted integration of employment at higher grades.

9. In direct conflict with the EEOC, FSA personnel procedures provided for priority in hiring to be given to internal candidates and these procedures were still followed in many agencies. When white internal candidates were not selected, they invariably filed discrimination complaints. In one agency, when a minority female manager sought to diversify the senior executive staff, career managers met to complain and to prevent the Asian selectee from receiving the appointment. This was the USDA headquarters. Employees in the field reported that few, if any, of the civil rights or diversity changes initiated by the administration had been implemented in the field offices.

MANAGEMENT AND PERSONNEL ISSUES IN CIVIL RIGHTS

10. OCR employees resented my appointment and focus on program

complaints. They believed that I had replaced a career employee and that my primary focus was not employee complaints. It is well to note that USDA's employment-complaint processing, though inefficient and ineffective, had never been eliminated as had program-complaint processing. Upon my arrival at OCR, I became aware that reducing the number of program complaints and establishing processing procedures for farm program complaints simply were not matters of concern to OCR staffers. Many of these employees were responsible for the poor service provided farm customers. Many of them were, at best, indifferent to the exclusion of minority farmers from USDA programs.

11. Indifference and incompetence produced poor records and ineffective case processing. While uncertainty about the number of cases and their status was clearly a controllable management issue, files were and remained in disarray. Few CR staffers understood complaint processing or even the rudiments of civil rights procedures. They seemed to care little about the consequences to farmers of their denial of services. To build a structure for complaint processing, I worked diligently with the technical staff to provide resources to complete the complaint tracking system. When employees' lack of understanding of complaint processing threatened to derail completion of the tracking system, I contracted to draft processing procedures to be incorporated in the tracking system. When the system was deployed OCR employees complained that data entry for the tracking system was too time consuming and burdensome. Without my approval, employees eventually maintained two systems: 1) new cases were entered in the computerized tracking systems; and 2) existing cases were maintained in the old system. This dual tracking system eliminated their need to organize the old files. It also created the opportunity to maintain various and confusing categories of pending cases. The result was that the number of pending cases continued to be erroneously reported. In fact, if one did not know the category of case numbers to request, one could not obtain a clear picture of OCR's caseload. This basic failure had serious repercussions beyond the immediate office. Not only were there not accurate numbers for work and planning, but time and again, the OCR reported differing case numbers to the Secretary and Congress, resulting in embarrassment for the administration and for me.

12. It was obvious that personnel changes were needed. The Secretary had approved the return of many of the OCR employees to their former agencies and was committed to hiring experienced civil rights personnel. The Department's Office of Personnel identified forty-five people who had been assigned to OCR who did not meet the qualifications for any position at the office. However, before the reassignments could be completed, they were aborted. The proffered reason was that the reassignments violated the settlement agreements that had brought the employees to OCR initially; the real reason was that the agencies did not want these employees returned. Thus, although Congress had allocated additional funds for hiring new competent OCR employees, much of the additional funding was redirected to other divisions within the USDA. Many times, the department simply froze hiring for OCR and used the funds earmarked for OCR for other purposes. With the high rate of turnover and frequent freezes on hiring, civil rights had no appreciable staff increases. It was not difficult to glean that civil rights

enforcement simply was not a USDA priority.

13. Employees were antagonistic and not very helpful. Agency chiefs and supervisors generally resented the existence of the OCR and considered most efforts to enhance civil rights enforcement as infringements upon their authority, because previously, agency chiefs had been responsible for their own civil rights enforcement. Agency chiefs and supervisors complained that OCR interfered with their civil rights enforcement authority, threatened to expose their past efforts or lack thereof in the area of civil rights enforcement. Consequently, throughout my tenure, I was constantly confronted with agency heads and their deputies who resisted directly, or through the agency civil rights director, many of the changes I sought to implement.

14. While complaints continued to be filed in record numbers and the Secretary's office retrenched on commitments it had made to customers and employees regarding civil rights enforcement, I struggled to reform the system of complaint processing.

