

## 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.

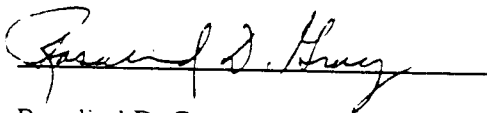
29. If not every, many efforts were made to correct the situation. Congress allocated resources. The Clinton Administration made improving civil rights enforcement at the USDA a priority. Training was provided. Yet these and many other efforts did not provide lasting improvements. The 1,088 "backlogged" 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.

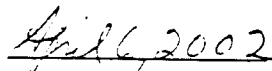
31. As I reflect upon my tenure as OCR Director, I ask: What was accomplished? Thousands of cases were resolved through extraordinary methods. Many backlogged cases, with the exclusion of the complaints filed by African American farmers, were resolved through an early resolution task force. Civil rights 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