15. The Office of General Counsel ("OGC") oversaw the civil rights process at USDA. When the OCR was created, OGC insisted that all attorneys hired for civil rights review and enforcement be housed with OGC. The resulting effect was that OCR still did not have independence in case processing. OGC's authority for a legal sufficiency review extended to every element of case processing and OGC's delays magnified the problems of civil rights enforcement. However, OGC was never held responsible for the problems created. Moreover, OGC civil rights attorneys were often as lacking in the knowledge of civil rights law as the OCR staff. There was constant conflict between the two offices.

16. Although OCR had responsibility for many activities, the remainder of this declaration will be limited to my observations of complaint processing for programs managed by the Farm Services Agency ("FSA") and the continuing need for reform.

PROGRAM DISCRIMINATION COMPLAINTS IN THE FARM SERVICES AGENCIES

17. The February 1997 Civil Rights Action Team ("CRAT") Report summarized charges by minority farmers that USDA had long tolerated discrimination in the distribution of program benefits and the misuse of power to influence land ownership and farm profits. Minority farmers blamed the FSA for depriving them of the benefits of farm programs that have helped major producers survive the changes in agriculture. Based on thousands of complaints that were filed and the supporting documentation that I personally reviewed, I can confirm that the accusations contained in the CRAT Report are generally true. Despite ample warnings that minority farmers were being subjected to systematic discrimination at the local level in the delivery of credit and debt servicing, USDA has failed to exercise sufficient control over its field operations to address these lingering problems. I submit that there have been few effective steps taken to insure an equitable distribution of federal dollars to USDA customers. This is in large part due to

the fact that there are constituents, more numerous than minority farmers, who oppose change. In addition, there has been less than a total commitment from the Department to correct the recognized inequities and almost none from the FSA. A leading feminist once said that discrimination will end when it is more profitable for corporations and institutions to treat their customers equitably than it is for them to discriminate. The same can be said for USDA.

18. Notwithstanding its protestations to the contrary, the USDA is not interested in an equitable distribution of funds from its farm programs to minority farmers. Indeed, there have been many opportunities for the FSA to change if that agency really desired equity for its farm customers.

19. When I arrived at USDA there were 1,088 cases identified as being backlogged or filed before 1997. In addition to the "backlogged" cases, there were approximately three hundred complaints that had been accepted and several hundred or so filings that awaited determinations. While not all filings would be accepted as complaints and not all complaints would yield findings of discrimination, the backlogged cases had been forwarded to OCR in a state of disarray.

20. Until 1997, the FSA had processed its own civil rights complaints. Based upon my first-hand knowledge, I can attest that many complaints were destroyed or not accepted at all. After FSA complaint processing was transferred to the OCR, the FSA was initially responsible for preparing a preliminary investigatory report. Even though the FSA had presumably forwarded complainant files to OCR, the files were often incomplete and OCR had to rely on FSA to provide documents and a response to each allegation. Within the USDA, the preliminary investigatory report prepared by FSA was considered more persuasive than the complainant's allegations even when the accused FSA official had a well-documented history of discriminating against minority farmers. In preparing the preliminary report, FSA would send its non-civil rights investigators to interview and often intimidate the complainant. When investigations were transferred to the OCR, reports of investigations were frequently deficient due to a lack of understanding of the farm programs, and the OGC's policy that no matter how blatant the discriminatory conduct might be, there can be no discrimination unless the applicant is "eligible." To avoid finding a would-be applicant "eligible," county officials often simply refused to give minority farmers a loan application thereby making it impossible for the minority farmer to establish "eligibility" under the OGC's policy.

21. When I arrived and regrettably when I left, the OCR did not have, despite my best efforts, an effective civil rights enforcement program. In 1993, there were twenty employees responsible for civil rights compliance in the Department. In 1998, there were more than one hundred twenty employees. However, roughly half of that number was responsible for employment complaints. Of the fifty or sixty employees responsible for program complaints, about twenty three were temporary employees with no prior civil rights complaint experience. The administrative and support staff were comprised of temporary employees or detailees from other agencies.

22. To bring any case to conclusion, I personally had to become much more involved than I wanted to be. I reviewed investigatory reports looking for information that the farmers swore should have been included in their files. A familiar scenario soon emerged: The farmer charged discrimination; FSA replied that it had done everything "by the books."

23. Over time, I began to see geographical patterns emerge in the complaints. Black farmers in the "southern" states had already lost most of their farm acreage. They complained of FSA's refusal to finance them after successful farming years. They complained of conspiracies between USDA and local white corporate farmers and developers to acquire their farms. Often the land had been auctioned and lost before their complaints were processed. It appeared that FSA bid at auctions infrequently. Consequently, the lost land was not available for repurchase by the farmer from FSA inventory.

24. In the midsouth, complaints alleged brazen conduct. In Arkansas and Alabama, for example, there were proven claims documented by OCR that FSA employees actually participated in schemes to deprive minority farmers of land ownership by refusing loans and refinancing or simply failing to inform them of the availability of funding. A favorite scheme was to extend loans that FSA officers knew the farmer could not repay. In some cases, farmers complained that they were required to pay a portion of their operating loans to the lending officers. In the southwest, where corporate farms dominate, and the largest concentrations of Hispanic farmers and ranchers live, the tactic was more direct - no loans. Many FSA employees are themselves farmers and have a personal interest in depriving loans to minority farmers. Finally, in 2000, the USDA's Office of Ethics was able to implement a provision that made it a conflict of interest for a FSA official to benefit personally from a loan in which he was involved.

25. For years, FSA has known that its system of county committees excluded minority farmers. Many minority farmers complained that they never knew about FSA elections or when funds were available even after they inquired. This system of control by a few white farmers over federal farm dollars moving into the counties has been used to perpetuate and expand the farms of many county committee members and their families, at the expense of disfavored minority farmers. In some Alabama and Arkansas counties where minority farmers were a majority, they were nevertheless totally excluded from participation in the county committee system.

26. When farmers complained that civil rights investigations had been inadequate or that FSA had misrepresented the truth during investigations, OCR sent investigators to review field offices for compliance. Discriminatory practices and treatment were uncovered in compliance reviews that investigations often did not identify. Through compliance reviews, it was uncovered that in certain offices in Oklahoma, FSA employees refused to register tribal land in their databases. This insured that the Native American farmers would not receive notice of elections to the county committee and would not be eligible to participate in FSA programs - simple and

effective discrimination. That practice was discovered in August, 1998, and I was still trying to insure that the all Native American farm land was registered in the database when I left office in 2001.

27. Results from many compliance reviews were shared with FSA administrator, the Deputy Secretary and the Assistant Secretary for Administration. FSA's civil rights director, who now serves as the USDA's OCR Director of Civil Rights, would respond that training was provided to the FSA office in response to findings of non-compliance. When complaints continued, I met with the FSA administrator who referred me to the agency civil rights director. FSA was reluctant and sometimes field offices refused to implement settlement or compliance agreements. Progress was so slow that the FSA administrator was made personally responsible for implementing compliance and settlement agreements. Complaints reached such a level that the USDA Secretary had to become personally involved. One of the more infamous cases involved an employee in rural Virginia who had brandished a gun in the office at an African American farmer inquiring about a loan. The federal employee admitted having the weapon in the office. FSA concluded that it was an antique weapon that the employee had in the office for cleaning and gave the employee only a three day suspension.

28. After all the investigations and findings of discrimination, after all the findings that FSA was not in compliance with civil rights regulations, after the millions paid by FSA in settlement of administrative complaints and after the many more millions in debt that FSA has forgiven, there still has not been any change in the way programs are administered. There were many recommendations for change. Yet systemic exclusion of minority farmers remains the standard operating procedure for FSA.

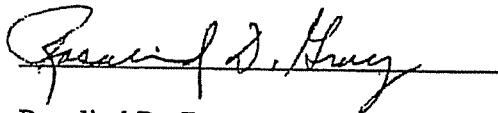
29. If not every, many efforts were made to correct the situation. Congress allocated resources. The Clinton Administration made improving civil rights enforcement at the USDA a priority. Training was provided. Yet these and many other efforts did not provide lasting improvements. The 1,088 "backlogged" cases were reduced to seven. All of the resources within the program office and assistance from other agencies helped reduce the backlogged cases. In 1999 another 1,261 cases were filed. In FY2000, filings were down to 671. Most of the complaints continued to be filed against the FSA. Many of the new filings were more than a year old before the initial processing began. OCR staff was simply not prepared to do the work of the office.

30. The lack of quality in the processing of cases over this period of time produced many erroneous decisions, especially dismissals based on an alleged lack of jurisdiction. Hundreds of complaints were dismissed on the basis of "lack of jurisdiction" by people who did not know the basis of a jurisdictional claim under Title VI of the Civil Rights Act. Private contractors, as well as the Justice Department, provided training. Employees attended Civil Rights training outside the Department. Yet the training did not improve production or the quality of work.

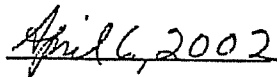
31. As I reflect upon my tenure as OCR Director, I ask: What was accomplished? Thousands of cases were resolved through extraordinary methods. Many backlogged cases, with the exclusion of the complaints filed by African American farmers, were resolved through an early resolution task force. Civil rights procedures were developed and published, but were not and are not followed. OCR dismissed hundreds of cases because they were not filed within 180 days of the "occurrence of the alleged discrimination." Yet many complainants did not receive a letter of acknowledgment after filing their complaint for more than a year and it frequently required another year for the complaint to be investigated and still another year before a proposed finding in the case was rendered. Consequently, there have been countless farmers who have lost their land or died waiting for USDA to process their complaints. Minority farmers continue to allege that FSA discriminate against them. The root of this problem lies in the unfettered discretion FSA employees have to control farmers' access to needed credit.

32. With few exceptions, minority participation in FSA programs is remarkably low. A comparative analysis of the distribution of the federal dollars would show this. I had suggested that a simple tracking of dollars would establish claims of exclusion by minority applicants. Small, minority farmers cannot compete with corporate farmers for loan eligibility, anymore than small business can compete with major corporations. USDA must propose, and Congress must approve, regulations with realistic eligibility standards for small farmers and set aside appropriate funding for this purpose. Exclusion of minority farmers from equitable participation in FSA program benefits must end before there are no minority farmers left to complain.

I have reviewed the foregoing Declaration and declare under penalty of perjury that it is true and correct to the best of my personal knowledge.



Rosalind D. Gray



Date

U.S. Department of Agriculture
Office of Civil Rights
Director
ES-301

I. INTRODUCTION

The Office of Civil Rights (CR) implements and coordinates all Department of Agriculture (USDA) programs and activities related to nondiscrimination, civil rights, and equal opportunity, as well as those civil rights programs and activities which are operated, controlled, reviewed, or sponsored by USDA but which are carried out by non-Federal organizations.

The Director, Office of Civil Rights, serves as the principal advisor to the Secretary and the Assistant Secretary for Administration on all matters related to equal opportunity and civil rights. The incumbent provides centralized leadership in planning and evaluating civil rights programs and activities of USDA and its component mission areas and agencies, in both Federally assisted and USDA-administered programs.

II. MAJOR DUTIES AND RESPONSIBILITIES

1. Provides overall leadership, coordination, and policy development for the Department's civil rights program, including program delivery compliance and equal employment opportunity. The incumbent is responsible for enforcement of:
 - Titles VI and VII of the Civil Rights Act of 1964;
 - The Civil Rights Act of 1991;
 - Title IX of the Education Amendments Act of 1972;
 - Sections 501 and 504 of the Rehabilitation Act of 1973;
 - The Americans with Disabilities Act of 1990;
 - The Age Discrimination in Employment Act of 1974 ; and
 - Related laws, Executive orders, policies, rules and regulations.
2. Takes proactive steps to ensure nondiscrimination in USDA employment and program delivery on the bases of race, color, national origin, religion, sex, age, disability, marital or parental status, reprisal, sexual orientation, and such other bases as may be added by law, Executive order, or policy of the Secretary.

3. Serves as the focal point for all contacts with the Department of Justice on civil rights matters, except those matters in litigation, including administrative enforcement actions. Also serves as the focal point for contacts with the Department of Health and Human Services on age discrimination. In addition, responsible for liaison on civil rights and equal employment opportunity programs and activities with the Equal Employment Opportunity Commission, the Office of Personnel Management, USDA Office of Human Resources Management, and the U.S. Civil Rights Commission, and works in partnership with these agencies to advance the Department's civil rights objectives. Coordinates contacts with Congress and response to Congressional inquiries on USDA civil rights matters.
4. Represents USDA at high-level meetings and conferences with Equal Employment Opportunity Commission, the Office of Personnel Management, and other Executive Departments and agencies, as well as with industry groups, universities, non-governmental organizations, state and Congressional officials, and others, on matters related to equal opportunity and civil rights.
5. Evaluates proposed or existing USDA programs and activities for civil rights impacts and concerns. Prepares or reviews Civil Rights Impact Analyses as necessary. Makes recommendations to reduce adverse impact on protected groups. Develops policies, regulations, plans, and procedures necessary to carry out the Department's civil rights programs.
6. Makes final determinations, on both the merits and required corrective action, as to complaints and compliance reviews. Monitors, evaluates and reports on agency compliance with civil rights laws. Directs such corrective action or affirmative steps as may be necessary to ensure compliance with civil rights laws and regulations. Based on results of investigations or reviews, advises Secretary on any changes to regulations or policies which may be necessary. Is designated as the Department's Director of Equal Employment Opportunity to perform functions and responsibilities of that position under 29 CFR Part 1614. Makes final determinations, or enters into settlement agreements, on discrimination complaints in conducted programs subject to the Equal Credit Opportunity Act.
7. Develops and coordinates the civil rights training program of the Department, including appropriate topics, methods, and target audiences. Develops and adjusts training as needed to reflect the Secretary's policies, and any new initiatives, changes in law or regulation, and emerging priorities. Provides mission areas and agencies direction on appropriate training in a timely manner.
8. Provides leadership and coordination for USDA systems for targeting, collecting, analyzing, and evaluating program participation data and equal employment opportunity data.
9. Maintains liaison with Historically Black Colleges and Universities, Hispanic-Serving

Institutions, and other educational institutions. Provides leadership and technical assistance in assisting USDA agencies in strengthening these minority institutions, by facilitating the institutions' participation in USDA programs and activities, by encouraging recruitment of institution graduates for USDA employment, and other means.

10. Provides equal employment opportunity services for managers and employees in the Department staff offices.
11. Takes steps to ensure equal opportunity and nondiscrimination within the Office of Civil Rights, and provides leadership and direction in the Office of Civil Rights to ensure compliance with equal opportunity and civil rights laws and regulations, through activities such as outreach efforts, training and developmental activities, and establishing and achieving contracting goals for small and minority contractors.
12. Ensures high standards of ethical conduct personally and throughout the workforce.

II. SUPERVISION AND GUIDANCE RECEIVED

The incumbent reports to the Secretary of Agriculture through the Assistant Secretary for Administration, who provides general oversight and broad policy guidance. Incumbent participates in the development of Department-wide policy. The Secretary assigns overall responsibilities. Incumbent is expected to identify and implement functions necessary to meet assigned responsibilities. Review is confined to the Secretary's and Assistant Secretary for Administration's appraisals of the program's effectiveness.

III. SCOPE AND EFFECT OF WORK

The decisions made by the incumbent, or recommendations made by him/her to the Secretary, the Assistant Secretary, and other key officials of the Department, influence the many complex and diverse policies and program operations of the Department. Thus, they have an impact and effect upon the national agricultural economy. The successful discharge of these functions is essential to the effective and efficient discharge of the Department's responsibilities.

IV. OTHER

The incumbent must exercise a high degree of diplomacy and persuasiveness in order to obtain the cooperation and affirmative attitudes of people with diverse attitudes, beliefs, and social customs.

June 30, 2000